Are UK Employment Tribunals a barrier to justice in unfair dismissal claims? : An observer's perspective

Jonathan David Lord

Salford Business School

University of Salford

Submitted in Partial Fulfilment of the Requirements of the Degree of Doctor of Philosophy,

September 2014

List of contents

Tables and Figures

Acknowledgements

The completion of this thesis has been greatly enabled through the support and encouragement of family, academic colleagues and friends, who have done so much to support this piece of work; without their help the task would have proved impossible. In particular I am indebted to my wife and children, my parents, and extended family who have ensured that I have both a happy home and work life. The advice, guidance and steering from Dr Dave Redfern and Professor Ralph Darlington has been a vital link in the study being completed and also meeting the demands of a PhD assessment. Special gratitude also goes to Salford Business School, which provided an excellent framework and support mechanism for undertaking the PhD journey.

I would like to dedicate the thesis to Joan Butterworth

Abbreviations

Acas	Advisory, Conciliation and Arbitration Service
BCC	British Chamber of Commerce
BERR	(The Department for)Business, Enterprise and Regulatory Reform
CAB	Citizens Advice Bureau
CBI	Confederation of British Industry
CIPD	Chartered Institute of Personnel and Development
CMD	Case Management Discussion (at the Employment Tribunal)
CPS	Crown Prosecution Service
EAT	Employment Appeal Tribunal
EEC	European Economic Community
EIRO	European Industrial Relations Observatory
ET	Employment Tribunal
ETS	Employment Tribunal System
EU	European Union
HMC&TS	Her Majesty's Courts and Tribunals Service
HRM	Human Resource Management
IER	Institute of Employment Rights
ILO	International Labour Organisation
IoD	Institute of Directors
IPA	Interaction Process Analysis
IPM	Institute of Personnel Management
IT	Industrial Tribunal
ITD	Institute of Training and Development
KPI	Key Performance Indicators
MoJ	Ministry of Justice
PH	Pre-Hearing (at the Employment Tribunal)
RMT	Rail, Maritime and Transport (Trade Union)
SBC	Small Business Council
SETA	Survey of Employment Tribunals
SME	Small and Medium Sized Enterprises
TfL	Transport for London
TUC	Trades Union Congress
TUPE	*Transfer of Undertaking Protection of Employment (TUPE) Regulations*
UK	United Kingdom
WERS	Workplace Employment Relations Survey

Abstract

The UK Employment Tribunal System (ETS) is broken and in need of reform according to the British Chamber of Commerce (BCC) (2011) and the Confederation of British Industry (CBI) (2011). Both organisations, that represent and lobby in the interests of employers, have carried out research which purports to show tribunals are too alacritous in accepting spurious claims and that the cost to defend a claim is higher than settling. In contrast the Trades Union Congress (TUC) (2011) and ETS commentators have consistently argued that the tribunal system favours employers through its judgments and ability to compensate, and needs to be reformed to address this lack of fairness, specifically the remedies awarded to claimants can be minimal in terms of potential career earnings, and the psychological impact of the tribunal process can be very damaging.

Focusing on three areas of social justice identified by Rawls (2005) and Cropanzano, Stein and Nadisic (2011) this study argues that although the ETS is an important mechanism for adjudicating workplace disputes, there are major concerns regarding the inclination to defend cases and the willingness to follow a claim to a full tribunal hearing. Implications are drawn from these superficially similar viewpoints as to how the government can continually monitor, evaluate and reform the tribunal system. The study considers the proposition that tribunals should favour employees, as they have more to lose from the process, and it implies that if justice is both carried out and also perceived to be administered, the ETS has to be continually modernised to meet the expectations of those involved with the process.

The law is stated as at October 2013.

Chapter 1

Introduction

Chapter One - Introduction Contents

1.1 Introduction

The UK Employment Tribunal System (ETS) is '*broken*' and in need of reform according to the British Chamber of Commerce (BCC) (2011) and the Confederation of British Industry (CBI) (2011). Both organisations, that represent and lobby in the interests of employers, have carried out research which purports to show tribunals are too alacritous in accepting spurious claims and that the cost to defend a claim is higher than settling. In contrast the Trades Union Congress (TUC) (2011) and ETS commentators have consistently argued that the tribunal system favours employers, through its judgments and ability to compensate, and needs to be reformed to address this lack of fairness, specifically the remedies awarded to claimants can be minimal in terms of potential career earnings, and the psychological impact of the tribunal process can be very damaging.

The following sections outline the background to the study, from theoretical and contextual perspectives, and appraises the various statements made regarding the ETS which have focused the literature investigation and shaped the design of the study.

1.2 Background to the research

1.2.1 Theoretical background

Contemporary discussions on employment law have focused around the pervasive arguments that Employment Tribunals (ET's) should enforce the rights of workers, ensure economic viability for the government as well as employers and deliver justice for workers (Davies, 2009). The initial remit of tribunals involved disputes regarding industrial training levies (Lewis and Sargeant, 2013). However over the last five decades the ETS has developed into a highly legalised and complex structure (Corby and Latreille, 2012; Renton, 2012) that does not encompass the original aim and mission of tribunals. Lord Justice Elias (Swift and Chapman, 2007) argues that present-day tribunals reflect original tribunals as much as the computer does with the calculator, specifically that the jurisdiction and complexity of tribunal hearings

has grown enormously. This has, suggested Lord Justice Elias, resulted in cases taking weeks to be heard, and according to Corby and Latreille (2012), led to the ETS shifting towards a civil court in terms of structure and practice. The introduction of measures to prevent cases from being heard at the ET, such as Acas' arbitration schemes, have also supported the argument that the ETS has become highly legalised and complex, and (as will be discussed in Chapter 2) far removed from the recommendations set out by the Donovan Commission (1965-1968); Walden (2001).

ET's have been continually monitored as well as persistently criticised by various commentators and stakeholders, including the users of the service. The ETS holds a unique position in that it not only has a very high profile, it also faces accusations of being in a position to adjudicate over employment disputes when other mechanisms could be utilised. For example, workplace disputes would have historically been dealt with internally through a tri-partite arrangement consisting of management, workers and trade union. The introduction of legislation led Hepple (1983:393) to label this the "*juridifaction of individual disputes where positive legal rights and duties regulated the employment relationship*". Criminal and Civil courts can be acknowledged as appropriate mediums for adjudicating cases that appear before them (although there are some commentators who have highlighted alternatives; Marshall, 1985). Commentators in favour of tribunal reform have questioned the role of ET's and whether other mechanisms, such as mediation, could be adopted (BIS, 2011; Colling, 2004; Dix and Oxenbridge, 2004; Gibbons, 2007; Pollert, (2005a). Critics of ET's have also questioned the effectiveness of the ETS in accepting spurious claims. The central debate within this thesis derives from criticism made by the CBI (2011) and the BCC (2011) who stated that the ETS is '*broken'* due to the number of vexatious claims and the perceived abuse of the system by claimants. Both publications have accused employees of opportunism as well as blackmailing employers into settling claims, even though their cases do not have reasonable prospect of success. The BCC's (2011) research indicates that employers would often settle a case to circumvent the costly nature and ambiguity of defending cases, even when the claims are unfounded. Specifically, the BCC (2011) have discovered that

to defend a case, employers would typically outlay on average, costs of £8,500, whereas to settle the case, the average settlement was £5,400. This according to the BCC (2011) leaves the ETS in a position, which they believe is '*broken*', and has resulted in a backlog of claims in which cases grind on for months and months.

These assertions have instigated a debate resulting in trade unions and other agencies, such as the CAB (2011), counteracting by highlighting the success rate of employers at tribunal hearings. The TUC (2011) have also argued that bringing a claim can be a highly stressful and time-consuming process, which deters employees from enforcing their rights through the tribunal system. The TUC also believe that:

> "*While employer groups complain that tribunals are costing them too much, they seem to have lost sight of the fact that if firms treated their staff as they are meant to, few would ever find themselves taken to court."*
>
> (TUC, 2011)

The TUC position concurs with what has been outlined above in that not only do they criticise the fairness of tribunals, but question the regulation of employment rights through an external medium rather internal processes of control. Specifically the TUC (2011) argue that:

> "*When things go wrong at work, it's better for everyone concerned that the problem is resolved within the workplace, which is why mediation and the assistance provided by unions and ACAS is so invaluable. It's no accident that employers who work with unions are much less likely to find themselves in front of a tribunal than firms where there are no unions.*"

The TUC's position supports the *Department of Employment's* (1986) affirmation that where there are individual workplace matters these should be dealt with by the employer and employee, and their representatives. More contemporary commentators raise further concerns, focusing on not just the structure of the legislation but how this is interpreted through case law. (Dickens, 2007; Taylor and Emir, 2012).

These two opposing arguments have similar propositions, that the ETS is '*broken*', but have differing opinions as to the fairness of the system. This study therefore assesses the fairness of tribunals, through Rawls' (1999) and Cropanzano, Stein and Nadisic's (2011) prism of procedural, interactional and distributive justice, to establish whether the system is a barrier for claimants and respondents having their disputes resolved. Both the BCC (2011) and TUC (2011) have incorporated the term '*justice'* into their arguments, therefore the central theme of the research assesses the ETS specifically against these forms of social justice.

Procedural justice concentrates on the fairness of the process and how certain aspects should be met to the satisfaction of the user (Klamming and Giesen, 2008). Therefore even if the outcome of the process were not to the agreement of the user, if the appropriate process has been adhered to then the outcome would have been deemed to be fair.

Interactional justice focuses upon the treatment received by users during the process (Bies and Moag, 1986) and is a key component in assessing the fairness of tribunals in this study. Renton (2012) raises these concerns by highlighting the psychological suffering when proceeding through the tribunal system, which can have serious consequences and provide little solace even if the Claimant or Respondent are successful. Cropanzano *et al*., (2011) explain that a key aspect of interactional justice is not just that people are treated with respect and understanding but also a clear rational is presented for the decisions being made. Within the tribunal system there are measures in place which try to ensure a rationale is provided, specifically Rule 30(6) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 SI No. 1861 and the directions in the Meek v City of Birmingham District Council (1987) case. In the majority of cases, written reasons for the judgment are not automatically provided, these must be requested and can take some considerably time to receive after the case has been heard. The literature and data collected in this study encapsulates these concerns by demonstrating the length of time that cases take to be heard,

including the appeal process, and thus impacting upon the treatment received by the users of the system.

Distributive justice concentrates on possibly the most important aspect of a tribunal case, the outcome. Theoretically it concerns fairness and equity (Folger and Cropanzano, 1998; Greenberg, 1982; Greenberg, 1990) and is not only associated with rewards but also punishments.

Within the tribunal system there are a number of possible outcomes for a case including the case being dismissed, the case being successful with compensation being awarded or reinstatement/reengagement instructed. As the forthcoming literature review chapter will explain, only a very small number of cases (5 in 4,596 successful unfair dismissal cases in 2012-2013) result in the tribunal ordering that the claimant must be re-instated or re-engaged. This could lead to an assumption that claimants are only looking for financial compensation. As the data will show, this is misleading and in fact highlights a key concern with the ETS in that users may not be satisfied with the outcome of a case, even if they have won. This links to the discussion around the purpose and effectiveness of tribunals and whether other mechanisms should be used to deal with workplace disputes (Colling, 2004; Pollert, 2005). Kersley *et al*., (2006) and Knight and Latreille (2000) expand on this by providing evidence that trade unions resolve grievances internally which prevents disputes spilling over into the ETS and deliver what Colling, (2004) and Pollert, (2005a) state is real industrial justice.

These three areas of justice have shaped and focused this research project and will be used to address the overall aim of the research; to determine if the ETS is a barrier to justice.

1.2.2 Contextual background

Law relating to industry and the individual at work is linked to the late nineteenth and early twentieth centuries, where labour legislation had been introduced to protect and support the individual worker (Kahn-Freund, 1954). Key pieces of legislation such as the *Factory and Workshop Act* (1901),

Workman's Compensation Act (1906), *Trade Board Act* (1909), *Coal Mines Act* (1911) commenced a process whereby individuals would be protected in the workplace through labour law rather than collective arrangements. Kahn-Freund (1959) stressed that although there was a series of legislative measures introduced, in retrospect it was a widening of existing principles rather than a formulation of new ones. Contemporary commentators have also questioned the rationale behind the vast amount of employment regulation (Taylor and Emir, 2012; Dickens, 2000; Dickens and Neal, 2006), citing membership of the then European Economic Community (EEC), government economic policy and reduction in trade union membership as possible explanations.

The implementation of individual employment law inevitably led to a codification of the employment relationship and the development of Industrial Tribunals (Taylor and Emir, 2012), which were initially established under s.12 of the *Industrial Training Act* (1964) for the purpose of considering appeals by employers against training levies imposed under that Act. The jurisdiction of tribunals was steadily widened after various reviews, most significantly The *Donovan Commission* (officially referred to as the Royal Commission on Trade Unions and Employers' Associations (1965 – 1968)) and over the following five decades tribunals have evolved into a complex and formal process that has detracted from its origins as a comparatively informal dispute resolution service (Corby and Latreille, 2012; Renton, 2012, Walden, 2001).

A comprehensive analysis of tribunal claims has been provided in the literature review that follows. However, to underline the growing importance of the ETS, in 1971 the number of claims totalled 8,592 in 2012/13 they had risen to 191,541 cases, leading to additional workload for the ETS. Table 1.1 below outlines the figures from the creation of the ETS:

Table 1.1**- UK Employment Tribunal Claims 1997 -2013**

Year	No. of Applications	No. of Jurisdiction Claims
April 1997- March 1998	80,435	80,435
April 1998 - March 1999	91,913	148,771
April 1999 - March 2000	103,935	176,749
April 2000 - March 2001	130,408	218,101
April 2001- March 2002	112,227	194,120
April 2002- March 2003	98,617	172,322
April 2003- March 2004	115,042	197,365
April 2004- March 2005	86,189	156,081
April 2005- March 2006	115,039	201,514
April 2006- March 2007	132,577	238,546
April 2007- March 2008	189,303	296,963
April 2008- March 2009	151,028	266,542
April 2009- March 2010	236,100	392,700
April 2010 – March 2011	218,100	382,400
April 2011 – March 2012	186,300	321,800
April 2012 – March 2013	191,541	332,800

(Source: Employment Tribunal annual statistics, 1997-2013)

The continued increase in use of the ETS has provided ammunition for employer organisations (BCC, 2011; CBI, 2011) to accuse the service of shifting away from the original mission of tribunals, which were devised to deal with employment disputes in a speedy and informal manner as well as being easily accessible and inexpensive (The Royal Commission on Trade Unions and Employers' Associations 1965 – 1968). Conversely commentators such as Hepple (1983) and Werhane *et* al., (2004) believe that the steady increase in employment legislation and tribunal claims since 1971 is a positive measure and that the recommendations by the Donovan Commission have been met, in that, the ETS is less formal than Criminal and Civil courts (Corby and Latreille, 2012) and is easily accessible as there are over 27 hearing centres across Great Britain. With the introduction of Employment Judges

sitting alone, the creation of HMCTS (Her Majesty's Courts and Tribunals Service) and the introduction of ET fees, tribunals are able to deal with claims in a speedy fashion and are inexpensive to operate. The introduction of fees has had an initial impact with a drop of 79% in total claims (ET Quarterly statistics October to December 2012 and 2013) which can be construed as being both detrimental to claimants' willingness to submit a claim whilst also reducing caseloads for the ETS, which has witnessed backlogs of 625,371 cases in the last quarter of 2013 (CIPD, 2014). It is too early to comment on the long-term impact of tribunal fees, however it is quite clear from the latest statistics that some claimants have not been willing to submit their case to a tribunal, which implies a shift away from the recommendations made by the Donovan Commission that tribunals should be easily accessible and inexpensive. Employers being potentially liable for paying the fees, if they lose a case, is also another element to consider regarding the expense of tribunal hearings.

The ETS is a very topical and much lamented institution that generates strong viewpoints, which are often more politically and ideologically based rather than evidenced (Busby, McDermont, Rose and Sales, 2013). The next section will outline the overall aim and objectives of the research regarding the ETS.

1.3 Research aim and objectives

This study has the aim of:

> **'Analysing unfair dismissal claims to establish whether the employment tribunal system is a barrier to justice'**

The study will explore the background to tribunals, why they were created, analyse what their original mission, aim and objectives were, the dynamics of the present model, whether this is an appropriate system to arbitrate employment law and also manage conflict between employers and employees.

The objectives of the study are to:

1- Critically analyse the history and importance of the tribunals to acquire an in-depth understanding of the ETS.
2- Develop an understanding of the theory of justice and apply this to the ETS.
3- Provide an insight into the workings of tribunals through questioning users and observers of the ETS.
4- Through the exploration of Unfair Dismissal cases, determine whether the system is a barrier to justice.
5- Identify areas where the ETS could be developed to meet future continuing needs

These objectives will be addressed through asking the following questions:

1- What was the original aim and mission of tribunals, and how have they evolved since their inception?
2- How many claims are made to the ETS and what are their jurisdictions?
3- What are the costs involved in operating the ETS and how much does it cost to bring or defend a claim?
4- How has employment law regulated and altered the balance of power in the employment relationship?
5- How does the theory of justice fit within the ETS?
6- Does the ETS act fairly towards claimants and respondents?
7- What are the outcomes of ET applications?
8- Are there any inefficiencies within the ETS?
9- What are the future requirements of the ETS?

1.4 Central theme of the Research

The aim of the research has been developed from the initial literature review and the concept based upon Rawls' (1999) and Cropanzano, Stein and Nadisics' (2011) theory of '*justice*', with the following areas being utilised as the central analytical themes:

Procedural Justice

- Fairness of the process
- Changes necessary in the process
- Legal representations impact on the process
- ETS as a fair process

Interactional Justice

- Treatment during the tribunal process
- Impact of legal representation on the way users are treated
- Treatment by the Tribunal panel
- Overall personal experience

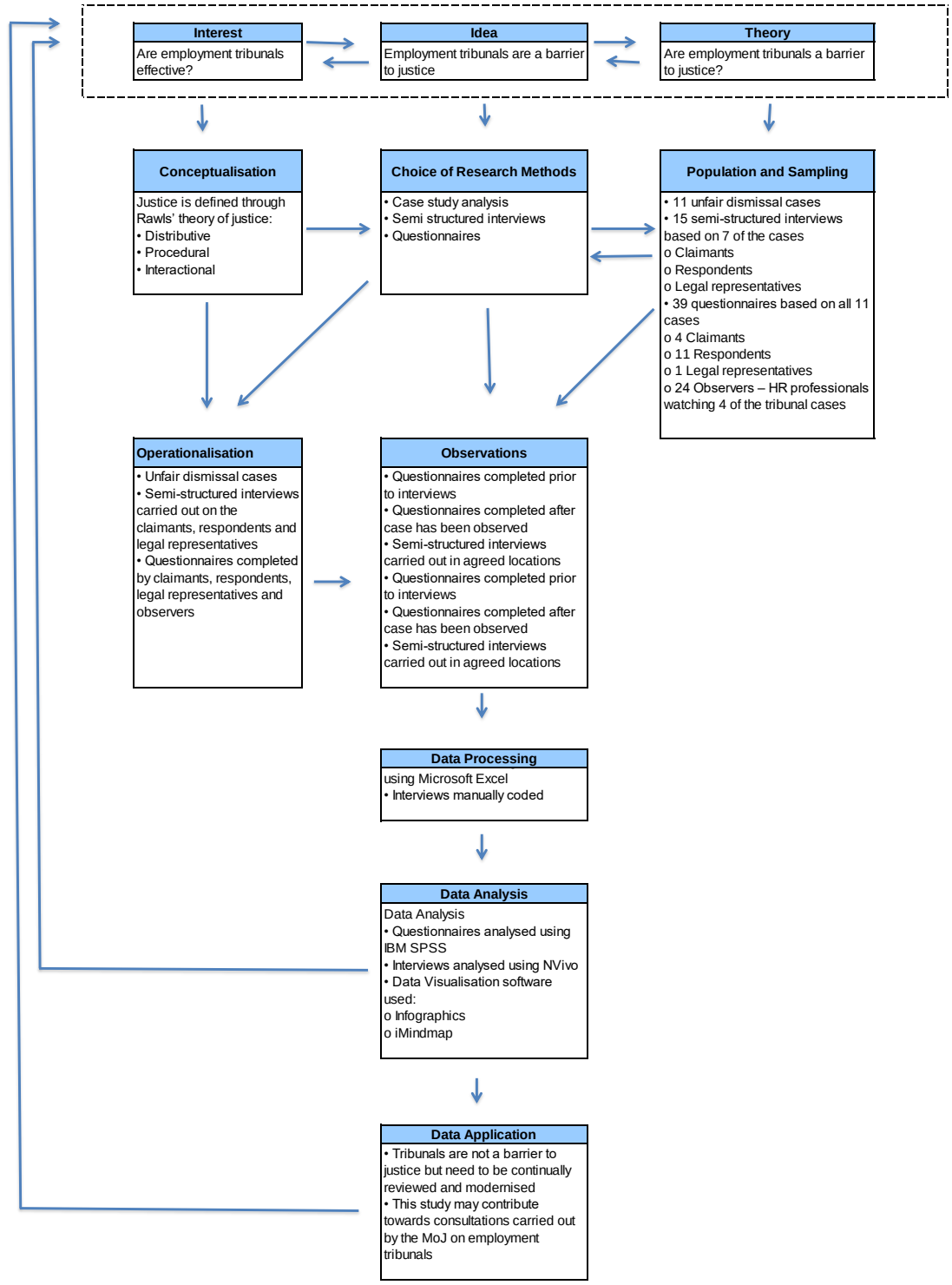
Distributive Justice

- Fairness in the outcome of the case
- Different judges arriving at different conclusions
- Legal representation on the impact of the outcome
- Ability of tribunals to arrive at a fair decision

1.5 Research conceptual framework

The overall research framework consisted of the following conceptual structure displayed below in Fig. 1.1:

Fig 1.1 - **Research Design Conceptual Framework**



The conceptual framework is adopted from Babbie's (2013:113) *Traditional Image of Research Design*, which provides a useful framework to capture the process undertaken during the design of the study. The initial focus of the study centred around the recommendations provided by the Donovan Commission, with a qualitative review of whether the current ETS had met these proposals. Through developing the design and overall conceptual framework of the study this was deemed to be too broad in detail and would not have provided rich data for assessing the effectiveness of the ETS. The study finally amalgamated the researcher's interest in the ETS, the idea of current perceptions of the ETS and the theory concerning the ETS. These foundations of the framework enabled the study to conceptualise the theory of justice into the central theme of the study, as well as identify appropriate research methods and population sampling.

The initial literature review provided a supportive element in designing the framework for the study. Therefore the next section will outline the key pieces of text that influenced the overall aim of the research.

1.6 An overview of related literature, previous studies and knowledge gap statement

Although there is a substantial amount of literature regarding the tribunal system, the literature available on the factors influencing the process and effectiveness of the tribunal system from a tangible evidence base is limited, which is one of the key reasons for carrying out this piece of research. A significant piece of text that influenced the study is the *Donovan Report* (Royal Commission on Trade Unions and Employers' Associations 1965-1968), which the government commissioned in response to concerns at the number of unofficial strikes, rising wage inflation and use of labour restrictive practices in industry. A number of key papers were submitted to the Royal Commission for their consideration, which provided a wealth of information on industrial relations in the UK. There were also numerous publications from a trade union and academic perspective, in particular the article by Turner in

The Economic Journal (1969), which provided a thoughtful analysis of the Commission's report and also raised questions regarding the appropriateness of judges carrying out such an important review.

Another significant piece of literature is the much more recent report produced by the Lord Chancellor's Department (Keter, V., 2003) which covers the nature, function and key issues of tribunals, and recommends a move toward the reform and unification of the various tribunal services into a single service. There are also practical publications on the process itself and also guides on how to present during ET hearings. (These include Cunningham and Reed, (2009) *Employment Tribunal Claims: Tactics and Precedents*; Waite, Payne and Isted, (2005) *Employment Tribunal Handbook*, *Practice, Procedure and Strategies for Success*; and Incomes Data Services, (2006) *Employment Tribunal Practice and Procedure*).

The *Department for Business, Innovation and Skills* (BIS) have traditionally commissioned a company (The Research and Report Bureau) to compile a report on statistics and trends in tribunal claims in terms of numbers, types of jurisdictions and the effects of the *Statutory Dispute Resolution Procedures*. This first report was published in 2003 and then updated in 2009.

The *Workplace Employment Relations Survey* is commissioned by the government and essentially carries out a benchmark for industrial relations in Britain. There have been six sweeps of the survey dating back to 1980 (then in 1984, 1990, 1998, 2004 and 2011) which has produced key information around a range of subjects including dispute resolution. There is also research by Busby and McDermont (2012); Corby and Dennison, (2007); Dickens (2004); Dickens and Hall (2003); Dickens, Jones,Weekes and Hart, (1985) ;Hammersley, Johnson, and Morris, (2007); Kathy and Coats (2007); Latreille, (2007) and (2009); Partington, Kirton-Darling, and McClenaghan, (2007); Urwin, Karuk, Latreille, Michielsens, Page, Benradetta, Speckesser, Boon, and Chevalier, (2010) which has contributed towards the understanding of the ETS and shaping the methodological approach to collecting the required data.

This piece of research will explore the ETS further and most importantly analyse the evolution of tribunals in response to changes in the nature of employment relations and the management of conflict, looking primarily at qualitative information rather than relying solely on statistical data. Comments and views were gained from claimants and respondents regarding their experiences with the ETS. HR Practitioners were also invited to observe a number of tribunal cases and complete a questionnaire regarding their thoughts and opinions on the case.

1.7 Importance of the study

Tribunal figures have shown that the use of the service has increased substantially over the last two decades in spite of legislative procedures being introduced. The ETS is an integral aspect to employment law and also an important arbiter in disputes between claimants and respondents (including prospective workers). Therefore it is essential that this service supports and benefits all individuals involved, so that a resolution can be made in the most efficient, effective, reasonable and inexpensive way possible.

This research contributes towards developing the body of literature that can assist interested parties in understanding the relevance of the ETS and also how the service could be enhanced or altered to deal with the current as well as future demands of employment law. It will also contribute towards the consultations held by the government that influence how the model and processes of the ETS operate in the future. In particular this study will differ from previous studies in that it will not just rely on numerical data, collected as part of a governmental research series, but will explore the real thoughts and opinions of users, as well as observers, of the service. Previous research has tended to focus too much on the statistical aspect to the ETS or how claimants are not treated appropriately. This study will extend beyond the standard analysis of the ETS and provide a unique insight into the effects and ramifications of tribunals on the employer/employee relationship.

1.8 Organisation of the study

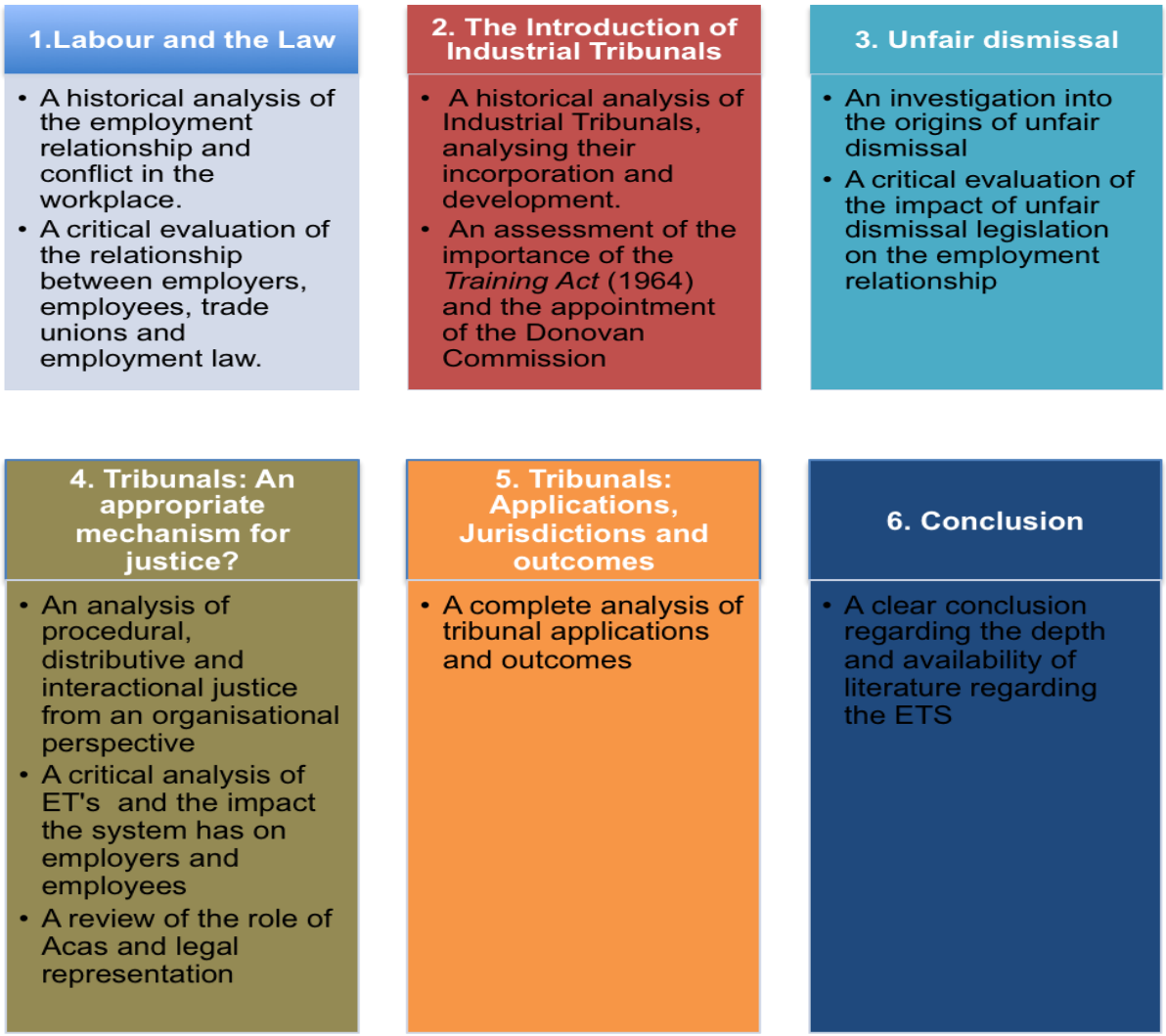
The study commenced with an initial scrutiny of literature on tribunals and industrial relations. This enabled the development of research questions as well as succinct aims and objectives. Therefore the study further analyses literature and research on the tribunal system.

It involved carrying out in-depth interviews with claimants and respondents, as well as their representatives who have been involved within the ETS. HR Practitioners also observed a number of tribunal cases and completed a questionnaire in conjunction with the overall theme of the study, '*justice*'. This enabled the researcher to carry out a survey into attitudes of current users of the ETS, providing an insight into its effectiveness, efficiency and limitations.

The study analyses the outcome of cases and provides a fundamental insight into the impact on the employment relationship and the resolution of conflict through the workings of the ETS. Although the conclusions of the study have been derived from the literature and primary data, it was acknowledged that a balanced view of the ETS and its processes and outcomes had to be maintained. Previous involvement in the ETS had led the researcher to gain a reflective and questioning view of their effectiveness, efficiency and fairness.

Underpinning the empirical studies, a comprehensive literature review has been carried that covers the following topics:

Fig 1.2 – **Literature review sectional framework**



Chapter 2 Literature Review

Chapter Two – Literature Review Contents

2.1 Labour and the Law

2.1.1 Introduction

As outlined in Chapter One, this study aims to establish whether the ETS is a barrier to justice by analysing several ET cases through the prism of Rawls' (1999; 2005) and Cropanzano, Stein and Nadisics' (2011) theory of '*justice*'. Before delving into the key theme of the study, the ETS, literary analysis reveals that employment law has been heavily influenced by industrial relations and the employment relationship; it is therefore appropriate to focus on these topic areas to ascertain their impact on the introduction and development of tribunals. The initial section of the literature review will address research questions 4, 8 and 9 through critically assessing the historical and contemporary importance of industrial relations, then proceed to analyse the effect the employment relationship has on employment disputes originating and being resolved. The chapter will then answer a number of other research questions regarding the original purpose and mission of tribunals (question 1), the cost, number and types of claims submitted and dealt with by tribunals (question 2, 3 and 7) and the importance of justice within the system (question 5). An underlining connecting thread throughout the literature review involves the opposing views of employer organisations, trade unions and ETS commentators, and an assessment of the view that the system is broken and in need of an overhaul.

2.1.2 The employment relationship

Industrial relations varies in nature between industries, sectors, businesses and countries over time; however there are constants that exist between all of these variables. Groups of situations are maintained throughout all industrial relations activity and provide an arena for analysis to operate within a set framework:

> *"The story of British Industrial Relations is the story of how voluntary commitment to work has been developed and how the institutions which support it have been established within a framework of values."*
> (Thomason, 1984:1)

The relationship between the employer and the employee has changed considerably since the middle of the nineteenth century, with the commencement of the Industrial Revolution and with the emergence of capitalism facilitating this change. Burgess (1980) commented that this has resulted in the change of relationship between employer and employee, shifting from traditional forms based on status e.g. servitude, to one that forms the notion of a contractual relationship. Thomason (1984:2) adds that:

> *"Although workers were not as 'free' as portrayed, they were clearly emancipated compared to conditions suffered under previous regimes."*

Historically, the demands of the markets had not penetrated the pre-industrial skilled trades, which worked on a customary basis of wage bargaining. Therefore traditional craft workers had more control over their own wage bargaining process, e.g. less exploitation of their labour, due to the customs and practice of the trade over the decades. The increase in factory-based production within key sectors, such as textiles and engineering, enabled employers to reframe the principles of determination of pay, based on market conditions (Burgess, 1980).

There have been many studies into industrial relations and the employment relationship, but it was not until the 1900's that this topic area could be discussed in theoretical terms rather than purely a descriptive one. Dunlop (1958) identified three actors within the industrial relations system:

1- The hierarchies of managers
2- The hierarchies of non-managerial workers
3- The specialised agencies of government or of the parties concerned with workers enterprises and relationships between them.

Dunlop (1958) argued that although all of the actors would have some form of presence at any one time, they would not all appear in a highly organised form, nor would they have an equal role to play in the operation of the system. The actors within this setting are influenced by a number of

environmental features, which constrains their ability for decision and action taking.

Thomason (1984:5) argued that the following environmental features are decisive in shaping the roles established by the actors in an industrial relations system, although these vary according to a point in time and space:

- *The technology*
- *The market or budgetary constraints*
- *The statuses and power relations associated with them*

To complete Dunlop's (1958) system, he identified a further requirement, which centred on an ideology or set of ideas and beliefs commonly held by the actors that helps to bind or to integrate the system together as an entity. Therefore to create a stable industrial relations system, it is vital that each actor holds a common set of ideas towards the other actors and their role/function within the system. They will then act or behave within them in accordance with the '*game*'. All of this would have produced the set of agreed rules required to function properly. The system was therefore thought to exist and operate to produce the substantive and procedural rules, by which the quantities to be determined within the employment relationship and the norms of conflict governing the interaction of the parties would be determined. Thomason (1980:6) argued that:

> *"This was the output of a system which took in the differences, disputes and disagreements which might arise within the contractual relationship between employer and employees and processed them through the machinery for discussion and agreement making."*

A platform for both employers and employees to work through their differences and interests would therefore be provided (Dunlop, 1958:16).

The employment relationship has been transformed considerably over recent decades, as a result of the development of the economy and the changing nature of employment (Williams and Adam-Smith, 2010). The latter part of the twentieth century saw the UK undergo a process of de-industrialisation, with a decline in the traditional industries such as coal

mining, iron and steel making as well as shipbuilding and other manufacturing industries. Although the UK has relied on the manufacturing sector (Ackroyd and Proctor, 1998), there has been a considerable shift in employment towards the service sector, which includes banking, finance, retailing, leisure and hospitality and also public services (Gennard and Judge, 2010).

Table 2.1 demonstrates this shift through the labour force survey, which highlights the dramatic reversal in employment within the manufacturing and service sectors:

Table 2.1 - **The proportion of UK jobs in manufacturing and service industries, selected years 1979-2011**

Year	Proportion of jobs in manufacturing (%)	Proportion of jobs in services (%)
1979	26.0	61.4
1984	20.5	67.5
1989	18.4	70.0
1994	15.8	74.2
1999	15.0	76.0
2004	11.6	80.0
2008	9.9	80.1
2011	9	81

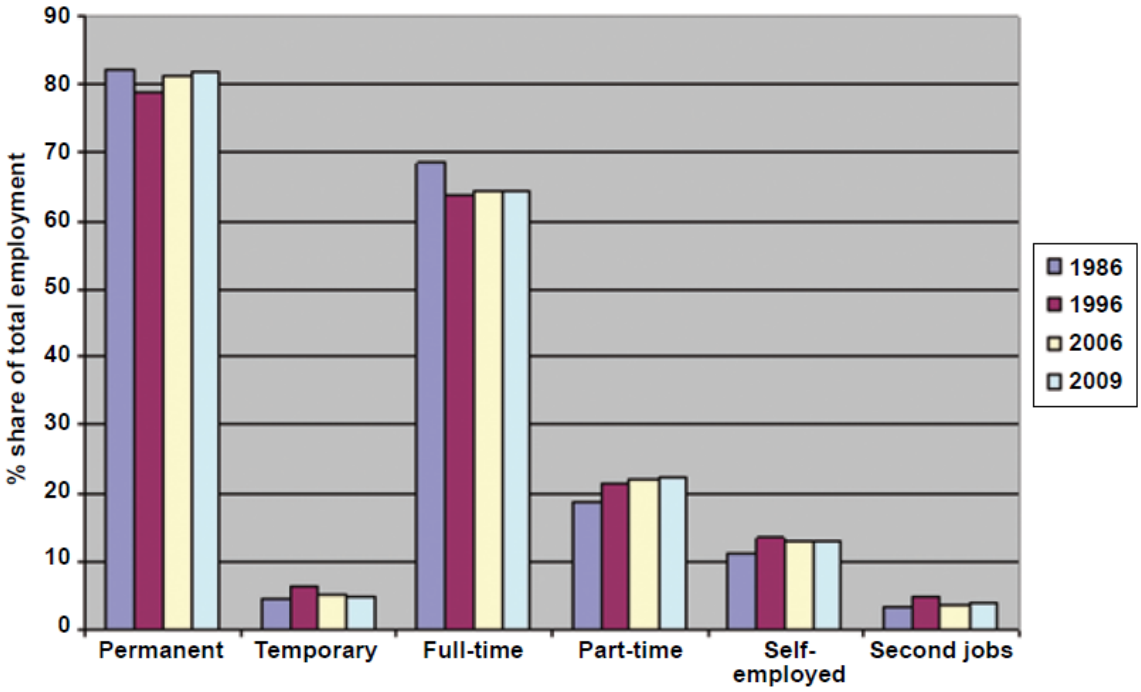
(Source: Labour Force Survey, 2009 and ONS, 2011)

The service sector has always been viewed as a less dependable and less protective environment compared with traditional areas of work with Harley (1994) warned that before long, having a '*proper*' job inside an organisation will be a minority occupation. Bridges (1995:45), worried about the very essence of work and the traditional nature of a '*job*' by stating that:

> *"Today's organisation is rapidly being transformed from a structure built out of jobs to a field of work needing to be done. Jobs are artificial units superimposed on the field…what is disappearing today is not just a certain number of jobs, but the very thing itself-the job."*

In retrospect these comments seem somewhat patronising and condescending, as the service sector has provided a large proportion of the country's income and also provided employment for people who would have ordinarily been employed in the diminished traditional industries (Hollinshead, Nicholls and Tailby, 2002). The removal of a '*job for life culture*' has also removed the traditional framework of the employment relationship. Employees have had to embrace a new psychology of work and be more emotionally mobile (Overell, Mills, Roberts, Lekhi and Blaug, 2010). The employment relationship has not only been affected by the shift from traditional to non-traditional employment, it has also been affected by the change in the labour market.

Fig. 2.1- **Employment change in the UK Labour Market 1986-2009**



(Source: Labour Force Survey, 2009)

As highlighted in Fig 2.1, there have been changes, albeit slight, in the pattern of contractual relationships, e.g. agency, seasonal, contractor etc.

A along with countries such as Denmark, the UK has a flexible workforce (Overall *et al.*, 2010). According to Bauman (1998:30) there are many consequences of a flexible workforce, in particular:

> *"The flexible labour market neither offers nor permits commitment and dedication to any currently performed occupation. Getting attached to the job in hand, identifying one's place in the world with the work performed is neither very likely not to be recommended given the short lived nature of any employment."*

Sennett (1998) also concurred by stating that there was an insistence on departure and that to stay put is to be left behind.

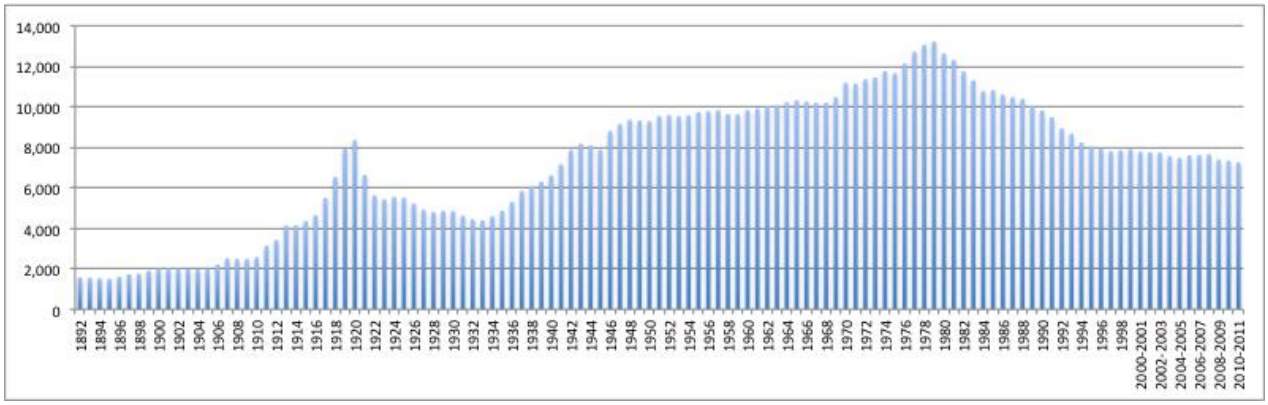
The recent issues raised by Unite the union (2013) regarding zero hours contracts highlight the continued natural disparity of flexible employment. Unite have argued that zero hours contracts offer no guarantee of weekly income or hours, and are used by employers to avoid paying holiday entitlements and other benefits, and which can lead to increased bullying and harassment of staff. However, the CIPD (2013) have carried out research, which suggests that while there are negative issues with zero hours contracts, they have been unfairly demonised and can be mutually beneficial.

2.1.3 The employment relationship and trade unions

In the UK legislation has altered the employment relationship over the last 40 years, originating from the individual master-servant contract, which encouraged fundamental inequalities between parties to the relationship (Kew and Stredwick, 2010). The balance of power has also shifted away from organised workers, specifically trade unions (Rose, 2008) although there are circumspect bellwethers (Blyton and Turnbull, 2004) that measure union power, which are not always accurate (Kelly and Bailey, 1989) such as union membership and density.

Fig. 2.2 below outlines Trade Union membership over the last one hundred and twenty years:

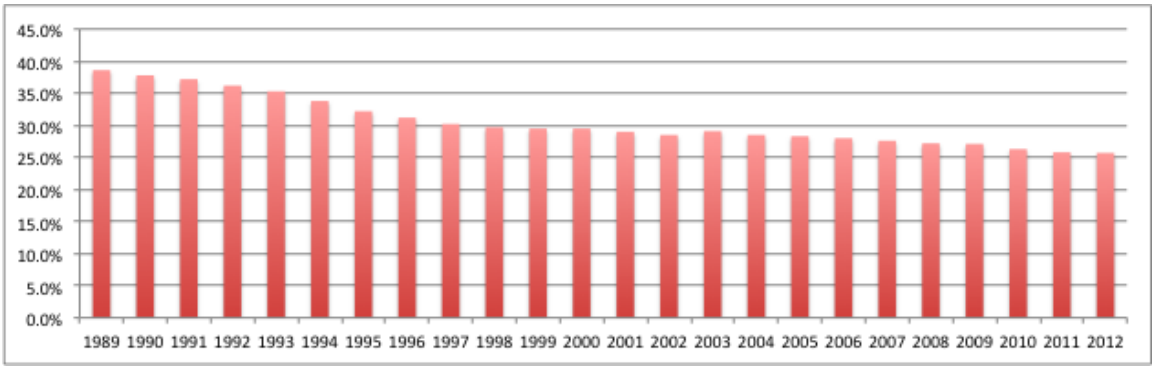
Fig. 2.2 – **Trade Union membership 1892-2011**



(Source: Labour Force Survey, 2011)

Although union membership has decreased over the last 30 years the figures are no longer in 'free-fall' but have actually plateaued over the last few years (Rose, 2008; Ross, 2013). Another form of measurement is Union density, which analyses the proportion of the economically active population who are actually trade union members. Fig 2.3 below outlines trade union density from 1989 – 2012, which also reveals stagnation in the reduction in union membership.

Fig.2.3 – **Trade Union density 1989 - 2012**



(Source: Labour Force Survey, 2011, Office for National Statistics, 2012)

Rose (2008:161) presents a number of propositions for the reduction in union membership, including:

1- Employer policies

The introduction of Human Resource Management (HRM) and direct links with employees has circumvented the traditional collaborative approach

to industrial relations including the utilisation of trade unions within the workplace. Millward *et al.,* (2000) also believe that unions have failed to integrate into recently established workplaces, which has affected employers' attitudes towards unions and collective bargaining. Although Milward *et al.,* (1992) and other writers such as Smith and Morton (1993) have outlined evidence regarding a link between union de-recognition and a fall in membership, others such as Gallie *et al.,* (1996) have carried out studies which argue that there is no clear 'anti-union' feeling within the workplace and that involving and utilising the workforce has ameliorated workplace relations.

2- Business cycle explanations

Rose (2008) explains that employees maybe less inclined to join a trade union if their terms and conditions are of a satisfactory level. This refers to studies by Bain and Elsheikh (1976) as well as Booth (1983); Carruth and Disney (1988) and Disney (1990) which argued that employees who had seen a real wage increase over a sustained period may result in them being less incentivised to join a union.

3- Legislative effects

This refers to two aspects of the law, collective and individual employment legislation. Rose (2008) reflects upon research carried out by Waddington (2003), Freeman and Pelletier (1990) and Pencavel (2001) that inferred 'unfavourable' legislation towards trade unions affected union density, as well as increasing the powers of employers from recognising unions. Research carried out by Smith and Morton (2009) points to a 'neoliberal' policy preference by the Labour government (1997-2010) that hindered trade unions and Heery and Simms (2008) qualify this by concluding that unions shifted resources from individual and collective representation towards ensuring they were organised and adhered to the required legislation.

As outlined above, Rose (2008) also intimates that employment law could have affected trade union membership, with Gennard and Judge (2010:159) stating:

"*…the state today so regulates the employment relationship – for example, working time, family friendly policies- that in both the short run and the long run, the activities of the state undermine the rationale for unions.*"

Although individual employment legislation may have had an impact upon the power of trade unions, it is debateable whether it has affected trade union membership (Kelly, 2012). The introduction of individual employment legislation will be discussed later in this chapter along with its effect on workplace disputes.

4- Employment composition

The decline in traditional unionised jobs and the increase in temporary job roles have according to Machin (2000), Rose (2008) and Gennard and Judge (2010) affected membership of trade unions but cannot be wholly attributed to this. An analysis of trade union membership (see Table 2.2 below) by industry, clarifies this point as sectors such as manufacturing and construction have witnessed membership drastically falling.

Table. 2.2 - **Trade union membership levels by Industry- 1995 to 2012**

Industry	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Agriculture, forestry and fishing	15,770	17,982	17,458	25,147	15,172	20,120	14,691	6,423	9,287	6,261	13,204	15,749	13,828	11,508	8,005	8,118	11,040	6,634
Mining and quarrying	36,956	39,392	31,401	30,292	36,432	34,203	26,042	23,129	28,047	20,666	22,731	21,530	26,065	22,634	18,809	19,065	24,267	20,401
Manufacturing	1,450,186	1,378,075	1,377,008	1,328,700	1,211,752	1,153,367	1,093,024	1,002,752	899,753	851,416	833,085	727,211	704,618	620,608	549,954	527,810	502,794	489,478
Electricity, gas, steam and air conditioning supply	95,271	72,458	77,618	69,108	66,895	81,049	75,428	72,731	57,412	67,522	59,983	68,899	68,942	77,064	72,811	76,608	77,756	74,930
Water supply, sewerage, waste management and remediation activities	96,285	89,470	94,595	89,816	105,088	91,235	78,253	81,529	67,197	66,535	74,122	91,820	79,729	70,557	61,516	65,106	63,847	72,358
Construction	335,307	312,997	319,408	322,772	335,399	321,878	298,412	275,712	303,033	298,309	251,274	293,107	278,936	281,049	202,184	193,903	185,824	196,615
Wholesale and retail trade; repair of motor vehicles and motorcycles	377,944	367,750	367,115	394,002	410,493	408,496	423,748	416,037	462,842	438,527	411,825	422,063	424,795	452,326	439,777	428,712	430,750	459,587
Transportation and storage	572,178	558,628	563,699	564,900	570,286	612,518	611,886	576,444	615,076	614,675	593,220	581,537	577,830	579,106	510,697	492,032	448,865	474,152
Accommodation and food service activities	77,315	68,396	71,143	69,755	62,317	63,414	60,609	71,630	58,944	52,443	44,686	60,220	54,865	57,691	47,461	45,903	46,461	46,877
Information and communication	172,056	156,819	172,223	157,052	161,954	132,814	164,732	183,895	176,300	163,691	160,950	170,540	168,728	144,261	112,122	107,319	105,137	120,896
Financial and insurance activities	405,850	391,738	367,409	345,985	336,973	367,237	301,128	320,078	307,932	286,430	295,122	289,401	278,863	236,630	225,457	185,166	187,367	169,466
Real estate activities	11,585	10,760	5,846	6,023	10,802	6,674	14,689	8,794	9,351	12,858	14,702	13,300	17,295	13,175	36,633	34,081	30,946	30,735
Professional, scientific and technical activities	84,200	92,731	85,149	87,315	96,653	90,030	105,882	93,369	105,279	102,642	88,690	92,199	111,952	103,348	154,551	123,294	131,465	127,016
Administrative and support service activities	81,522	78,729	80,021	82,031	90,341	86,811	92,969	86,279	95,433	93,747	93,229	93,443	87,916	85,317	129,863	131,360	121,913	116,165
Public administration and defence; compulsory social security	842,355	877,926	926,306	889,293	940,113	990,584	1,060,755	1,070,691	1,041,731	1,050,589	1,110,555	1,108,553	1,087,315	1,115,977	975,592	913,122	932,967	889,808
Education	1,060,715	1,079,793	1,064,985	1,053,089	1,121,826	1,172,979	1,169,414	1,254,645	1,271,021	1,378,224	1,387,930	1,398,685	1,428,197	1,410,804	1,524,888	1,566,114	1,473,522	1,541,864
Human health and social work activities	1,224,548	1,207,794	1,304,496	1,234,270	1,225,017	1,291,135	1,263,469	1,292,513	1,387,199	1,390,722	1,434,356	1,389,939	1,417,757	1,397,660	1,470,585	1,448,269	1,470,652	1,487,319
Arts, entertainment and recreation	119,058	108,063	115,796	128,583	115,096	128,850	130,468	116,860	143,320	112,234	106,849	119,144	121,638	135,928	112,076	108,768	98,099	80,394
Other service activities	53,290	51,887	53,427	53,441	65,886	64,831	55,723	66,186	65,823	49,256	53,945	60,459	49,366	53,221	57,312	55,249	51,881	49,893

(Source: Labour Force Survey,2011, Office for National Statistics,2012)

As stated earlier, traditional industries have contracted and new employers have emerged where trade unions are weak and have very little impact. The decline in trade union membership could therefore be attributed to the failure of unions in organising labour in the workplace as well as encouraging recognition from employers (Machin, 2000; Nowak, 2013).

The employment relationship in the twentieth and twenty-first centuries has evolved into a legal concept, which underpins the operation of the labour market in many countries (International Labour Conference, 2003). At the International Labour Organisation (ILO) meeting of experts in May 2000, it was noted that there was a severe lack of protection of workers, and that the legal scope of employment did not agree with the realities of working relationships. This included full-time/permanent workers not being fully protected, along with temporary, contractual, self-employed workers and workers involved in a triangular relationship, whereby the employees of a person (the provider) work for another person (the user). Although the Agency Workers Regulations 2010, which stem from the EU Temporary Workers Directive 2008, have tried to address some of the inequalities suffered by temporary workers.

2.1.4 The employment relationship and the law

Law that affects employment can be separated into two segments; firstly, the element that addresses the individual employee's contract of employment; and, secondly, the regulation of the relationship between employers and trade unions (Pilbeam and Corbridge, 2006). Under the jurisdiction of individual employment rights, Willey (2009) has identified three formal instruments, which are:

- The contract of employment with an individual
- Other contracts under which work is undertaken personally
- Statute law and statutory instruments together with case law

The regulation of individual employment rights has always generated strong feelings from various commentators including a White Paper (1986) that posed the question:

> *"…is it necessary to depart from the basic principle that terms and conditions of employment are matters to be determined by the employer and employees concerned (where appropriate through their representatives) in the light of their own individual circumstances?"*
> *(*Department of Employment,1986: para.7.2).

Edwards, (2003) and Pilbeam and Corridge (2006) have responded to this question by justifying the use of statutory regulation as it counteracts the inequality of bargaining power, which is inherent in the employment relationship. The implementation of discrimination legislation in the 1970's started a raft of individual employment legislation, which curtailed the use of collective bargaining, which had historically been the primary method of addressing inequality (Edwards, 2003). Although the Conservative Government (1979 – 1997) had intended to reduce individual employment rights to promote employment and competition, there was little to deregulate in comparison to other European countries (Dickens, 2002). The Labour Government's (1997 – 2010) policy on improving employment protection for the individual has seen them protected from a wide range of issues, which need to be regulated and implemented by an employment contract. This Labour Government (1997-2010) sought to merge the thoughts of the right, that believed workers rights were a burden to business as they imposed costs upon them and reduced their competitiveness, with the left that believed the promotion of workers rights was a redistribution of wealth from management to labour (Davies, 2009).

As outlined further in this chapter, ETs regulate and enforce legislation and the huge increase in the number of applications has been attributed to the changing structure of employment towards small, non-unionised, service sector employers. There is no question that employees have benefited from the enactment of individual employment rights, with Edwards (2003:135) providing a succinct summary of the impact:

- *"Arbitrary 'hire and fire' approaches to discipline have been curbed*
- *Due process and corrective procedures instituted"*

A summary of the minimum benefits that individual employment law has introduced are listed below in Table 2.3:

Table 2.3 – **Summary of minimum employment benefits**

MINIMUM BENEFIT	LEGISLATION	SUMMARY OF KEY DETAILS
Minimum Wage	*National Minimum Wage Act* (1998)	Provides low minimum which is reviewed once a year in October. Includes bonuses and tips with lower rates for employees under 21. Aims to eradicate exploitative pay in vulnerable sectors, such as homeworkers and hospitality. 21 and over | 18 to 20 | Under 18 | Apprentice
Holidays	*Working Time (Amendment) Regulations* (2007)	Minimum entitlement, including statutory holidays, currently 28 days.
Maternity Pay	*Employment Rights Act* (1976) - amended by *Employment Act* (2002)	Six months qualifying period. Payable by employers for 39 weeks. Paid at 90% of average earnings for six weeks then SMP rate for remaining 33 weeks.
Ante-natal Care	(As above)	Right to paid time off during working hours for all ante-natal care and treatment.
Maternity Leave	(As above)	On top of paid maternity leave, an additional 13 week unpaid maternity leave can be taken, with

		the right to the same job upon return.
Paternity Leave and Pay	*Employment Act* (2002)	Six months' qualifying period. Applicable to father of child or husband or partner. Paid for two weeks at SPP rate. Additional Paternity Leave of up to 26 weeks.
Adoption Leave and pay	*Employment Act* 2002	As per maternity pay and leave
Parental Leave	*Maternity and Parental Leave Regulations* (1999)	Parents with children under five (or disabled children under 18) can take up to 18 weeks' unpaid leave with the right to return to the same job. One year qualifying service.
Time off for Dependants	*Employment Rights Act* (1996)	Reasonable unpaid time can be taken off to provide assistance when a dependent dies, falls ill, gives birth or is injured/assaulted or when any school problems arise or there is disruption to existing care arrangements.
Flexible Working	*Employment Act* (2002) / *Employment Rights Act* (1996) / *Work and Families Act* (2006)	Provides the right of a parent or carer to apply for change in working arrangements, including to work flexibly in order to care for the child.
Time off for Public Duties	*Employment Rights Act* (1996)	Reasonable unpaid time can be taken off relating to work as a member of a local authority, health authority or similar.
Time off for Trade Union Duties	*Trade Union and Labour Relations*	Officials of independent trade unions have a right to time off with

	(Consolidation) Act (1992)	pay during working to carry out reasonable and relevant trade union duties and to undertake training.
Statutory Sick Pay	*Social Security Contributions and Benefits Act (*1992) / *Statutory Sick Pay Act* (1994)	Employers are responsible for payment of SSP for up to 28 weeks of sickness / injury in any single period or entitlement.
Redundancy Consultation, Time off and pay	*Trade Union and Labour Relations (Consolidation) Act* (1992)	Consultation with employees and representatives must take place 45 days before redundancies take effect if 100 or more employees are redundant (30 days if between 20 and 99 employees) and adequate information must be provided by employer. Redundancy pay entitlement based on age, length of service and weekly income.
Time off for Study	*Employee Study and Training (Procedural Requirements) Regulations* (2010)	Employees with 26 week's service have the right to request time off to train or study.

(Adapted from: Kew and Stredwick, 2010: 204-05)

This set of minimum benefits demonstrates the complex nature of employment legislation, where the interpretation of legislation and case law has to be a consideration when determining the rights and circumstances of individual working people (Willey, 2012). A further criticism is how the law, which in most cases is perfectly acceptable (Lewis and Sargeant, 2010) is enforced. There are still issues around the satisfactory redress through Employment Tribunals (Taylor and Emir, 2012) and also the expectations

placed on the employee at the employment tribunal, coupled with apathy from the employer:

> *"…too much importance is placed upon awareness of rights and a capacity/willingness to enforce them."*
>
> (Dickens, 2007:479)

Even after an application is made to a tribunal, the experience can be unpleasant for the claimant and if this is known, could prevent applications being made in the first instance. A further concern involves the way employment law operates in practice, which in some circumstances can be unjust (Collins, 2004; Davies, 2009; Taylor and Emir, 2012). For example indirect discrimination can be viewed as unfair from both the employer and employee perspective; it penalises employers who have no intention of discriminating unlawfully but allows them to substantiate practices which intend to readdress social inequality, through the means of having a legitimate aim (Willey, 2012).

Analysing these minimum benefits highlights that individual employment legislation has considerably benefited the employee, and these rights would not have been implemented through the voluntary system of industrial relations, although it is acknowledged that through collective consultation benefits of this type have existed and in some cases more generously than the statutory minimum.

Although there have been advancements of workers' rights in the UK, the influence of the European Union (EU) has also played a major role, affording rights to full and part-time employees as well as employees in triangular relationships e.g. agency workers (Kew and Stredwick, 2010; Wilthagen and Tros, 2004). Within the EU, there has been a two-fold expectation of making labour markets employment and work organisation more flexible whilst providing a comparatively strong job security to employees (Wilthagen and Tros, 2004). This has been outlined in the EU policy discourse since 1993, commencing with the White Paper, *Growth*

Competitiveness and Employment (1993), continuing with the treaties of Luxembourg and Lisbon, in 1997 and 2000 respectively. A new approach entitled 'flexicurity' and is:

> *"…a policy strategy that attempts, synchronically and in a deliberate way, to enhance flexibility of labour markets, work organisation and labour relations on the one hand, and to enhance security-employment security and social security – notably for weaker groups in and outside the labour market, on the other hand."*
>
> (Wilthagen and Tros, 2004: 250).

This study does not include the remit of analysing the EU in such detail, but it is worth recognising its contribution and influence upon UK employment legislation.

The overall aim of individual employment legislation was to guarantee the rights of workers and implement minimum standards within the workplace (CIPD, 2011). The success of this initiative is and will continue to be debated; what is certain is the ramifications that the legislation has had upon employee, employers, trade unions and the government, which will be discussed in the next section.

2.1.5 Intended and unintended consequences of individual employment law

Over the last 40 years employment law has posed a challenge to successive governments, each with their own agenda and rationale for introducing a raft of legislation (Davies, 2009). Although the governments believed that the legislation would be beneficial to employers, employees or both (Gennard and Judge, 2010), individual employment legislation has attracted numerous critics, including Taylor and Emir (2012:18) who have outlined their criticisms from a micro and macro perspective. From a micro perspective, employment law fails to meet its own objectives in practice, as it burdens employers but does not offer satisfactory protection for the employee. For example equal pay law has failed to readdress the imbalance of pay between men and

women. Employment legislation has also been criticised for being poorly drafted and lacking clarity. The *Transfer of Undertaking Protection of Employment (TUPE) Regulations (*1981, 2006) are still riddled with ambiguous practices and continually evolve through ET judgments. Another criticism is that employment law is too complex, which has led to confusion over workers' rights and employers' responsibilities. Employment status is a tangible example, one that is still being discussed within not only the tribunals but within government revenue and tax departments. Willey (2012:46) has outlined six categories that employment tribunals use in determining the employment status. These are:

1. Common law test
2. Mutuality of obligation
3. Personal service
4. Duration of work
5. Contract
6. Remuneration

The increased regulation of employment has been viewed by employer organisations such as the Confederation of British Industry (CBI), the Institute of Directors (IoD) and the Small Business Council (SBC), as affecting competitiveness, the creation of jobs and also detrimental to the interests of employees (Taylor and Emir, 2012). All of these issues are enveloped by the matter of costs, in particular the expense of implementing the regulations. In the CBI's 2010 report on '*Making Britain the place to work – An employment agenda for the new government'* they have calculated the total cost of employment legislation to the UK economy over the period 1998 – 2009 to be more than £72 billion. Expenditure has originated from direct costs such as national minimum wage and increased holiday entitlement, ramification costs, such as when an employee exercises their employment rights, for example maternity or parental leave and the organisation has to employ staff on a temporary basis. Costs are also incurred from the organisation's understanding, interpreting and complying with the regulations and finally the costs of litigation such as tribunal awards and legal costs (Taylor and Amir, 2012; Pilbeam and Corbridge, 2010; Gilmore and Williams, 2009). Although cost is a major factor in the negative attitude towards regulation of the

employment relationship, other issues have been raised, in particular the negative impact upon employees and the '*unintended consequences*' of legislation. A report by the IoD highlighted this problem:

> *"…it is clear that many business people are very supportive of maternity benefits and rights (nearly a fifth of members provided more than the statutory maternity benefits in terms of leave or pay) but there is a clear warning from our survey. Already 45% of our members feel that such rights are a deterrent to hiring women of prime child-rearing age. If the regulations are made even more burdensome then employers will be even more reluctant to employ these women."*
>
> (Lea, 2001:57).

Gilmore and Williams (2012) label this the '*law of unintended consequences*' and argue that when employers are faced with selecting between an equally qualified man and woman, they may opt to select the man due to the employer calculating the risk of employing a woman who may bring about a claim for sex discrimination. The argument around anti-discrimination law also poses the question whether the legislation was introduced to facilitate multi-million pound claims by women who might be more able to look after their own interests, or whether its intention is to protect and enhance the prospects of people with less individual power within the job market (Gilmore and Williams, 2012). The high profile case of female city bankers, such as the £7,500,000 case pursued and lost by Stephanie Villalba against the investment bank, Merrill Lynch (*Villalba v Merrill Lynch & Co Inc. and others UKEAT/0223/05; [2006] IRLR 437*), highlights the problems derived from employment regulations (Gilmore and Williams, 2012). The argument for cases such as this, is that although the awards sought were extraordinarily high, the costs to the state only involved a single ET hearing as well as a single EAT hearing, and it did clear up what seemed to be contradictory earlier decisions of the EAT on other cases which formed precedents.

The final concern regarding employment regulation is the requirement for employers, through stringent procedures, to introduce bureaucratic and system based approaches to managing people (Taylor and Emir, 2012; Pilbeam and Corbridge, 2010; Edwards 2003). The *Statutory Disciplinary and*

Dismissal Procedures (2004) is a prime example and although these procedures were repealed in 2009 with the Gibbons Review stating that:

> "*…rather than encouraging early resolution, the procedures have led to the use of formal processes to deal with problems which could have been resolved informally*."
>
> (Gibbons, 2007:8)

The ACAS Code of Practice still recommends that employers follow the same process as outlined in the statutory disciplinary and dismissal process. Therefore the use of formal processes in cases where other permutations would be more suitable, can affect the climate for resolution, make all parties suspicious and enhance the contemplation of applying to an ET at an earlier stage Gibbons, (2007). The BCC (2010) has identified a number of solutions to the problems outline above, which covers both the legislation and the process around the enforcement of the legislation. In the 2010 report, '*Employment Regulation: Up to the job?*' the BCC outlined a number of proposals:

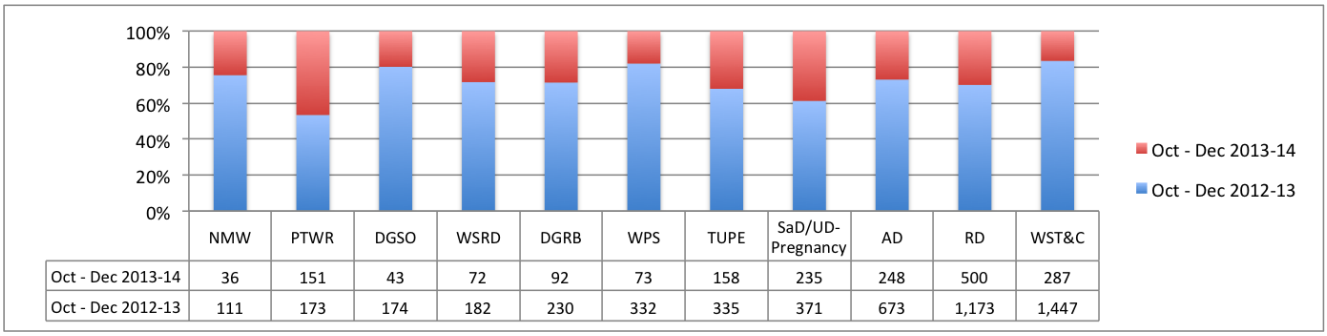
- New employment legislation should not impose process requirements on Small and Medium Sized Enterprises (SME's)
    - The BCC argue that 25.2% of businesses in the UK have less than 50 staff compared to 0.8% which have 50 staff or more, and that small businesses with less than 50 staff employ over a third of the workforce. Therefore they have the potential to create even more jobs in the right conditions, and parliament should take this into consideration when devising new or amended employment legislation
- Barriers to taking on interns must be broken down
    - The BCC believes that a new category of worker should be created which clarifies the legal position of the intern
- If an employer reasonably believes an employee has committed gross misconduct then this should be enough for dismissal

    - The BCC recommends that an employer should be able to dismiss an employee for gross misconduct even if the offence was not explicitly included in their contract
- A fast track conciliation scheme for employees claiming less than £3,000
- All claimants who have not received professional advice must go through their ET1 form with ACAS before submitting their claim
    - This would act as a 'sifting' process whereby claims with no basis would be prevented from proceeding further
- Tribunal reporting should be restricted in the same way as reporting in criminal courts
    - Respondent organisations have sometimes settled a claim, even though they know that the claim is not founded or that they always act professionally. Repercussions from salacious reporting could far outweigh damages awarded at a tribunal
- Claimants should have to pay the same fees to launch a claim as in the civil courts
    - The BCC recommend a small charge should be made to access the ET system following the same principle as the civil courts

These recommendations are not very radical and are certainly conventional in terms of how businesses have advocated for change. In fact some of the proposals were already in place, for example the *Information and Consultation of Employees Regulations* (2004) was only deemed applicable for organisations with over 50 employees. The final recommendation has now come into force through the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013. It is too early to assess the impact of fees on applications although there has been a surge of claims before fees were introduced in July 2013 (25,000 in June 2013 and 17,000 in July 2013) and a steep reduction immediately afterwards (7,000 in August 2013 and 14,000 in September 2013). The immediate impact does look somewhat drastic

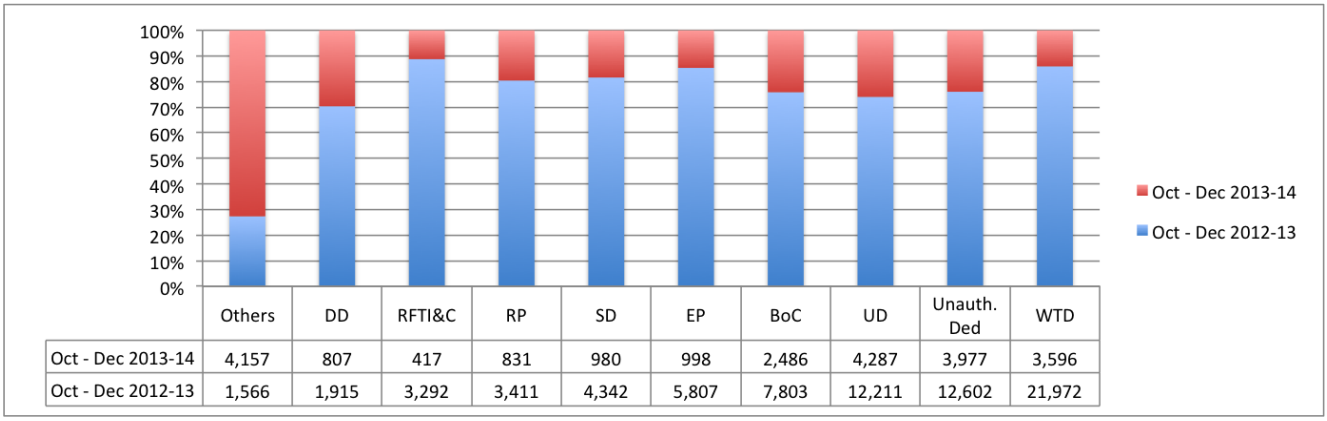
however, as the quarterly statistics from October – December 2012 and 2013 have seen a seismic reduction in the number of claims submitted in 2013 compared to the previous years figures:

Fig. 2.4 – **ET Quarterly Statistics Oct – Dec 2011-12 and 2012-13 – Part 1**



	NMW	PTWR	DGSO	WSRD	DGRB	WPS	TUPE	SaD/UD-Pregnancy	AD	RD	WST&C
Oct - Dec 2013-14	36	151	43	72	92	73	158	235	248	500	287
Oct - Dec 2012-13	111	173	174	182	230	332	335	371	673	1,173	1,447

Fig. 2.5 – **ET Quarterly Statistics Oct – Dec 2011-12 and 2012-13 – Part 2**



	Others	DD	RFTI&C	RP	SD	EP	BoC	UD	Unauth. Ded	WTD
Oct - Dec 2013-14	4,157	807	417	831	980	998	2,486	4,287	3,977	3,596
Oct - Dec 2012-13	1,566	1,915	3,292	3,411	4,342	5,807	7,803	12,211	12,602	21,972

Abbrev.	Full Title
NMW	National minimum wage
PTWR	Part Time Workers Regulations
DGSO	Discrimination on grounds of Sexual Orientation
WSRD	Written statement of reasons for dismissal
DGRB	Discrimination on grounds of Religion or Belief
WPS	Written pay statement
TUPE	Transfer of an undertaking - failure to inform and consult
SaD/UD-Pregnancy	Suffer a detriment / unfair dismissal - pregnancy[4]
AD	Age Discrimination
RD	Race discrimination

Abbrev.	Full Title
WST&C	Written statement of terms and conditions
Others	Others
DD	Disability discrimination
RFTI&C	Redundancy – failure to inform and consult
RP	Redundancy pay
SD	Sex discrimination
EP	Equal pay
BoC	Breach of contract
UD	Unfair dismissal
Unauth. Ded	Unauthorised deductions (formerly Wages Act)
WTD	Working Time Directive

Table. 2.4 – **ET Quarterly Statistics 2011-12 and 2012-13**

	Oct - Dec 2012-13	Oct - Dec 2013-14	% change
National minimum wage	111	**36**	-68%
Part Time Workers Regulations	173	**151**	-13%
Discrimination on grounds of Sexual Orientation	174	**43**	-75%
Written statement of reasons for dismissal	182	**72**	-60%
Discrimination on grounds of Religion or Belief	230	**92**	-60%
Written pay statement	332	**73**	-78%
Transfer of an undertaking - failure to inform and consult	335	**158**	-53%
Suffer a detriment / unfair dismissal - pregnancy[4]	371	**235**	-37%
Age Discrimination	673	**248**	-63%
Race discrimination	1,173	**500**	-57%
Written statement of terms and conditions	1,447	**287**	-80%
Others	1,566	**4,157**	165%
Disability discrimination	1,915	**807**	-58%
Redundancy – failure to inform and consult	3,292	**417**	-87%
Redundancy pay	3,411	**831**	-76%
Sex discrimination	4,342	**980**	-77%
Equal pay	5,807	**998**	-83%
Breach of contract	7,803	**2,486**	-68%
Unfair dismissal	12,211	**4,287**	-65%
Unauthorised deductions (formerly Wages Act)	12,602	**3,977**	-68%
Working Time Directive	21,972	**3,596**	-84%
Total	**80,122**	**24,431**	-70%

These statistics are very drastic, and it does present concerns that fees have prevented potential claims being submitted (Walden, 2013). Further research will have to be carried out beyond this particular study once the relevant data is available, to ascertain why the number of cases has fallen so drastically.

There are many supporters of employment regulation who categorically disagree with the arguments outlined above. Although written in 1983, Hepple concluded that:

> *"…an underlying trend towards the juridification of individual disputes…matters which were once entirely within the sphere of managerial prerogatives, or left to collective bargaining, are now directly regulated by positive legal rights and duties."*
>
> (Hepple, 1983:393-4).

Hepple used unfair dismissal as a demonstration of how employment regulation has benefited employees through changing management behaviour and the work place system as a whole (Lewis, 1986). Whilst Taylor and Emir (2012) argue succinctly the case for employment regulation being a basic human right and encompassing social justice, but it is the arguments against the accusations of '*cost*' associated with employment regulation, which need to be analysed. Deakin and Wilkinson (1996) argued that an essential ingredient of a successful economy is fair treatment for the workforce based on decent wages and conditions including employment laws in line with best international practice. They concluded that Britain can not compete with the Asian Tiger economies on the basis of low wages and non-existent rights at work.

The Institute of Employment Rights (IER) study by Dubinsky (2000) concluded that the boosting of managers' right to manage, rather than utilising collective arrangements, has led to the intensification of work, reduced terms and conditions, redundancies and unemployment. Despite the increase of employment legislation and the threat of employment tribunals, Dubinsky's (2000) study argued that managers were still being allowed to act incompetently, in the process reducing workplace co-operation and creating conflict. Davies and Freedland (2004) and Werhane, Radin and Bowie (2004) believe that protecting workers through employment regulation can have a positive impact upon the financial performance of an organisation. Werhane *et al.,* (2004:144) even recommends that employers *"recognise and celebrate employee rights".* Although aimed at a US audience, Pfeffer (1998) outlines seven characteristics which organisations can build upon to ensure no legal redress:

1. Employment security.
2. Selective hiring of new personnel.
3. Self-managed teams and decentralisation of decision making on the topic principles of organisational design.
4. Comparatively high compensation contingent on organisational performance (equitable competitive pay).
5. Extensive (and lifelong) training (employability training).

6. Reduced status distinctions and barriers, including dress, language, office arrangements and wage differences across levels.
7. Extensive sharing of financial and performance information through the organisation (transparency).

All of Pfeffer's characteristics are reflected in some permutation within employment legislation and they are not only designed to improve the success of the organisation but also ensure the security of the worker. Individual employment regulation has tried to force employers into acting in this manner, what Supiot (2001) refers to as a shift from passive protection to active security.

Despite the introduction of individual employment law, the employment relationship continues to highlight the presence of conflict between both parties. The next section will analyse the role of conflict within the workplace, outline the various theories that have helped shaped the thinking around this topic area and evaluate how ET's have become an important vehicle for resolving work place conflicts.

2.1.6 The nature of conflict

ET's by nature try to act as a conflict resolution conduit, either consensually or not. The nature of conflict between employer and employee stems from the constant struggle over terms of the employment relationship. Baldamus (1961:56) explains that:

> *"An important implication of conceptualising the employment relationship as an 'effort' or 'wage-work bargain' is that there is always the chance that the interests of employers and employees, or capital and labour, will come into conflict."*

An example of this would be the employer working to the rule of extracting the most from employees, at the minimum cost, and the employee conversely working to the rule of solidifying better wages and conditions, with a limit on the expected work to be undertaken. Hyman (1975) labelled this

struggle over terms, the frontier of control, with a stark conflict of interests, between the employer and employee.

Gennard and Judge (2005, 2010) have developed a system, which highlights the interests of both the employee and employer. A set of components have been devised, within the employment relations system, with a list of '*players*', who all operate within it, and who all have a role in protecting and advancing their relative economic interests. The players consist of:

- Individual employers
- Individual employees
- Employee representative bodies (staff associations, trade unions)
- Employers' associations
- Private companies
- Public bodies
- Voluntary organisations

The system operates on the premise that both the employee and employer, who are known as the sellers and buyers respectively, share a common interest in following their counterpart.

> *"Both employees and employers have a common interest in the survival of the employing enterprise even though they may disagree on how any surplus generated by the sales of its products or services should be divided amongst themselves."*
>
> (Gennard and Judge, 2005:12).

Therefore it is imperative for both the employee and employer to agree a solution to the issues, as both parties will suffer the consequences. To understand the nature of conflict, it is important to appreciate the different archetypical perspectives on conflict and co-operation, within the field of industrial relations through their theoretical configurations.

<u>Unitary theory</u>

The unitary theory considers organisations to have a unified group of employees, managed by a simple hierarchical structure, who share a set of

shared values and objectives (Rose, 2008; Poole and Mansfield, 1993; Edwards, 2003). It is a perspective which views employees as psychological rather than economic beings (Budd and Bhave, 2010:57). Unitarism was first used within an employment relations context through Ross's (1958) discussion on organised labour and management, and has been further analysed and widely associated with Alan Fox (1966). However, although Ross (1958) and Fox (1966) brought to prominence the concept of unitarism, it can be traced to Taylor's (1903) philosophy of management which is constructed around the unitary theory, believing that management should maintain control of the organisation and the work, ensuring the objectives of the business are met. Taylor (1903) labelled this the '*right to manage*', which is a key element within the unitary theory, and operates on the basis that there is a harmonious relationship between the employer and employee, whom have the joint objective of achieving success together:

> *"In any executive work which involves the co-operation of two different men or parties, where both parties have anything like equal power or voice in its direction, there is almost sure to be a certain amount of bickering, quarrelling and vacillation, and the success of the enterprise suffers accordingly. If, however, either one of the parties has the entire direction, the enterprise will progress consistently and probably harmoniously, even although the wrong one of the two parties may be in control. The essence of task (scientific) management lies in the fact that the control of the speed problem rests entirely with management."*
> *(*Taylor, 1903:45).

This partnership assumes that a set of common values exist, which therefore ensures that there is no potential source of conflict. How the consensus regarding objectives is achieved is open to debate but could be attained by:

- ideas and values between employers and employees being absolutely identical as a result of a happy coincidence
- ideas and values being a condition of entry to the organisation, their existence therefore being established at the recruitment and selection stage of employment
- ideas and values originating with management being learnt by those entering the organisation on a voluntary basis and subsequently adopted by employees

- ideas and values being part of a socialisation programme and, through corporate induction courses and other training activities, being involuntarily learnt and adopted
- employees being confronted with these ideas and values and their adoption being a condition of continuing employment. The ideas and values are then adopted or not by employees, depending on their own circumstances

(Hollinshead *et al.,* 2002:65)

The unitary theory therefore presumes that a '*third party*' is not required within the employment relationship as both parties are in pursuit of the same objectives. Fox (1966:2) summarises these characteristics as follows:

1) *The employees of the organisation are seen as a team, unified by a common purpose with all employees pursuing the same goal*.
2) *There is a single source of authority, that source being management*.
3) *As all employees are pursuing the same goal, conflict is irrational: it must be the result of poor communication or 'troublemakers' at work who do not share the common purpose*.
4) *The presence of third parties to the employment relationship is intrusive; therefore there is no place for trade unions*.

The unitary theory has been heavily debated and criticised, with Fox (1966:56) arguing that unitarism:

> "…*has long been abandoned by most social scientists as incongruent with reality and useless for the purposes of analysis."*

However, more recent discussions around unitarism have aligned the theory with soft and hard HRM (Fombrun, Tichey and Devanna 1984; Thompson 2011), advocating its continuing relevance today, in particular, in relation to the resistance of trade union recognition (Cullinane and Dundon, 2012). The second element of Fox's statement proposes that unitarism is '*useless for the purpose of analysis*', which is a contradiction to the studies carried out on employment relations, as well as the analysis of Personnel v HRM, which according to Storey (1992), aligns unitarism with employment relations and the HRM movement.

Specific criticisms of the theory have been outlined by Lewis, Thornhill and Saunders (2003), who believe that unitarism ignores the fact that conflict

is predictable and absolutely rational. They explain there are many factions within the employment relationship, with individual prerogatives taking precedence over the groups aims and objectives. This is emphasised by analysing a football team, who on the outside portray a body of men or woman who are working for a common purpose, to win silver-wear for their team. If one delves into the member's individual priorities, it reveals the fact that they have their own individual personal goals, namely achieving a regular place in the team, securing a new contract, increase their value and attraction to rival clubs. The important point is how much the individual elements affect the working towards and achievement of attaining the common goal.

To summarise the unitarist theory, there is management prerogative (i.e. a right to manage and make decisions), which is rational, legitimate and accepted. The assumption, underlying this view is that:

> *"…the organisation exists in perfect harmony and all conflict, not only industrial relations conflict, is both unnecessary and exceptional."*
> *(*Salamon, 1992:31).

Pluralism theory

The pluralist theory offers a different perspective to the unitary system of management prerogative and rejects the premise that individuals are purely commodities (Kaufman, 2005) believing instead they are entitled to equality and a voice (Budd, 2004). The pluralist theory embraces the experience of those working in a larger and more complex organisation and also acknowledges the existence of conflicting interests, which is dealt with by all parties working together.

Whilst the unitary theory is more aligned to nineteenth century capitalism, pluralist theory is seen as more congruent with modern-day society (Rose, 2008), and within the practice of contemporary HRM (Kaufman, 2012). Rose (2008:28-29) has outlined a number of changes which has given rise to the pluralist perspective over the last one hundred years:

- A widespread distribution of authority and power in society.
- A separation of ownership from management.
- A separation of political and industrial conflict.
- An acceptance and institutionalisation of conflict in both spheres.

Hollinshead *et al.*, (2003) state that the pluralist theory materialised through post-war economic growth, which Halsey (1995) believes enabled a cultural reform which challenged established assumptions and ideas which permutated into industrial relations due to greater disposable income and opportunities for employment. Fox (1973) believes that this cultural reform and the adoption of a pluralist theory resulted in the unitary theory losing its credibility. Fox's (1966) idea of sectional groups has resonance in today's organisation which is now termed '*stake-holders*' where managers are presumed to be accountable to the workforce, customers, suppliers, environmental groups, and the general public, rather than the traditional components consisting of the owners and / or shareholders (Bryson *et al*, 2004). A survey by the Chartered Management Institute (CMI) agreed with Fox's (1966) idea, whereby modern managers perceived their:

> "…*organisations in terms of a variety of stakeholders having a legitimate stake in the goals and objectives of their organisations."*
>
> (Poole *et al.*, 2001:29).

A significant characteristic that demonstrates the difference between a unitary and pluralist theory is conflict. The pluralist perspective acknowledges conflict, accepts that it is both logical, to be expected, and originates from the different roles of managerial and employee groups (Rose, 2008) whereby both entities within the employment relationship pursue increased profitability and productivity (Budd and Bhave, 2010).

This type of relationship can result in the organisation accepting that trade unions are legitimate representative bodies who can support, advise and encourage employees to influence, management decisions in a collective format. Fox (1966:8) explains that:

"Trade Unions do not introduce conflict into the industrial scene. They simply provide a highly organised continuous form of expression for sectional interest which would exist anyway."

But not all managers share this viewpoint, for example the Chief Executive of Zurich Insurance, during a House of Commons Employment Committee investigation into the future of trade unions, contended that:

"…it is the job of the company to create an environment in which a trade union become irrelevant…the very nature of the unions, sitting in their diverse capacity, stops the employees and managers of an organisation getting together as one team."
(House of Commons Employment Committee. 1994:342).

This type of opinion is often criticised as an unrealistic view of workplace life (Williams and Adam-Smith, 2010). But while the pluralist view sees the organisation as a coalition of individuals and groups (Leopold, 2002), critics believe it suffers from a series of mistaken assumptions, (Hollinshead *et al.,* 2003:16):

- *It believes in the existence of democracy, which through the franchise, ensures that individual rights are recognised.*
- *It assumes that the institutions of democracy operate to resolve what differences do occur between management and labour.*
- *It relies on the existence of a common set of rules and procedures which guide behaviour in the workplace.*
- *It depicts the differing parties to the employment relationship as possessing a rough equivalence of power and influence, competing for power on the basis of similar levels of influence.*
- *It relies on the power and success of negotiation and bargaining to overcome fundamental differences between management and labour*
- *Its analytical focus is upon a continuous description of the 'given' institutions of modern capitalism and thereby fails to reveal the inbuilt biases and inequalities of such structures.*

As early as the 1970's critics of the pluralist system (Fox, 1973; Hyman, 1978) made accusations that the system relied too much on the assumption outlined above and also that:

> *"…originally radical in orientation, pluralist ideas have increasingly tended to serve as a conservative legitimation of established institutions and ultimately a cloak for essentially repressive programmes."*
>
> (Hyman, 1978:35).

This relates back to the discussion on the regulation of employment, which challenged the validity and true purpose of individual employment rights. The acceptance and co-operation with trade unions, according to Marchington (1982) does not restore the balance of power but merely mitigates the imbalance. Hyman (1989) concurred by stating that the pluralist theory focuses too much on procedural reform and by doing so it disregards the important substantive outcomes for employees.

There are arguments for adopting either the unitary or pluralist theory. However, Jackson (2006) believes that problems within the workplace can be categorised in six sets:

1 -simple - unitary
2 -simple - pluralist
3 -simple - coercive
4 -complex - unitary
5 -complex - pluralist
6 -complex - coercive

Acknowledging the six sets and therefore different approaches allows managers to:

> *"…escape from the intricacies of perspectives, methods and tools and make more efforts to discover the nature of phenomenon and nurture a suitable environment."*
>
> (Jackson, 2006:6).

This concurs with Clegg (1979) who comments on the two systems: "*neither is commonly found in its pure form*" (Clegg, 1979:163) and what Marchington (1982) outlines as expecting managers at various levels to exhibit different tendencies.

Radical perspective

The challenge to the two traditional industrial relation archetypal approaches derives mainly from the Marxist/radical perspective which shares the pluralist premise of conflict within the employment relationship, but differs in not presuming that conflict can be resolved by the development of procedures, or even the desire of attempting to do so (Williams and Adam-Smith, 2010). Blyton and Turnbull (2004) believe that:

> "*..workers under capitalism would gradually, but inexorably, lose control over the process of production as greater division of labour created not only unskilled but highly fragmented work, with workers becoming, as a result, more and more estranged from the product of their labour.*"
>
> Blyton and Turnbull, 2004:24-25)

Specifically, Marxists argue that:

> "*The distribution of power in capitalist society is a reflection of the relationships of dominance and subordination, which are determined primarily by the economic arrangements and mode of production of society*."
>
> (Rose, 2008:199)

The Marxist/radical perspective believes that the working class would then become less passive in terms of their attitude towards capitalism and favour a move towards a socialist paradigm (Hyman, 1975). There are a number of Marxist-influenced writers such as Darlington (2014); Kelly (1988), McIlroy and Campbell (1999) and Gall (2003) who believe that a Marxist/radical perspective is still relevant, however Farnham and Pimlott (1990:16-17) believe that a Marxist / radical approach:

> "*…whilst probably a valid interpretation of nineteenth –century Victorian capitalism, does little to explain the complex, economic and social conflicts of late twentieth-century Britain.*"

Fox (1974) argued that pluralism did not address the issue of power within the organisation in a serious manner, as where there is a bargaining

relationship, the radical perspective has emphasised that a balance of power exists between employers and unions:

> *"…by virtue of their ownership of and control over, the production of goods or delivery of services, (employers) enjoy far greater power than even the most well-organised union."*
>
> (Fox, 1974:89)

The radical perspective received many plaudits during the 1960's and 1970's with Beynon's (1973) study at Ford's Halewood car manufacturing plant being heavily influenced by the theory. However, as a result of the decline in the level of trade union membership, industrial action and deteriorating collective bargaining activity, the authority of the radical perspective has considerably weakened (Ackers and Wilkinson, 2005). According to Wajcman (2000) challenges to the traditional perspectives of unitary and pluralist come from other sources such as the feminist perspective, which has broadened the scope of employment relations by raising workplace issues such as equal pay, family friendly policies and discrimination issues, which have historically received little attention through unitary and pluralistic processes.

It would be difficult to analyse employment tribunal claims in relation to pluralist, unitarist, Marxist and feminist perspectives as sectors and industries operate differently and will not follow a specific approach. However, it may be possible to analyse employment tribunals, or employment law specifically, in relation to the balance of power in the workplace.

2.1.7 The balance of power between management, organised labour and individual employees

As outlined in section 2.1.2, the third analytical dimension to the environment of an industrial relations system is the "*statuses and power relations associated with them*," (Thomason, 1984:5), or as Dunlop (1958) labelled it, the locus and distribution of power in the larger society. According to Blyton and Turnbull (2004:41):

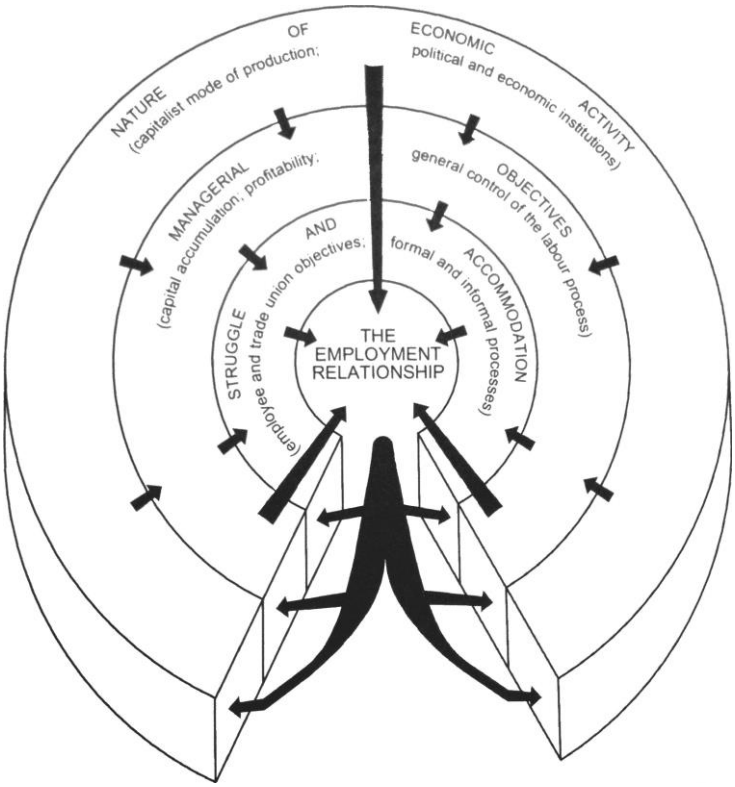
> *"…power is typically understood as the ability of one party to compel another party to do something which they otherwise would not undertake of their own volition. In the employment relationship, employers seek to enjoin and entice workers to comply with their demands and co-operate with their instructions."*

How organisations achieve this varies between different sectors and industries. To understand and recognise the structure of power between management, organised labour and the individual employee, it is imperative to analyse the fundamentals of the indeterminate nature of the employment relationship. The employment relationship commences with the connection between management and individual employees. This is built upon a relationship that is inherently contradictory:

> *"…employers need workers' creative capacities, but cannot give them free reign because of the need to secure a surplus and to maintain a degree of general control; and workers, although subordinate, do not simply resist the application of managerial control."*
>
> (Edwards, 1986:6)

The majority of workers define themselves in relation to their work, and although they may be dissatisfied with their job, possess a long-term commitment to their organisation (Freeman and Diamond, 2001). The activities of organised labour are therefore linked to the tensions within the employment relationship, specifically the grievances, deprivations and wider interests of employees that arise from their (subordinate) role in the process of goods production or service provision (Blyton and Turnbull, 2004). The power of both management and individual employee are key to the effective working of the employment relationship. The figure below demonstrates the importance of many factors that influence the employment relationship:

Fig. 2.6. – **A framework of employee relation's analysis**



(Gennard and Judge, 2010:76)

The essential constitution of the employment structure derives from the nature of economic activity, which with ownership and non-ownership of capital manifests into a relationship built upon by authority. Although ownership leads to power and authority, this single factor does not automatically guarantee co-operation from the workforce:

> *"In order for management to achieve their objectives they must secure the co-operation and consent of the workforce. The outcome is one of contest and accommodation, as those employed seek to improve the wages and general conditions of their employment."*
>
> (Blyton and Turnbull, 2004:43).

Poole (1986) had already established this viewpoint, and also expressed an analysis that power is related to a social view point specifically that:

> *"…the changes in the social relationships of each class of humans to the means of production (plant, machinery, tools, technology, skills,*

knowledge and raw materials) are the result of class struggle between those who own or control the means of production and those divorced from ownership and control. The latter, with only their labour power to sell to secure mean of subsistence, are thus open to subordination. However, this 'labour power' is a vital resource giving rise to the notion of interdependence between capital and labour."

(Poole, 1986:98).

This analysis therefore intimates that although management (owners) have the power in relation to capital, the importance of the labour force in working effectively and efficiently, ultimately means that some power rests with the individual employee. Without co-operation, compromise and compliance, the power of management would be severely curbed and possibly rendered futile. Therefore some form of '*consent*' from the employee must exist:

"By giving full consent, workers 'authorise' management to govern them, thereby giving them a special significance to the term authority. Management can govern without this authorisation by employing coercion, but it faces at best passive indifference and at worst militant hostility. The value to management of consent is therefore apparent."

(Fox, 1985:67).

Through the concept of power, French and Raven (1959) developed The Bases of Social Power, and identified the following six categories of power at the disposal to managers:

1- Rewards: this links the employee's perception with the positive incentives that the managers have to offer.
2- Punishment: this relates to the negative power available.
3- Information: information can be viewed as a source of power, therefore if employees perceive management as controlling information they want, then management have this power.
4- Legitimacy: employees feel that management have a right to make a given request, as a result legitimate power can be labelled authority and originates from the status or position as a manager.
5- Expertise: employees may comply due to their manager's expertise (or perceived expertise) within a certain area of their responsibility.
6- Referent: this form of power refers to the theory that an employee respects and identifies with their manager, and therefore will comply with the demands of the manager.

Employers are less inclined to join forces, i.e. in the form of employers' associations, as they have more alternative means of power at their disposal. Weber (1925) states that association is an instrument used in particular by those who cannot derive power from status or class, and therefore the power advantage becomes a disadvantage in relation to getting organised. As well as alternative means of power, employers have another obstacle in their way, the fact that their interests are more diverse than those of employees. This is due to a number of factors, firstly employers not only share the same interests as employees (labour and product market) but also have to deal with additional markets, such as capital, raw materials and equipment. Secondly, employers represent companies and therefore employers' associations are associations of organisations, whereas trade unions are organisations of individuals (Ruysseveldt *et al*., 1995). This has many implications, as Ruysseveldt *et al.,* (1995) argues the difference between employers will be far more considerable than individuals; employers will vary in size, methods or production, markets that they operate in, culture and the decision making processes. These differences will generate conflict of interest and the high interest heterogeneity is bound to complicate finding a common ground for organisation (Ruysseveldt *et al.*, 1995). Thirdly, it is recognised that employers are not willing to engage in collective action to attain the goals and interest that have been agreed by the employers' associations (Olson, 1965).

The system, described by Dunlop (1958) that typified the power struggle between management and organised labour has, according to Overell *et al.*, (2010), diminished. The UK in the twenty-first century has moved away from Kahn-Freund's collective, union based resolution, to one of empowering the individual employee. In Overell *et al's.,* (2010) report for the '*Good Work Commission*', they commented:

> "*The culture of capitalism has evolved considerably since then. The model of the hierarchical firm no longer works so well because creating and delivering sophisticated products and services is difficult to monitor or control through rules. Owing to the devolution of decision-making and new forms of team-based work organisation, initiative and the scope to exercise autonomy among workers are today important aspects of generating competitive advantage*."
>
> (Overell *et al.*, 2010)

Evidence is presented in Burchell *et al.,* (2003), which outlines the increasing use of '*task discretion*' whereby employees are trusted to carry out their work through their own volition, which could lead to increased productivity and output.

A report by the UK government on employee engagement that correlates with Burchell *et al's.,* (2003) viewpoint, notes the benefits of empowerment over the current trend of power sharing (*Engaging for Success*- BIS, 2009). Empowerment, according to Gilmore and Williams (2012) implied two assumptions. Firstly, that some supervisory tasks are delegated to workers, which would have normally constituted part of the management duties. Secondly, it supposes that workers are afforded more independence in their work and as a result have more control over how their duties are undertaken. Overell *et al.,* (2010:45) states that empowerment has different guises but:

> *"…generally refers to a management approach aiming to encourage employees to exercise initiative in solving problems*."

Using this rationale, power is therefore believed to be more about permission rather than the historical tactic of submission. The CIPD's *Change Agenda: What is Employee Relations* (2006) report, advanced the view that the issue of the balance of power has receded to the level that the whole employment relationship is uniformly directed to the battle for engagement. It concurs with Herriott, (2001) who insists that the process of empowerment is only used by management when it is for the benefit of the organisation and helps meet the goals of the organisation. Other observers also believe that the empowerment of workers has enabled managers to assume greater power as:

> *"…restraints on the managerial prerogative are now fewer while the 'joint regulation' procedures previously used to manage the employment relationship and secure the co-operation of employees have come to be replaced by direct dialogue."*
>
> (Overell *et al.*, 2010:46).

Although many contemporary organisations are utilising empowerment to deliver their aims, Daft (2008) believes that management still exercise empowerment albeit in three different forms:

- Legitimate power or authority
    - This is generated from a formal management position and the authority granted to it.
- Reward power
    - This stems from the authority to bestow rewards on other people. Managers have access to formal rewards such as pay rises, promotion and other benefits.
- Coercive power
    - This refers to the authority to punish or recommend punishment for actions perceived to be harmful to an organisation.

Daft (2008) has built on the traditional response of management, which was the right to manage, to a more sophisticated source of management legitimacy (Farnham, 2010). Hales (2001) argued that if management seeks to manage by consent, rather than by coercion, then the least legitimacy is generated by physical power and the greatest by normative power. Table 2.5 below outlines the '*power resources*' available to management and the repercussions of using this form of power.

Table. 2.5 - **Power resources: modes of influence, legitimacy and likely employee responses**

Power resources	**Personal forms of power**	**Positional forms of power**	**Modes of influence**	**Legitimacy**	**Likely employee responses**
Physical	-Individual strength -Possession of means for violence	-Access to means of violence	-Force	-Not legitimate	-Alternative compliance or withdrawal
Economic	-Individual wealth and	-Access to and disposal of	-Reward	-Partially legitimate	-Economic calculation or

	income	organisation resources			instrumental compliance
Administrative knowledge	-Individual experience	-Access to and control over organisation information	-Accepted rules or procedures	-Partially legitimate	-Instrumental compliance
Technical knowledge	-Individual skill and expertise	-Access to and control over technical information and technology	-Accepted methods	-Partially legitimate	-Rational calculation or cognitive commitment
Normative	-Individual beliefs, values, ideas and personal qualities	-Access to and control over organisational values, ideas	-Moral persuasion	-Legitimate	-Moral commitment

(Source: Hales, 2001:24)

Although management power can be robust, it is argued that with the current restructuring, fluidity and ambiguity within many organisations, the individual employee and groups of them have opportunities to exercise power in the employment relationship. Herriott (2001:98) argues that:

> *"…if roles are constantly changing and are ill-defined; if people are selected for the roles that they might play rather than for job vacancies; if structured change is constantly occurring: then there is a vacuum which the individual can fill*."

Herriot's rationale is that employees can take advantage of the employers' lack of clarity; for example if communication from senior management regarding what they expect from employees is mutually contradictory, then they can either select to hear the message which is most beneficial for themselves or purposely take advantage of single messages, which may be vague and therefore used to create roles that, again, are

beneficial for themselves. From the management position then, the problem has changed from overcoming resistance and alienation by employees but achieving positive employee commitment to management requests and decisions.

This approach to Human Resource Management has challenged the traditional view of the employment relationship but according to Kochan, (2007:599):

> "*…faces a crisis of trust and a loss of legitimacy in the eyes of its major stakeholders. The two-decade effort to develop a new 'strategic human resource management' (HR) role in organizations has failed to realize its promised potential of greater status, influence, and achievement*"

Thompson (2011:356) also raises problematic issues with HRM that need to be investigated further, citing Wilmott's (1993) HRM viewpoint that, "*promoting employee commitment through cultural practices is held to extend management control by colonising the affective domain*" as well as Grant *et al.,* (1998:202) who state that new disciplinary regimes are:

> "…founded on the internalization of self-regulation, calculation and control in which externally imposed authority and discipline becomes much less significant."

Townley (1993:538) believes that the new form of management and in particularly HRM is a conduit, "… *aimed at making employees' behaviour and performance predictable and calculable.*"

So as we have seen, there is considerable debate regarding power and the employment relationship; a number of viewpoints deem new management techniques are a subversive tactic to manage and control employees (Taylor, 2013; Newsome *et al*., 2013). Debates about this will continue and the next section of this chapter will focus upon the emergence of employment tribunals and whether the increased number of applications is a result of a change in management and/or a reduction in trade union membership.

2.2 The Introduction of Industrial Tribunals

2.2.1 Introduction

Law relating to the industry and the individual at work can be traced back to the late nineteenth and early twentieth centuries, where labour legislation had been introduced to protect and support the individual worker:

> *"There is perhaps, no major country in the world, in which the law has played a less significant role in the shaping of industrial relations than in Great Britain, and in which the law and legal profession have less to do with labour relations."*
>
> *(*Kahn-Freund, 1954:44).

Key legislative codes such as the *Factory and Workshop Act* (1901) and *Coal Mines Act* (1911), protected individuals from industrial accidents, the *Employment of Children Act* (1903), as well as the aforementioned *Factory and Workshop Act* (1901), regulated the hours of work of women and young persons. The *Truck Acts* (1831 and 1896), the *Trade Union Act* (1871), amended in (1876), offered protection and governed the major rules regarding the status of trade unions and the *Coal Mines Regulation Act* (1887) determined the method of wage payments.

The period between the Boer Wars (1880-1881 and 1899-1902) and the First World War (1914-1918), is described as the formative period of British labour law (Kahn-Freund 1954:215). During this period the Liberal governments (1892 – 1895 and 1905 – 1915) introduced minimum wage legislation, through the *Trade Board Act* (1909), and most importantly the foundations of social security, were also put in place, specifically the *Workmen's Compensation Act* (1906), the *Old Age Pensions Act* (1908) and the *National Insurance Acts* of (1911) and (1913). During this radical period, legislation was introduced that safeguarded the individual's right to strike and freedom of association, culminating in the *Trade Disputes Act* (1906). Although this period saw a series of legislative measures being introduced, it

is recognised that these were more of a widening of the scope of existing principles rather than the formulation of new ones (Kahn-Freund, 1959).

Until the 1960's, law relating to employment in the UK was extremely limited and only related in essence to restrictions on employers regarding the maximum number of working hours for women and children, minimum health and safety standards, and protection of the individual concerning trade union membership and activity. Trade boards, which were the forerunners to wage councils, were established to:

> *"…regulate the pay and conditions of workers in industry where collective bargaining machinery had not developed and where earnings would otherwise have been lower than the community considered proper for the maintenance of health and human dignity."*
>
> *Trade Boards Act* (1909:13).

Latterly the boards were enabled, through the passing of further legislation, to determine overtime rates, holiday entitlement and other terms and conditions of employment (e.g.*Trade Boards Act*, 1918; *Wages Councils Act*, 1945). Despite these legislative measures, there were no government interventions, which protected individual employees in relation to statutory minimum notice periods, discrimination on the grounds of sex or race, dismissal of employees without following proper procedures or offering severance pay. Rules and regulations such as these, which are integrated into the fabric of employment law, were far from being discussed or implemented. In other countries around the world, the government/state actively intervened in the employment relationship, seeing their role as being passive and what Kahn-Freund (1900 – 1979**)** labelled a collective laissez-faire system. This voluntarism system of state philosophy was built on the premise that individuals should be empowered into entering a contractual agreement, which they felt fit. The government had created the court system to enforce individual contracts of employment, if they were ever broken by the employee or employer, and further protection was afforded to employees through the presence of a resilient trade union movement and effective mechanisms of collective bargaining. The freedom of the individual and the

protection offered by trade unions and collective bargaining provided what the state believed was a system, which worked and promoted the free market. Since the 1960's, arguably due to the increasing power of the trade unions and their impact upon the UK economy, employment law has played a major role in the employment relationship, in particular with individual employment rights.

The first important piece of legislation came in the form of *The Redundancy Payments Act* (1965), which was seen as a way of encouraging the mobility of labour and was most importantly designed to ensure that reasonable severance payments were made to employees when they were laid off for economic reasons. The Act also provided for the establishment of the redundancy fund, which had an original function of providing for the payment of rebates to employers who had made redundancy payments and latterly provided for the making of redundancy payments direct to employees out of the fund in the event of the employer's insolvency.

However, the most significant development in employment law came a year earlier in 1964 when Industrial Tribunals were created by the *Industrial Training Act* (1964). These were initially created to hear appeals in relation to the assessment of training levies under the 1964 Act. Over the following three years the remit of tribunals was extended to include such areas as the determination of the right to a redundancy payment and issues surrounding the level of, or inaccuracy of, a written statement of terms and conditions of employment. As a result of issues such as wage inflation, unofficial strikes and the general existence of restrictive practices in industry, the government initiated a review, and commissioned Lord Donovan to carry out an investigation into and make recommendations on how these problems could be resolved. The main recommendation from the *Donovan Commission* (1968) stipulated that the remit of Industrial Tribunals should be broadened to deal with other areas of the employment relationship. This encompassed the area of unfair dismissal, and later, with the introduction of further legislation, ensured they dealt with issues around sex discrimination, equal pay, race discrimination and maternity rights etc.

With the advent of the Conservative Government (1979-1997), came a raft of collective employment legislation, which in particular curtailed the activities of trade unions and also the relative freedom with which they could take industrial action was condensed (Davies, 2009). Although the Conservative Government (1979-1997) concentrated on collective employment law (Rose, 2008), the acceptance of the UK into the European Economic Community in 1973 brought many directives, which introduced individual employment rights (Davies, 2009). This involved the introduction of the TUPE regulations (Transfer of Undertakings (Protection of Employment) Regulations 1981), the remit of equal pay legislation was widened in 1984 and 2010, and new health and safety legislation was introduced in 1989. With the continuation of the Conservative Government into the 1990's, legislation was introduced to further restrict the practices of trade unions, through the *Employment Act* 1990 and the *Trade Union Reform and Employment Rights Act* 1993, and also a broadening of health and safety law as a result of European intervention. The 1990's also saw the implementation of one of the most important individual employment laws passed in the UK. The introduction of the *Disability Discrimination Act* (1995) ensured that organisations with employees who were disabled or suffered from a long-term illness were treated in a reasonable manner. The *Disability Discrimination Act (1995)* instigated an avalanche of further individual employment legislation over the next couple of decades, which included:

- *Working Time Regulations* (1998)
- *Employment Relations Act* (1999)
- *Part-Time Workers Regulations* (2000)
- *Age Discrimination Act* (2004)
- *Equality Act* (2010)

This body of employment legislation resulted in the UK being:

> *"…moved a very great distance from a voluntarist regime towards one that has a great deal more in common with the 'codified' approaches of our continental neighbours."*
>
> (Taylor and Emir, 2008:88).

There is no clear reason why a vast amount of employment regulation has been introduced; however Dickens (2002) and Taylor and Emir (2012) have attributed the following reasons:

- UK membership of the EEC and more recently the EU
- The decline in trade union membership and activism over the past twenty five years
- Government economic policy
- Reviews into institutional issues
- The growth of regulation in many areas of national life
- Plain political expediency

In tandem with the rise of employment regulation in the UK, is the development of '*welfare personnel*' (Niven, (1967), which eventually developed into what is now known as Human Resource Management (HRM). Before attempting to explain and evaluate the synergy between employment law and HRM, it is appropriate to briefly outline the origins and augmentation of personnel into the world of employment.

Welfare Personnel

According to Niven (1967:1), the origins of 'welfare personnel' can be traced back to the latter part of the 1880's when a:

> *"…handful of pioneer employers and welfare workers saw together the immediate need for improving working and social conditions through 'industrial betterment."*

Notable employers included the families of Cadbury and Rowntree, which were intrinsically linked to the Quaker tradition (McKenna and Beech, 2008). It is generally acknowledged that working conditions during this period were particularly appalling (Foot and Hook, 2011). Although the government had tried to address these issues through legislation (*Factories Act,* 1878) and also trade union members were elected to the House of Commons to champion the causes of workers, it was enlightened employers who wanted to improve working conditions for their employees through the adoption of various schemes, which dealt with unemployment, sick pay and subsidised housing for employees. According to McKenna and Beech (2008) the motives

of particular employers were questioned as there was a general feeling of suspicion and scepticism of their practices, accusing employers of introducing these schemes as an alternative to realistic wages and also avoiding contact, leading to possible disputes, with trade unions. Despite this scepticism, a number of organisations continued with this welfare policy, and it is generally acknowledged (Niven, 1978) that in 1896 the first 'personnel officer' was Miss Mary Wood, who was appointed by Rowntrees in York. Her remit encompassed the well-being of women and children who were employed by the organisation, in particular monitoring and improving their health and behaviour.

Cadburys was another company that had similar convictions of employee welfare, although their philosophy and approach was completely different to that of Rowntrees, who believed that the welfare of the workforce was the responsibility of each member of staff. In 1900, Edward Cadbury, spoke of the need to:

> *"… develop the social and moral character of each worker … the supreme principle has been that business efficiency and the welfare of employees are but different sides of the same problem."*
>
> (Niven 1978:23).

In 1913, a conference was called in York by Seebohm-Rowntree, which was attended by sixty industrial welfare workers, resulting in the Welfare Workers' Association being formed, which eventually developed into the modern day Chartered Institute of Personnel and Development (Foot & Hook, 2011).

At this key stage of HRM, the first stages of personnel and government synergy first emerged. During the First World War, the government (Second Asquith ministry and Lloyd George ministry) had to utilise the best of resources, which included people, and also had to conform to the raft of recently introduced liberal employment legislation. As a result the government established the Industrial Welfare Department under the auspices of the Ministry of Munitions, which had the responsibility for introducing new welfare

and personnel policies by persuasion into factories (Foot & Hook, 2011). The Industrial Welfare Department ensured compulsory welfare workers in explosives factories and also ‘strongly encouraged’ them within munitions factories.

The period between the First World War and the Second World War saw Personnel Management develop even further (McKenna and Beech, 2008), although the need for efficient selection methods were omitted, possibly due to the high unemployment rate (Foot & Hook, 2011). The key development of Personnel Management during this period was the emphasis on personnel administration, which involved supporting management in areas such as recruitment, discipline, time-keeping, payment systems, training and keeping personnel records (McKenna and Beech, 2008). The role of Personnel Management developed further after the Second World War and into the 1950’s to encompass areas such as salary administration, basic training and advice on industrial relations. During this period, a growth in the labour market ensured that the various governments continued to support the rise of Personnel Management, with a particular interest in industrial relations. This can be attributed to a number of elements, including the shift from collective bargaining at industry level to company level, which required workers to develop specialist skills in industrial relations (McKenna and Beech, 2008).

With the increase in employment legislation in the 1960’s and early 1970’s, along with a high employment rate, there was an increase in activity around the core principles of Personnel Management, specifically recruitment, selection, training and remuneration. The practices of recruitment and selection were prompted by the shortages of labour and the need to attract and retain highly skilled staff. Training was regimented and systematically planned in accordance with the training boards, which as previously stated, were created to fund and provide training within specific industries. The establishment of training boards under the *Industrial Training Act* (1964), forced employers to dedicate time and resources to training. This resulted in training becoming another specialism within Personnel Management, as well

as other activities such as performance appraisal, management development and manpower planning. As discussed earlier, the most significant development of employment law arrived in 1964, with the creation of Industrial Tribunals and their widening remit in 1968 to encompass other areas of the employment relationship.

This had a far-reaching impact upon the personnel officer, as the increase in employment legislation and the threat of Industrial Tribunals, meant that the personnel function often acted as a specialist adviser, ensuring that managers followed the prescriptive elements of employment legislation and also try to avoid the conflict being resolved within an Industrial Tribunal. Providing specialist advice on employment legislation became an important aspect of Personnel Management, partly due to the severe consequences of not complying with employment legislation, and therefore required a highly skilled and well trained person to carry out this specialised role.

The 1970's also saw an increase in trade union activity, which required personnel officer to develop another specialism, in the form of negotiation. This development also saw the position of the personnel officer shift from a tactical role towards a more strategic objective (McKenna and Beech, 2008). Throughout this period, despite the economic and political climate, the subject and practice of Personnel Management had secured a relatively low-status position within companies and educational institutions. According to Wood (1983), Bacon (2003) and Kelly (2003) the subject of Personnel Management suffered from both an overall neglect of management as an academic discipline and the dominant position of industrial relations and collective bargaining. With the advent of the 1980's and the Conservative government, a new opening enabled personnel and contemporary HRM to come to fruition. Relevant factors included:

> *"… growing national interest in new management methods to stimulate productivity, industrial performance and competitive advantage in the world economy; the swing in public opinion and national economic policy- away from labour collectivism and toward a neo-liberal policy of open markets and individualised employment relations."*
>
> *(*Boxall, Purcell and Wright, 2007:39).

With this came an increase in the visibility of personnel, with senior personnel executives providing a contribution to the discussions around the company's future strategic direction, as well as setting and reviewing business objectives. In tandem with the increase in visibility of personnel came the recession of the 1980's, which had the double impact of high unemployment and a decrease in the power of the trade unions. With the introduction of new legislation, trade unions found it less effective to strike and employers could replace staff members fairly quickly. The reduction in strength of the trade unions meant that the role of the personnel worker changed considerably. Detailed and time consuming processes, based on collective bargaining and conflict management were replaced with rapid wage negotiations and swifter changes in necessary working practices:

> *"There was a move away from the traditional adversarial industrial relations of the 1970's towards an approach that sought to achieve excellence in the organisation through a committed workforce."*
>
> (McKenna and Beech 2008:4).

The 1990's heralded two major developments that affected the world of personnel. Firstly, as mentioned previously, employment legislation empowered the individual employee and further reduced the power of the trade unions. Secondly, employers were required to develop new working practices to ensure they could meet the changing demands of a flexible workforce, which included an increase in the number of staff employed on a part time or temporary contract, as well as a growth in the number of people working from home. Employers who had previously relied upon traditional employment practices had to suddenly meet the demands of a diverse workforce, which required the requisite skills to develop the appropriate policies, procedures and mechanism to manage these new working arrangements. McKenna and Beech (2002:4) argues that:

> *"…the early 1990's witnessed a change in emphasis. The reaction to individualism and unjustifiable greed of the 1980's made way for the spirit of consent and the value of teamwork. There was concern for core workers who are essential to the operation of the organisation since commitment is required from these workers. They are expected to be flexible about the hours they work and to work above and beyond their job*

descriptions. Wages tend to reflect the market rate rather than the rate determined by agreements with trade unions."

These changes ensured that personnel officers, who were now being labelled HR professionals due to the acceptance/embracing of human resource management by academics and leading businesses, had to develop a new set of skills and gain an array of competencies which could support organisations in achieving their aims and objectives. The increase in importance/structure of personnel within academia and the business world, was highlighted by the merger in 1994 of the Institute of Personnel Management (IPM) and the Institute of Training and Development (ITD) to the Institute of Personnel and Development (IPD) which was eventually granted a Charter by the privy council in 2000.

2.2.2 The *Industrial* Training Act (1964) and the appointment of the Donovan Commission

The Donovan Commission had severe reservations regarding the efficiency, effectiveness and also appropriateness of Industrial Tribunals, stating that:

> *"The Multiplicity of jurisdictions is apt to lead to waste, to frustration and to delay."*
>
> (The Royal Commission on Trade Unions and Employers' Associations 1965 – 1968:Para.570).

An example of the multiplicity of jurisdictions is highlighted by the Donovan Commission, who outlined a tangible example to clarify their concerns:

> *"If an employee wishes to claim a redundancy payment, but at the same time alleges that the employer has given him insufficient notice of dismissal. Or perhaps that there are still outstanding claims for holiday pay or for overtime pay, he has to go before one tribunal for one point of his claims and to another for the other point. The industrial tribunal can give him no damages for wrongful dismissal, and the county court can give him no redundancy payment. We understand that two or three complaints a week on the grounds of dismissal are addressed to the*

> *industrial tribunals at present even though every opportunity is taken to make it known that they cannot deal with them."*
>
> (The Royal Commission on Trade Unions and Employers' Associations 1965-1968, Para.570).

This example supported the commission's recommendations:

> *"… industrial tribunals should be enlarged so as to comprise all disputes between the industrial worker and his employer" The commission believing that it would "not only overcome the present multiplicity of jurisdictions …also…produce a procedure which is easily accessible, informal, speedy and inexpensive, and which gives them the best possible opportunities of arriving at an amicable settlement of their differences."*
>
> *(*The Royal Commission on Trade Unions and Employers' Associations *1965 – 1968,* Para.572).

The Donovan Commission appeared to have a utopian vision of Industrial Tribunals (The Royal Commission on Trade Unions and Employers' Associations *1965 – 1968, Chapter X*), and how they should be designed, developed and delivered. This vision concentrated too much on the future and failed to address the underlying current problems with Industrial Tribunals. To understand the Donovan Commission's thoughts on Industrial Tribunal's, it is appropriate to evaluate the report, which was segmented into the following recommendations to improve the workings of the system:

- Easily Accessible
- Informal
- Speedy
- Inexpensive

Easily Accessible

A key aspect of the Donovan Commission's recommendations and problems with the current system was the accessibility of tribunal hearings. The Donovan Commission envisaged:

> "… *that they will be operating in all major industrial centres and thus easily accessible."*

(The Royal Commission on Trade Unions
and Employers' Associations 1965 – 1968,
Para.548).

This not only had the premise that both the employer and the employee could access a tribunal in their area rather than some considerable distance away, but would also speed up the process of resolving the dispute. MacMillan's (1999) article in the Industrial Law Journal, who was a former regional chairman at Industrial Tribunals, stated that in 1971, after Lord Donovan's recommendations were implemented:

> *"… there was a total of 84 different locations used to hear disputes with, tribunals then sat in hotels, houses, libraries, council chambers, civic centres and other government accommodation. Tribunal clerks travelled considerable distances, staying overnight where necessary, their luggage including the case files, the statutes, the law reports, an extensive quantity of equipment, including a tape recorder (for decisions) and an extension lead, a universal plug and a screwdriver!."*
> MacMillan (1999:35).

Although this may have made Industrial Tribunals more accessible, it raises questions around the cost of transporting the tribunal chairman and other personnel to a centre near the employer and employee. The Donovan Commission also suggested that Industrial Tribunals were accessible from an administration point of view, rather than just a geographical perspective. Although this is not clearly outlined within the report, making the Industrial Tribunals more easily accessible would have expedited the process and removed any barriers for employees to apply to the tribunal.

Informal

The Donovan Commission's ideal for having an '*informal*' ET structure was divided into two segments. Firstly, the Donovan Commission wanted the entire tribunal system to have a more informal approach, from the application process to the hearings and judgments. Secondly the Donovan Commission wanted an informal approach to the resolution of disputes, through having a pre-hearing:

> *"Before any claim is heard formally, there should, we suggest, be an informal meeting in private at which an amicable settlement of the dispute should be sought."*
>
> (The Royal Commission on Trade Unions and Employers' Associations 1965 – 1968, Para.549).

This sought to have the obvious benefit of resolving the dispute in a setting away from the more formal tribunal full hearing.

Speedy

The ideology of a speedy ETS is related to the premise of developing an informal approach, as a speedy resolution of the dispute would be addressed through an informal pre-hearing. It can also be linked to the process of an Industrial Tribunal hearing being informalised. Modern ET '*court rooms*' are far less informal than other court systems. For example there are no wigs or gowns and the rooms, where disputes are heard, are considerably less imposing. At criminal courts for example, both parties are expected to present their case and challenge the case of the opposite side. At ET's, the chairperson was expected to support either side in ensuring all of the relevant facts were presented and communicated clearly. Through an '*informal*' process, employees with a dispute would be able to apply to an ET and have this dispute resolved (either to the benefit of the employee or employer) in a reasonably speedy timeframe, in comparison to other courts. The Donovan Commission did not quantify their desire for a speedy conclusion, only stating that:

> *"Since we envisage that they will be operating in all major industrial centres and this easily accessible, the speedy hearing of complaints can be organised."*
>
> (The Royal Commission on Trade Unions and Employers' Associations 1965 – 1968 Para.548).

This could be interpreted to mean that if Industrial Tribunals were more accessible, i.e. there were more of them and close to where the person who raises the dispute lives, then hearings can be arranged and heard within a shorter period of time, than disputes of this nature had been used to.

Inexpensive

As well as the ideal of ETs being reconciled in a speedy fashion, the Donovan Commission envisaged them to be inexpensive. The clarity of the Donovan Commission's reference to '*inexpensive*' is somewhat blurred, but it can be interpreted that it would be inexpensive for the parties involved, the employee and employer. Therefore it is possible to interpret this recommendation this way as the Donovan Commission had made a number of proposals which would have severely increased the cost for the government, such as the recommendation to create more ET hearing '*courts*', across an increased number of towns and cities.

2.2.3 Reaction and implications of the Donovan Commission

As previously stated Industrial Tribunals were created as part of the *Industrial Training Act* (1964), and were designed to hear appeals against training levy assessments imposed by industrial training boards. The jurisdiction of Industrial Tribunals was extremely limited, being confined to appeals by employers against levies imposed under the *Industrial Training Act* (1964). Over the following three years, their brief was extended to include matters concerning redundancy, such as the determination of the right to a redundancy payment, under the *Redundancy Payments Act* (1965), and also to resolve disputes over:

- *The failure to provide, or the accuracy of, a written statement of terms and conditions of employment (under section 4a of the Contracts of Employment Act ,1963).*
- *Certain appeals under the selective Employment Payments Act (1966)*
- *The determination of whether work was 'dock work' for the purposes of the Docks and Harbours Act (1966).*
- *Jurisdiction in the area of terms and conditions and compensation for loss of office in local government and related occupations.*

MacMillan (1999:34)

The Donovan Commission drew attention to the fact, that at the time, jurisdiction to hear and to determine disputes arising between employers and

employees was divided between a variety of courts. The Industrial Tribunals established under the *Industrial Training Act* (1964) were a vehicle for handling disputes over a certain number of issues, whereas other matters, which would arise out of the contract of employment, were dealt with by the magistrate's court under the *Employers and Workman Act* (1875), and the County Courts and the High Court, depending on the gravity of the dispute. The role and remit of Industrial Tribunals was enlarged through recommendations made by the Donovan Commission. The recommendations included the following (although all were not implemented):

- *Industrial Tribunals should be enlarged so far as to compromise, all disputes between the individual worker and his co-worker and his employer*
- *Industrial Tribunals to be renamed, 'Labour Tribunals'*
- *The jurisdiction of tribunals should cover all contracts of employment, irrespective of the nature of the work done by the employee and irrespective of his place in the hierarchy of employment or the amount of his salary, and that it should extend to persons in public as well as to persons in private employment*
- *Industrial Tribunals should not be used to resolve industrial disputes or differences arising between employers or employers' associations and trade unions or groups of workers*
- *Industrial Tribunals should not have the jurisdiction of settling matters between trade unions and their members or applicants for membership*
- *Industrial tribunals are not indented to handle any issues connected with the negotiation of collective agreements*
- *Provide for all parties an easily accessible, speedy, informal and inexpensive procedure for the settlement of their disputes, and for this purpose to remove the present multiplicity of jurisdictions*
- *The right of employees / employers to have a right to access 'ordinary courts', and access to a jury (e.g. if committed fraud)*
- *Labour Tribunals to be established in all larger industrial centres*
- *Labour Tribunals to consist of a legally qualified chairman and of two lay judges, one taken from a panel presented by the trade unions and one from a panel presented by the employers' associations*
- *Primary duty of tribunal to bring about an amicable settlement, and the procedure should be designed so as to make this as easy as possible. e.g. each hearing should be preceded by a "round table" meeting in private between the parties and the tribunal*

(The Royal Commission on Trade Unions and Employers' Associations 1965 – 1968 Para's 568-585 & 1061-1064)

The intention of the commission was to establish law courts that would adjudicate on disputes arising from the contracts of employment or statutory obligations between the employer and employee. The principal compulsion of

the commission was for the tribunal to be informal:

> "*... the tribunal shall, so far as it appears to it appropriate, seek to avoid formality in its proceedings".* Further, it should*, "conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.*"
> (Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001, Schedule 1,11(1))

The next section will consider a fundamental aspect of tribunal jurisdiction as well as this study, unfair dismissal, to assess the impact of these recommendations.

2.3 Unfair dismissal

2.3.1 Introduction

Until the introduction of the legal right not to be unfairly dismissed through the *Industrial Relations Act* 1971, employees were limited in their protection of being dismissed from their job, which they felt was unfair (Upex *et al*., 2009). The law relating to unfair dismissal can actually be traced to being a basic social right (Collins, 2004) and was introduced relatively late in comparison to other fundamental labour rights, such as the right to be a member of a trade union, the right to a safe workplace and the right to organise for the purpose of collective bargaining (Collins, 2004).

2.3.2 The origins and forms of unfair dismissal

Remedies against dismissal have always been seen to be inadequate under the common law (Lockton, 2011), in that if the employer complies with the contractual arrangements, specifically the notice period, then, the employee had no protection against arbitrary dismissal. When unfair dismissal was eventually introduced, it was intended to provide protection against the lack of rights provided for in common law, although it has not and still does not protect all employees. The first movements towards the implementation of this employment right arrived with the European Social Charter of the Council of

Europe in 1961. This was further developed through the International Labour Organisation in 1963 which provided a broader protection which declared in their 'recommendation on termination of employment' that:

> *"Termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."*
>
> (ILO, Recommendation 119, Article 2 (1), 1963)

The jurisdiction of unfair dismissal was formalised in the UK through the controversial *Industrial Relations Act* (1971) (Lockton, 2011). The provisions were re-enacted in the first schedule by the Trade Union and Labour Relations Act, further amended by the *Employment Protection Act* (1975), and then consolidated, first in the *Employment Protection (Consolidation) Act* (1978) and then in the *Employment Rights Act* (1996) (Smith and Baker, 2010). The statutory right can be found in Section 94 (1) of the *Employment Rights Act* (1996) (ERA 1996), "*An employee has the right not to be unfairly dismissed by his employer*". This is a very succinct and at first impression straightforward statement (Collins, 2004). The basic outline of the original legislation has remained fairly consistent over the course of its life (Upex *et al*., 2009) although there have been numerous additions and alterations (Smith and Baker, 2010; Collins, 2004) that have attempted to provide a broad outline of the legal claim in relation to unfair dismissal:

- *An employee who can show that they have been dismissed by the employer may bring a claim before an employment tribunal.*
- *The employer has to demonstrate a substantial reason for dismissal such as misconduct or lack of capability.*
- *The tribunal must then determine whether or not dismissal for that substantial reason was reasonable under the circumstances.*
- *If not, the tribunal has the power to award reinstatement, reengagement or compensation.*
- *Compensation consists of a basic award, equivalent to a redundancy payment based on length of service, and a discretionary compensatory award which reflects the losses caused to the employee.*

(Collins, 2004:4)

2.3.3 The impact of unfair dismissal on the employment relationship

Although the basic structure of the legislation has remained relatively intact one key element has consistently fluctuated, depending on the political views of the government at the time (Upex et al., 2009). This is the qualifying period that employees must reach before being eligible for protection against unfair dismissal. In the 1970's the Labour government implemented a six-month qualifying period with successive governments increasing and decreasing this term. The present Coalition Government recently increased this to a two-year period in 2012. The pendulum of change in the qualifying period has been outlined below:

Table 2.6 - **Unfair Dismissal qualifying periods**

Qualifying Period	Year	Act / Regulations	Government
2 years	1971	*Industrial Relations Act* (1971)	Conservative
6 months	1974	*Trade Union and Labour Relations Act* (1974)	Labour
1 year	1979	*Unfair Dismissal (Variation of Qualifying Period) Order* (1979)	Conservative
2 years (small firms)	1980	*Employment Act* (1980)	Conservative
2 years (not restricted as above)	1985	*Unfair Dismissal (Variation of Qualifying Period) Order* (1985)	Conservative

1 year	1999	*Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order* (1999)	Labour
2 years	2012	*The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order* (2012)	Conservative / Liberal Democrat

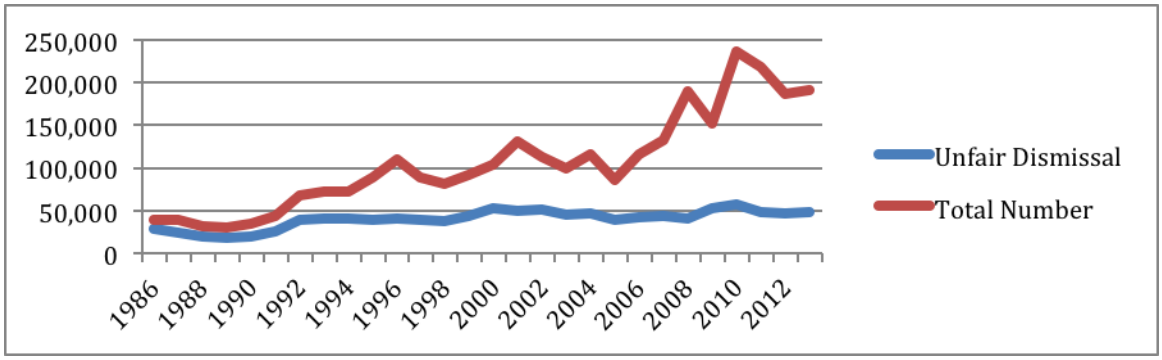
In essence the unfair dismissal regulations are a peculiar form of legislation and bear no relation to a common law breach of contract claim (Lockton, 2011) in respect that although a dismissal may be lawful, as the contract has been complied with, it may still be unfair. Equally a dismissal may be unlawful but deemed fair under the regulations.

Before the statutory provisions of unfair dismissal were introduced, the most effectual protection for workers against unfair treatment was consumed within collective organisation and the threat of industrial action (Collins 2004), even in recent times the dismissal rates are considerably lower where union membership is high (Knight and Latreille, 2000). The laws relating to unfair dismissal were therefore introduced as an 'individual' piece of protection against arbitrary treatment. Collins (2004:5) states that:

> "*…the legislation characterises disciplinary disputes as an individual matter between an isolated employee and the employer, rather than a collective conflict about the proper scope of managerial disciplinary powers in the workplace*."

Therefore the most profound and substantial impact of the introduction of unfair dismissal legislation is the shift from a workplace discipline controlled jointly by agreement between capital and labour towards a legal forum, which adjudicates on arguments about managerial rights and reasonableness (Clancy and Seifert, 1999).

Fig. 2.7 - **An outline of unfair dismissal tribunal claims rates compared with total number of applications since 1986**



(Sources: 1986-1998 – Hawes (2000); 1985-1997 – Burgess *et al.*, (1997); (1998-2013 –Employment Tribunal Service Annual Reports)

From a practical perspective the *Employment Rights Act* (1996), (ERA) Section 98 states that once the employee has proven their dismissal, the burden of proof passes on to the employer to show:

1. *What was the reason for the dismissal (or the principal reason if more than one).*
2. *That it fell within one of the enumerated categories of prima facie fair dismissals, namely that the reason was:*
   a) *Related to the capability or qualifications of the employee for performing his work.*
   b) *Related to the conduct of the employee.*
   c) *The retirement of the employee (now rescinded).*
   d) *That the employee was redundant.*
   e) *That the employee could not continue to work in that position without contravention of a legislative provision.*
   f) *Some other substantial reason of a kind such as to justify the dismissal.*

Through Section 98 (4) of the ERA, the ET panel then have to decide, whether having regard to equity and the substantial merits of the case, the employer acted reasonably in treating that reason as a sufficient reason for dismissing the employee.

2.4 Tribunals: An appropriate mechanism for justice?

2.4.1 Introduction

Theorists such as Rawls (1999, 2005); Lucy (2007); McCoubrey and White (1999) concur that justice is the most important aspect within 'social institutions' and that:

> *"…likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust."*
>
> (Rawls, 1999:3)

From an academic perspective, Cropanzano, Stein and Nadisic (2011) have divided justice into three perspectives, which are:

> *"…organised around a family of objects or events that may be perceived as more or less fair. That is, they are defined by the types of stimuli that are evaluated – outcomes received by an individual (distributive justice), processes by which outcomes are assigned (procedural justice) and social interactions that take place among individuals (interactional justice)."*
>
> (Cropanzano, Stein and Nadisic, 2011:18)

2.4.2 Justice and the law – Procedural justice

Historically, the discussions around justice within the law have tended to focus on the failure of judges to apply the opposite rule or to interpret it correctly. This has been labelled '*procedural justice*' (Klaming and Giesen, 2008:3) and refers to:

> *"…various aspects that a procedure should meet in order to be perceived as fair by its user."*
>
> (Klamming and Giesen, 2008:3)

Various pieces of research have indicated that the benefit of procedural justice is that it solidifies an increased acceptance of decisions and outcomes, as well as improved compliance with the law (Greenberg, 1987; Lind, Kulik, Ambrose & de vera Park, 1993; Thiabaut and Walker 1975; Tyler 2005).

Rawls (1999) differentiated procedural justice and distributive justice by dividing the principles into how goods are allocated (procedural) and what goods are allocated (distributive). The principle of procedural justice was linked to Rawls's (1999) belief that justice required equality of opportunity, individual empowerment and the option to contribute towards decisions that could affect them from a personal perspective.
Nozick (1974:76) concurs, stating:

> *"…a given distribution should be judged with respect to how it came about. The distribution is fair to the extent that the process that produced it is also fair."*

Cropanzano, Stein, and Nadisic (2011) believe Nozick's statement is profound and consequently moves the process of justice to the centre stage. As the majority of people are unfamiliar with the judicial process, they can feel emotionally distressed before and during the legal process (Forgas, 2002; Van den Bos, 2003). Rawls (1999) has outlined two variations to procedural justice, which are:

- Impure procedural justice
- Pure procedural justice

Impure procedural justice can be aligned to criminal and employment law cases and:

> *"…while there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead it."*
>
> (Rawls 1999:75).

Therefore it is known what results are required (e.g. the person is found guilty if the person has committed the offence) however a procedure cannot be devised that will automatically produce the independently defined just result (Nelson 1980) and only try to minimise injustice. Rawls exemplifies this through providing an analogy to criminal law:

> *"The desired outcome is that the defendant should be declared guilty if and only if he has committed the offence with which he is charged. The trial procedure is framed to search for and to establish the truth in this regard. But it seems impossible to design the legal rules so that they always lead to the correct results."*
>
> (Rawls, 1999:75).

Pure procedural justice refers to a situation in which there is not a criterion for what constitutes a just outcome except for the procedure itself. Specifically it refers to a situation in which:

> *"…some independent specification of what justice requires in a certain situation, and it is possible to devise a procedure that will automatically produce the independently defined just result."*
>
> (Nelson, 1980:503).

Inevitably, Rawls (1999) provides a clear analogy of this concept by describing the process of placing bets with the distribution of the winnings as being fair:

> *"…the betting procedure is fair and freely entered into under conditions that are fair."*
>
> (Rawls, 1999:75)

Although the person may not win their bet, the process is still seen to be fair and therefore accepted. Even though the process may be fair, the perception is that it could be shaped by the emotional effect of the conflict as well as the potentially unfamiliar aspect of having to take legal action to resolve the conflict (Klaming and Giesen, 2008). The overall problem with procedural justice within a legal context is that the process is unfamiliar to most people, and as the outcome is unknown to the person before commencing the process, it can stimulate feelings of anxiety and stress. Analysing those procedural justice perceptions in accordance with the participants' '*affected state*' has been argued, by Van den Bos, 2003, to be advantageous in understanding the psychological mechanisms underlying people's justice evaluations.

2.4.3 Justice and the law – Distributive justice

Distributive justice concerns the just, fair and equitable distribution of benefits and burdens, which cover all aspects of social life. Johnson (1956) and Jackson (2005) have clarified distributive justice as addressing how a community treats its members in terms of the assignments of benefits and burdens accordingly to some standard of fairness. Essentially, distributive justice focuses upon the fairness of outcomes (Folger & Cropanzano, 1998; Greenberg, 1990) and is based around the concepts of equity (Folger and Cropanzo, 1998; Greenberg, 1982). Not only is distributive justice associated with rewards, it is also concerned with punishments.

Distributive justice has played an important role in political, economic and social thinking with Walzer (1985:3) stating that "*distributive justice is a large idea*" and Rawls (1971) commenting that it is the virtue of social institutions. Markovsky and Younts (2001) concur with Walzer by explaining that when individuals analyse the fairness of outcomes they are evaluating distributive justice. From an organisation's perspective, distributive justice can be aligned to the employee's evaluation of organisational outputs based on their own inputs and then compared to what others have received in a similar situation as themselves. Lambert (2003) labels this the '*exchange principle*' where people assess what they have done in exchange for what they receive.

The history of distributive justice from a social perspective can be traced back to Aristotle (and even further from a biological nature according to research carried out by Homans, 1961) who divided distributive justice into two sections, the allocation of economic goods and the allocation of socio-emotional goods (Cropanzano *et al.,* 2011) with Aristotle stating that "*the just is something proportionate*" and that "*proportion is equality to ratios*" (Aristotle 350BC/1962:119). Sternberg (2010:34) clarifies and concurs with this but warns that definitive objectives must be in place:

> "*Distributive Justice specifies that allocated rewards should be commensurate with contributions: those who contribute most to an association, deserve most from that association. What counts as a*

contribution, however, depends crucially on the association's definitive objectives: contributions are just that which promotes achievement of them."

From a legal perspective, if a person involved in the process dedicates a serious amount of time, resources and emotion into the proceedings then the distribution award will be highly relevant, as they will feel that they are due some form of recompense for their effort or compensation for what they have been through. Limited research has been carried out regarding distributive justice within the ETS, however, it can be assimilated with research carried out involving organisations undertaking processes such as redundancy. Daly and Geyer (1994) in Campbell's (1999) study on survivors of redundancy, believe that the fairness of the selection criteria used in a redundancy situation to decide which employees are to remain and who are to leave, will determine whether the person is satisfied with the outcome (distributive justice). However, Rawls (1971); Cropanzano *et al.,* (2011) and Ferrora (1998) believe in certain circumstances that the individual will not accept the outcome (or distributive justice) despite the apparent appearance of a fair and legitimate outcome being reached.

2.4.4 Justice and the law – Interactional justice

Numerous researchers have labelled interactional justice as the third style of justice (Aquino, 1995; Barling and Phillips, 1993; Bies and Shapiro, 1987; Skarlicki and Folger 1997; Tata and Bowes-Sperry, 1996). Although some have classified interactional justice as a 'third component' others believe that it is a subdivision of procedural justice (Moorman, 1991; Niehoff and Morrman, 1993; Tyler and Bies, 1990). A few have gone even further and stated that although there are two separate entities, they can be combined because of their high inter-correlations (Mansour-Cole and Scott, 1998; Skarlicki and Folger, 1997). Bies and Moag (1986) defined interactional justice as the interpersonal treatment people receive as procedures are enacted. Cropanzano *et al.,* (2011) explains this form of justice through a social transaction, which is appraised and then an evaluation is made. Interactional justice is therefore restored when decision makers treat people

with respect and understanding as well as explain the rationale for various decisions being made. To counteract the argument purporting interactional justice to be a sub dimension of procedural justice, Bies (2001) outlined a series of theoretical refinements that divided into two processes. He proposed that interactional justice be fragmented into four dimensions:

- Overly harsh evaluative judgements
- Lack of honesty
- Violations of privacy and
- Disrespect

Although those four elements are conceptually distinct, they can be operationalised as a single, unitary dimension (Roch and Shanock, 2006). To confuse matters further, Colquitt (2001) believes that there should be four elements; distributive and procedural justice with interactional divided into two sub facets known as, '*informational'* and '*interpersonal'* justice. A number of researchers have followed up on Colquitt's (2001) theory and measured interpersonal and informational justice separately with some success (Ambrose *et al.,* 2007; Camerman, Cropanzano and Vandenberge, 2007; Colquitt, Zapata-Phelen and Robertson, 2005; Scott, Colquitt and Zapata-Phelen 2007; Walumbwa, Cropanzano and Hartnell, 2009). However, despite these fairly recent advancements and discussions, Cropanzano *et al.,* (2011) believe that interactional justice should remain as one unitary element, due to both practical and empirical reasons.

2.4.5 Impact of tribunals on the way employers manage relationships

The use of employment legislation and the ETS has always been viewed disparagingly by employers (Jordan *et al*., 2013) . Evans *et al.,* (1985) state that although a fairly muted response was received in 1971, when unfair dismissal was first introduced, employers were more vociferous when legislation and the remit of Industrial Tribunals were extended in 1975. Objections raised at the time, which look very familiar in today's workplace, were that there would be a deterrent to job creation, the use of tactics to avoid legislation (for example temporary contract) and an increase in bureaucracy.

A study, at the time, by Clifton and Tatton-Brown (1979) countered this notion and in fact demonstrated that they had little or no impact on organisations. In the study, only 4% of companies suggested that the legislation had an impact upon their business, and it was rated lowly in a list of main difficulties in running a business. An interesting feature of this study however, was that it reiterated that managers of small businesses were largely ignorant of the law. However, over the last four decades, this has changed, with data from the most recent Workplace Employment Relations Survey (2011), finding that 89% of companies had a disciplinary procedure in place and 88% had a grievance procedure in place. This can be associated with the introduction of a raft of employment legislation, a rigid process for following disciplinary and grievances, and the threat of a costly involvement with ET's.

As previously discussed, the original master-servant contract and the fundamental inequity in that relationship have resulted in an attempt to rectify the disparity. The establishment of employee rights and the restrictions placed upon trade union activity have changed the nature of employment relations. Although legislation has been in place since the late nineteenth century, it was not until the 1970's, and the creation of Industrial Tribunals that protection for employees was effective. Gennard and Judge (2005:273) relate the protection back to the *Industrial Relations Act* (1971) stating that:

> *"…the act gave individual employees the right, for the first time, to complain to an industrial tribunal that they had been unfairly dismissed. The 1971 Act was a turning-point in the relationship between employer and employee. The relative informality of the then industrial tribunals and the fact that access to them did not depend on lawyers or money meant that for many employee the threat of dismissal without good reason disappeared or diminished."*

Gennard and Judge (2005:273) further counter this by warning:

> *"…this does not mean that employees cannot be unfairly dismissed. They can. The law has never removed from management the ability to dismiss whom it likes, when it likes, and for whatever reason it likes. All that has happened since 1971 is that where employers are deemed to have acted unreasonably and unfairly in dismissing employees, they can be forced to compensate an individual for the consequences of those actions."*

The commentary by Gennard and Judge (2005) provides a salient discussion around the impact and influence of the ETS on how employers manage and relate to staff. Despite the protection and threat of a tribunal, employers are still dealing with employees in a fashion that existed prior to the creation of tribunals. Employers still argue that the relationship with their employees should remain private and any disputes should not be dealt with in a public arena. Rollinson (1993:133) concurs:

> *"… management are the law makers, they draw up the laws in private, and largely to protect their own interests rather than those of all the members of the organisation. It is hardly surprising, therefore, that discipline has been called a very private system of justice."*

This private system of justice has also been labelled '*natural justice*' and has been derived from the ideology equity, due process and model legal practice. Farnham (2000:422) outlines the principles of natural justice that apply within the employment relationship:

- *A knowledge of the standards or behaviour expected.*
- *A knowledge of the alleged failure and the nature of the allegation.*
- *An investigation to establish a prima facie case should normally precede any allegation.*
- *The opportunity to offer an explanation and for this explanation to be heard and considered fairly.*
- *The opportunity to be accompanied or represented.*
- *Any penalty should be appropriate to the offence and take account of any mitigating factors.*
- *The opportunity and support to improve behaviour , except when misconduct goes to the root of the contract, should normally be provided.*
- *A right of appeal to a higher authority.*

An ET therefore will measure whether '*natural justice*' has taken place. Employment law has formalised the ideologies of natural justice, into a rigid framework with which employers have to adhere. Natural justice has therefore been introduced into employment legislation, whereby the action of the employer in dealing with the employee is measured just as highly, if not more so, than the actual actions or non actions of the employee. The threat of an ET has resulted in employers not being able to act '*instinctively*', but forcing

them to follow set procedures. This is also applicable to employees who are also pressed into following set, rigid procedures before being able to apply to an ET or have their potential award reduced by up to 25%. The employee may feel uncomfortable in raising the issue with their employer due to the possible implications and therefore would prefer the tribunal to deal with the issue(s). The ETS therefore have tried to regulate the employment relationship, which in some cases can be detrimental to both parties.

2.4.6 Impact of tribunals on employees in seeking to resolve disputes

The late Lord Wedderburn's speech in the House of Lords (Wedderburn, 2009) regarding the composition of the ETS is evidence that the discussion around the service is still prevalent and necessary to ensure the service continues to develop and fit the needs of a modern employment relationship. Although it can be argued that with the advent of ET's a new raft of 'disputes' have arisen, some commentators have noted that the rise in applications to tribunals over the last four decades is linked to the decline in trade union power (Shackleton, 2002). Drinkwater and Ingram (2005) argued the use of tribunals was a reaction to the purification of collective action, due to the difficulty experienced by trade unions in being able to organise and act collectively. A clear accusation is that tribunals offer a new avenue of resolution for the same conflict, which would have previously been voiced through collective action.

Numerous writers have attempted to correlate an increase in ET claims with an overall fall in trade union membership; believing that the fall in trade union membership and therefore a relaxation in collective agreements, has been affected by the individualisation of the employment relationship (Kelly, 1998; Brown *et al.,* 1998: Hawes, 2000). With the decrease in trade union membership since the 1980's, employees have used ET's to resolve any disputes they may have. However, the nature of resolving conflict through a trade union or an ET is radically different. For example, an ET will ask the claimant what remedy or remedies are they seeking, with three options:

1. *To get their old job back and compensation (reinstatement).*
2. *To get another job with the same employer and compensation (re-engagement).*
3. *Compensation only.*

ET's therefore usually handle non-payment of wages, unfair dismissal or discrimination and constructive dismissal. Also it is very rare for applications to be made in seeking a continuing employment relationship (For example, the ET Annual statistics from 2012-2013 record that only 5 in 4,596 successful unfair dismissal claims resulted in reinstatement or re-engagement.) Dickens *et al.,* (1981) clarifies this by labelling re-employment claims for unfair dismissal as the '*lost remedy*'. In contrast the use of collective action through trade unions is usually used to address concerns regarding pay levels, redundancies and other general terms and conditions of employment. Only on rare occasions have employees arranged a '*walk out*' in support of colleagues. Batstone *et al.,* (1977:218) called strikes a:

> *"…tactical extension to collective organised opposition through which the frontier of control in a workplace is either changed or maintained."*

Therefore the apparent correlation between increases in tribunal applications and the decrease in union membership is distorted by the remedies sought by the parties, when using these conflict resolution methods.

There could be a change in this correlation because, as stated by Gibbons (2007), there is a growth in the number of multiple tribunal cases involving a single issue (or set of issues) which are or have affected a number of employees in the same workplace. Gibbons (2007:98) attributes the increase in multiple cases:

> "…*directly to collective issues, with the rate of such cases fluctuating substantially because it is heavily influenced by large scale disputes."*

Gall and Hebdon (2008) labelled this '*semi-collective action*' and it is estimated to cost employers three billion pounds and predicted to rise to 5 billion pounds with base pay liabilities and future wage bills (Fuller, 2007). The 2006 case of Birmingham City Council being taken to an ET compounds

this theory. In the case of *Barker and others v Birmingham City Council* (ET 1305819/2006), more than 4,000 female workers won their equal pay claim in an ET. The female employees were employed across 49 different jobs, which were traditionally dominated by females, including cleaners, carers, cooks, care assistants and teaching assistants, and were on the same pay grade as men. They complained of being excluded from bonuses worth up to 160% of their basic pay, which were paid to men. The workers were represented by different organisations, for example 900 were represented by Steton Cross Solicitors. Historically, a dispute like this would have involved trade union negotiations and possible industrial action. The fact that the amount of compensation sought was large, two hundred million pounds (BBC, 2013), resulted in the employees taking action, which they knew was the only option open to achieve the compensation they believed was rightly theirs. Batstone *et al's*., (1977) assertion that strikes were a tactical extension of '*collective opposition*' can therefore be assimilated to the use of ET's, as in the case of Birmingham City Council, an initial grievance was raised and refuted regarding the issue of equal pay. The application to the tribunal service is an obvious next step in the tactics of employees to resolve their dispute. Metcalf (2003) disagrees with Batstone *et al*., (1977), and concludes that the use of tribunals is a necessity due to the restrictions placed on trade unions by the Conservative government (1979-1997):

> *"…the strike threat…was weakened by a succession of laws which permitted a union to be sued, introduced ballots prior to a strike, and outlawed both secondary and unofficial action."*
>
> (Metcalf, 2003:175).

In many respects the policies of the Conservative government continued with New Labour 1997 - 2010, who stated that:

> "…*there will be no going back, the days of strikes without ballots, mass picketing, closed shops and secondary action are over."*
>
> (Department for Trade and Industry, 1998:7).

With the Labour Government (1997-2010) continuing with the restrictive practice policies on trade unions, ET's have become the only viable

option for employees to try and resolve their disputes. The explosion in individual employment rights (Dickens, 2000) has now swept into the remit of employment relations, "*which had previously been a matter of voluntary determination"* (Dickens and Neal, 2006:7). With the implementation of the *Statutory Disciplinary and Grievance Procedures* (2004), employers and employees were effectively forced into channelling disputes into a set, rigid process. Even though this has been repealed after the Gibbons Review and replaced with the semi-mandatory *ACAS Code of Practice* (2009), (implemented through the *Employment Act*, 2008) organisations and employees are still advised to follow the process formalised in the *Statutory Disciplinary and Grievance procedures* (2004). There is an added threat of awards at tribunals being reduced or increased by 25% if the correct processes are not followed. There is an argument conversely, that enforcing set processes on employers, with repercussions at the tribunal stage if these are not followed, have been to the detriment of the employee, and dispute resolution. Although ET claims have risen since the implementation of set procedures in 2004, it is unclear whether these procedures and the threat of an ET claim, have had a positive effect on workplace dispute resolution.

It has been suggested though that the impact of the procedural changes, brought in through the *Employment Act* (2002), has downgraded rather than enhanced procedural fairness (Hepple and Morris, 2002). Although the procedures have been updated to mirror the ACAS Code of Practice (2009), Hepple and Morris (2002) have still argued that even though these set processes are in place, employers could follow the statutory procedure and could escape a finding of unfair dismissal on the grounds that procedural defects would have made no difference to the decision to dismiss (Polkey Principle - Polkey v A E Dayton Services Ltd [1987] IRLR 503). Aware of this procedural loophole, employees may feel that applying to a tribunal would therefore be futile. Kelly (1998) argues that the overall growth in tribunal claims indicates rising levels of discontent at work. However, only a minute fraction of grievances that could result in a tribunal claim, actually result in this action being taken with only a quarter advancing to an actual

hearing. Brendan Barber from the Trade Union Congress (TUC) is quoted in EIRO (2001:9) as stating:

> *"I am fed up listening to employers griping about a so called compensation culture. Tribunal claims do not arise because sacked workers are 'having a punt'. Only around 30,000 claims a year go to a full tribunal hearing. Meanwhile, as many as three-quarters of a million times a year employers get away with actions that could land them in a tribunal. That is the real scandal*."

There is an argument that the sector in which a person works can affect the application to a tribunal. Dickens (2000:34) bluntly states that:

> *"…the number of people employed in those parts of the private services sector, where the management of employment relations is often conducted in a harsh and arbitrary manner by small employers and unions are weak, is generating more claims*."

Kersley *et al.,* (2006) have related the presence of trade unions with lower rates of complaints to tribunals. It is generally accepted and proven in recent studies (Knight and Latreille, 2000) that unions are often able to resolve grievances in the workplace, through a collective manner which therefore omits the requirement to submit applications to a tribunal. Pollert's (2005) study on unorganised workers found that employees with workplace problems generally did nothing about them. This was attributed to having limited awareness of their employment rights or the potential financial costs that could be sustained in raising an application. As discussed earlier, financial assistance at a tribunal is limited due to the absence of legal aid; the only viable option could be trade union backing or 'no win – no fee' solicitors, who would severely analyse the merits of the case before accepting and representing the claimant. Colling (2004) and Pollert (2005) have concluded that the problem with ET's is not with hampering a costly burden on hard-pressed and blameless employers, but actually relates to the failure in delivering effective industrial justice to thousands of employees who have legitimate grievances but who seldom achieve the outcome, which they are seeking.

Another problem with ET's is the stigma that can be attached to a person who has submitted an application against their employer. As tribunals publish most case information in the public arena (except for cases involving sexual misconduct allegations and disability issues) it is possible for prospective employers to determine whether someone has submitted tribunal applications previously, which would then '*warn them off*' and they would not employ them. The TUC's (2008) commission on vulnerable employment reported that workers:

> *"… are stopped by fear that even though they might have the strongest case in the world, once the next employer who they got finds out they took the previous employer to the tribunal, the chances of getting a job go out of the window."*
>
> (TUC 2008:132).

This is also highlighted in the recent revelations surrounding workers in the construction industry who were unwittingly placed on a blacklist, which employers were able to view. The Consulting Association, supplied information on thousands of names, which provides details of their trade union activities, political allegiances, tribunal applications and personal information such as health conditions. Employees are fully aware of the ramifications of submitting a tribunal application, and with active networks within sectors, case details can easily be retrieved. Employees are therefore confined to raising a grievance internally or withdrawing issues.

2.4.7 The role of representation at tribunals

The right of a party to be represented by a solicitor or advocate of choice is fundamental and well established. The *Employment Tribunals Act* (1996) S 6 (1) reinforces this maxim by providing that a person may appear before an employment tribunal in person, or be represented by counsel or a solicitor, a representative of a trade union, an employers' association or any other person whom they desire to represent them. With the increase in the use of HR Consultants, it has become more common that non-traditional advocates have represented employees during the tribunal hearings. In the case of *Bache v*

Essex County Council (2000), the Court of Appeal had to consider the verdict of a tribunal which formed the view that a representative, who was neither a solicitor or a trade union representative was causing considerable delay and distraction in the process of evidence collation. The representative had previously supported the claimant in disciplinary meetings, but was now considered to be detrimental to the tribunal process. The Court of Appeal intervened on this issue and disagreed with the tribunal's instance of relegating the representative to a supporting role and held that the tribunal did not have the remit to dismiss a representative. Therefore the right of any party to be represented by any person whom it desires is absolute. This does not prevent tribunals acting inappropriately when faced with '*non-legal*' representation. Snobbery allegedly still exists within the judicial system, whereby Employment Judges prefer to be in an arena of qualified legal professions. The bias against '*non-legal*' representatives is highlighted in the recent case concerning Peninsula Business Services (2008), which successfully claimed that an Employment Judge should have removed himself on the basis of apparent bias against them. The case centred around Peninsula, a national employment law service, who provide advice to SME's. The Employment Judge was retained on a part time basis and was also a partner in a firm of solicitors. The firm of solicitors had posted a then recent advert containing the following details:

> *"Employers: Do you want to……*
>
> *Deal with a local firm whom you can see and talk to at any time and avoid having the potential risk of dealing with untrained and unqualified 'consultants' or inexperienced and unqualified 'call centre operatives'? Avoid expensive and lengthy tie-ins of 3 or 5 years and pay only for the professional service that you actually utilise, avoiding subsidising others because you have to pay a large lump sum each year for a service you never use?"*
>
> (*Peninsula Business Services Ltd v Rees & Ors, 2008*:4)

The part-time Employment Judge found against Peninsula and recorded the following statement towards Peninsula's apparent failure to comply with employment law:

> *"We remind ourselves that Peninsula holds itself as the biggest employment law consultancy in the country. For such an organisation to flagrantly breach employment legislation is frankly astonishing…Put simply, Peninsula did not practise what they preach…However, the claimants did have a legitimate expectation that Peninsula would comply with those standards of behaviour. This is all the more so where Peninsula hold themselves out as being an 'Employer of Excellence"*.
>
> (*Peninsula Business Services Ltd v Rees & Ors, 2008*:12)

Although Peninsula was not named within the advert the EAT declared that a fair-minded and informed observer could not have excluded the possibility of bias against Peninsula by the Employment Judge. This case was serious for the ETS and raised questions about the potential bias of Employment Tribunal Judges and lay members. As the majority of employers are supported by '*legal*' representatives at tribunals (Hammersley *et al.*, 2007), cases of employees could be hindered who may not have the finances or knowledge to appoint someone of similar standing. A high proportion of employees are represented by themselves or '*non-legally*' qualified persons (Hammersley *et al.*, 2007) and therefore have the dual disadvantage of not being properly represented and potential bias against their claim.

2.4.8 Access to effective representation at tribunals for non-unionised workers

Although the ETS does not formally regulate representatives at the tribunal hearing, legislation does stipulate the '*types*' of persons who can provide independent advice on compromise agreements. Section 203(4) of the *Employment Rights Act* (1996) stipulates that '*independent legal advice*' refers to advice provided by a lawyer who is not acting in the matter for the party. A '*qualified lawyer*' is a barrister or advocate (whether in practice as such or employed to give legal advice) or a solicitor (holding a practising certificate). The Employment Rights Act (1998) updated this to reflect a person, other than a barrister or solicitor, who is an authorised advocate or authorised litigator and is classified as a '*qualified lawyer*' for these purposes.

To gain access to qualified legal representation during the tribunal process can be extremely difficult and expensive (Latreille et al., 2005;). A viable option will be for a claimant to be a member of a trade union, who would usually provide legal representation.

The main benefit of legal representation is the utilisation of legal representatives working knowledge of the ETS, specifically its processes and procedures. They are able to present a case in an eloquent and appropriate manner, which will support the Judges in being able to decipher the core element of the case and understand fully the grievances or dispute raised (Greenhalgh, 1996). A forgotten beneficial element of having legal representation includes the '*legal professional privilege*' and the '*without prejudice*' communications. ET's accept that discussions and '*settlements*' can be negotiated between parties, without the details being used or raised at a later stage. This is only applicable though where there are communications between lawyer and client in contemplation of proceedings and during proceedings themselves (Sneath, 2005). The case of *New Victoria Hospital v Ryan (1983) ICR 201* held that legal professional privilege did not extend to other types of representatives such as employment consultants or trade union representatives.

The increasing formality of tribunals has resulted in parties believing they have to be represented by a legal representative. An option that has been discussed previously is for employees who are not members of a trade union utilising '*no win, no fee*' (also called contingent fee arrangements) solicitors. This can be difficult though and according to Hammersley *et al.,* (2007) there are three sets of potential influences that affect this arrangement. These are the characteristics and circumstances of the claimants, the willingness of legal advisers to enter into such arrangements and the type of case involved. The use of a contingent fee arrangement does provide a number of problems for the claimant. Details in the Survey of Employment Tribunals (2003) (SETA) found that there was no difference in a positive case outcome between claimants represented on a contingent fee arrangement and those that did not. In fact, claimants with contingent fee arrangements were involved in higher financial value cases and were more probably seeking

financial reward than claimants who were not represented in this manner. The survey also revealed that a higher percentage of claims were settled if the claimant was represented in such a way.

Therefore the data suggests that being represented by a contingent fee arrangement does provide serious consequences for claimants. Although the option is there is for potential claimants, solicitors who offer this service should carry out rigorous analysis of the facts to determine the likelihood of winning the case. There are also accusations that this type of arrangement could tempt lawyers in acting inappropriately for their own personal gain (Hammersley *et al.*, 2007). In the UK, the use of contingency fee arrangements have always been frowned upon, even dating back to the *Statute of Westminster* (1275), courts have condemned these arrangements. In the famous case of *Re Trepca Mines Ltd* (1963:Ch 199), Lord Denning stated that:

> "… *once the legal adviser has a personal interest in the litigation, he might be tempted to influence the damages, to suppress evidence, or even to suborn witnesses*."

Although Section S8(3) of the *Courts and Legal Services Act (*1990) changed the law and makes permissible '*conditional fee arrangements*' for specific proceedings (currently personal injury, companies in administration or winding up and human rights proceedings), regulation is very limited and potentially costly for the claimant. This arrangement operates on the premise that if the client wins their case, they will be liable for their lawyer's professional fees and in addition a success fee which is calculated on a percentage of professional fees. However, it does vary and Yarrow's (1998) study indicated that from a sample of 121 companies, the average level was around 43%. As well as the fees involved, there is added concern of costs being awarded against the claimant, although this is very rare with only 651 cases resulting in costs being awarded in 2012-13, with employers totalling 522 and employees totalling 129 (ETS Annual Statistics, 2012-13). With the increase in the use of legal representation, particularly from the respondent's perspective, it is important then for claimants to appoint the appropriate

representative. With contingency fees, solicitors generally work on two premises. Firstly, there is a 51% chance of winning and secondly, the likely award will need to be in the region of £12,000-£15,000 (Johnson and Hammersley, 2005). Although the solicitor is sharing the cost and also liability of all costs if the case is not won, this is viewed as a benefit to the claimant. However, as outlined above, solicitors are not generally risk diverse and will only accept cases which offer a high '*windfall*' omitting cases which are not as transparent or worth fighting (Latreille *et al*., 2005)

There are other options for employees who have applied to the ETS, such as initial free advice from solicitors; however, these sessions generally discuss the process rather than the merits of a case (Sneath, 2005). Legal help, which replaced elements of the Legal Aid System in England and Wales, does not provide for at the ET stage, but is available under certain conditions at the Employment Appeal Tribunal stage (Hammersley *et al.*, 2007). The community legal service does provide initial advice, but again not at tribunal hearing stage. This service has developed a satellite service, administered through the Citizen's Advice Bureau (CAB) and Law Centres. The service will outline what rights the employee has and what duties the employer has, and will provide support with completing the application (ET1 form) to the tribunal.

2.4.9 The role of ACAS and its effect upon dispute resolution

Within the realm of British industrial relations, the perception of arbitration has historically been the final stage in the settlement of a dispute between an employer and a trade union, Brown (1992), with every effort being made to assist the parties in settling and reaching their own conclusion to the dispute (Lockyer, 1979). A system of voluntarism had always existed in the UK, whereby the government believed that wherever possible, the parties to an industrial dispute should have control over the terms and conditions of any settlement (Brown, 1992).

However, since the establishment of ACAS, by the *Employment Protection Act* (1975), there has been a more interventionist approach to

dispute resolution by the state (Williams and Adam-Smith, 2010). The service offers employee relations services to employers, employer's organisations, employees and trade unions. It is essentially a tri-partite body that acts independently of the government, and is governed by a council consisting of trade unions, employers and academics who are experts in this area. When ACAS was founded, it was:

> *"…given the general duty of promoting the improvement of industrial relations, and in particular encouraging the extension of collective bargaining and the development and where necessary the reform of collective bargaining machinery."*
>
> (Kessler, 1993:220).

The aim of the service changed slightly in the 1990's with a mission statement aiming:

> *"… to improve the performance and effectiveness of organisations providing an independent and impartial service to prevent and resolve disputes and to build harmonious relationships at work."*
>
> (ACAS Annual Report, 1996: 2).

Today the service has a Corporate Plan (2011- 2015) and is underpinned by the following strategic aims:

1. *Promote better performance in organisations through improved employment relations and more effective dispute resolution;*
2. *Assist SMEs to manage their employment relations to achieve sustainable growth;*
3. *Support the operation of fair and effective workplaces and an engaged workforce;*
4. *Inform public policy and debate on the economic and social value of good employment relations in the workplace; and*
5. *Enhance the capability of our staff and secure value for money in all we do.*

(ACAS Annual Report, 2011-12:59)

Through these statements it is clear that the service has been transformed from being focused on specific issues such as collective bargaining, to focusing on providing a clear and transparent service, which addresses all areas of workplace activity.

Although the service was legally established in 1975, the core elements of the services were established in 1896, when the government launched a voluntary conciliation and arbitration service. This was renamed the Industrial Relations Service in 1960 and then the Conciliation and Advisory Service in 1972 (Sanderson and Taggart, 1999). A controversial move came in 1974, when the service was separated from the government and became independent. This left the service in a vulnerable position of being funded by the government and also potentially resolved conflicts involving government departments and employees. The advent of the Conservative government (1979-1997) meant the service was under further pressure due to that government's hostility towards tri-partism (Dix and Oxenbridge, 2004). Its most impressive achievement is the way, in which it managed to co-exist with the Conservative rule between 1979-1997 (Williams and Adam-Smith, 2000). There have been a number of theories as to why or how the service has survived throughout a hostile period. Wood (1992) believes that it has successfully verified its independence from government, employers and trade unions. Also many employers support the service and believe:

> "…*that ACAS has a unique role to play…because of the expertise and insight it has gained over the past 30 years…and it is a role that it is succeeding in at present."*
>
> (Anthony Thompson, Confederation of British Industry, 2006:59).

Thirdly, as already stated, the role and remit of ACAS has changed with the evolving nature of employment law and industrial relations. The service has focused upon the resolution of individual disputes, providing informed advice about workplace problems, and trying to prevent disputes from arising or manifesting into a serious issue (Dix and Oxenbridge, 2004; Hawes, 2000). Included with this changing nature was the removal of its role in promoting collective bargaining, and to be seen as being independent and trying to resolve individual disputes, whilst promoting collective bargaining was seen as damaging to its authenticity and it was correctly removed (Goodman, 2000). ACAS still does provide this service with 905 requests to

provide collective conciliation in 2009 (ACAS, 2010). A modern day ACAS service has seen it become involved within attempts to resolve high-profile national industrial disputes such as the on-going disagreements between British Airways and Cabin Crew and the disputes between Transport for London (TfL) and the National Union of Rail, Maritime and Transport Workers (RMT). Both unions and management have stated that the working parties chaired by Acas have turned negative feelings into positive results (Acas, 2001). Although ACAS does not mediate or arbitrate in disputes, it does refer disputes for mediation or arbitration where appropriate, and also co-ordinates permanent arbitration bodies in the public sector, for example the police service (Corby, 2003).

ACAS use the word conciliation instead of mediation and has recently become involved in disputes before the formal reference to conciliation has been made (Williams and Adam-Smith, 2010). By watching the dispute from a parallel viewpoint, the independent conciliators can understand its dimensions and therefore consider possible elements of a settlement in a more expedient manner (Dix and Oxenbridge, 2004). The role of the independent conciliator has been clarified as:

> *"…acting as an intermediary in the exchange of information and ideas, by keeping the parties communicating, clarifying issues, establishing common ground, identifying barriers to progress, eroding unrealistic expectations, pointing to the costs and disadvantages if the dispute is not settled, developing possible solutions and creating confidence that an acceptable solution will be found. The conciliator has no powers other than those of reason and persuasion."*
>
> (Goodman, 2000: 38).

As stated previously, there is a positive recognition of ACAS services with Dix and Oxenbridge (2004) specifically noting that conciliators have the skills to elucidate, challenge and test their negotiating positions and thus establish potential areas of agreement.

In recent years, ACAS has continued to evolve further and with the strain placed on the ETS due to the increase in number of claims, it has been

utilised by the government to address this issue through what Latreille *et al.,* (2007) have labelled a three-pronged approach of '*weed, concede and speed*'. The first strategy by discouraging or eliminating spurious/vexatious applications, secondly through promoting a higher ratio of settlements between the claimant and respondent and a third strategy of developing the ETS into a more effective and efficient service. ACAS has been key to the second strategy and has been an effective filter in reducing the number of cases being dealt with by tribunals (Dickens *et al.*, 1985) but the key question is whether the ETS is a barrier to justice?

According to recent ET figures, around 35,700 tribunal applications do not reach the full hearing stage (ETS, Annual Report, 2011-12- Cases either struck out or dismissed at the preliminary hearing) with at least a quarter directly related to the involvement of ACAS (ACAS, 2012). The tribunal system recognises these achievements and understands that settlements are imperative as the system would otherwise be impossible to manage with current resources (Shackleton, 2002; Hawes, 2000). This has been achieved through ACAS discussing the details of the case, specifically trying to *"get the parties to critically examine their own cases to consider weaknesses as well as strengths"* (Dickens, 2000:76).

The ETS understands the use of ACAS as there is a:

> *"… conflict between the search for compromise, which is at the centre of conciliation and the pursuit of rights."*
>
> (*Dickens*, 2000:77)

However, as stated previously, ACAS has overcome this and it is generally acknowledged that the skill, sensitivity and competence of ACAS conciliators are highly regarded by others (Latreille and Knight, 2007). This relates to the issues, raised before, that ACAS concentrates more on the prevention of conflict, which has been achieved through the introduction of a number of 'Codes of Practice', which provide step by step guides on how to handle employment issues. At present, ACAS has developed codes of

practice that provide authoritative advice in the key areas of employment practice. They are approved by Parliament and referred to by ET to be taken into account. The codes of practice are:

1. ACAS Code of Practice – *Disciplinary and grievance procedures* (2009).
2. ACAS Code of Practice – *Disclosure of information to trade unions* (1997).
3. ACAS Code of Practice – *Time off for trade union duties and activities (*2009*)*.

ACAS provides other codes of practices such as handling redundancies, but these have not been approved by Parliament and do not force employees or employers in following the processes to the letter. They are merely '*best practice*' guides and a written outline of best practice (Williams and Adam-Smith, 2010). Analysing the volume of cases and the issues addressed since ACAS was officially formed, demonstrates the service as being a '*strong performer*' in particular during the late 1970's. Although demand did fall in the 1980's, which reflected the significant sectorial changes occurring during the period as well as legislative changes to union powers (Dix and Oxenbridge, 2004) requirements for the service have remained buoyant since the early 1990's.

To assess the impact and effectiveness of ACAS's work, it is useful to consider Dix's (2006) framework, which describes the numerous roles to be performed and the styles adopted by officers of ACAS. Dix (2000) develops the work carried out by Kressel and Pruitt (1985; 1989) by recognising three prominent roles of the ACAS Conciliator:

1. Reflexive
2. Informative
3. Substantive

Reflexive represents the importance of establishing a rapport, building trust and establishing impartiality that represents a golden thread through the other conciliator functions. Informative demonstrates the significance of informational asymmetries, and how this imbalance of information between both parties needs to be rectified (Tracy, 1987) and that ACAS's impartiality is

outlined and consistently demonstrated throughout this process. Information not only concerns details of the dispute, but also the process of conciliation and the ETS and results in the ACAS Officers acting as 'quasi-representatives' as they carry out services which ordinarily would have been done by representatives (Latrielle *et al.*, 2005). The substantive role involves ACAS Officers in '*reframing*' the parties' position, providing a '*realistic*' outline of the case (with the ultimate aim of resolving the dispute before it manifests into an ET hearing). Dix (2000:110-111) identifies a number of tactics, utilised by ACAS officers to fulfil their substantive role. These are:

- *Altering perceptions so as to make positions look closer (e.g by finding common themes).*
- *Playing devil's advocate.*
- *Face saving.*
- *Off the record discussions (e.g possible settlements).*
- *Suggesting that parties take professional (legal) advice.*

Using Dix's (2000) prototype and analysing tribunal data, as well as qualitative information from representatives, it is possible to analyse the effectiveness of the service. Taking Dix's (2000) roles, it does seem that ACAS officers are genuinely appreciated by both parties (Williams and Adam-Smith, 2010) and are praised due to their skill in:

> *"…untangling the various problems, identifying the key point, providing the relevant information and where appropriate pointing them towards other sources of help and advice."*
>
> (Sisson and Taylor, 2006:29).

They are appreciated by both employers and trade unions. Due to Acas's independence from governmental control, it is recognised as a truly independent service (Gennard, 2009) which, as stated previously, could result in mediating between governmental organisations. ACAS's (2010) customer survey, found that 89% of parties agreed (strongly agreed or agreed) that they trusted the conciliator who dealt with their case, 95% felt the conciliator was professional and 90% felt that the conciliator was knowledgeable (ACAS, 2010). Although there was a marginal disparity in the perception of conciliators between the parties, overall satisfaction was high, with 95% of

employee representatives and 80% of employers saying they were satisfied. Acas' Early Conciliation Service will come into effect on the 6th April 2014, where claimants will have to notify Acas of the dispute before being able to submit a claim to the tribunal. This service will undoubtedly increase the use of Acas' conciliation service but the process is entirely voluntary and may only have been introduced purely to reduce tribunal claims, as previous ADR schemes have been accused of (Chapman *et al*., 2003).

2.4.10 The costs and benefits of Tribunals

Analysing the costs associated with the tribunal system is a difficult and controversial task (Shackleton, 2002) and there is a need to distinguish the various diverse notions of cost. An analysis of the tangible direct cost involved in operating the ETS is outlined below and in accordance with guidance from Shackleton (2002), a further analysis of other direct costs and also compensation, compliance and indirect costs will be provided in the data collection section (Chapter 4)

2.4.11 Conclusion

Initially research into justice predominantly focused on the decision outcome, now termed '*distributive justice*' by writers such as Adams (1965); Deutsch (1975); Homans (1961) and Leventhal (1976). Over the last three decades the research has probed further into the social science aspect of justice, with two other strands being termed. As discussed above '*distributive justice*' occurs where outcomes are consistent with implicit norms for allocation, for example, equity or equality. Further research has developed the premise of procedural justice and interactional justice. Procedural justice developing from the theory that a '*voice*' is heard through the decision making process and that this will have some influence over the outcome or will at least adhere to fair process criteria such as consistency (Thibaut and Walker, 1975) or lack of bias, correctability, representation, accuracy and ethicality (Leventhal, 1980; Leventhal *et al.,* 1980). '*Interactional justice*' is fostered when the decision makers treat people with respect and sensitivity, but also outline the

rationale for their decisions (Colquitt, 2001). Defined by Bies and Moag (1986) as the interpersonal treatment people receive as procedures are enacted, this third form of justice has enabled researchers to appropriately analyse all aspects of the justice process, taking into account not only the process and outcome but also the emotional aspect of justice procedures.

2.5 Tribunals: Applications, Jurisdictions and outcomes

There have been a number of studies scrutinising ET statistics (Burgess, Propper and Wilson, 2001; Genn and Genn, 1989; Keter, 2003; Latreille, Latreille and Knight, 2007; Saridakis, Sen-Gupta, Edwards and Storey, 2008) as well as regular publications such as the *Workplace Employment Relations Surveys*, the *Survey of Employment Tribunal Applications* and government department reports which probe into the vast quantity of data that the government produce regarding ET's. To ensure that a complete picture could be produced regarding the emergence and development of tribunals, the researcher has collected, entered and analysed the data using Microsoft Excel and IBM SPSS. During initial analysis of ET statistics the researcher found that numerous studies had used statistics collected from various sources, which in some cases differed. Another issue, which has affected previous research, is the re-alignment of annual statistics whereby the ETS produce figures for not only the previous year but also the previous two years prior. The figures are adjusted after more robust is data collected. The researcher therefore had to check all annual data twice to ensure that realignments had been recognised. The final issue with ET statistics involved the change in jurisdiction titles throughout the forty plus year analysis. As the ETS broadened its remit of jurisdictions, tribunal claims were separated into these distinctions; however this was only a minor issue once the jurisdiction title changes had been noted. Complications arose when the ETS amalgamated the jurisdictions, which results in a distorted year-by-year analysis of specific jurisdictions. For example, the jurisdiction '*Suffer a detriment / unfair dismissal – pregnancy*' incorporated three jurisdictions relating to pregnancy that were previously recorded under 'Other'. Therefore

analysing jurisdictions year-by-year can produce misleading conclusions, which need to be appreciated and understood.

The following data tables and graphs provide a highlighted representation of the number and types of tribunal claims as well as other details such as outcomes, compensation awards and representation figures. Although there is a wealth of information, all aspects of the statistics provide an interesting portrait of various components of the ETS. During the life of the tribunal system, there have been various reporting standards, therefore more comprehensive figures have been included during specific periods due to the ETS providing more data. All of the data has been collected and systematically re-entered into a database, with all of the data being drawn from ETS annual reports and statistics unless specifically stated otherwise. A comprehensive analysis of all ETS statistics can be found in Appendix one.

2.5.1 Employment tribunal applications

The number of ET claims has risen from 8,592 in 1971 to 191,541 in 2013, although it must be noted that the jurisdiction of tribunals has expanded considerably, which has enabled different types of claims to be submitted. In 2012/13 ET's had the authority to adjudicate over sixty-five different jurisdictions, which may have contributed to the significant rise in claims, as detailed below:

Table. 2.7 - **Employment Tribunal Applications 1971 - 2013**

Year	Number	Year	Number
Jan - Dec 1971	8,592	April 1992 - March 1993	71,821
Jan - Dec 1972	14,857	April 1993 - March 1994	71,661
Jan - Dec 1973	14,062	April 1994 - March 1995	88,061
Jan - Dec 1974	16,320	April 1995 - March 1996	108,827
Jan - Dec 1975	35,897	April 1996 - March 1997	88,910
Jan - Dec 1976	47,804	April 1997 - March 1998	80,435
Jan - Dec 1977	46,961	April 1998 - March 1999	91,913
Jan - Dec 1978	43,321	April 1999 - March 2000	103,935
Jan - Dec 1979	41,244	April 2000 - March 2001	130,408
Jan - Dec 1980	41,424	April 2001 - March 2002	112,227
Jan - Dec 1981	44,852	April 2002 - March 2003	98,617
Jan - Dec 1982	43,660	April 2003 - March 2004	115,042
Jan - Dec 1983	39,959	April 2004 - March 2005	86,189
April 1984 - March 1985	**39,191**	April 2005 - March 2006	115,039
April 1985 - March 1986	38,593	April 2006 - March 2007	132,577
April 1986 - March 1987	38,385	April 2007 - March 2008	189,303
April 1987 - March 1988	30,543	April 2008 - March 2009	151,028
April 1988 - March 1989	29,304	April 2009 - March 2010	236,100
April 1989 - March 1990	34,697	April 2010 - March 2011	218,100
April 1990 - March 1991	43,243	April 2011 - March 2012	186,300
April 1991 - March 1992	67,448	April 2012 - March 2013	191,541

N.B. *The counting year for ET claims changed from calendar to financial year in April 1984. Figures for this and subsequent years run from April to March of the following year (e.g. 1st April 1984 to 31st March 1985)*
(Sources: 1971 -1984 – Employment Gazette; 1985-1998 – Hawes (2000); (1998-2013 –Employment Tribunal Service Annual Reports)

The ET annual statistics divide the total number of claims accepted into single and multiple, where single claims are made by a sole employee or worker, relating to alleged breaches of employment rights. Multiple claims are where two or more people bring proceedings arising out of the same facts, usually against a common employer, and both single and multiple claims can involve one or more jurisdictional complaints. Where claims are grouped as multiples, they are processed administratively and managed judicially together. It is important to acknowledge this, as ET statistics reveal the number of single claims has actually decreased over the last fourteen years, whilst multiple claims has seen a four fold increase from 33,000 accepted claims in 1999/00 to 136,837 accepted claims in 2012/13. The reasoning behind this surge in multiple claims is difficult to answer comprehensively,

however analysing the number of individual jurisdiction claims does provide some possible explanations, which will be analysed further in the following sections. The increase in multiple claims can be attributed to the surge in Working Time Directive (WTD) claims submitted since 2009, mainly as multiple claims in certain sectors such as the airline industry, which in some instance were re-submitted every three months.

The next sections will analyse the ETS statistics in further detail and provide commentary to extrapolate the key pieces of information.

2.5.2 Jurisdiction claims in comparison to total claims

The number of tribunal claims submitted per jurisdiction highlights not only how tribunals have adjudicated over a variety of disputes, it also provides an opportunity to analyse whether a number of accusations, set out in section 1.2.1, against the ETS are in fact accurate. A full breakdown of tribunal applications since 1998 has been outlined below:

Table 2.8 - **Employment Tribunal Receipts by Jurisdiction**

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009 / 10	2010 / 11	2011 / 12	2012 / 13
Total Claims Accepted	**91,913**	**103,935**	**130,408**	**112,227**	**98,617**	**115,042**	**86,181**	**115,039**	**132,577**	**189,303**	**151,028**	**236,100**	218,100	186,300	**191,541**
Singles		70,600	78,000	71,000	68,000	65,700	55,600	56,660	53,377	50,094	62,400	71,300	60,600	59,200	54,704
Multiples		33,300	52,400	41,200	30,700	49,400	30,600	36,300	35,357	34,414	88,700	164,800	157,500	127,100	136,837
JURISDICTION MIX OF CLAIMS ACCEPTED	**1998/99**	**1999/00**	**2000/01**	**2001/02**	**2002/03**	**2003/04**	**2004/05**	**2005/06**	**2006/07**	**2007/08**	**2008/09**	**2009 / 10**	**2010 / 11**	**2011 / 12**	**2012 / 13**
NATURE OF CLAIM															
Unfair dismissal(1)	43,482	53,070	49,401	51,512	45,373	46,370	39,727	41,832	44,491	40,941	52,711	57,400	47,900	46,300	49,036
Unauthorised deductions (Formerly Wages Act)	29,660	39,894	41,711	42,205	39,451	42,524	37,470	32,330	34,857	34,583	33,839	75,500	71,300	51,200	53,581
Breach of contract	27,188	30,958	31,333	30,791	29,635	29,661	22,788	26,230	27,298	25,054	32,829	42,400	34,600	32,100	29,820
Sex discrimination	10,157	7,801	25,940	15,703	11,001	17,722	11,726	14,250	28,153	26,907	18,637	18,200	18,300	10,800	18,814
Working Time Directive	1,326	5,595	6,389	4,980	6,436	16,869	3,223	35,474	21,127	55,712	23,976	95,200	114,100	94,700	99,627
Redundancy pay	8,642	10,846	9,440	8,919	8,558	9,087	6,877	7,214	7,692	7,313	10,839	19,000	16,000	14,700	12,748
Disability discrimination	3,151	3,765	4,630	5,273	5,310	5,655	4,942	4,585	5,533	5,833	6,578	7,500	7,200	7,700	7,492
Redundancy failure to inform and consult			1,542	3,862	3,112	5,630	3,664	4,056	4,802	4,480	11,371	7,500	7,400	8,000	11,075
Equal pay	7,222	4,712	17,153	8,762	5,053	4,412	8,229	17,268	44,013	62,706	45,748	37,400	34,600	28,800	23,638
Race discrimination	3,318	4,015	4,238	3,889	3,638	3,492	3,317	4,103	3,780	4,130	4,983	5,700	5,000	4,800	4,818
Written statement of terms and conditions	3,098	2,762	2,420	3,208	2,753	3,288	1,992	3,078	3,429	4,955	3,919	4,700	4,000	3,600	4,199
Written statement of reasons for dismissal			1,425	1,526	1,658	1,829	1,401	955	1,064	1,098	1,105	1,100	930	960	808
Unfair dismissal - transfer of an undertaking	562	1,287	1,087	1,806	1,161	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Written pay statement			884	1,082	1,117	1,387	1,076	794	990	1,086	1,144	1,400	1,300	1,300	1,363
Transfer of an undertaking - failure to inform and consult	2,060	1,336	1,323	2,027	1,054	1,321	1,031	899	1,108	1,380	1,262	1,800	1,900	2,600	1,591
Suffer a detriment / unfair dismissal - pregnancy(2)	1,341	1,216	963	981	878	1,170	1,345	1,504	1,465	1,646	1,835	1,900	1,900	1,900	1,589
Part Time Workers Regulations			12,280	831	500	833	561	402	776	595	664	530	1,600	770	823
National minimum wage		1,306	852	556	829	613	597	440	806	431	595	500	520	510	500
Discrimination on grounds of Religion or Belief	n/a	n/a	n/a	n/a	n/a	70	307	486	648	709	832	1,000	880	940	979
Discrimination on grounds of Sexual Orientation	n/a	n/a	n/a	n/a	n/a	61	349	395	470	582	600	710	640	610	639
Age Discrimination							n/a	n/a	972	2,949	3,801	5,200	6,800	3,700	2,818
Others	7,564	8,186	5,090	6,207	4,805	5,371	5,459	5,219	5,072	13,873	9,274	8,100	5,500	5,900	6,901
Total	**148,771**	**176,749**	**218,101**	**194,120**	**172,322**	**197,365**	**156,081**	**201,514**	**238,546**	**296,963**	**266,542**	**392,800**	**382,400**	**321,890**	**332,859**

One of the most interesting findings from the statistics is that unfair dismissal claims have remained constant over the last fifteen years, despite the total number of claims increasing by over one hundred thousand. The Working Time Directive (WTD) has seen one of the most significant increases with claims in 1998/1999 at 1,326 whilst in 2012/13 99,627 claims were accepted. The WTD regulations have obviously developed over the relatively short period of time they have been in operation, and possibly is an area, where there is regular conflict in the workplace. The survey by Rutherford and Achur (2010) does disclose details regarding the types of disputes related to the WTD, with National Minimum Wage, non-receipt of pay, holiday pay and working hours issues as the dominant factors in their grievances.

The five most common jurisdictions are unfair dismissal, unauthorised deductions (wages act), breach of contract, equal pay and working time directive. As Renton (2012) highlights, the first four of these categories would have been familiar to an employment lawyer when tribunals were formerly created in the 1970's, and therefore counteracts in some essence what has been previously discussed regarding tribunals having grown into a completely new entity. It can be argued that the statistics concur with what Renton (2012) believes, in that tribunals have not morphed into a new, monolithic institution, but merely expanded upon the lines that they had already been set. Analysing the different types of claims being accepted, it is clear that over the last forty years, the majority of workplace disputes that tribunals have adjudicated over, have remained the same.

2.5.3 Outcome of claims

Analysing the outcome of claims is revealing and presents arguments for both the supporters of respondents and claimants. As outlined below in tables 2.9 and 2.10, the majority of claims have either been settled through Acas (33% of claims in 2012/13) or withdrawn (28% in 2012/13).

Table 2.9 - Cases proceeding to a tribunal hearing - outcomes (% of total claims) 1999-2006

	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
Acas conciliated settlements	38.6%	36.6%	36.2%	39.1%	37.9%	36.9%	26.3%
Withdrawn	33.0%	28.8%	30.7%	31.2%	30.8%	29.6%	34.3%
Success at tribunal	12.4%	14.9%	13.1%	13.2%	14.0%	18.0%	18.1%
Dismissed at prelim hearing	3.3%	2.0%	1.6%	1.6%	1.6%	1.5%	1.6%
Unsuccessful at hearing	9.6%	10.4%	8.4%	8.6%	8.2%	6.9%	6.1%
Struck out	3.2%	7.2%	9.9%	6.3%	7.5%	7.1%	10.1%
Default judgement							3.5%

Table 2.10 - Cases proceeding to a tribunal hearing - outcomes (% of total claims) 2007 - 2013

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Acas conciliated settlements	24.3%	29.2%	31.9%	31.1%	29.3%	33.1%	33.0%
Withdrawn	30.8%	33.4%	33.2%	32.2%	32.1%	26.9%	28.0%
Success at tribunal	12.4%	13.1%	13.1%	12.6%	11.5%	11.7%	11.0%
Dismissed at prelim hearing	1.7%	2.4%	2.0%	2.0%	2.0%	2.3%	3.0%
Unsuccessful at hearing	6.2%	6.9%	8.4%	6.3%	8.7%	6.9%	7.0%
Struck out	21.4%	11.2%	7.0%	8.8%	10.5%	13.3%	12.0%
Default judgement	3.3%	3.8%	4.4%	7.0%	5.9%	5.9%	6.0%

Therefore 61% of accepted claims have effectively not been heard at the tribunal and it is difficult to know exactly on what terms the cases have been settled or the reasons why they have been withdrawn. The *Survey of Employment Tribunal Applications* (SETA) (2008) has provided some reasoning as to why some cases were withdrawn, which included the claimant being advised to withdraw, the claimant could not afford to continue with the case, the claimant believed they could not win, and there was too much stress involved. Latreille's (2007) analysis of tribunal settlements has theorised that the reasoning behind the settlement of cases is based on numerous variables such as the size of the financial offer and whether the claims outcome was based on a matter of principle (e.g. did the claimant want their day in court or receive some kind of compensation). Other variables were also identified which included the consciousness of costs being awarded, the size of the company the claimant worked for and the claimant's job role in the organisation. As with claims being withdrawn, it is difficult to access Acas

settled claims in finite detail, however what Latreille (2007) has succeeded in doing is providing some candour to the characteristics of the settled claims. Although 61% of claims were settled / withdrawn in 2012 / 13, it is important to also focus upon the number of claims that proceed to a hearing, and assess the outcome. These statistics present a different perspective upon the success rate of claims, and can address some of the accusations levelled against the ETS. If a case proceeds to a full hearing, the ETS statistics for 2012 / 13 reveal that claimants were successful in over three fifths (61.1%) of cases. Drilling down further, the ETS statistics reveal that certain types of claims are usually successful, such as unauthorised deductions (wages act), breach of contract and redundancy pay. In comparison, discrimination claims are less likely to succeed at a hearing, with 67% of sex discrimination cases being unsuccessful, 85% of race discrimination cases were unsuccessful, 77.3% of disability discrimination claims being unsuccessful and 83.4% of religious / belief discrimination claims not succeeding.

Analysing these statistics, it can be inferred that when the more traditional jurisdictions, such as unauthorised deductions (wages act), breach of contract and redundancy pay, eventually proceed to a full hearing, the case will have been initially assessed to having a reasonable chance of success. The claimant and possibly their representatives will also have drawn the opinion that they had a reasonable chance of winning, for them to pursue the claim to a full hearing. Cases involving allegations of discrimination are generally more complex and difficult to predict, in terms of the outcome, and therefore is less likely to have been assessed in the same manner as other types of claims.

2.5.4 Compensation awards

The available ETS statistics for outcomes across all jurisdiction claims are limited. What is available however, are details regarding the outcome in unfair dismissal claims and compensation amounts awarded in successful claims. The noticeable statistic regarding outcomes in unfair dismissal cases, is the number of re-instatement or re-engagement orders. In 2012 / 13, only 5 cases

out of 4,596 successful unfair dismissal claims involved orders for re-instatement or re-engagement. The number of cases that were successful and awarded compensation totalled 2,242 cases in 2012/13, however what may be surprising is the number of successful cases where no awards were made. In 2012/13 a total of 2,197 successful cases did not issue any awards, which equates to 48% of the total cases. This is a further consideration for potential claimants, when proposing to submit and follow through with a tribunal claim.

The amounts awarded in compensation is another area that highlights some interesting evidence of how the ETS resolves workplace disputes. The maximum compensation awarded in 2012/13 was £236,147 within the unfair dismissal jurisdiction. However, the average award in this category was only £10,127. If someone has lost their job, pension, accrued benefits and ability to find another role at the same seniority, the average award will provide little security or compensation. The majority of unfair dismissal cases actually only awarded £8,000 or less, with a median award level of £4,832 in 2012/13, providing further concern for any potential claimant.

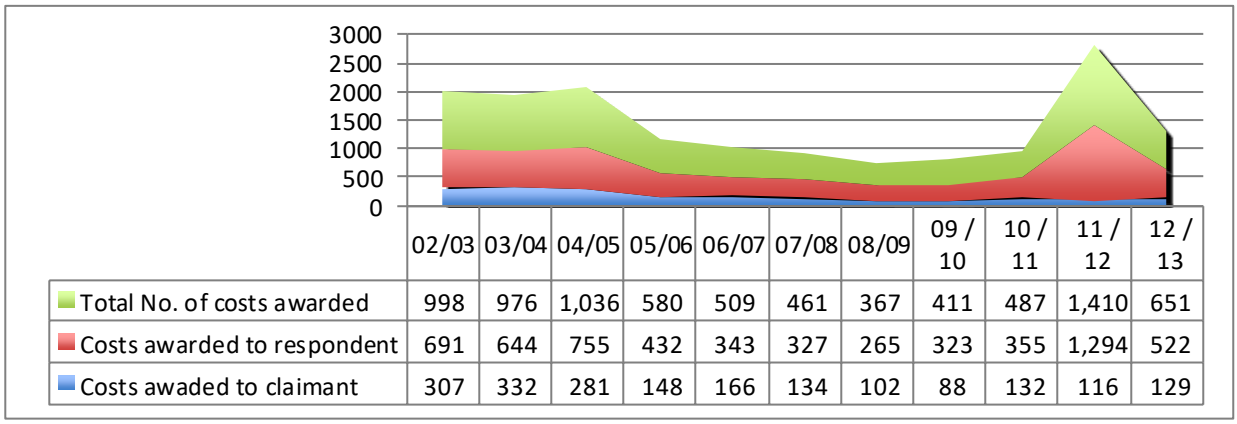
Discrimination cases demonstrate a comparatively lower level of awards being made, which reflects the success rate of these types of claims. Two of the discrimination categories, sex and disability, issued very high maximum awards (£318,630 and £387,472 respectively in 2012/13) although across all of the discrimination categories, the average award was broadly similar. This reveals that large awards are very rare and do not reflect the normal practices of the ETS, which has stringent guidelines when awarding compensation.

2.5.5 Costs awarded and representation at the ET

The number of cases where costs are awarded to either party is extremely low, involving only 651 cases in 2012/13. Costs awarded to the respondent far outweighs those awarded to the claimant. As outlined below in Fig. 2.8 in

2012/13 a total of 522 cases issued costs to the respondent, which equates to 80% of all costs awarded.

Fig. 2.8 - **No. of cases where costs were awarded**



	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total No. of costs awarded	998	976	1,036	580	509	461	367	411	487	1,410	651
Costs awarded to respondent	691	644	755	432	343	327	265	323	355	1,294	522
Costs awaded to claimant	307	332	281	148	166	134	102	88	132	116	129

This possibly reflects the remit, reasoning and rationale in which costs can be awarded, although it could also be inferred that tribunal Judges are more willing to award costs in favour of respondents rather than claimants, who may not have the same level of costs to bear.

Another feature of ET's issuing costs, is the erratic nature of the number awarded every year. Over the last ten years, the number of costs awarded has witnessed declines and increases, sometimes sharply, which does not highlight any patterns or correlation with major changes in employment legislation. However there are some explanations as to the sharp increase in 2011/12, the number of cases where costs were awarded to respondents increased to 1,294, which included a multiple case consisting of 800 claimants where they had all been made liable for a costs award of £4,000 to the respondent. (This worked out at £5.00 per claimant, all cases had a unique case number and had their portion of the cost award entered onto the MI system).

As outlined in section 2.4.7, the claimant or representative have the right to appear in person or be represented before an ET. Over the last eight

years, the number of claimants represented by a trade union has remained relatively constant, except for 2007/08, which may have seen a surge in this type of representation due to a number of multiple claims that had received trade union backing, as well as an increase in claims relating to trade union membership. As outlined below in Table 2.11 the most significant increase involves the use of lawyers, which has risen from 67,442 in 2005/06 to 160,116 cases in 2012/13.

Table 2.11 - **Representation of claimants at ET**

Representation of claimants at ET	**05/06**	**06/07**	**07/08**	**08/09**	**09 / 10**	**10 / 11**	**11 / 12**	**12 / 13**
Trade Union	6,676	9,902	29,136	8,812	12,500	10,000	5,500	6,471
Lawyers	67,442	79,313	117,565	85,871	161,900	142,700	72,600	160,116
No rep info provided	30,195	31,694	31,780	41,270	44,900	40,400	34,900	40,139
Other	10,256	11,701	10,814	15,075	16,700	25,000	46,100	12,667
Total	**114,569**	**132,610**	**189,295**	**151,028**	**236,000**	**218,100**	**159,100**	**219,393**

This would indicate that claimants are becoming increasingly reliant upon legal representation, whether this is on a contingency fee arrangement, through the backing of a trade union, covered by legal expense insurance or directly paid for by the claimant. These figures have to be treated with caution however, as the ET statistics utilise the term '*lawyers*' to include solicitors, law centres and trade associations, who all provide different levels of legal representation.

2.5.6 Conclusion

Analysing the ETS data evolved into an extremely difficult and prolonged task, with the challenge of not only understanding the data, but also gaining access to accurate information proving even more problematic. The researcher invested a considerable amount of time inputting and validating the information, then correlating this with other sources of ET data. This, however, was extremely beneficial to the study, enabling the researcher to fully understand how the tribunals have operated in terms of dealing with claims as

well as present an accurate picture of what the outcomes are after a claim has been submitted. The introductory chapter and literature review have outlined numerous opinions regarding ET claims, however the statistical analysis highlighted in this section and also further in Appendix one, has provided clear evidence of what actually happens within the ETS, enabling evidence based conclusions to be drawn in Chapter five.

2.6 Chapter Conclusion

When analysing the ETS it is important to revert back to the available evidence (as there are always numerous accusations and denunciations concerning tribunals) which highlight the purported bias towards claimants or respondents (Renton, 2012). However it is also important to analyse the details of the evidence to understand and appreciate the complex nature of how the ETS operates and how claims are reported upon. The tables and figures in section 2.5 and Appendix One, outline a plethora of information regarding claims but as already discussed '*events*' within specific years can distort the overall comparative figures. It does, nonetheless, present a clear picture regarding areas that will be discussed in the findings chapter, e.g. the success of submitted claims at a tribunal in 2012/13 was 11%, and used to analyse whether the ETS is a barrier to justice by interspersing the ETS figures with the study findings.

Overall the literature review has intended to address some of the objectives of the study, in particularly Objective 1 (Critically analyse the history and importance of the tribunals and acquire an in-depth understanding of the ETS). The literature review has detailed the background and historical augmentation of the ETS, encompassing the conflicting views as to the reasons why tribunal claims are made. As also outlined, tribunals were initially established to preside over a very small jurisdiction; through the appointment of the Donovan commission this was enlarged and has subsequently grown into a multifaceted institution. As the tribunal system has developed more accusations regarding whether it can dispense '*justice*' have been made. The term '*justice*' encapsulates a wealth of connotations therefore the literature

review has explained how distributive, procedural and interactional justice has been utilised to understand and measure the ETS. Utilising the three strands of justice, the study has been able to focus the data collection upon addressing the comments made by the CBI (2011) and BCC (2011) and counteracted by the TUC (2011) that the tribunal system was broken and or bias in favour of the claimant.

The next chapter will outline the methodology utilised and the data collection techniques specifically employed to address the research questions.

Chapter 3

Methodology

Chapter Three – Methodology Contents

3.1 Introduction

The term '*methodology*' refers to the process, principles and procedures by which researchers approach problems and seek answers (Bogdan and Taylor, 1975). It explains and justifies the decisions why certain techniques were adopted to gather and make sense of the data. As described within the introductory chapter, this research has the aim of:

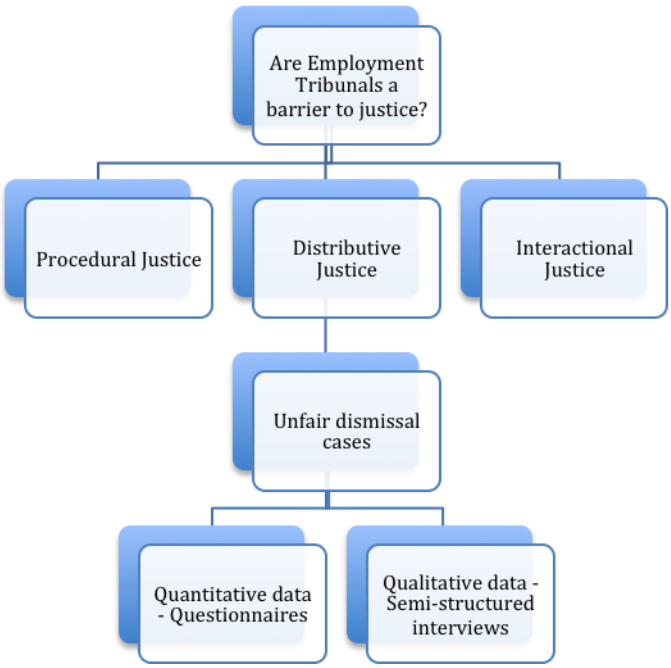
> **'Analysing unfair dismissal claims to establish whether the employment tribunal system is a barrier to justice'**

There are various analogies of the term research, which can be attributed to the process of collecting data. Research can be described in various ways, but is best summarised by Easterby-Smith *et al.,* (2009:82) who stated that:

> *"Research designs are about organising research activity, including the collection of data, in ways that are most likely to achieve the research aims."*

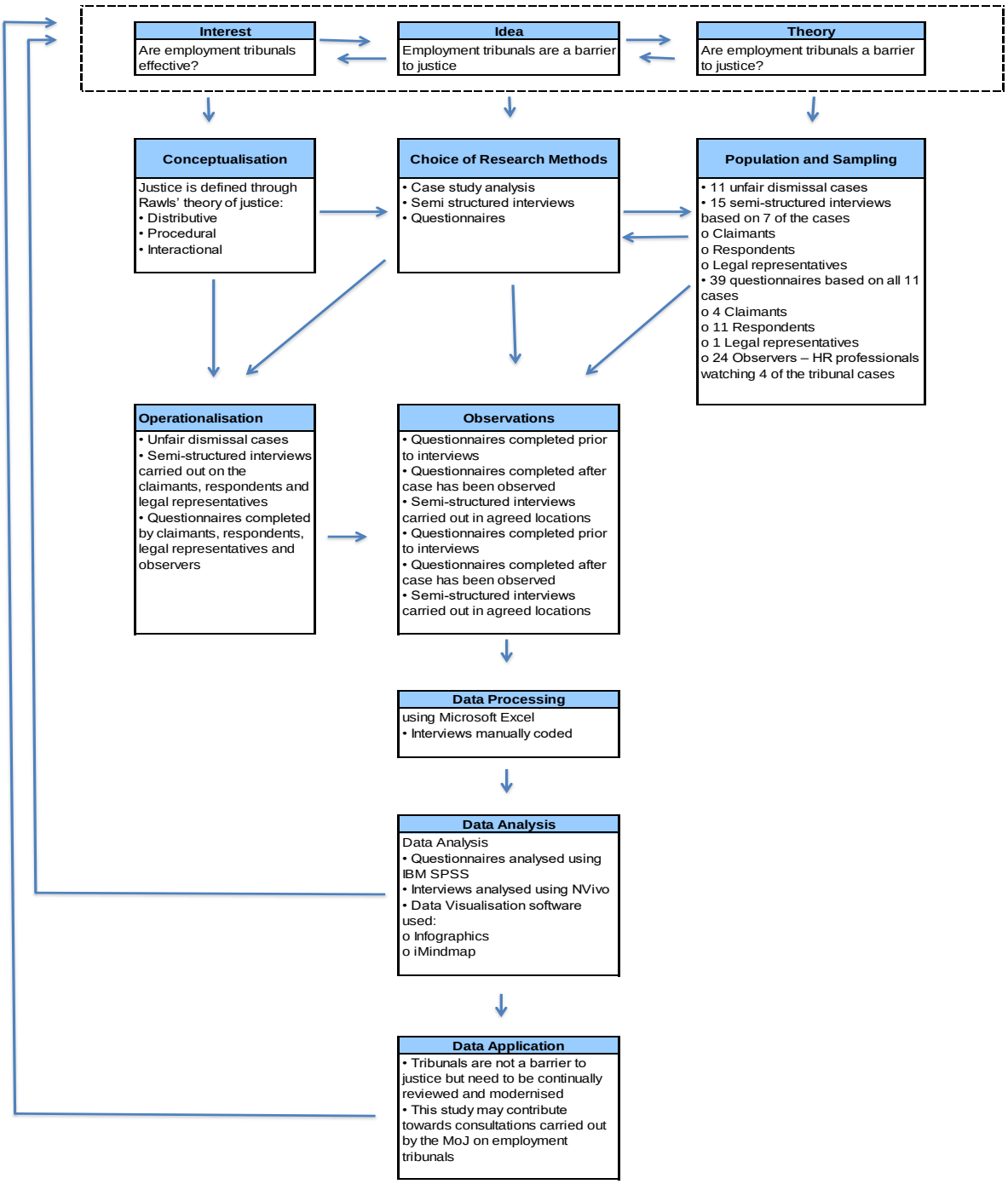
To outline how the methodological approach was designed to achieve the aim of the study, this chapter has been divided into various sections. The first series of sections will outline the research design and the philosophical suppositions that guided the methodology. Later sections will outline the operationalisation of the research design explaining that a mixed method approach was adopted and maintained throughout the study, albeit the data collection methods and sample population were altered due to a review of what data was required to meet the aim of the research and in particular the constraints of access to ET claimants and respondents. This is common within research and is acknowledged as a process that needs to be undertaken to identify the most appropriate data collection methods (Marshall and Rossman, 2010). Therefore the final research framework followed the design displayed in Fig. 3.1:

Fig 3.1 – **Finalised research design**



Although Fig 3.1 outlines a simplified research design, the Researcher also adopted a '*schematic*' model (Fig 3.2 below) to understand how the study developed and eventually manifested into the research design outlined above:

Fig 3.2 – **Research design conceptual framework**



(Based on Babbie's, 2013:113 '*Traditional image of research design*')

As per Babbie's (2013:112) comments, Fig 3.2 is an idealised overview of the research and essentially a retrospective framework of how the research aim, objectives, data collection, processing and analysis was utilised. The following sections will outline the initial thoughts and rationale behind the adoption of a mixed method approach.

3.2 Overview of the research design approach

Before selecting a research design, it was important to consider distinctions between the worldviews (paradigms), and the strategies and the research method. The approaches to research design can be separated into three distinct fragments:

- Qualitative approach
- Quantitative approach
- Mixed method approach

Table 3.1 - Approaches to research design

Tend to or Typically	Qualitative Approaches	Quantitative Approaches	Mixed Method Approaches
Use these philosophical assumptions	Constructivist/advocacy/ Participating knowledge claims	Post-positivist knowledge claims	Pragmatic knowledge claims
Employ these strategies of inquiry	Phenomenology, grounded theory, ethnography, case study and narrative	Surveys and experiments	Sequential, concurrent and transformative
Employ these methods	Open ended questions, emerging approaches, text or image data	Close ended questions, predetermined approaches, numeric data	Both open and closed ended questions, both emerging and predetermined approaches, and both quantitative and qualitative data

			and analysis
Use these practices of research as the researcher	Positions him or herself, Collects participant meanings, Focuses on a single concept or phenomenon, Brings personal values to the study, Studies the context or setting of participants, Validates the accuracies of findings, Makes interpretations of the data, Creates an agenda for change or reform, Collaborates with the participants.	Tests of verified theories or explanations, Identifies variables to study, Relates variables in questions or hypotheses, Uses standards of validity and reliability, Observes and measures information numerically, Uses unbiased approaches, Employs statistical procedures.	Collects both quantitative and qualitative data, Develops a rationale for mixing, Integrates the data at different stage of inquiry, Presents visual pictures of the procedures in the study, Employs practices of both qualitative and quantitative research.

(Creswell, 2009:17)

Before discussing further these different approaches, it is important to recognise the following three elements that have also been considered and have influenced the design of the study:

- The research problem
- Personal experiences
- Audience

3.2.1 - The research problem

Certain types of social research problems require specific approaches (Creswell, 2009). If a concept or phenomenon needs to be appreciated due to little or no research being available, then the most appropriate approach would be qualitative methods. If the problem prompts the following:

i. The identification of factors that influence an outcome
ii. The utility of an intervention or
iii. Understanding the best predictors of outcomes

then the quantitative approach is the most appropriate method. The mixed method approach would be used to understand a problem in a clearer way, as it utilises the strengths of both approaches. Therefore the research problem should influence the whole design of the study. In this study the research problem centres on an understanding of why there is a conviction that the ETS is a barrier to justice. As outlined in Chapter One, differing opinions have been expressed regarding the effectiveness of the ETS, but very little tangible evidence has been collected to analyse the strength of these assertions. Therefore a mixed method approach was adopted as the most appropriate means to understand the problem, conducting quantitative and qualitative data collection and analysis and filling the gap in terms of available research to produce an overall opinion of the ETS.

3.2.2 - Personal experiences

The researcher's own education, training and most importantly experiences working within the field of employment law, have influenced the approach to how the research has been conceived and designed. Specifically the researcher was aware from previous data information requests to the ETS that accessing data was going to be challenging, in particular access to claimants.

Some researchers will be trained in the fundamentals of quantitative research that requires a more technical, scientific and statistical set of skills to

conduct the research, in comparison to broad '*literary*' skills and observations required for qualitative research. It is not only the skills that the researcher possesses that are important, but also the recognised limitations of the researcher as well (Babbie, 2013). As quantitative research is highly structured and works within a defined set of rules, the researcher may be more comfortable in challenging ideas and themes within the format, rather than having a less rigid framework to rely upon and to substantiate. Qualitative approaches allow flexibility with a research framework, but the researcher must be comfortable in using this approach.

While the researcher recognised that within this study a framework was required, but also some flexibility was also necessary in gaining access to the appropriate data. Therefore questionnaires were utilised within a set framework of justice, and semi-structured interviews were carried out to encapsulate opinions, beliefs and feelings that could not have been gained through the quantitative framework.

3.2.3 – Audience

As this study is necessarily supervised and assessed by academics with specific expertise in the research area, the approach has been centred around the requirements of assessment, the areas of research required within the research centre, and also for potential researchers in the future who may use this study to develop new fields of analysis and develop the topic even further. Chapter Five outlines further the contributions made, which incorporates the benefits to audience members.

In line with Creswell and Plano Clark's (2011:39) view that all research has a "*Philosophical foundation*", the following sections set out the rationale for the research questions and then proceed to analyse the philosophical elements of research and their impact upon the study.

3.3 Selection of research questions for this thesis

The selected area for this research and thus the research questions at the centre of this study were influenced by the researcher's professional and academic background. The researcher has dealt with employment law issues on a day-to-day basis, and understands the value of the ETS but also recognises the accusations of bias that had been levelled against it. To gain an evidence-based insight into the ETS and to achieve the overall aim of the research, the following questions were devised:

1- What was the original aim and mission of tribunals, and how have they evolved since their inception?
2- How many claims are made to the ETS and what are their jurisdictions?
3- What are the costs involved in operating the ETS and how much does it cost to bring or defend a claim?
4- How has employment law regulated and altered the balance of power in the employment relationship?
5- How does the theory of justice fit within the ETS?
6- Does the ETS act fairly towards claimants and respondents?
7- What are the outcomes of ET applications?
8- Are there any inefficiencies within the ETS?
9- What are the future requirements of the ETS?

In relation to the research, each question has been developed and aligned with the overall objectives of the study. This can be viewed in section 4.5, as well as the highlighted findings that the research questions have generated in Chapter Four.

As further elaborated in Section 3.5, this study has adopted a mixed method approach. When questions are derived from the research objectives, Teddlie and Tashakkori (2009) believe that mixed method research questions should be concerned with unknown aspects of a phenomenon and answered in both numerical and narrative forms. They can also be linked conceptually or framed so that they are independent (Creswell and Plano Clark, 2011) and do not have to be dependent upon each other. The nine questions derived for this study are generally more than would be expected in either quantitative or qualitative studies (Creswell and Plano Clark, 2011), as the questions need to

enable the collection of both different sets of data. They also need to enable the researcher to merge and analyse the data (Creswell, 2009) to address the central theme within the study of ET's being a barrier to justice?

The following section will identify the pragmatic paradigm as the dominant approach utilised within the study, and evaluate the reasons why this is appropriate within mixed method research.

3.4 Research paradigms and the underpinning philosophy of the research

Failure to think through philosophical issues, such as the relationship between data and theory, could have severe consequences upon the quality of research (Easterby-Smith *et al.*, 2012). Traditionally, philosophy has thrived through discussion, arguments and criticism, which has established a number of philosophical stances. However, philosophy within the social sciences has taken the position of criticising alternative points of view and in extreme circumstances completely overlooking their competing existence, when in fact it might be beneficial or even necessary to extract from more than one tradition. Easterby-Smith *et al.,* (2012:12) stipulate three reasons why an understanding of the philosophical elements are necessary:

1- *Helps to clarify research designs*
2- *Knowledge of philosophy can help the researcher to recognise which designs will work and which will not*
3- *Helps the researcher identify, and even create, designs that maybe are outside of their past experience*

The term paradigm has been used in a variety of functions and according to Masterman (1970), the person that is most responsible for bringing the concept into collective awareness, Thomas Kuhn (1962), has used the term in no fewer than 21 different ways. A research paradigm is the, *"basic belief system or world view that guides the investigation"* (Guba and Lincoln, 1994:105) and is a "*collection of logically held together assumptions, concepts and propositions that orientates thinking and research"* (Bogdan and Biklen, 1982:30). Essentially research paradigms do not relate to the

differences in methodology but in fact distinguish philosophical differences and analyse the underlying theme for constructing a research study.

There are various forms of paradigms, which are all determined by how their proponents respond to three basic questions:

1- Ontological: The science of the nature of being

- *What is the nature of the 'knowable'?*
- *What is the nature of 'reality'?*

2- Epistemological: The philosophy of knowledge or how do we come to know?

- *What is the nature of the relationship between the knower (the inquirer) and the known (or knowable)?*
- *What is the relationship between the observers and the phenomenon that is observed?*
- *How do we know what we know?*
- *What counts as knowledge?*

3- Methodological: A strategic approach

- *How should the inquirer go about finding out knowledge?*
- *How should the inquirer carry out the research about the phenomena that was observed?*

(Guba, 1990:18)

The answers to these questions will determine the basic belief systems or paradigms that could be utilised and provides an initial opening to verify what the inquiry is and how it is to be practiced. As stated previously, Kuhn (1962) is recognised as the catalyst for the term '*paradigm*' becoming an integral aspect to research. In 1962 Kuhn observed that research carried out according to a paradigm is normally regarded as routine puzzle-solving. He labelled this normal science (Benton and Craib, 2001) and it was acknowledged within the scientific community that the problem or problems can be solved through the terms determined by the currently accepted paradigm and that failure is directed at the researcher(s) as opposed to rejecting the actual paradigm. Kuhn (1962) believed that paradigms were essential for researchers (scientists) to determine problems and choose

methods in their research, and that to reject the dominant paradigm because a lack of synergy between facts and theory would hinder the researcher from carrying out further research, due to a lack of guidelines to operate within (Benton and Craib, 2001).

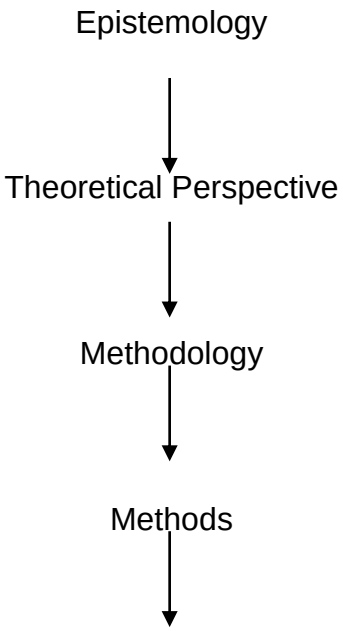
Paradigms are the starting point or framework that determines what inquiry is and how it is to be practiced. According to Guba (1990) they are unable to be proven or disproven in a rudimentary sense; if this was feasible there would be no doubt about how to practice inquiry. Within the research process two concerns need to be addressed, firstly, what will the methodology or methods of the research be and secondly, what is the justification for the choice of methodology and methods utilised? To answer these concerns, Crotty (1998:3) has developed four questions and themes, which are:

1- *What methods do we propose to use?*
2- *What methodology governs our choice and use of methods?*
3- *What theoretical perspectives lie behind the methodology in question?*
4- *What epistemology informs this theoretical perspective?*

Crotty (1998) goes further, expanding and explaining the meaning of each question. Methods are what techniques or systems incorporated to scrutinise information have been collected in conjunction with a research question or hypothesis. Where the method is the practical element, the methodology is the strategy and process underlying the actual chosen method, which formulates a link between the method of choice and the desired outcome. The theoretical perspective is the philosophical position that has informed the methodology and therefore provided a context for the process and explanation of the logic and criteria used in developing the methodology.

Epistemology informs the theoretical perspective through embedding a theory of knowledge into the theoretical perspective and methodology. Crotty (1998) and Creswell (2009) have attempted to place these four elements into a logical sequence, so that each segment informs the next; in basic terms the process would look as follows:

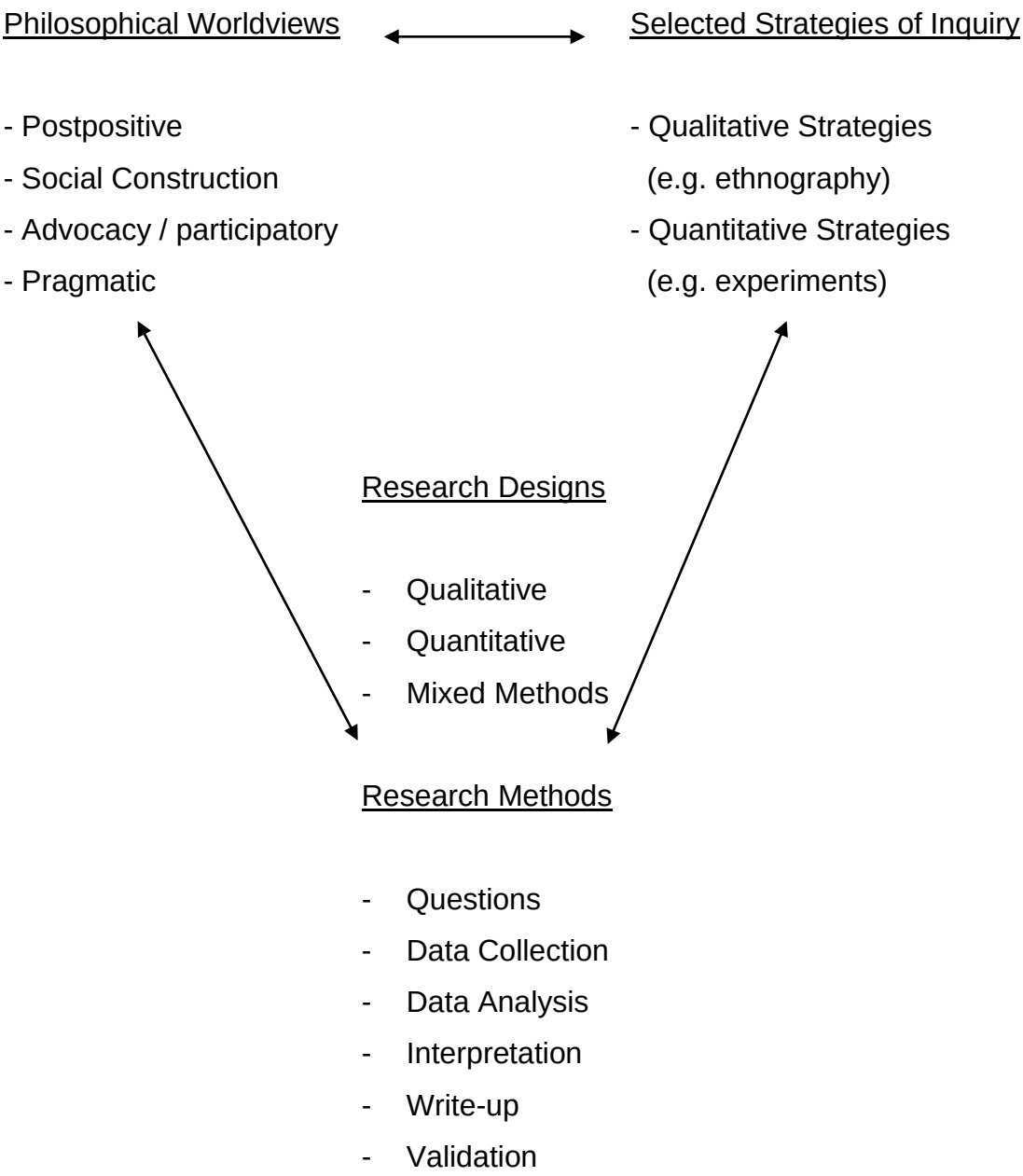
Fig. 3.3 - **Theoretical perspective of research**



(**Adapted from Crotty, 1998 and Creswell, 2009)**

To emphasise the chosen methodology, Creswell (2009) believes it important to delineate the researcher's philosophy, or '*world view*', which can directly influence thoughts, opinions and most importantly the decision for choosing a specific research method, as detailed below:

Fig. 3.4 – **A framework for design – The interconnection of worldviews, strategies of inquiry and research methods**



(Creswell, 2009:5)

These worldviews will be shaped by the researcher's past experiences, discipline area and the beliefs of advisors (Crotty 1998). The different beliefs held by the researcher will then lead to them assuming quantitative, qualitative and mixed method approaches to research.

According to Creswell (2009), there are four worldviews:

Table 3.2 – **Creswell's four worldviews**

Positivism (Post Positivism)	**Constructivism**
- Determination - Reductionism - Empirical observation and measurement - Theory verification	- Understanding - Multiple participant meanings - Social and historical construction - Theory generation
Advocacy / Participatory	**Pragmatism**
- Political - Empowerment Issue Oriented - Collaborative - Change orientated	- Consequences of actions - Problem-centred - Pluralistic - Real-world practice oriented

(Creswell and Plano Clark,2011:40)

Essentially, social research is based around the supremacy of the two '*classic*' paradigms (world views) of '*positivist*' and '*constructivist*'. The positivist paradigm is based around the logic that the researcher is working with an:

> "…*observable social reality and that the end product of such research can be the derivation of laws or law-like generalisations similar to those produced by the physical and natural scientists*."
> (Remenyi, Williams, Money and Swartz,1998:32).

Therefore the belief system of positivism is entrenched in a realist ontology, that reality exists and driven by "*immutable natural laws"* (Guba, 1990:19). As outlined in Guba's (1990:19) *Alternative Paradigm Dialogue*, once committed to working within a realist ontology, the positivist is restricted to operating within an objectivist epistemology. The researcher must behave in a real world that operates according to natural law, and align questions to

nature, which therefore allows nature to respond back directly. In contrast the constructivist viewpoint is that:

> *"… all knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction between human beings and their world, and developed and transmitted within an essentially social context."*
>
> Crotty (2003:42)

Constructivists believe that individuals develop subjective meanings of their experiences and assume that people search for understanding of the world in which they live and work. The researcher will therefore search for complexity of views rather than narrow meanings into a few categories or ideas (Creswell, 2009). The main difference between positivism and constructivism is that positivism presumes that reality is external and objective whereas constructivism proposes that reality is determined by people rather than by objectives and external factors.

Creswell (2009) has identified two further paradigms; the advocacy/participatory and pragmatist paradigms. The advocacy/participatory viewpoint has been developed over the last two decades and mainly incorporates qualitative research, although it can be a foundation for quantitative research (Creswell 2009). Stemming from writers such as Marx, Adorno, Marcuse, Hubermas and Freire (cited in Neuman, 2010) it holds the viewpoint that the research has to be interspersed with politics and therefore possess a political agenda, which will create action reform for people involved in the research. This worldview is a countenance to the positivist position, which intends to impose structured laws and theories that did not fit marginalised individuals in society and the constructivist position that was deemed to be negligent in advocating for an action agenda to help marginalised peoples (Creswell, 2009).

The fourth position is the pragmatic worldview, which derives from writers such as Peirce (1905), James (1907 / 1981), and Dewey (1931) (cited in Cherryholmes, 1992) and derives from actions, situations and

consequences as opposed to the positivist position of antecedent conditions. Cherryholmes (1992), Morgan (2007), and Creswell (2009) have provided the following philosophical basis for pragmatism:

- *The pragmatist researchers look at the 'what' and 'how' of research, based on the intended consequences – where they want to go with it. Mixed methods researchers need to establish a purpose for their mixing, a rationale for the reasons why quantitative and qualitative data need to be mixed in the first place.*
- *Pragmatists agree that research always occurs in social, historical, political and other contexts. In this way, mixed methods studies may include a postmodern turn, a theoretical lens that is reflective of social justice and political aims.*
- *Pragmatists have believed in an external world independent of the mind as well as that lodged in the mind. They believe that we need to stop asking questions about reality and the laws of nature.*
- *Thus, for the mixed methods researcher, pragmatism opens the door to multiple methods, varying worldviews and different assumptions, as well as different forms of data collection and analysis.*

(Creswell, 2009:11)

For this piece of research, and as is consistent with a mixed method approach (Creswell, 2009; Crotty, 1998) a pragmatic philosophical stance has been adopted. Further discussion around the pragmatic paradigm is provided in Section 3.6.1.2. However, it is important to clarify why this worldview has been adopted and how it has influenced the study. Creswell and Plano Clark (2011:42) have provided five '*world-view elements*' to assist in substantiating the use of a specific paradigm. These consist of:

1. Ontology (What is the nature of reality?)
2. Epistemology (What is the relationship between the researcher and that being researched?)
3. Axiology (What is the role of values?)
4. Methodology (What is the process of research?)
5. Rhetoric (What is the language of research?)

From an ontological perspective a pragmatic researcher believes in singular and multiple realities, whereby both hypotheses and perspectives are presented and addressed. The aim of the study is to '*Analyse unfair dismissal*

claims to establish whether the employment tribunal system is a barrier to justice', which has been developed through the literature research and problems identified within the ETS. However, other perspectives have been presented regarding the efficiency and competence of the ETS, which also need to be addressed. These single and multiple realities therefore lead towards a pragmatic ontological approach.

The second world-view element addresses the relationship between the researcher and the entity being researched. A positivist will collect data from a distant, impartial and objective perspective (Creswell and Plano Clark, 2011) and a constructivist will use their close relationship to collect the data, such as on-site or in person (Creswell and Plano Clark, 2011). A pragmatist employs a practical approach whereby data will be collected through the apposite technique to addressing the research questions. Due to the barriers and challenges in collecting data involving the ETS, the researcher had to use methods that ensured the '*right*' data was collected. This involved the use of both quantitative and qualitative data to enable as much information was obtained as possible from the sample population. As outlined in section 3.5.2, the initial research design intended to interview various stakeholders within the ETS, however after various discussions and analysis of this method it was deemed to be incapable of answering the research questions. Therefore a more practical approach was adopted to collect the requisite data, which involved both impartiality and closeness to the research matter.

The third word-view element focuses on the role of values within the research. A pragmatic researcher believes in "*multiple stances*" (Creswell and Plano Clark, 2011:42) whereby a biased and unbiased perspective exists within the research. As the researcher has been involved with the ETS for over fifteen years, it is logical to conclude that there must have been some opinions and judgments established which have shaped the research, in particularly instigated the reasons for carrying out the study, resulting in some form of bias. However, to carry out a piece of research that will be analysed and tested, it is also logical to presume that, as far as possible, bias is eliminated from the research. Within this study there is a pragmatic value

acting as a '*golden thread*' throughout the entire research activity where both biased and unbiased perspectives have been acknowledged.

The fourth word-view element is methodology, the process of the research. The two traditionalist paradigms, positivist and constructivist adopt a deductive or inductive approach respectively. A pragmatic researcher uses both quantitative and qualitative data then fuses the information together. This correlates with the second word-view element whereby a practical approach is adopted so that the right data collection method is used to answer the research questions. As outlined above this study adopted a mixed method approach to gain as much information as possible from the sample; it also enabled data to be collected separately so these could be collected in an easier manner, analysed in different formats and ensure that each data collection method utilised the time allocated to optimum effect. For example the data collected from the questionnaires that were linked to the interviews enabled the researcher to concentrate on qualitative information as the questionnaires had already collected the necessary statistical data. This left more time in the interview for in depth analysis of the ETS.

The fifth and final world-view element involves the language of the research, rhetoric. As with the other elements, a positivist and constructivist will utilise a different language, with positivists adopting a formal style based on defined variables and constructivists a literary, informal style. A pragmatist will encapsulate both techniques, applying each when necessary. Within this study the questionnaire analysis was completed using a formal style where the results were delineated within the parameters of various scales used to measure the responses. The interviews have been delineated through a relaxed and informal dialogue of what was discussed. This informal language has enabled the comments and thoughts of the interviewees to be represented in a more accurate manner than if it was done through a more formal approach that would have to align the responses within a strict variable or boundary.

As discussed previously a pragmatic approach has been adopted which relates to the principles behind the mixed method data collection technique (Creswell and Plano Clark, 2011). The next section will discuss further the properties of mixed method research and why a '*triangulation*' method has been used within this study.

3.5 The research design: A mixed method approach

As we have seen, to ensure that a rigorous approach is adopted, a mixed methodology has been selected to collect and analyse the necessary data. While as a research design the mixed-method approach is still relatively new, substantial pieces of work have produced a comprehensive overview of this strategy (notably in *The Handbook of Mixed Methods in the Social and Behaviour Sciences* by Tashakkori and Teddlie, 2003 as well as journals advocating its use, such as the *Journal of Mixed Methods Research and International Journal of Social Research Methodology*). It has already been discussed that the two traditional data collection techniques have always competed against each other, with many writers trying to debate the merits of both (Dafta, 1994; Gage, 1989; Giba and Lincoln; 1994, House, 1994). However, there are benefits in utilising both approaches in the same study.

Also known as methodological triangulation, the practice of mixing qualitative and quantitative techniques has been seen as the perfect antidote to the problems involved in just using one method. Smith (1975:273) tried to metaphorically capture this issue by stating that:

> "*…we are really like blind men led into an arena and asked to identify an entity (say an elephant) by touching one part of the entity (say a leg). Certainly we might make better guesses if we could pool the information of all blind men, each of whom has touched a different part of the elephant*."

Smith tries to convey the notion that different types of complementary data, regarding the problem could be collected by the use of different research techniques within the same study. The triangular techniques are

linked to and developed from the pioneering work of Campbell and Fiske (1959), who utilised the use of more than one quantitative method of measuring a psychological trait (they labelled this technique the multi-method-multi-trait matrix).

According to Creswell and Plano Clark (2011) there are four major types of mixed methods designs:

- Triangulation design
- Embedded design
- Explanatory design
- Exploratory design

For the purpose of this study, the triangulation design has been adopted and will be discussed in the following section.

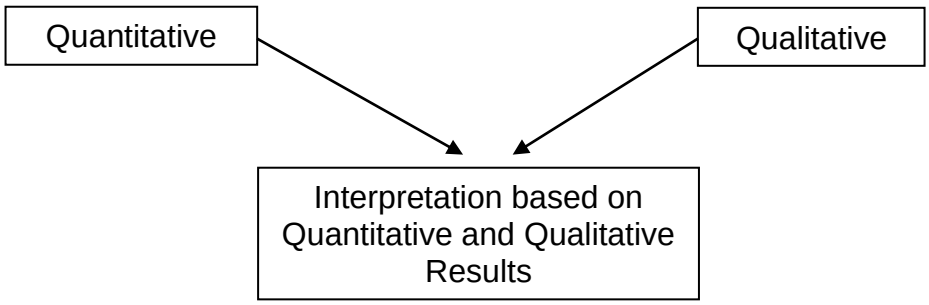
3.5.1 The triangulation design

Denzin (1978:291) defined triangulation as "*the combination of methodologies in the study of the same phenomenon*" and is based on the triangulation metaphor from navigation and military strategy which, according to Smith, (1975), uses multiple reference points to locate an object's exact position. Within the field of social sciences, triangulation can be linked back to Campbell and Fiske (1959), who crafted the theory of multiple operationism. An example of how this works within the field of management is through appraisals. A manager's effectiveness could be assessed through a one to one interview, an evaluation of performance record and a peer review. Although the focus remains on the effectiveness of the manager, the method of data collection varies. Likewise Jick (1979) used the triangulation strategy to study the effects of a merger on employees over a period of fourteen months. To achieve multiple viewpoints, three observational approaches were utilised; feelings and behaviours, direct and indirect reports, obtrusive and unobtrusive observations. The main reason for using the triangular design is for the researcher to either directly compare and contrast qualitative and quantitative information or to substantiate or develop quantitative results with

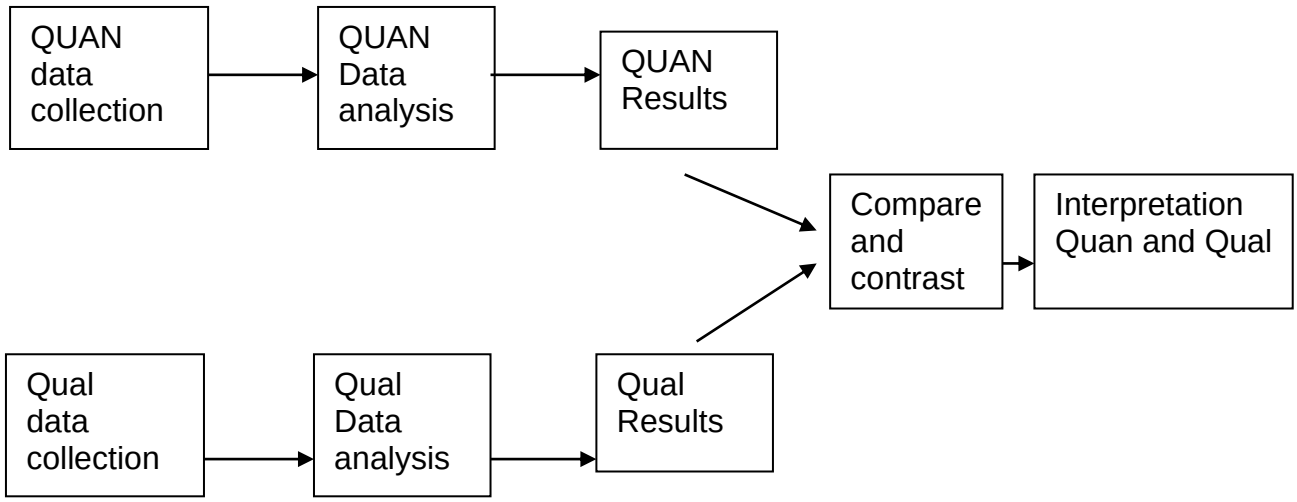
qualitative data. Creswell and Plano Clark (2011) have devised a triangular design, which demonstrates how quantitative and qualitative methods are used within the same timeframe and adopt equal weighting:

Fig 3.5 - **The triangulation design**

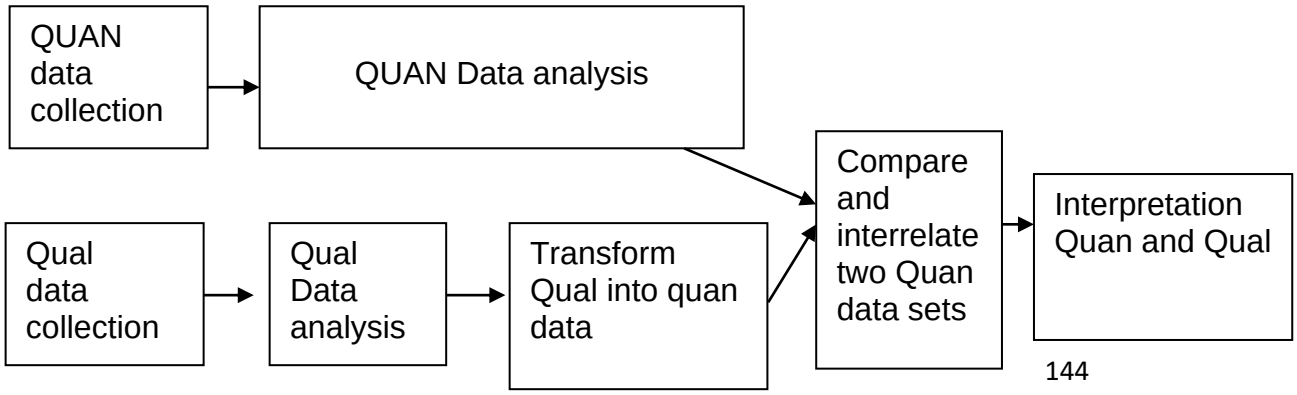
a) Triangulation Design : Concurrent model



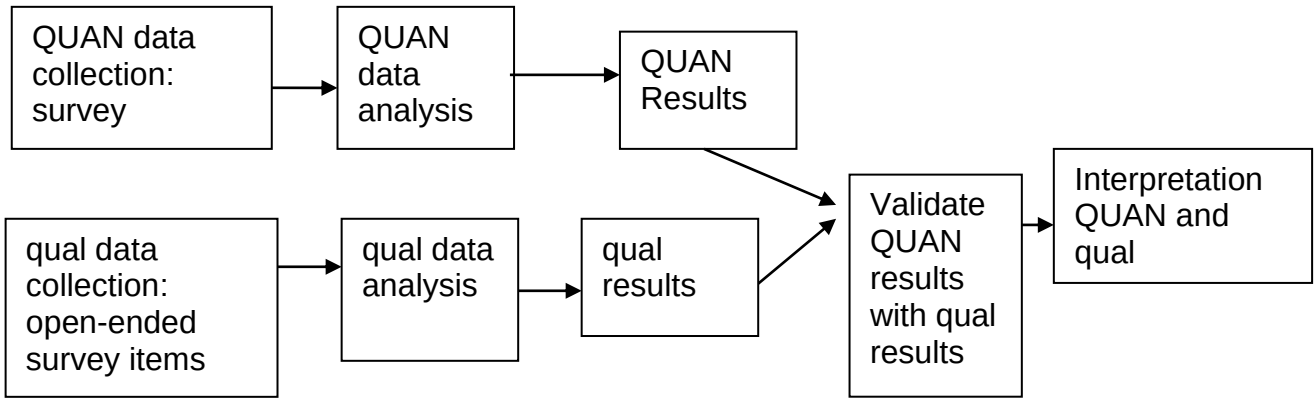
b) Triangulation Design: Convergence Model



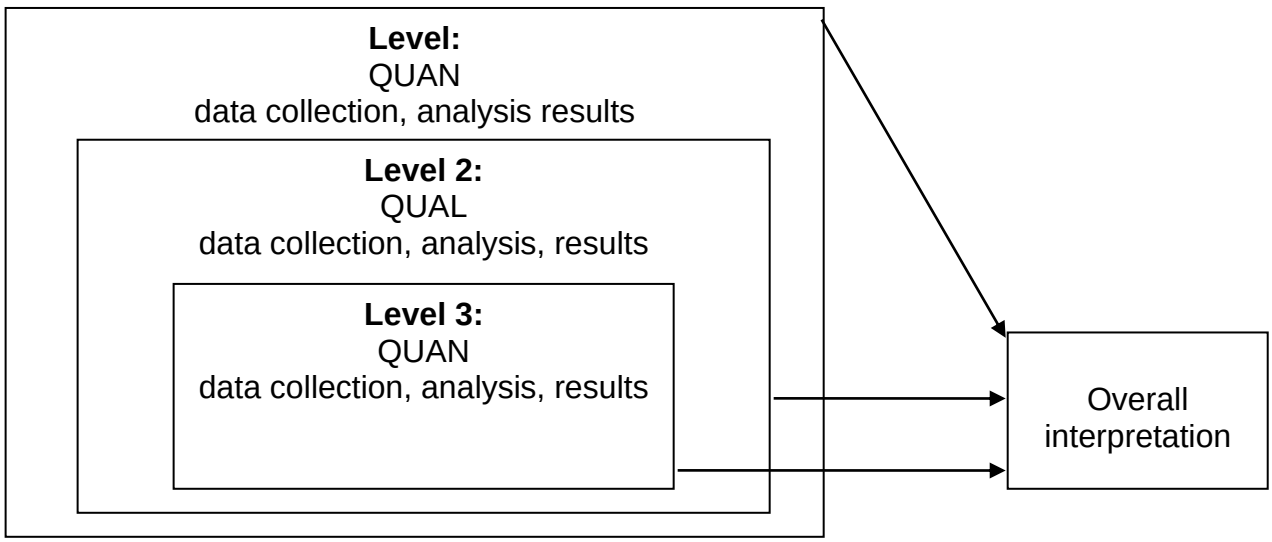
c) Triangulation Design: Data Transformation Model (Transforming Qual data into Quan)



d) Triangulation Design: Validating Quantitative Data Model



e) Triangulation Design: Multi-level Model



(Creswell and Plano Clark, 2011:64)

The triangulation approach in Fig. 3.5 (a) has been labelled the *concurrent triangulation desig*' by Creswell, Plano Clark *et al.,* (2003) due to its single-phase nature and timing. To best understand the problem or phenomenon in this study, the research will collect qualitative and quantitative data separately but in tandem, and then proceed to merge the two data sets. The merging of data can be done through interpreting the data collectively or by:

> "…*transforming data to facilitate integrating the two data types during the analysis.*"
>
> (Creswell and Plano Clark, 2007:64).

An example of this type of research can be viewed in Jenkin's (2001) single phase study regarding '*Rural Adolescent Perceptions of Alcohol and other Drug Resistance*'. Qualitative data was collected in the form of focus groups and quantitative data through semi-structured questionnaires. The two data sets were then interpreted by relating the qualitative results in the qualitative findings. The next research design, outlined in Fig. 3.5 (b), is the *convergence model*, which according to Creswell (1999) is the traditional model of the mixed methods triangulation design. Through this process the researcher collects qualitative and quantitative information regarding the problem/phenomenon separately and also analyses the data separately as well. The two separate results are converged together through comparing and contrasting the data during the interpretation stage. This method is normally used when the researcher wants to:

> "…*compare results or validate, confirm or corroborate qualitative results with qualitative findings.*"
>
> (Creswell and Plano Clark, 2007:65)

Ultimately this process will result in conclusions that are proven and substantiated.

The third variant, outlined in Fig. 3.5 (c), is the *data transfer model*, which also collects and analyses qualitative and quantitative data separately, but once the initial analysis has been completed, the researcher undertakes the process of transforming one data type into the other data type. Tashakkori and Teddlie (1998) state that this is done through either quantifying qualitative findings or quantifying quantitative results. This technique was used in a study of parental values by Pagano, Hirtsch, Deutsch and McAdams (2003) which carried out the transformation through mixing data, during the analysis stage, which then led to comparison and further analysis of the two sets of data. The fourth variant, outlined in Fig. 3.5 (d),

validating quantitative data model is used to substantiate and broaden the quantitative results through constructing a limited number of open-ended qualitative questions. Although the qualitative information is not comprehensive, it will supplement the qualitative results. This technique was used in a survey by Webb, Sweet and Pretty (2002) which studied the emotional and psychological impact of mass casualty incidents on forensic odontologists. The fifth variant is known as the '*Multi-level Research Model*' Tashakkari and Teddlie (1998) and uses quantitative and qualitative methods to address different levels within a system. As can be seen from Fig 3.5 (e), the findings from each level are amalgamated together into one complete interpretation. An example of this method being utilised is in a study by Elliot and Williams (2002) which analysed an employee counselling service through collecting qualitative data at the client level, qualitative data counsellor level, qualitative data with the Directors, and quantitative data for the organisational level. Creswell and Plano Clark (2007:66) have outlined a number of benefits and limitations in using these triangular methods:

- *The design(s) make intuitive sense and researchers new to mixed methods often choose these design.*
- *It is an efficient design, in which both types of data are collected during one phase of the research at roughly the same time.*
- *Each type of data can be collected and analysed separately and independently using the techniques traditionally associated with each data type.*
- *Much effort and expertise is required, particularly because of the concurrent data collection and the fact that equal weight is usually given to each data type.*
- *Researchers may face the question of what to do if the quantitative and qualitative results do not agree, which can be difficult to resolve and may require the collection of additional data.*
- *For the convergence model, researchers need to consider the consequences of having different samples and different sample sizes when converging the two data sets. It can also be very challenging to converge two sets of very different data and their results in a meaningful way.*
- *For the data transformational model, researchers need to develop procedures for transforming data and make decisions about how the data will be transformed.*

Due to the different sample sizes and characteristics of this particular study it was deemed appropriate to adopt the convergence model which not only included the primary data but also secondary, specifically ETS statistics, when comparing, contrasting and interpreting the results.

3.5.2 Initial chosen methodology

Deciding where to start and establishing a basic framework for the research, can be extremely challenging and provide a number of difficulties (Boland and Hirschheim, 1987; Galliers and Land, 1987, Galliers, 1992; Gable, 1994). Once these difficult decisions have been made the process of practically carrying out the research can be fairly routine, using well-established methods for analysing and interpreting the evidence that is collected (Remenyi and Williams, 1993). Creswell (2009:174) has provided an eleven-point plan in the form of questions to follow when devising a mixed method approach to research. These are:

1. *Is a basic definition of mixed methods research provided?*
2. *Is a reason given for using both quantitative and qualitative approaches (of data)?*
3. *Does the reader have a sense for the potential use of a mixed methods design?*
4. *Are the criteria identified for choosing a mixed methods strategy?*
5. *Is the strategy identified, and are its criteria for selection given?*
6. *Is a visual model presented that illustrates the research strategy?*
7. *Is the proper notation used in presenting the visual model?*
8. *Are procedures of data collection and analysis mentioned as they relate to the model?*
9. *Are the sampling strategies for both quantitative and qualitative data collection mentioned? Do they relate to the strategy?*
10. *Are specific data analysis procedures indicated? Do they relate to the strategy?*
11. *Are the procedures for validating both the quantitative and qualitative data discussed?*

Following this eleven-point plan, initially the researcher identified a list of key personnel who would be interviewed to gain their views and insights on the ETS. The list of personnel involved participants from:

- Acas (Advisory, Conciliation and Arbitration Service).
- Unite.
- Unison.
- Barristers Chambers.
- Employment Tribunal Service (ETS).
- Academic Institutions.
- Confederation of British Industry (CBI).
- Greater Manchester Chamber of Commerce.
- The Work Foundation.
- Citizens Advice Bureau (CAB).
- Job Centre Plus (JCP).
- Ministry of Justice (MoJ).
- Department of Business Innovation and Skills (BIS).

This approach was discussed with various ET commentators. A number of these applied what Trowler (2012) labelled the '*so what*' rule. Trowler (2012) believes that within research, the question of the '*so what*' can be applied to aspects of the study such as research questions, research aims and objectives, samples chosen to analyse, questions asked, data collection methods used and data analysis techniques adopted. The '*so what*' question in this study focused on the proposed interviewees, why were they selected? What is their involvement with the ETS and most importantly what benefit will their opinions have upon the research?

To gain the required data the researcher believed that users of the tribunal service and observers of '*real life*' cases would be a better option. Therefore the following sample was selected:

- Claimants
- Respondents
- Claimant's representatives
- Respondent's representatives
- Observers

3.5.3 Finalised research framework

Upon reviewing the original research framework a finalised version, as outlined in Fig 3.2, was adopted which would enable the researcher to collect more viable data. As opposed to ETS stakeholders; claimants, respondents and their representatives were contacted to engage in semi-structured

interviews, as well as complete questionnaires regarding their thoughts and opinions of the tribunal system. 15 interviews were carried out in total, which characterised seven tribunal cases. 39 questionnaires were completed which provided comments on eleven tribunal cases, 7 of which were also included in the semi-structured interviews. The following section outlines how this strategy was implemented practically and also discusses the theoretical underpinning of why the data collection methods were selected.

3.6 Operationalising the research design

As detailed within Section 3.5, the framework for design instigated some exploratory research to be carried out which established a firm rationale for a mixed methods approach to be adopted. Qualitative data was collected through the conducting of '*semi-structured*' interviews with claimants and respondents from selected employment tribunal cases. Quantitative data was collected in the form of questionnaires with claimants, respondents and observers answering set questions regarding the ETS. Both sets of data were collected through the selection of several case studies. The next sections detail the rationale for the use of case studies, semi-structured interviews and questionnaires in the research design and how these techniques were practically implemented.

3.6.1 Case study research – The rationale

The use of case studies within academic research remains a particular challenge of all social science endeavours (Yin, 2009). Case studies benefit from the collection of data regarding a certain object, event or activity (Sekaran and Bougie, 2013). Within this remit the '*event*' is an ET case. Participants are questioned through a '*semi-structured*' interview to ask their thoughts, feelings and attitudes towards the ET from a justice perspective.

Yin (2009:18) has categorised and defined the broad areas of case study research in terms of scope:

A case study is an empirical inquiry that:

a. *investigates a contemporary phenomenon in depth and within its real life context, especially when.*
b. *the boundaries between phenomenon and context are not clearly evident.*

Yin (2009:18) argues that technical characteristics such as data collection and data analysis strategies, form part of case study research as phenomenon and context are not always distinguishable in real life situations:

The case study inquiry

c. *copes with the technically distinctive situation in which there will be many more variables of interest than data points and on one result.*
d. *relies on multiple sources of evidence, with data needing to converge in a triangulating fashion, and as another result.*
e. *benefits from the prior development of theoretical propositions to guide data collection and analysis.*

Stoecker (1991) believes that using this two-fold definition highlights the '*holistic*' approach of case study research whereby a case study approach is not a singular data collection method or singular design feature which covers all aspects of the research design, data collection methods and approaches to data analysis. Case study research is most applicable when answering questions that start with how, who and why (Farquhar, 2012). By narrowing of the research field, in this instance employment tribunal cases, a more in depth analysis of the topic or phenomenon can be carried out. Yin (2009) states that case studies should be preferred when faced with the following predicaments:

- when, how or why questions are being asked?
- when the researcher has little control over events?
- when the focus is on a contemporary phenomenon?

When addressing the questions of when, how and why, the technique is to use a variety of different sources of data within each case study with the utilisation of both primary and secondary data, such as internal documentation, industry reports and sets of interview data (Dibb and Meadows, 2001). Case study research has also been used to study a

phenomenon over a set period of time (Leonard-Barton, 1990). However, in this instance the case study presents a snap-shot of the ETS through the process of the tribunal case. A longitudinal study of the ETS could potentially be undertaken in the future with the justice theme of this study being utilised as the framework of future research.

3.6.1.1 Types of case studies

An examination of case studies often concluded with a summation by the researcher that formulates the overall meaning derived from the cases (Creswell, 2013). Stake (1995) labels these '*assertions*' whereas Yin (2009) presents them as building '*patterns*' or '*explanations*'. With the conclusions in mind it is necessary to study the various types of case studies and how these are distinguishable (Creswell, 2013). Stake (1995) believes that case studies can be separated through their intent, and are divided into:

- the single instrumental case study
- the collective or multiple case study
- the intrinsic case study

Within the single instrumental case study an area of concern or prevailing issue is highlighted and a singular case is utilised to either demonstrate or reject the veracity of the stated problems. Within the collective or multiple case study, a singular issue is also highlighted, however, a number of case studies are selected to exemplify the area of concern. Creswell (2013) illustrates how collective case study can be achieved, either through the selection of a number of programmes from a number of research sites or through the selection of multiple programmes within a singular site.

Yin (2009) elucidates the premise that multiple case study design utilises the rationale of replication, whereby the researcher replicates the process for each case. Yin (2009) suggests that:

> "*…criticisms about single-case studies usually reflect fears about the uniqueness or artificial conditions surrounding the case (e.g special*

access to a key informant) … having two or more cases can begin to blunt such criticism and scepticism … having more than two cases will produce an even stronger effect."

(Yin, 2009: 61-62)

The final design is the intrinsic case study whereby the attention is held upon the actual case. Stake (1995) suggests this could be the evaluation of a programme or the study of a student having difficulty whereby an unusual or unique situation is presented.

Within this research Stake's (1995) collective or multiple case study category has been adopted. The singular issue under investigation involves the ETS being a barrier to justice. To analyse this, 11 cases were selected with seven of these utilised for the semi-structured interviews. Yin's (2009) rationale of replication was adopted in relation to the types of case studies used and for the questions used within interviews. The use of replication enabled similar themes and correlations to be identified and extracted, so that informed conclusions could be drawn.

3.6.1.2 Case study research and the philosophical suppositions

Stake (1995) and Yin (2009) approach case study research from the philosophical view that this research method's greatest asset is its flexibility. Farquhar (2012) agrees that flexibility is a strength and that, in this context, case studies can be utilised as a technique for handling diverse contexts and dealing with a variety of research questions. The mixed method approach adopted in this study has enabled a flexible approach in terms of the sample and the numerous research questions that have been set. Morgan (2007) believes that a one-paradigm approach is too narrow in the search for knowledge and a pragmatic approach is a new, viable option for collecting the data.

Morgan (2007) has also compared the two dominant philosophies of an interpretive and positivist approach with a pragmatic perspective:

Table 3.3 - **A Pragmatic alternative to the key issues in social science research methodology**

Research dimensions	Interpretive	Positivist	Pragmatic approach
Connection of theory and data	Induction	Deduction	Abduction
Relationship to research process	Subjectivity	Objectivity	Intersubjectivity
Inference from data	Context	Generally	Transferability

(Farquhar, 2012: 22- adapted from Morgan, 2007)

The key separating factor between interpretative / positivist and the pragmatic approach is the relationship with the research process, whereby a pragmatist formulates an inter-subjectivity position which Farquhar (2012) labels '*common sense*' as the '*social actors*' do not necessarily analyse the '*meaningful structure of the world*' during their life experiences. Hughes and Sharrock (1990:138) explain further that:

> "*…we make sense of our actions and those of others through a 'stock of knowledge' that is held in common and that we inherit and learn through members of society*."

Morgan (2007) clarifies the points made by Hughes and Sharrock (1990) by explaining that pragmatists are comfortable with the belief that there is a single real world and that individuals can evoke their own interpretations of this world. Within this study, the use of case studies has not only allowed the single reality of the ETS to be critically evaluated, but also be assessed and interpreted by claimants, respondents and observers.

Case study research has attracted the pragmatic mixed method approach (Eisenhardt, 1989; Eisenhardt and Graebner, 2007; Kaplan and Duchon, 1988) due to its flexible nature and ability to collect both qualitative

and quantitative data. Yin (2009:63) believes that certain types of case studies automatically adopt a form of mixed methods research:

> "…*embedded case studies rely on more holistic data collection strategies for studying the main case but then call upon surveys or other more quantitative techniques to collect data about the embedded unit(s) of analysis*."

Yin (2009) explains that there can also be an '*opposite relationship*', where the case studies are embedded within a larger, mixed methods survey. However, this piece of research has adopted Yin's (2009) premise that case studies are utilised to collect the '*dominant*' data with quantitative data used to effectively supplement the qualitative information.

The next section analyses the use of semi-structured interviews and the techniques used during this process.

3.6.2 Approaches to interviewing

Farquhar (2012) has stated that within the framework of qualitative data collection, interviews would normally be carried out in a 'semi-structured' format. Silverman (1997) goes further by clarifying that the type of interview to be conducted is normally based on the methodological approach and information requirements. The advantages of this approach, according to Denzin (1970) are:

1. Respondents are permitted to draw on their unique ways of defining the world.
2. It is assumed that no fixed set of questions can be applicable to all respondents.
3. Respondents are allowed to make observations on issues that are not contained in the interview schedule.

Rubin and Rubin (2012) explain that there are opportunities to carry out structured, semi-structured and unstructured interviews. Structured interviews involved the interviewer compiling a list of predetermined questions that the interviewee will respond to (Sekaran and Bougie, 2013) and when these

forms of interview are conducted, the researcher is aware from the outset what information is required.

Unstructured interviews involve the researcher taking no planned set of questions and have an objective of:

> "…*bringing some preliminary issues to the surface so that the researcher can determine what factors need further in-depth investigation*."
>
> (Sekaran and Bougie, 2013:118)

Within this study a '*semi-structured*' interview technique has been adopted. Rubin and Rubin (2012) explain that this form of interviewing enables the researcher to identify specific topics they wish to learn about, prepare a limited number of questions in advance and plan to ask follow up questions. As stated in section 3.6.1, ET cases were selected as the core element to the mixed method data collection method. From these cases the following interviews were carried out:

Table 3.4 – **Case study interviews**

	Type of interviewee	**Total number of interviews**
Case 1	Respondent and Claimant	2
Case 2	Respondent and Claimant	2
Case 3	Respondent and Claimant	2
Case 4	Respondent and Claimant	2
Case 5	Respondents	2 (1 joint interview)
Case 6	Respondents	3
Case 7	Respondents	3
	Total number of interviews	**15**

Cases were selected based on accessibility and pertaining to unfair dismissal jurisdiction. The next sections will explain why semi-structured interviews were carried out and how the interview sample was chosen.

3.6.2.1 Semi-structured interviews

Denzin (1970) argues that '*semi-structured*' interviews are an appropriate method of collecting data and investigating issues, which have not been previously documented in literature. Although a framework of questions were adhered to in this study, based upon the exploratory research and literature review, open-ended questions generated important data that may not have been collected from other data collection methods.

The semi-structured interview approach has been adopted previously within employment law and business research (Aston *et al*., 2007; Moorhead and Cumming, 2009). As well as having a healthy background of being utilised within this area of research, theorists such as Ryan (1995); Silverman (1997); Jennings (2001) believe that the greatest asset of the semi-structured interview lies within its ability to enable the researcher to maintain the structure and focus of the interview whilst having the option to '*funnel*' questions, probe further and seek further clarification on what is required. Interviewees are also empowered to raise and discuss points that were not included in the initial interview schedule but were deemed to be important areas within the research framework.

Carrying out interviews can be viewed as a procedure with a series of steps (Creswell, 2013). Various authors have detailed these steps (Kvale and Brinkmann, 2009; Rubin and Rubin, 2012). The seven stages proposed by Kvale and Brinkmann (2009) detail a logical sequence of stages from thematising the inquiry, to designing the study, to interviewing, to transcribing the interview, to analysing the data, to verifying the validity, to reliability and generalisability of the findings and finally reporting of the study. Rubin and Rubin's (2012:38) responsive interview model emphasises the importance of building a relationship of trust between the interviewer and interviewee, which results in high yielded questions being asked and responded to. The responsive interview model is determined by four characteristics:

1. *Responsive interviewing emphasises searching for context and richness while accepting the complexity and ambiguity of real life.*
2. *The personalities of both interviewer and conversational partner impact the questioning. Because interviewers contribute actively to the conversation, they need to be aware of how their own opinions, experiences, cultural definitions, and even prejudices influence what they ask and what they understand, and they should be cautious about how they react emotionally to challenging, threatening or disturbing material.*
3. *Interviewing is an exchange that occurs within a meaningful, but usually temporary relationship between interviewer and interviewee. The interviewee is treated not as a research subject but as a partner in the research whose ideas impact subsequent questioning. Interviewing is usually conducted in a supportive, non-confrontational and gentle manner. This personal relationship carries obligations of reciprocity. The interviewer is imposing on the time, energy, emotion and creativity of the conversational partner and owes loyalty and protection in return.*
4. *In responsive interviewing, the design remains flexible, from the first formulation of the research topic to the last bit of analysis of the data. In response to what you hear, you can change the questions you ask, the people you talk to, the research sites or conditions and the concepts and themes you are working with. The issues that you explore in depth evolve as you find more evidence for one or another of your themes or sets of themes.*

Due to the personal and confidential nature of what claimants and respondents have experienced through the ETS process, Rubin and Rubin's (2012) model was deemed to be the most appropriate technique in carrying out the semi-structured interviews.

Rubin and Rubin's (2012) first characteristics of responsive interviewing was taken into consideration when dealing with interviewees' experiences during the ETS process. These experiences had led them to be extremely wary in revealing detailed information, in particular their personal feelings towards the tribunal system. This was also acknowledged within the second characteristic of Rubin and Rubin's (2012) model, which takes into consideration the personalities involved within the interview, and how their experiences had affected them. The researcher felt it was important not to reveal personal opinions about the ETS, as this could have impacted upon the actual interview taking place, the type and amount of information being provided, and finally how the interviewee may have been influenced by the researchers opinion.

This follows onto the third characteristic, which acknowledges the relationship between the interviewer and interviewee. A number of the interviews, in particular the conversations with claimants, were extremely emotional and had to be conducted in a tactful, supportive manner that not only extricated the information required but also enable to elucidate their point without feeling threatened or treated unfairly.

The final characteristic of Rubin and Rubin's (2012) model aligns with the pragmatic mixed method research approach, and enabled the researcher to challenge the interviewee by asking questions based upon their initial responses. Interviewees also had their own preference in how they structured their responses, as not interrupting the flow of their thoughts and opinions was vital.

3.6.2.2 The interview sample

As stated in section 3.6.2, seven case studies were selected, with 15 interviews carried out. This allowed perspectives from both claimants and respondents to be generated and establish the validity of the research conceptual framework. The semi-structured framework of questions centred on the following areas of justice:

1. Procedural Justice
2. Distributive Justice
3. Interactional Justice

Although Rawls (1999); Lucy (2007); McCoubrey and White (1999) have discussed justice in terms of organisations, Cropanzan, Stein and Nadisis (2011) have split justice into the above three segments in terms of fairness. The interview was therefore based on the literature around justice and fairness. Based upon Rawls (1999) theory of justice, interviewees were questioned around the following themes:

Procedural Justice

- Fairness of the process

- Changes necessary in the process
- Legal representations impact on the process
- ETS as a fair process

Interactional Justice

- Treatment during the tribunal process
- Legal representation impact on the way treated
- Treatment by the Tribunal panel
- Overall personal experience

Distributive Justice

- Fairness in the outcome of the case
- Different judges arriving at different conclusions
- Legal representation on the impact of the outcome
- Ability of tribunals to arrive at a fair decision

Before each interview, all interviewees were asked to complete a questionnaire, which was carried out as a separate process to the collection of quantitative data. Although the researcher had a list of thematic questions in a listed format, during the actual interview questions were asked when most appropriate. The flow of an interview is important and it can be difficult for interviewees to sporadically jump from one discussion point to the next. The researcher allowed the interviewee to discuss things fluidly and then moved on to the next theme/question based on the appropriateness and where the interviewee finished their discussion. Therefore, although the questions were listed in a schedule, it was not always the case that they were asked in that order. This enabled the researcher to ask interviewees to elaborate on specific points to clarify or explore further the critical incidents under discussion.

No problems were encountered during the interview process, with interviewees appearing relaxed and candid. To ensure that any issues or problems were minimalised, the researcher always agreed to meet the participant at a time that suited them and more importantly at a location where they felt most comfortable. For participants who had been the respondent in the tribunal case, interviews were carried out at their place of work. For participants who had been claimants in the tribunal case, all locations were

determined by themselves and included interviews taking place in their own home, at university or over the telephone. As well as agreeing convenient times and locations, the researcher ensured that the interviews maintained their focus and kept within the stated time limit.

Once an interview sample has been identified, consideration must then be given to accessing the sample, acknowledge any ethical implications and finally determine how the interviews should be analysed and evaluated.

Access to the interview sample

Gaining access to the interviewees proved to be the most difficult and challenging aspect to the study. King and Horrocks (2010) state that there are common challenges when gaining access to the participants. Firstly, the kind of experience that the study focuses upon is a very uncommon one. Secondly, the chosen topic is a painful or emotive one, which they are reluctant in discussing or '*resurfacing*'. Thirdly, and most commonly, access may be the biggest issue. Whereby access is denied or prolonged by several, what King and Horrocks (2010) label gatekeepers as well as having to cope with potential political sensitivities.

Within this research, points two and three were the most applicable. For both claimants and respondents, the ET process can be a very emotive experience. Even for those participants who have won their case, the experience can be extremely raw and something that they would rather forget. Some of the sample initially agreed to participate in the case, but then for various reasons decided to withdraw. This was extremely frustrating for the researcher but also understandable. It also enhanced the rationale for the research as previous studies had also been limited from gaining access to claimants and respondents.

The ETS is presided over by the government department, the Ministry of Justice. As one can expect from a government department, there were several gatekeepers who delayed and eventually blocked access to potential

participants. If the Ministry of Justice had provided access to claimants and respondents, thousands of participants could have been contacted to participate in the study. All records are stored centrally both in electronic format as well as hard copy format at the main administration office in Bury St Edmunds. To gain access to case details the researcher travelled to Bury St Edmunds on numerous occasions to access tribunal reports and respondents details. The majority of tribunal cases are accessible to the general public and it was therefore relatively easy to access respondents' names and then look up their contact details. The main challenge was in finding the most appropriate person to contact within the company. Contacting a person who would be able to make a decision to participate in the study, and conform to data protection protocol was extremely difficult.

Contacting claimants proved the more difficult of the two participants. Although tribunal case details are usually made public, e.g names of respondents, names of claimants and details of case with the judgment, the personal details are obviously omitted. To contact claimants a variety of methods were adopted, resulting in variations of success. Techniques included contacting solicitors who had represented claimants, requesting access through the Ministry of Justice, promotion of the research in HR and Employment Law forums, advertising in HRM journals and contacting agencies that have supported claimants during the tribunal process.

Ethical approach to the interviews

All participants who agreed to participate in the study gained, if necessary, authorisation from appropriate personnel and were given two documents prior to the interview. Firstly a research information pack, which outlined the nature of the research, what will happen to the data collected and most importantly that all details will remain confidential. Participants were asked to sign an agreement form, which formalised their contribution towards and understanding of the research. A copy of the Research Information Pack can be viewed in the Appendices. Participants were also issued with a questionnaire to complete prior to the interview. This had a twofold objective.

Firstly, to collect factual data that would otherwise have been collected during the interview taking up valuable time and secondly to collect quantitative data to supplement the more dominant qualitative data. Prior to the interviews taking place, the University of Salford's ethical approval process was followed requesting the researcher to consider and submit an ethical report, with supporting documentation. This process enhanced the understanding and ultimately influenced the research conceptual framework.

Analysis of the semi-structured interviews

A variety of researchers have proposed numerous methods of analysing interviews. Sarantakos (1998) has suggested a five-stage model:

Table 3.5 - **The five stages of interview analysis**

Stage	Process	Activity
1	Transcription	Data is transcribed from the original form on to paper; the researcher 'cleans' and edits the manuscripts
2	Checking and Editing	The transcripts are checked and edited, relating parts of data and preparing data for further analysis
3	Analysis and Interpretation	This entails data reduction and analysis; categories are developed coding and data reduction are implemented and trends are identified
4	Generalisation	The findings of the individual interviews are generalised; differences and similarities are identified
5	Verification	The validity and reliability of interpretations is checked, alone or with other researchers

(Adapted from Sarantakos, 1998:78)

Sarantakos's (1998) model is very logical and enables the researcher to tailor each stage of the study. However, as with the interview process, Rubin and Rubin (2012) have provided a seven-step process for analysing responsive interviews that is a more practical and, for the researcher, a more logical process to follow. They are generally undertaken in sequence, although in some circumstances the steps can be reordered to suit the research process:

1. *Transcribe and summarise each interview*
    a. *a full and accurate word-for-word written rendition of the questions and answers*
    b. *reading a transcript is easier and more fruitful then listening to a recording*

2. *Define, find and mark in the text (code)*
    a. *facilitate retrieval of what was said on each topic*
    b. *code the data by highlighting words or phrases*
    c. *use computer programmes e.g Nvivo, Atlas T16, Hyperresearch 3.0, QDA Miner 3.2, QUALRUS*

3. *Sort coded themes into single date file and summarise*
    a. *assign each concept or theme a code*
    b. *each code is discrete and not related to other codes*

4. *Sort and resort the material within each file*
    a. *extract all excerpts codes with the same label across all interviews*
    b. *sort into single computer file*
    c. *summarise the coded content within the single file*

5. *Weight and integrate the descriptions from different interviewees*
    a. *put together different parts of a narrative or descriptions of a culture or subculture by weighing a combining*
    b. *combine insights from those best informed of an event, issue or institution*

6. *Combine concepts and themes to generate own theory*
    a. *work out explanations for what has been described*
    b. *look for a set of related concepts and themes that together answer the research questions*

7. *Generalise the findings*
    a. *analyse whether principles discovered within the research may apply to other settings*

b. *if explanations apply beyond the research, discover if they apply elsewhere, at all times, or under some set of specified conditions*

(Adapted from Rubin and Rubin 2012:190-211)

To analyse and produce themes / concepts, the computer software package NVivo was used, which although did not produce all of the main findings, did assist in targeting key areas that cannot be identified manually. Although both quantitative and qualitative data are important within this study, the information derived from the interview would be heavily analysed and it was important that the correct interview style, structure and analysis process was utilised.

The next section will discuss and assess the use of questionnaires within the study and substantiate the necessity for this type of data collection method.

3.6.3 Approaches to questionnaire design

Questionnaires are a pre-formulated written list of questions that respondents provide direct answers to, usually within closely defined alternatives (Kumar, 2011; Sekaran and Bougie, 2013) and the design considers the type of questions, their wording, the reliability and validity of the responses (Hussey and Hussey, 1997). Questionnaires are similar to interviews in that they allow respondents to answer questions, however the key difference is that with questionnaires the respondent interprets and provides an answer directly whereas with interviews the interviewer can contextualise and explain the questions if necessary (Kumar, 2011). The main drivers that influence the design of a questionnaire are usually the objectives of the research (Wilson, 2003), which has resulted in the use of the objectives in this study to construct the questionnaire. Hussey and Hussey (1997) have also outlined further considerations that also shape the design of this research technique:

1. The size of the sample
2. The types of questions

3. How the questions are worded
4. Instructions to respondents, including covering letter
5. The distribution and returning of completed questionnaires
6. Validity and reliability testing
7. How the data is collated and analysed

Drawn from the literature, a checklist was developed for the researcher to follow and which informed and developed a framework for the questionnaire design.

Table 3.6 - **Design checklist for the research questionnaire**

Length of questionnaire	- Is the questionnaire an appropriate length, not too long, not too short? - Are the questions an appropriate length?
Meaningfulness of questions	- Is every question relevant to the study? - Can questions be amalgamated or omitted? - Are questions repeated? - Is more than one question required for each area of study?
Language and wording of the questionnaire	- Are the questions easy to comprehend? - Are the questions unambiguous? - Are the questions jargon free? - Is the tone of the questionnaire appropriate? - Are there leading, biased, loaded or offensive questions? - Are there positively and negatively worded questions? - Are there double-barrelled questions? - Have the questions been ethically approved? - Are the questions appropriately sequenced? - Are questions 'pitched' at the appropriate level for those completing the questionnaire?
Response space	- Is there adequate space for full responses to be provided?

Coding	- Are questions pre-coded for ease of collation and analysis? - Are questions separated into appropriate research categories?
Coverage	- Are all aspects of the research topic covered in adequate detail?
Instructions	- Are visible and understandable instructions provided for completing and returning the questionnaire?
Covering letter	- Does the letter adequately explain the purpose of the research? - Does the letter have the researcher's contact details? - Is the letter adequate in length? - Is the letter constructed appropriately for research purposes? - Is there any information missing that the participant needs/would like to know?
Questionnaire layout	- Is the font size appropriate? - Is the layout professional?
Confidentiality	- Are all 'confidential details' omitted so that the participants cannot be identified? - Are all questionnaires 'pre-coded' for research purposes only?
Philosophical assumptions and methodological approach	- Have the philosophical assumptions that shaped the research been introduced in the questionnaire? - Has the research methodology adopted been adhered to?
Legal responsibilities	- Are any of the questions likely to breach any laws or violate any right of any persons?
Ethical considerations	- Has the questionnaire been approved by the ethics panel?

Overall acceptability	- Has the questionnaire been tested and is it easy to follow and enticing to complete?

(Adapted from – Sekaran and Bougie, 2013; Sarantakos, 1998; Kumar, 2011, Babbie, 2013; Saunders *et al*., 2012)

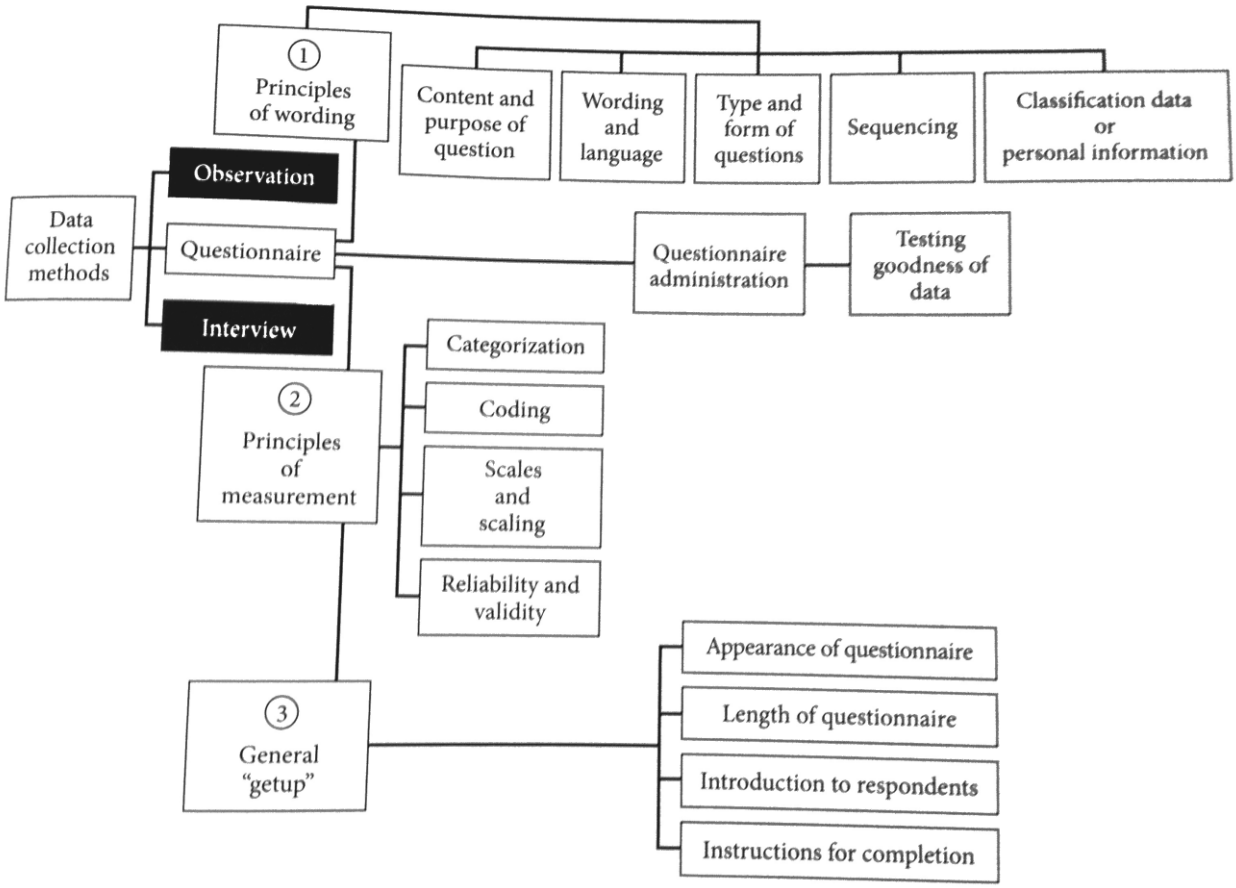
3.6.3.1 Guidelines used for the questionnaire design

The non-completion of a questionnaire can sometimes be attributed to the overall design, which can be too complex or confusing for the person completing it. Sekaran and Bougie (2013) believe that a '*sound questionnaire*' should have three design principles:

1. Appropriate wording
2. Planning variables categorisation, scaling and coding
3. General acceptable appearance

Which can be explained further below in Figure 3.6:

Fig 3.6 - **Principles of questionnaire design**



(Sekaran and Bougie, 2013:149)

Hussey and Hussey (1997:163) have also provided guidance for questionnaire design but in a more practical manner:

1. *Purpose of the questionnaire is fully explained to participants*
2. *Questions are kept as simple as possible*
3. *Avoid jargon and technical language*
4. *Questions are phrased to ensure a singulartory meaning*
5. *Do not use vague or descriptive words such as large or small*
6. *Do not ask negative questions which can be misconstrued*
7. *Only ask one question at a time*
8. *Insert questions that are only relevant to the aim and objective of the study (do not include questions for the sake of asking)*
9. *Insert questions that enable 'cross-checks' on answers to previous questions*

10. *Do not include questions where participants have to perform calculations or carry out 'memory tests'*
11. *Avoid questions of a 'leading' nature*
12. *Do not use offensive or insensitive questions which can cause embarrassment or compromise the participant's professional status*
13. *Keep the questionnaire as short and simple as possible whilst asking all the required questions*

Both Sekaran and Bougie's (2013) and Hussey and Hussey's (1997) principles ensured the questions and the wording were focused and understandable. The questionnaire was '*tested*' by the researcher and colleagues to approve its acceptability before being piloted and eventually distributed in full.

3.6.3.2 Selecting appropriate question forms

When designing each question, Bourque and Clark (1994) state that researchers do one of three things:

1. Adopt questions used in other questionnaires
2. Adapt questions used in other questionnaires
3. Develop their own questions

Within this study the researcher analysed previous case studies that utilised questionnaire research but decided to develop questions that were not adopted or adapted from these studies but created specifically for this research but influenced by the literature on justice. Babbie (2013); Saunders *et al.,* (2012); Bryman and Bell (2011) have identified two forms of questions, open-ended and closed-ended. Open-ended questions allow respondents to give answers in their own way (Fink, 2009). Closed-ended questions (or force-choice questions) according to DeVaus (2002) provide a series of alternative answers from which participants are encouraged to select. The benefits of '*close-ended*' questions are that they are quicker and easier to answer, and as the answers have been predetermined they are easy to compare. Although as Foddy (1994) highlights, these benefits are rendered useless if the responses cannot be easily interpreted. The benefits of utilising open-ended questions are that they enable participants to respond precisely

in their own vernacular (Hussey and Hussey, 1997) which results in a greater variety of information (Kumar, 2011). However, the disadvantage with free choice is that some participants, may not be able to express themselves, resulting in lost information (Kumar, 2011). Within this study, the researcher adopted the use of both of these question forms as suggested by Foddy (1993); Hussey and Hussey (1997); Sarantakos (1998). The questionnaire was divided into four sections. The first section on page one provided statistical data regarding the case, specifically the case name and number, participant's status, tribunal outcome and award details if applicable.
Sections two, three and four covered the areas of justice discussed within the literature review:

- Procedural Justice
- Distributive Justice
- Interactional Justice

During initial tests of the questionnaire, respondents were not too sure what all the areas of justice actually were, therefore a clear definition of each one was provided on the questionnaire. This enabled participants to understand what the questions were in relation to. The first question on each section was formatted around the '*fairness*' of each justice theme. It was important for the researcher to be made aware of the participants' feelings on this as the research focuses on tribunals being a barrier to justice. To classify what a barrier potentially could be, the term '*fairness*' is used to present the person's feelings in relation to the tribunal being a fair process. For example, if the participant feels that the process was not fair then this could potentially be a barrier to justice. Respondents were given a choice of a '*yes* or '*no*' response for this question, which could provide easy analysis at a later stage. The second question in all three of these sections involved the use of a closed question but utilised a Likert scale, to provide distinguishable data from question one. Respondents were asked to 'rate' the level of fairness using the following vertical Likert scale:

- Very unfair
- Unfair
- Neither fair nor unfair

- Fair
- Very fair

Section three of the questionnaire had an independent question that enquired about the fairness of the remedies (if any) made by the tribunal. The final question in each '*justice*' section was a particular '*open-ended*' question, which asked the respondents to provide further details or thoughts on how tribunals could change or improve from a procedural, distributive and interactional justice perspective. Although this question was '*open-ended*' parameters were still established in terms of limiting the response to a maximum of five suggestions and focusing the comments on change or improvement. This ensured that the information could be collated and coded in some form, rather than just collecting and analysing random comments.

3.6.3.3 Presentation, structure and layout of the questionnaire

To avoid a low response rate or inaccurately filled forms, one technique is to ensure the instrument is as short as possible. However, Dillman (1983) disagrees and states that a more attractive design is more likely to enhance response rates. In particular incorporating a '*clear presentation*' style, which is '*easy on the eye*' while asking the requisite questions. The questionnaire in this study was designed not to be clustered and has a '*repetitive*' format so that the respondents can easily assimilate with the instrument. Sections two, three and four comprised of a definition with three or four similar questions. Dillman (1983) recommended using different font sizes, bold, italics, underlined text etc which can enhance the text. These principles were adopted within the form but also carried out in a consistent manner as per Dillman's (1983) guidance. Sanchez (1992); Hague (1993) and Kumar (2011) also believe the order of questions is important and can affect the quality of information, the interest and willingness of a respondent to participate in a study. Kumar (2011) highlights two approaches to the ordering of questions, firstly through asking questions randomly and secondly, through following a logical progression based upon the objectives of the study. A number of writers such as Babbie (2013); Sarantakos (1998); Bryman and Bell (2011);

Saunders *et al.,* (2012) believe that questions should be placed in logical progression that are relevant to the respondent rather than in an order that follows the data requirement.

Both the questionnaire and interview were deemed to be appropriate data collection methods that would address the research question. A framework had been produced as to how the interviews would be carried out and how the questionnaires would be constructed. The next and most challenging element of the research was to devise and engage a survey sample that was both accessible and beneficial in terms of collecting a high yield of data.

3.6.4 Survey sample: Reliability and validity

As discussed in section 3.5.2, initially the researcher had developed a list of key personnel (ETS stakeholders) who would be interviewed to gain their views and insights on the ETS. The list of personnel involved participants from:

- Acas (Advisory, Conciliation and Arbitration Service).
- Unite.
- Unison.
- Barristers Chambers.
- Employment Tribunal Service (ETS).
- Academic Institutions.
- Confederation of British Industry (CBI).
- Greater Manchester Chamber of Commerce.
- The Work Foundation.
- Citizens Advice Bureau (CAB).
- Job Centre Plus (JCP).
- Ministry of Justice (MoJ).
- Department of Business Innovation and Skills (BIS).

This approach was discussed with various ET commentators and, as outlined earlier, applied what Trowler (2012) labelled the '*so what*' rule.

The focus of the research centred on the tribunal being accused of being a barrier to justice; to clarify this point it was felt that opinions and

perceptions from stakeholders would not provide a robust or compelling response. ET's were established to resolve workplace disputes in a speedy fashion, in an informal, responsive and accessible way. To gain the required data the researcher believed that users of the tribunal service and observers of '*real life*' cases would be a better option. Therefore the following sample was selected:

- Claimants
- Respondents
- Claimant's representatives
- Respondent's representatives
- Observers

Gaining the thoughts of claimants, respondents and their representatives produced a variety of quality and robust data, based on the first-hand experience of the case and the actual tribunal hearing. Observers provided a series of independent observations that may not have been produced by the other set of research participants.

Sampling, according to Kumar (2011) is the process whereby, a few (the sample) is selected from a bigger group (the sampling population). Bryman and Bell (2011:173) have highlighted numerous approaches to sampling:

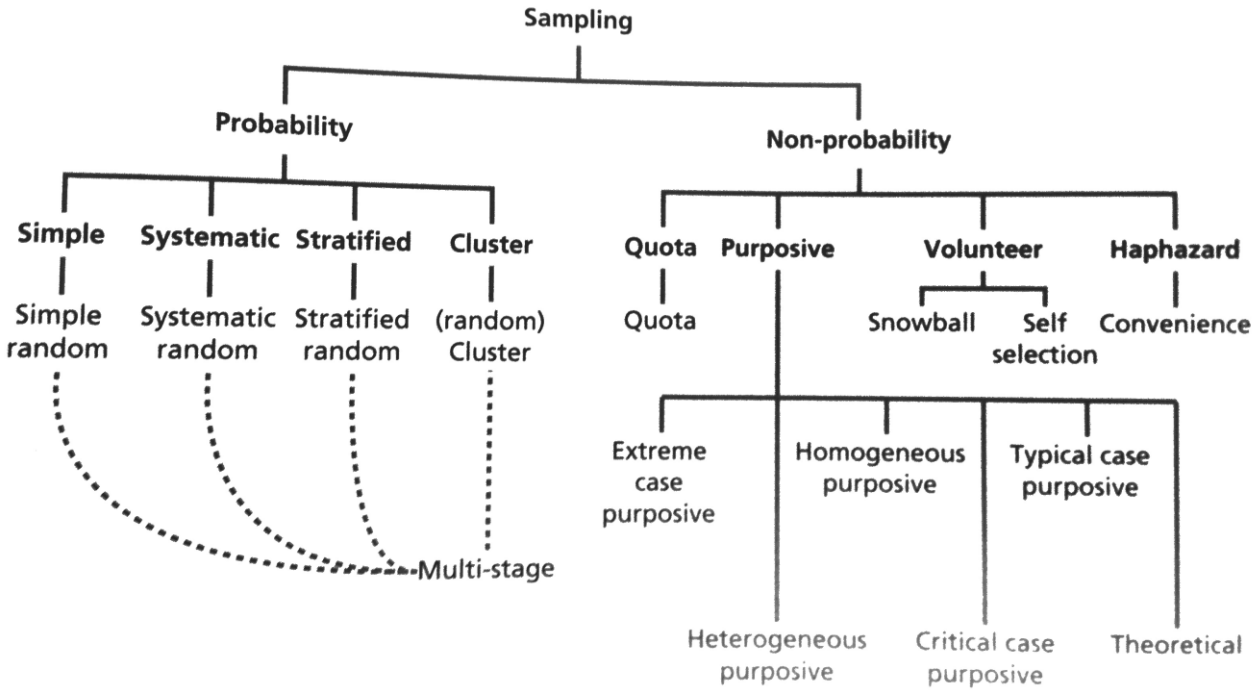
- *Simple random sample*
- *Systematic sample*
- *Stratified random sampling*
- *Multi-stage cluster sampling*
- *Purposive sampling*
- *Theoretical sampling*

Saunders *et al*., (2012:261) have described a more structured explanation of the sampling strategies. They have divided sampling into two forms:

- Probability
- Non-probability

With a series of techniques being derived from these umbrella terms:

Fig. 3.7 - **Sampling techniques**



(Saunders *et al.,* 2012:261)

Probability sampling has been defined by Kemler and Vanryzin (2011) as a data collection technique that uses chance to select people (or elements) from the sample population. Saunders *et al.,* (2012) expand the definition further by associating the strategy with making inferences from the same about a population to answer the research question(s) and achieve the overall objectives, with a framework of four stages:

1. *Identify a suitable sampling frame based on the research question(s) and objective(s)*
2. *Decide on a suitable sample size*
3. *Select the most appropriate sampling technique and select the sample*
4. *Check that the sample is representative of the population*

(Saunders *et al.,* 2012:262)

Probability sampling does utilise the use of sophisticated statistical analysis, but is generally easy to understand and has a fundamental objective of:

- *Providing useful descriptions of the total population*.

- *The sample of individuals from a population must contain essentially*. *the same variations that exist in the population*.

(Babbie, 2013:132)

According to Saunders *et al.,* (2012); Babbie (2013); Sekaran and Bougie (2013); Bryman and Bell (2011) there are several probability sampling designs available to researchers:

Table 3.7- **Impact of various factors on choice of probability sampling techniques**

Sample Technique	Sampling frame required	Size of sample required	Geographical area to which suited	Relative cost
Simple Random	Accurate and easily accessible	Better with over a few hundred	Concentrated if face to face contact required, otherwise does not matter	High if large sample size or sampling frame not computerised
Systematic Random	Accurate, easily accessible and not containing periodic patterns. Actual list not always needed	Suitable for all sizes	Concentrated if face to face contact required otherwise does not matter	Low
Statistical Random	Accurate, easily accessible,	Suitable for all sizes	Concentrated if face to face contact	Low, provided that lists of relevant strata

	divisible into relevant strata		required otherwise does not matter	available
Cluster	Accurate, easily accessible, relates to relevant clusters, not individual population members	As large as practicable	Dispersed if face to face contact required and geographically based clusters used	Low, provided that list of relevant clusters available
Multi-stage	Initial stages: geographical. Final stage: for geographical areas selected	Initial stages: as large as practicable. Final stage: suitable for all sizes	Dispersed if face to face contact required, otherwise no need to use technique	Low, as sampling frame for actual survey population required only for final stage

(Adapted from Saunders *et al.,* 2012; Babbie, 2013; Sekaran and Bougie, 2013; Bryman and Bell, 2011)

Saunders ***et al's.,*** (2012) second strategy, non-probability sampling, has been described by Babbie (2013) as a technique to be used in cases where the use of probability sampling is not permitted or appropriate, citing a survey of homelessness as an example where it would be impossible to carry out probability sampling. Sekaran and Bougie (2013) clarify the technique by highlighting the fact that the elements in the population do not possess any probabilities which influence them as being chosen as sample subjects. They are normally used when the number of elements in the population is unknown or, more commonly, unable to be individually identified (Kumar, 2011) and provide an opportunity to select samples from various techniques, including subjective judgement (Saunders *et al.,* 2012). Easterby-Smith *et al*.,

(2012:228-229) have outlined the following examples of non-probability sampling designs:

- *Convenience sampling*
- *Quota sampling*
- *Purposive sampling*
- *Snowball sampling*

Convenience sampling selects sample units based on how easily accessible they are (Easterby-Smith *et al.,* 2012) and is used predominantly during the exploratory phase of the study as a means of gaining information quickly and efficiently (Sekaran and Bougie, 2013). The main negative aspect of this form of sampling is that in most cases it is impossible to generalise the findings, as it is not known what population this sample is representative of (Bryman and Bell, 2011).

Quota sampling ensures that certain groups are adequately represented in the research through the assignment of a quota (Sekaron and Bougie, 2013) and is utilised within commercial research and political opinion polling (Bryman and Bell, 2011). An example of quota sampling is provided by Easterby-Smith *et al*., (2012) whereby a PhD study on whether the internet empowers consumers, ensured a variety of users based on age. Babbie (2013); Remler and Van Ryzin (2011); Sekaran and Bougie (2013); Bryman and Bell (2011) have developed a serious of criticisms against quota sampling:

- Quota samples cannot be truly representative as the choice of respondent is left to the researcher, who may select the population on 'superficial' characteristics, such as those who are engaged or enthusiastic about the research but who do not necessarily provide a true representation of the population
- People who are to participate in the study may not be a typical representation of the population, and could dominate the study rather than gaining a variety of participants. For example with market research, people who will stop and provide comprehensive questions may not be in full time employment, thus having an unrepresented element in the form of full-time workers. In essence the individuals who are most accessible could have characteristics that are unique to them and therefore are not a true representation of the total sampling population.

- It is impossible to calculate the standard error of the mean, due to the difficult nature of calculating the range of possible values of a population

Purposive sampling or Judgement sampling bases the consideration upon the judgement of the researcher as to which population can best provide the information to achieve the objectives of the study (Kumar, 2011). Advantageous when used in developing areas of little knowledge or constructing historical realities, although this method can prevent the generalisation of the findings, it is a truly viable technique for attracting the required set of data from specific individuals who are the only ones able to provide the facts and informed commentary. Neuman (2010) believes that these are predominately used when working with exceedingly small samples, e.g case studies, where cases are selected due to being particularly informative.

Snowball sampling is sometimes labelled '*accidental sampling*' (Babbie, 2003) and involves the process of accumulation as every identified individual or group suggests other subjects to take part in the study. The technique is normally applied when the subject is difficult to locate (Saunders *et al.,* 2012; Babbie 2013; Bryman and Bell, 2011) and the process reveals important aspects of the sampled population that "*uncovers the dynamics of natural and organic social network*s" (Noy, 2008: 329). There are a number of problems associated with snowballing, namely that the choice of the whole sample stems from the choice of the initial participants, which could result in a biased fraction influencing the whole research. Also snowballing is a difficult technique to process when the sample becomes increasingly larger.

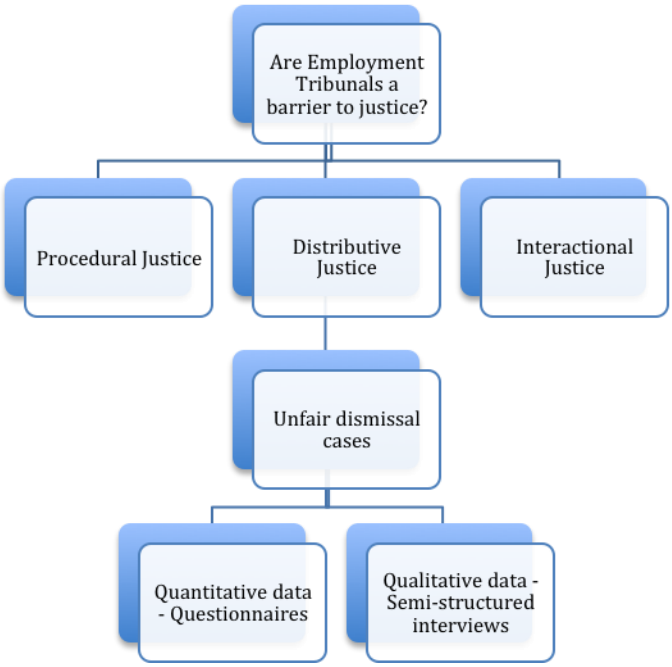
3.6.4.1 The selected sampling method

Before identifying which sampling method was selected, it is important to discuss the rationale behind the sampling process considered within this study.

As is consistent with a mixed method pragmatic researcher (Creswell, 2009), the sampling methods considered and eventually selected have fluctuated throughout the initial stages of developing the research framework. The initial proposed method involved carrying out interviews with key stakeholders within the ETS and are listed in section 3.5.2. This data would have consisted of both qualitative (interviews) and quantitative (questionnaires) with interviews being the dominant source of information. Pilot interviews were carried out with members of the judiciary, barristers, solicitors and academics.

Although the data was interesting and it helped shape the research framework, the information produced would not have answered the research questions and met the aim of the study. As a result, the research methodology was refined to use ET's as the foundations of the design framework. Participants of specific tribunal cases would complete a questionnaire that not only collected essential quantifiable data, but also provided an insight into what was going to be discussed during the interview. As also discussed in section 3.6.3.2, justice would be used as a measurement of the tribunal effectiveness and the overall research framework looked as follows:

Fig. 3.8 - **Final adopted research framework**



To select appropriate ET cases, the researcher through discussions and reading guidance literature, adopted an initial population derived from the six ET regions in Great Britain:

1. North East and West
2. Midlands
3. Wales and South West
4. Central London
5. Greater London
6. Scotland

To gain a broad representation of various outcomes that can arise from a tribunal judgment, each case would have been selected from the following:

1. North East and West - Case dismissed
2. Midlands - Compensation awarded
3. Wales and South West - Case dismissed
4. Central London - Reinstatement/re-engagement
5. Greater London - Remedy left to parties
6. Scotland - Case dismissed

The philosophy behind analysing different tribunal outcomes as well as areas is that a broader sample would be used. Two other '*sampling criteria*' that were taken into consideration were:

1. Both the claimant and respondent had to have legal representation
2. Tribunal claims had to have been submitted in the last two years

Having legal representation would impact on the answers provided, in terms of the experience that the participants had, therefore it was important to develop a sample population that could provide comments without an area of difference that could have influenced their answers. As discussed previously, it is essential that when participants in research are asked to discuss historic events, the surveys are carried out relatively close to the event to ensure total recall and avoid any misconceptions developed over time.

To gain access to case details, a subscription was taken through a company named Court Serve which provided ET information such as jurisdictions, tribunal hearing centre location and the dates when the case was

heard. Visits were also made to the administration head office of the ETS at Bury St Edmunds. Through the information gained via Court Serve and Bury St Edmunds, lists of potential cases were identified and noted. A laborious process of obtaining names and addresses based on the case details was undertaken which enabled the researcher to directly contact the parties involved in the research. The following details outline the number of participants contacted with those who took part in the study:

Table 3.8 - **Participants involved in the study**

Number of parties contacted	**Number took part in the study**
110	39

A number of those contacted thoughtfully replied but declined to take part in the study. In order to complement the qualitative interviews, questionnaires were distributed and completed by those taking part in the semi-structured interviews. However, as the initial number of questionnaires totalled sixteen, this was felt to be too low a number to provide valid data within a mixed method research strategy (Teddlie and Tashakori, 2009). The engagement of participants was particularly difficult, and through the process of generating participation in the semi-structured interviews, sending unsolicited letters asking individuals to complete the questionnaire would be an even more difficult challenge and very unreliable. Therefore, individuals who had observed tribunal cases were asked to complete the questionnaire once the case had concluded. This method generated a vast wealth of interesting data that would not have been collected through the sample from the qualitative approach.

The range of sampling techniques has utilised initially a purposive sampling process whereby a specific set of tribunal cases were identified so a consistent sample had been selected. As the research process continued, and with the difficulty in engaging participants, the characteristics of a '*convenience sample*' were deployed to ensure a number of cases were

generated. Although a '*convenience sample*' framework was utilised, other methods had resulted in the researcher widening the participant criteria, as the initial criteria were proved through pilot studies irrelevant to the study and were deemed to have little impact upon the validity of the case.

3.6.4.2 Sample size and characteristics

One of the biggest challenges within research is the determination of appropriate sample size, as according to Hawkins and Till (1994) what occurs in the field is somewhat different to the statistical approach within sampling theory. Easterly-Smith *et al.,* (2012) believe that precision is the key to how credible a sample population is. Nguyen's (2005) unorthodox but clear and practical example of cooking chicken soup verifies Easterly-Smith *et al's.,* position.

When determining the sample size Jennings (2001), believes that the number of pragmatic factors should be considered:

1. The overall population size.
2. The nature of the population (homogeneous or heterogenous).
3. The accessibility of the population (easy or difficult to access).

Sekaran and Bougie (2013) offer further guidance by stating that the following factors can affect the decision on the sample size:

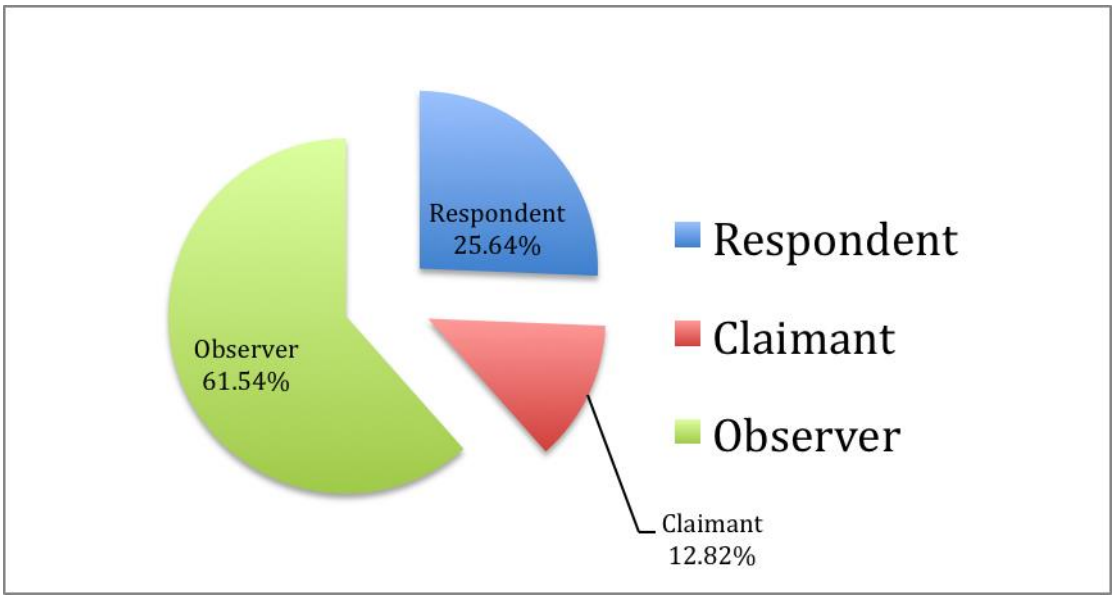
1. The research objective
2. The extent of precision desired (the confidence interval)
3. The acceptance risk in predicting that level of precision (confidence level)
4. The amount of variability in the population itself
5. The cost and time constraints
6. In some cases, the size of the population itself

Within this study it was determined that a larger number of questionnaires (quantitative data) was required than compared to the number of semi-structured interviews (qualitative data) which correlates with Sarantakos (1998) and Jennings (2001) who believe that qualitative methods

rely on smaller sample sizes as the key prerogative is to collect in depth information compared to information from a larger population which is less in depth. They also argue that importance is placed upon the quality of the data rather than quantity.

As mentioned previously in section 3.6.4, when a sample population has been selected, characteristics of the population may influence the study in some way. The characteristics in this study can be attributed to the sampling process, as there is a weighting towards the respondents bias due to respondents being easier to engage and co-operate in the study. The make-up of the participants are detailed below in Figure 3.9:

Fig 3.9 - **Sample population characteristics**



3.6.4.3 Sample reliability and validity

A research technique will be deemed reliable if it is consistent, stable, predictable and accurate (Kumar, 2011). The higher ratio of consistency and stability will result in a greater reliability and according to Moser and Kalton (1989: 353):

"…*a scale or test is reliable to the extent that repeat measurements made by it under constant conditions will give the same result*."

Both reliability and validity need to be developed by the researcher (Saunders *et al.,* 2011) and should be considered in respect of the data collection and results produced. Babbie (2013) explains this using a weight measuring metaphor and summarises that reliability does not always ensure accuracy and that the results are only as good as the process by which they are obtained (Saunders *et al.,* 2011). Babbie (2013:188) explains that reliability is "*a matter or whether a particular technique, applied repeatedly to the some object, yields the same result each time*". To put this into a practical test for researchers, Easterby-Smith *et al.,* (2012:71) have formulated the following questions:

1. *Will the measure yield the same results on different occasions?*
2. *Will similar observations be made by different researchers on different occasions?*
3. *Is there transparency in how sense was made from the raw data?*

Lincoln and Guba (1985) have also developed criteria, which consider the validity and reliability of the research:

- Credibility: how truthful the findings are
- Transferability: the extent to which findings are applicable to another setting or group
- Dependability: how consistent are the findings
- Confirmability: how neutral are the findings

Aspects of both of these guides were utilised within this study. For example a series of measures were undertaken to enhance the credibility of the interviews; firstly, the interviewees were given a '*research information pack*', which provided full details about the research, its aim and objectives, why the research was being carried out and what will happen to the research findings. This ensured that time during the interview was not taken up explaining the background to the research and being based on the aspects of the study that should have been done prior to the interview, secondly, interviewees were selected on their direct involvement in the case, whether they were the claimant, respondent or legal representative. This ensured that

the answers provided were based on factual and tangible experiences with the ETS, rather than opinions or perceptions; and, finally, during the interview although the researcher took notes, the discussion was recorded and transcribed so that a verbatim commentary was produced. Any quotes could then be easily corroborated back to the interview recordings if there was any dispute.

Saunders *et al.,* (2012) focus reliability upon whether another researcher would expose comparable data, as there is a choice for the researcher to potentially bias the interview with how the interviewee responds and reacts. Interviewees could be influenced by the nature of the interviewer or perceptions about the interviewer. Saunders *et al.,* (2012) provide guidance by advising the researcher to establish credibility and trustworthiness through clarifying the purpose of the interview and the exact data requirements using sophisticated interviews techniques where questions are phrased appropriately and probing in nature. This approach was adopted by the researcher so that a great deal of preparation was committed to establishing the necessary elements to a successful interview. When testing the reliability of the questionnaires Mitchell (1996) outlines three common approaches:

- Test re-test
- Internal consistency
- Alternative form

Within this study, an '*internal consistency*' approach was adopted. Saunders *et al.,* (2012) describe this method as a technique for correlating responses within the questionnaires with each other, which in essence measures the consistency of responses across all the questions or a specific sub group within the questionnaire. Also within this study, the three '*justice*' sections were classified as sub groups. Within each sub group, the answer to the yes or no question was correlated with the answer within the proceeding Likert scale. If a respondent answers, for example 'no' to the tribunal process being fair, then ticks '*very fair*' on the Likert scale, there is an obvious error

within the questionnaire. All questionnaires were checked using this method and no errors were found.

3.7 Chapter Conclusion

A research framework had been adopted from the outset of the study; however, as discussed changes to the design were necessary to enable robust data to be collected. It became apparent that the initial research design would not enable the research questions to be answered therefore alternative methods were utilised to overcome the various barriers. A mixed method approach was adopted with 39 questionnaires being collected and 15 interviews being carried out. Both sets of data were analysed and interpreted separately using SPSS for the questionnaire data and manually / NVivo for the semi-structured interviews. A pragmatic philosophical stance has influenced the use of a mixed method approach to ensure the ontological perspective of single and multiple realities regarding the ETS were addressed.

The next chapter will systematically outline the results from the questionnaire and then logically outline the responses given to the themes of the semi-structured interviews.

Chapter 4

Research Findings

Chapter Four – Research Findings Contents

4.1 The Employment Tribunal case studies

This chapter outlines the background to each case, the judgment and remedy details if appropriate. The cases have been labelled from 1- 11 and used the following coding:
c = claimant
r = respondent

Case 1 - 1c v 1r

Claim

In this case the claimant resigned from his employment with the respondent and his employment ended on 31st August 2008. He complained that he was constructively and unfairly dismissed. He further complained that he was subjected to detriments for making protected disclosures pursuant to Section 47B of the *Employment Rights Act* (1996). The claimant's case was originally heard by an ET in October 2009 which judged that the claimant was unfairly dismissed and that they had suffered a detriment within the meaning of Section 47B *Employment Rights Act* (1996).

An appeal was submitted to the Employment Appeal Tribunal who allowed the appeal and remitted the case back to a different employment tribunal for a re-hearing.

The second ET adjudicated that the claimant was unfairly dismissed but the respondent did not subject the claimant to any detriments pursuant to Section 47B of the *Employment Rights Act* (1996).

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant was unfairly dismissed
2. The respondent did not subject the claimant to any detriments pursuant to Section 47B of the *Employment Rights Act* (1996)

Regarding the unfair dismissal claim the tribunal found that:

> "*The first issue for us to determine is whether the respondent committed a fundamental and repudiatory breach of the contract of employment. In relation to the meeting which took place on … we are satisfied that the respondent, by the actions of … was guilty of conduct which was a significant breach going to the root of the claimant's contract of employment.*
> *We are satisfied in this case that having found that the respondent committed a repudiatory breach of contract by reason of the conduct of respondent senior employees, the inexorable outcome must be that the claimant was unfairly dismissed.*"
>
> Employment Tribunal Judgment Case 1:13&16

Regarding the claim for suffering a detriment pursuant to Section 47B of the *Employment Rights Act* (1996), the tribunal found:

> "*In relation to the protected disclosures complaint we are satisfied that there are two key issues for us to determine. The first issue is whether the claimant suffered a detriment or detriments. …The second issue is whether the claimant was subjected to any detriment by any act, or by any deliberate failure to act, by his employer done on the ground that he made a protected disclosure. Having regard to our findings set out in the previous paragraph we are satisfied that the respondent did not subject the claimant to any detriments in breach of Section 47B of the Employment Rights Act (1996)*."
>
> Employment Tribunal Judgment Case 1:16&19

<u>Award Details</u>

Judgment 1

	Amount
Basic Award	£1,485.00
Compensatory Award	£41,036.77
Injury to Feelings	£10,000
Total	**£52,521.77**

Judgment one included an 'uplift' of 40% due to the tribunal finding that the statutory procedure was not completed and the non-completion was wholly attributable to the failure by the respondent to comply with a requirement of the procedure.

Judgment 2

	Amount
Basic Award	£1485.00
Compensatory Award	£28,072.23
Total	**£29,557.23**

Judgment two did not include an 'uplift' as the tribunal disagreed with the original finding that the claimant had not been given a proper opportunity to present his grievance. The tribunal found that although the manner in which the respondent dealt with the claimant's grievance fell short of perfection they were satisfied that the respondent fully and properly complied with all the requirements of the statutory grievance procedure.

Case 2 - 2c v 2r

Claim

The claimant left his job citing a lack of training and not being paid the minimum wage. He then claimed constructive dismissal, stating he was forced to leave his job and that he should have received holiday pay as well as the national minimum wage for when he did work. As he had not met the 2 years qualifying period for Unfair Dismissal claims, this aspect of the claim was rejected.

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant's claim for arrears of wages is not well-founded and fails
2. The claimant's claim for notice pay is not well-founded and fails
3. The claimant's claim for payment in lieu of accrued but untaken holidays succeeds

Award Details

	Amount
Unpaid holiday pay	£112
Total	**£112**

Case 3 - 3c v 3r

Claim

The claimant was made redundant in December 2011. The claimant asserted that he was unfairly dismissed, as the redundancy process was not carried out properly. The claimant alleged that a fair selection process was not carried out, the consultation process was not followed and his grievance was not heard.

Judgment

1. Case settled before the tribunal hearing

Award Details

Claim was settled for £4,250

Case 4 - 4c v 4r

Claim

The claimant was dismissed in April 2011 for swearing at his manager after an incident that took place within the workplace. A full investigation and disciplinary process took place, which resulted in a termination of the claimant's employment. The claimant claimed in respect of:

- Unfair dismissal
- Redundancy payment
- Notice pay
- Holiday pay
- Arrears of pay

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant was unfairly dismissed.
2. The claimant's claim alleging breach of contract in respect of the termination of his employment without notice succeeds.
3. The responded made an unauthorised deduction form the claimant's wages in failing to pay him holiday pay.

4. The claimant withdrew his claim for redundancy pay and additional holiday pay.

Regarding the unfair dismissal claim, the tribunal found:

> "*... for reasons explained above… acted unreasonably in concluding that the claimant had been guilty of misconduct…" Because of these failings the tribunal concludes that, in all the circumstances… acted unreasonably in dismissing the claimant.*"
>
> (Employment Tribunal Judgment Case 4:31)

Regarding the breach of contract claim, the tribunal found:

> "*Looking at all the circumstances objectively from the perspective of the reasonable person in the position of the respondent, we are not convinced, on the balance of probabilities, that the claimants behaviour … 'clearly showed an intention to abandon and altogether refuse to perform the contract.' We conclude that the claimant did not commit a repudiatory breach of his contract of employment and the respondent's actions in dismissing the claimant without notice were a breach of his contract of employment."*
>
> (Employment Tribunal Judgment Case 4:38-39)

> " *The respondent conceded that it owed the claimant holiday pay… On the basis of that admission we conclude that the respondent made an unauthorised deduction from the claimant's wages… contrary to Section 13 of the Employment Rights Act.*"
>
> (Employment Tribunal Judgment Case 4:39)

Award Details

	Amount
Breach of contract	£1,833.85
Unfair dismissal	£13,131.05
Unpaid holiday pay	£308.96
Total	**£15,273.86**

Case 5 - 5c v 5r

Claim

The claimant was made redundant in October 2010 due to a headcount reduction in the company. The claimant contested this and felt that they were unfairly dismissed and that the redundancy process was not carried out properly, in particular the consultation and selection process.

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant was not unfairly dismissed and the claim fails.

Case 6 - 6c v 6r

Claim

The claimant was dismissed by the respondent for using his work mobile to telephone Australia. After an investigation he was dismissed, which he appealed but was upheld.

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant was unfairly dismissed
2. The claimant contributed to his dismissal by 75%
3. The respondent breached the terms of the contract of employment by failing to give proper notice of termination to the claimant
4. The respondent breached the terms of the claimant's contract of employment by failing to pay him holiday pay accrued but untaken on termination

Award Details

The unanimous judgment of the tribunal was that the respondent was ordered to pay to the claimant:

	Amount
Total basic award (£1,020 less 75%)	£255
Prescribed Compensatory award (immediate loss - £13,350 less 75%)	£3,337.50
Non prescribed award (future loss - £6,942 less 75%)	£1,810.50
Total	**£5,403**

Case 7 - 7c v 7r

Claim

In this case the claimant was dismissed in March 2011 for his behaviour whilst in the workplace. He complained that he was unfairly dismissed and that he

also suffered racial discrimination by the application to him of the two disciplinary procedures.

Judgment

The unanimous judgment of the tribunal was that:

1. The respondent's dismissal of the claimant was fair. Accordingly, the claimant's complaint of unfair dismissal is dismissed.
2. The claimant's complaints of discrimination and harassment on the grounds of race fail and stand dismissed.

Regarding the unfair dismissal claim the tribunal found:

> "*The tribunal's judgment is that the respondent acted well within the range of reasonable responses in deciding to dismiss the claimant arising out of his conduct … We are satisfied that the claimant behaved as alleged.*"
>
> (Employment Tribunal Case 7 Judgment:25&27)

Regarding the complaint of discrimination and harassment on the grounds of race, the tribunal found:

> "*… there was simply no material from which the tribunal could safely reach a conclusion that, absent an explanation from the respondent, the claimant was treated less favourably by being subject to disciplinary proceedings than would a comparator of a different race… The claimant's complaint that he was subject to direct race discrimination by the application to him of the two disciplinary procedures in question therefore stands dismissed.*"
>
> (Employment Tribunal Case 7 Judgment:25&27)

Case 8 - 8c v 8r

Claim

The claimant was dismissed for not declaring a gift left in the will of a tenant who resided in one of the respondent's houses. The claimant alleged that he was not aware of the company policy to declare gifts and therefore should not have been dismissed. The claim presented at the tribunal consisted of unfair dismissal, wrongful dismissal, disability discrimination and unpaid holiday pay.

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant has been unfairly dismissed by the respondent
2. The claimant contributed towards his dismissal and for that reason the amount of compensation to which the claimant would otherwise be entitled will be reduced by a factor of 25%.
3. The claimant has also been wrongfully dismissed by the respondent
4. The claimant's complaints that he had been subjected to disability discrimination and that he was owed outstanding holiday pay were dismissed on withdrawal by the claimant.

Regarding the unfair dismissal claim the tribunal found:

> "*...the crucial issue for determination is whether the decision to dismiss the claimant (with or without notice) for that reason was outside the range of responses of a reasonable employer confronted with that situation… I am, of course, very mindful of the risk of improperly substituting my own personal view rather than adopting the approach which a reasonable employer would adopt in these circumstances. I also recognise that the 'bar' is set relatively low in determining this threshold. Nevertheless having given the matter considerable thought I have come to the conclusion that no reasonable employer would have dismissed the claimant on this occasion having regard to the claimants length of service, his exemplary disciplinary record throughout this employment and the extremely impressive character references letters from various residents demonstrating that, so far as they were concerned, the claimant was an extremely well respected and trusted employee*. "
>
> (Employment Tribunal Case 8 Judgment:7)

Regarding the reduction of the award by 25% the tribunal found:

> "*The claimant's failure to adopt an entirely transparent attitude in relation to the bequest from the resident and his delay in notifying the respondent of this inevitably contributed towards the claimants dismissal. For that reason, it is just and equitable that the claimant's compensation be reduced a factor of 25%to reflect his own contributory fault*."
>
> (Employment Tribunal Case 8 Judgment:7)

Regarding wrongful dismissal the tribunal found:

> "*Having regard to these conclusions, I am quite satisfied that the claimant's conduct could not possibly be categorised as 'gross misconduct' justifying summary dismissal and for that reason the claimant's complaint that he has been wrongfully dismissed is also upheld*."
>
> (Employment Tribunal Case 8 Judgment:7)

Regarding the claim for disability discrimination and unpaid holiday pay, the tribunal stated that:

> "*The claimant's complaints that he has been subjected to disability discrimination and that he is owed outstanding holiday pay are both dismissed on withdrawal by the claimant.*"
>
> (Employment Tribunal Case 8 Judgment:1)

Case 9 - 9c v 9r

Claim

The claimant suffered an injury at work and was absent from work due to illness from October 2011. The respondent had established a secondary business in November 2011, which carried out similar work but according to the respondent was a completely different company.

The claimant's contract was terminated in January 2012. The claimant alleged that he should have been TUPE transferred to the new business or be made redundant. The respondent argued that the company, which the claimant worked for had been dissolved and the new company was a separate entity and could not be liable for the claimant's complaints.

Judgment

The unanimous judgment of the tribunal was that:

1. The tribunal was unable to consider the claimant's complaint against the respondent because the respondent was dissolved on 5th June 2012 and no longer exists as a legal entity.

Award Details

1. Had the first respondent not been dissolved it would have been liable to pay the claimant a statutory redundancy payment of £1059.18, a compensatory award for unfair dismissal of £300, damages for breach of contract of £661.84 and holiday pay of £45.
2. All claims against the second respondent fail and are dismissed because the above liabilities did not transfer to the second respondent under regulation 4 of the TUPE regulations 2006.

Case 10 - 10c v 10r

Claim

The case involved three claimants, who alleged that they were unfairly dismissed, subjected to indirect discrimination and not paid outstanding holiday and redundancy pay.

Judgment

The unanimous judgment of the tribunal was that:

1. The claimants were fairly dismissed by the respondent. Their claims for unfair dismissal fail and are dismissed.
2. The claimants' claims of indirect discrimination fail and are dismissed.
3. The claimants' claims for holiday pay and / or a redundancy payment are withdrawn.

Award Details

Case dismissed

Case 11 - 11c v 11r

Claim

The claimant alleges she was bullied at work and eventually dismissed by her manager. She received a text saying that her contract was terminated, did not receive a dismissal letter or allowed to appeal against the decision. She also alleged that she was not paid the national minimum wage or any holiday pay. In total the claimant brought ten claims before the tribunal:

1. A failure to provide terms and conditions of employment.
2. Unlawful deductions from pay.
3. A failure to pay commission.
4. Payment for additional hours.
5. Being paid less than the National Minimum Wage.
6. Failing to allow access to National Minimum Wage records.
7. Failing to pay proper mileage allowance.
8. Failing to pay parking fees.
9. A breach of contract claim in respect of a week's notice.
10. Holiday pay on the basis that she did not take any holidays during her employment.

Judgment

The unanimous judgment of the tribunal was that:

1. The claimant was wrongfully dismissed in relation to breach of contract.
2. The respondent made unlawful deduction of wages claims
3. The respondent did not follow the Acas code of practice on disciplinary and dismissal procedures.

Award Details

The claimant's claims in respect of breach of contract were well founded and the following awards were made:

	Amount
One week's notice pay	£310.08
Unpaid expenses	£60.75
Unpaid holiday pay	£206.72
Unlawful deduction of wages (National Minimum Wage)	£972.24
15% award lift for failure to follow Acas code of practice	£232.47
Total	**£1,782.26**

4.1.1 – Conclusion

Although the cases had the underlining connecting thread of incorporating unfair dismissal, they all had interesting and diverse features, which generated a series of data that could be examined within the context of this research. As mentioned in the methodology chapter, to gain access to the cases as well as the participants was extremely difficult, delaying the research by some considerable time. On a number of occasions agreements were made with solicitors, the Ministry of Justice (MoJ) and Acas to contact claimants or respondents. However some of the respondents and claimants understandably withdrew from the study, citing personal reasons. The MoJ have an extremely convoluted process when authorising research within their remit. After a lengthy process of contacting various MoJ personnel, the department declined to support the research. Acas also initially offered to assist with gaining access to claimants but eventually declined citing resource issues.

The cases that have been included in this study have produced a fascinating insight into the workings of the ETS and what the thoughts of

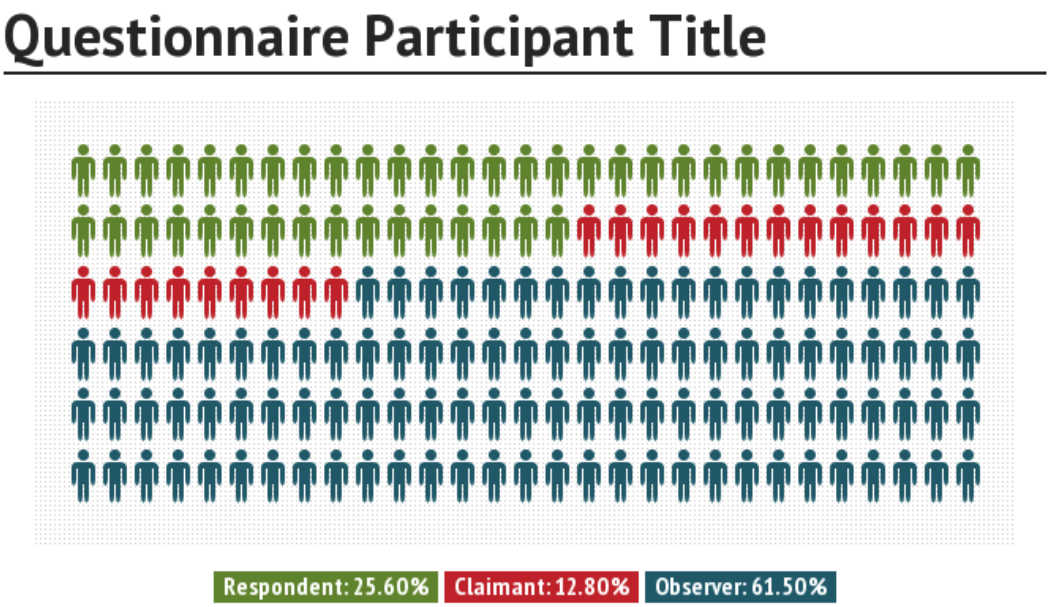
claimants, respondents and observers are. The following section will initially outline responses from all of the questionnaires and then use IBM SPSS to cross-tabulate the data to highlight specific trends or themes.

4.2 - The Employment Tribunal System: Questionnaire results

4.2.1 Questionnaire participant title

In total 39 questionnaires were completed, which were based upon 11 ET cases. The majority of questionnaires were completed by HR professionals, who observed a specific ET case, providing a different perspective on the ETS, highlighting concerns within the process as well as how ET Judges conducted the case.

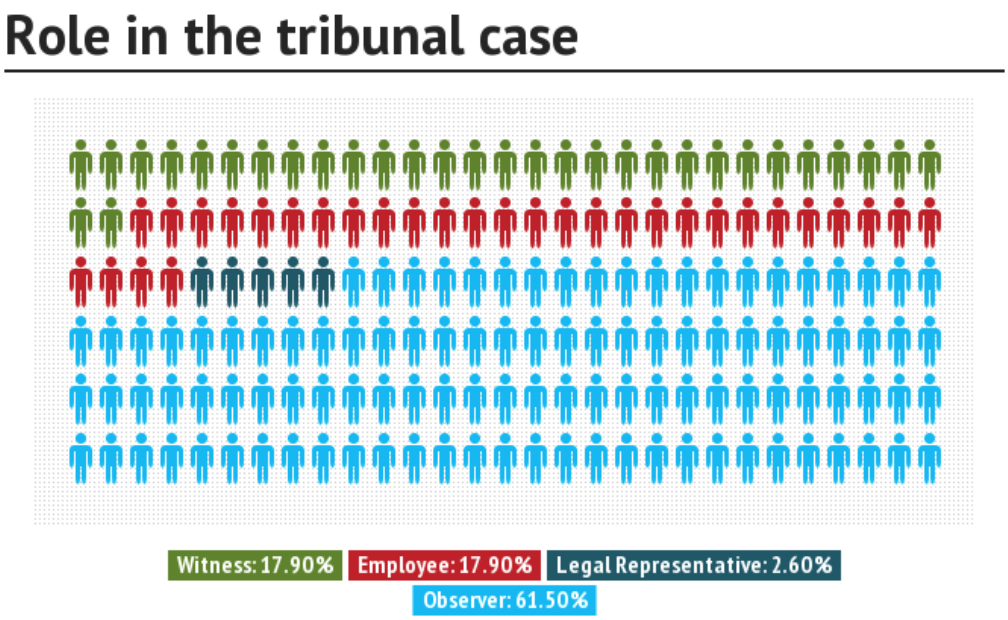
Fig 4.1 - **Questionnaire participant title**



4.2.2 Role in the ET case

To highlight the variety of perspectives provided in the questionnaire, Fig. 4.2 outlines further the participant's role in the tribunal. Observers maintain the same role, however respondents were witnesses in the case, and the claimants' legal representatives also participated in the study.

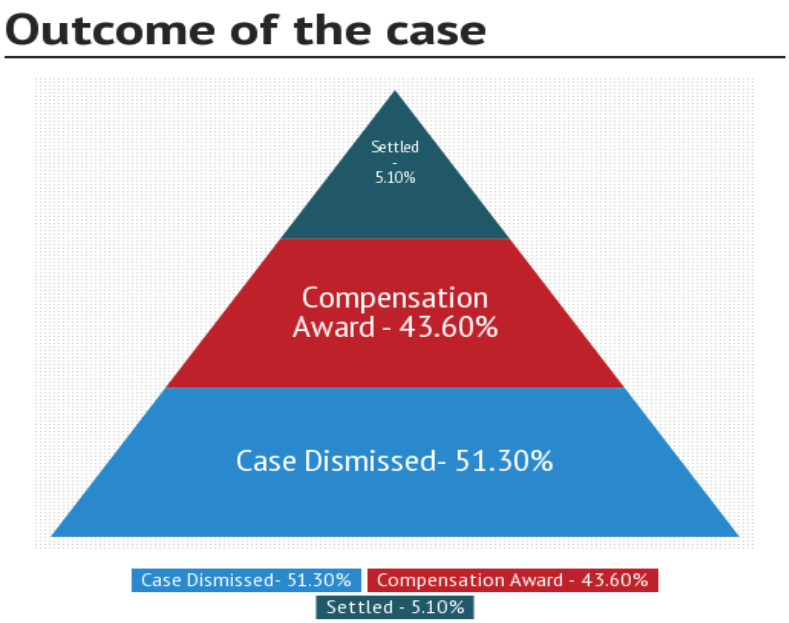
Fig 4.2 - **Role in the tribunal case**



4.2.3 Employment tribunal judgment

When analysing the responses regarding justice, it is also important to assess what the outcome of the case was, in terms of judgment. The outcome of cases was reasonably balanced between the claimant and respondent winning the case, with only one case being settled. The respondent in this case felt that they had a reasonable chance of success, however the agreed settlement was considerably lower than the legal expenses incurred and expected if the case had proceeded to a full hearing. This case also included an issue involving covert recording of a meeting by the claimant, which the respondent thought may affect the case or be interpreted wrongly by an ET panel. Although the respondent sought legal advice as to whether the covert recording could be submitted as evidence, they did not receive full assurance that this would be blocked by the ET Judge and therefore contributed to the decision of settling the case.

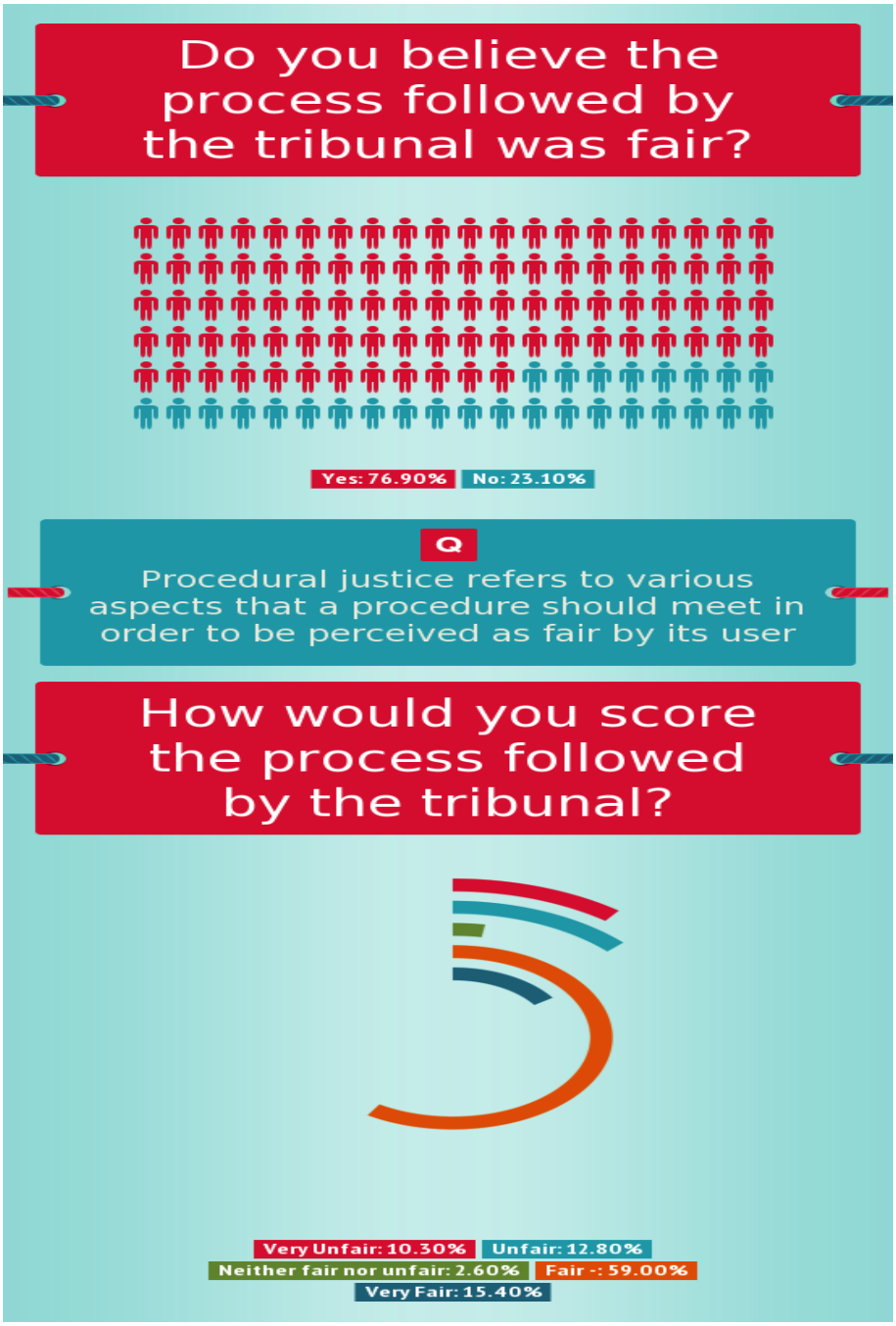
Fig 4.3 - **Outcome of the case**



4.2.4 Procedural justice

This section of the questionnaire focuses upon procedural justice, which required the participants to answer questions in relation to the fairness of the ET procedure. Overall the majority of responses stated that they did feel the process followed was fair or very fair. A definition was provided regarding procedural justice, however the participants interpreted what aspects of the process would be analysed to determine their answers.

Fig 4.4- **Procedural justice overall**

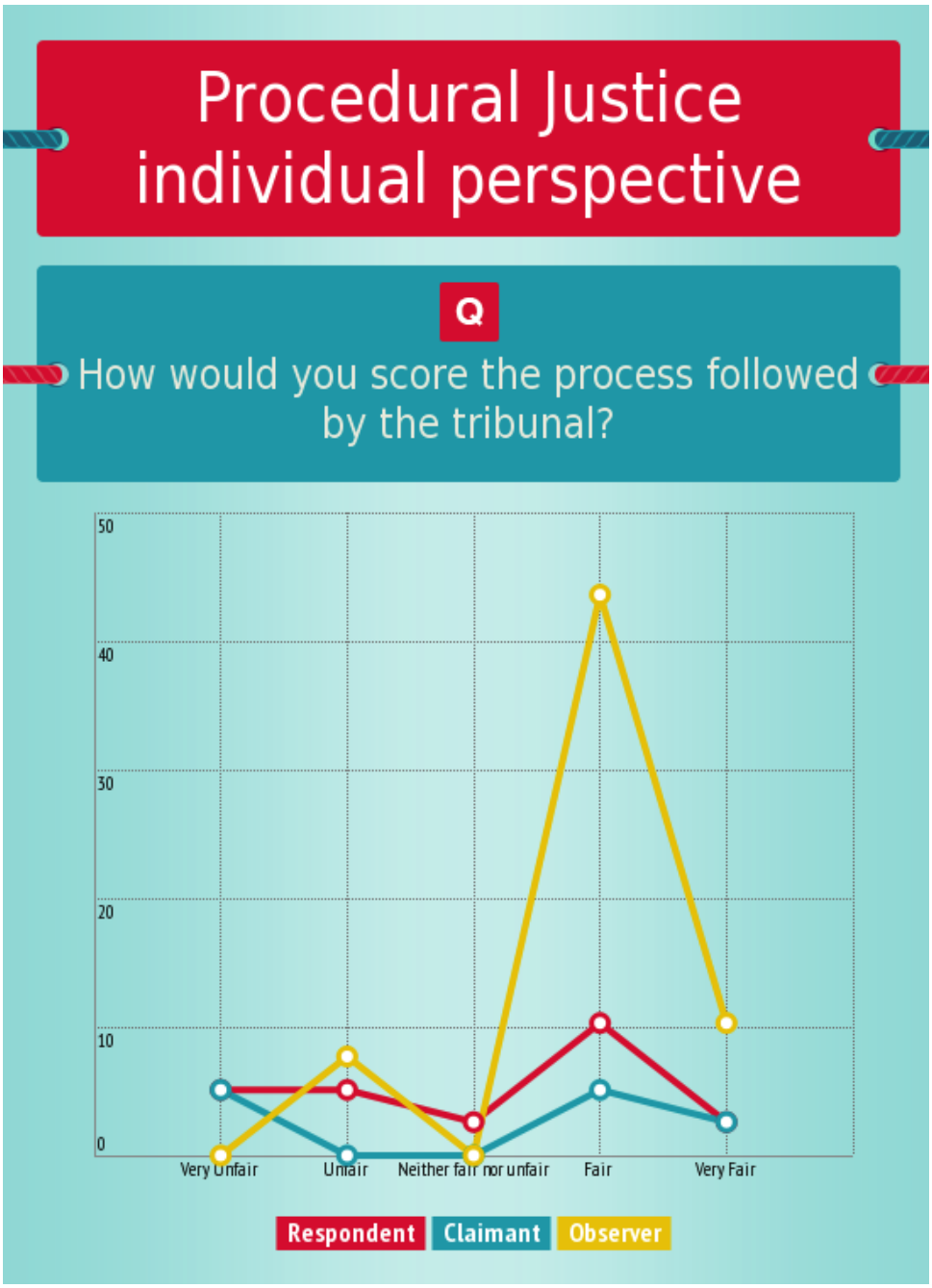


Analysing this further, most of the observers and respondents felt that it was a fair process however the claimants were not as convinced.

Fig. 4.5 - **Do you believe the process followed by the tribunal was fair – individual perspective?**

To determine exactly how the questionnaire participants felt about the process, they were asked to complete a likert scale ranging from very fair to very unfair. It is interesting that although the majority felt the process was fair in Fig. 4.6, when clarified the majority only stated that the process was fair rather than very fair.

Fig. 4.6- **How would you score the process followed by the tribunal – individual perspective?**



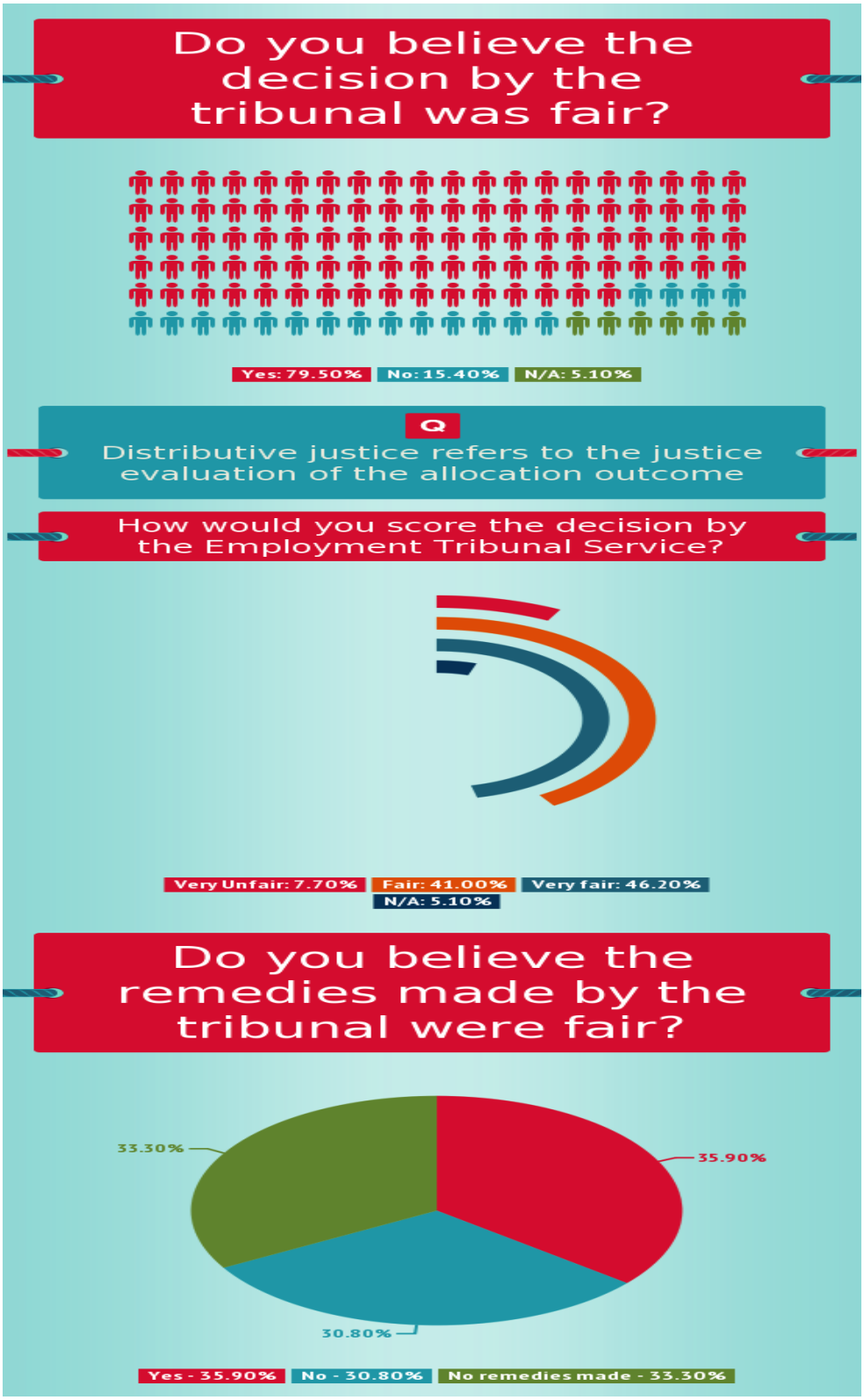
This would indicate there are some issues or concerns within the process, therefore the final question in this section was designed to identify these. The responses identified potential changes within the ETS, including a better system for recovering legal costs, the length of time that it takes to hear a

case could be speeded up, fees for submitting a claim should be introduced, Judges being more stringent with compliance of orders, lay members being present on the panel, making Judgments on the day or in a speedier manner, protecting witnesses more and introducing a more formal process of mediation before the hearing.

4.2.5 Distributive justice

This section of the questionnaire required the participant to reflect on the outcome of the case with a definition being provided regarding distributive justice, which focused the participant's answers solely around the allocation outcome. As with the comments regarding procedural justice, the majority of respondents stated that they felt the decision by the tribunal was either fair or very fair.

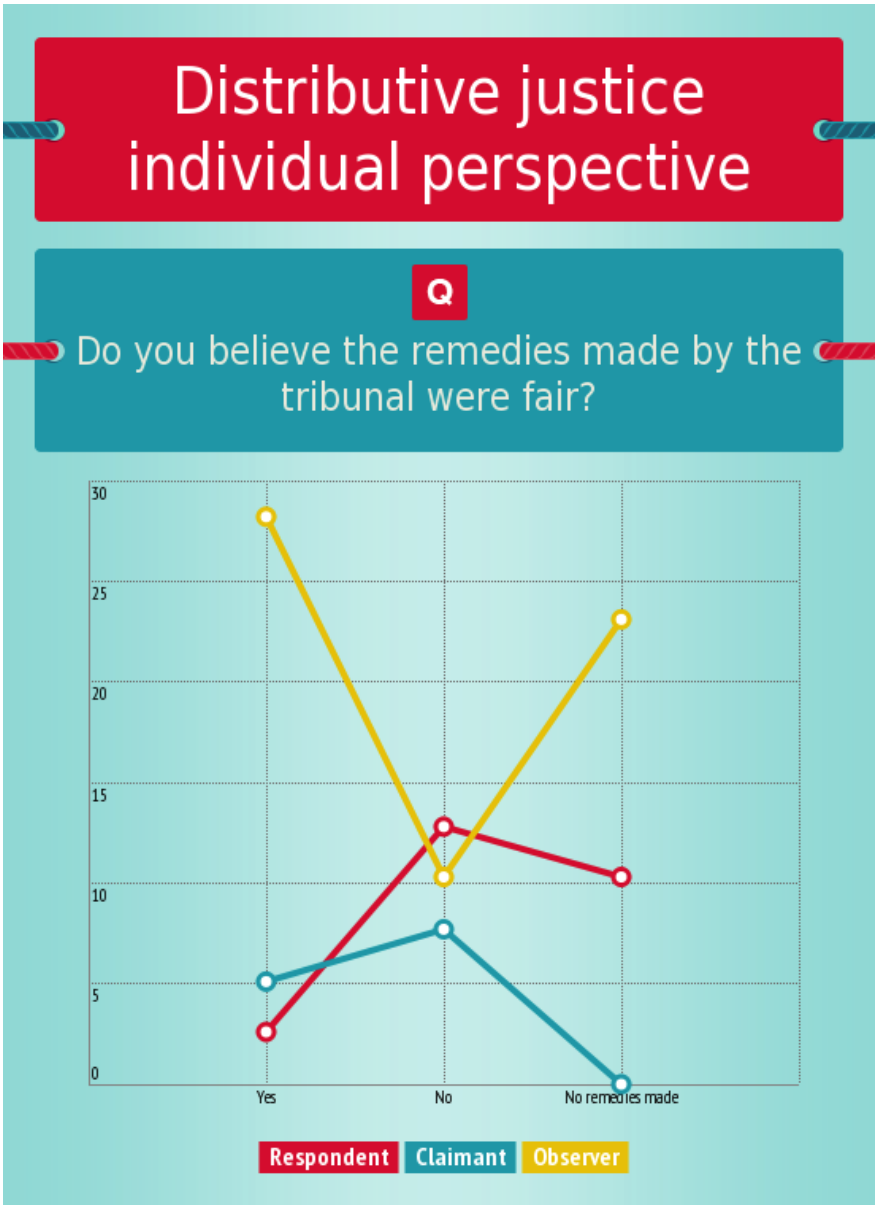
Fig 4.7 - **Distributive justice overall**



If remedies were made by the ET panel, responses were sought as to the fairness of these, which was split evenly between yes or no. Analysing the

data further however reveals that the majority of claimants and respondents believed they were not fair, with the majority of observers distorting the figures by stating they believed the remedies were fair.

Fig. 4.8- **Do you believe the remedies made by the tribunal were fair – individual perspective?**



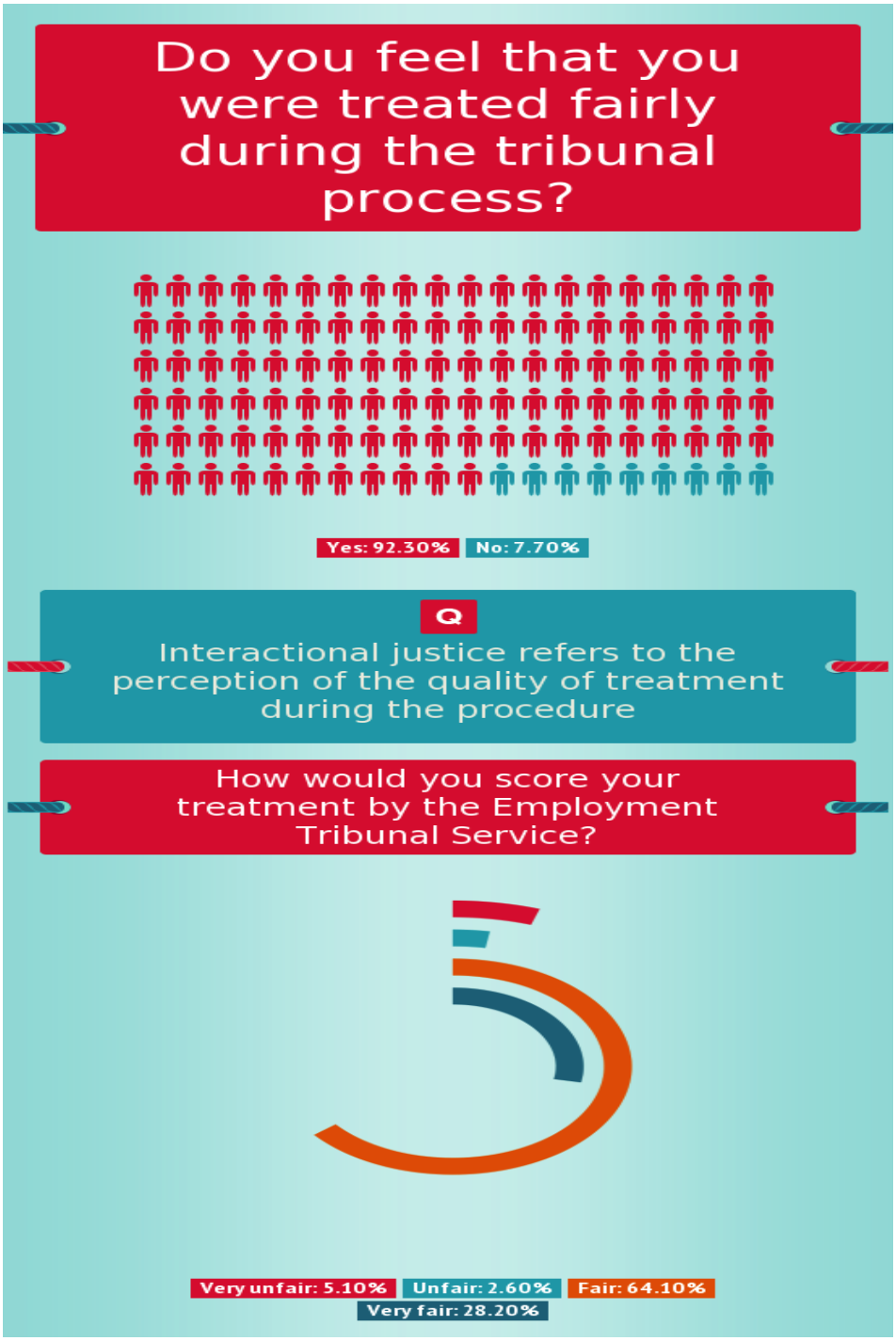
To gain qualitative data regarding distributive justice, the questionnaire requested suggestions for other remedies that are not currently in the tribunals remit. Two interesting suggestions centred around compensation,

firstly the ability to award compensation for damages to the claimants health and secondly to align compensation more with the claimants age. At present injury to feelings cannot be awarded in most unfair dismissal cases, which some felt was not fair as they or the claimant had suffered psychologically through what had happened in the workplace or during the ET process. The second suggestion seeks to expand upon the ETS' capability to take into consideration the claimant's ability to find other work at the same level with similar pay and benefits. Although the tribunal can make awards which take into consideration the person's ability to find other similar work, responses suggested that compensatory awards should automatically increase based on a person's age.

4.2.6 Interactional justice

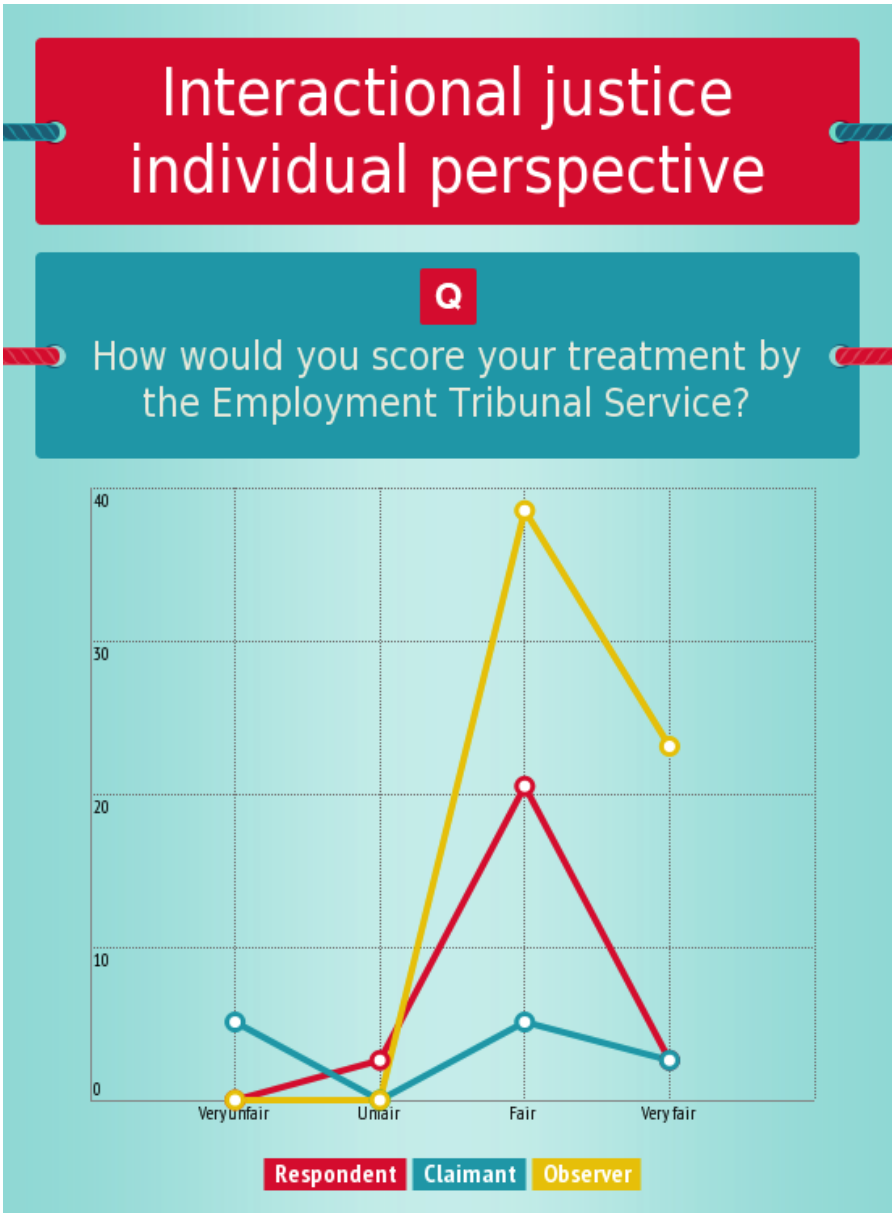
Interactional justice focuses upon the quality of treatment during the procedure, with the definition clarifying this as the 'perception of the quality of treatment'. This is an important aspect of ET research that does not receive full exposure but is an important element within the ETS. Over 90% of responses stated that they were treated fairly during the process or that the claimant / respondent was treated fairly.

Fig 4.9- **Interactional justice overall**



Analysing the likert scales for this question, a small proportion of claimants stated that they were treated very unfairly, which was due to the nature of how cases were conducted rather than the behaviour of the ET panel.

Fig. 4.10 - **How would you score your treatment by the Employment Tribunal Service – individual perspective?**



When asked to suggest improvements on how the ET could improve upon the treatment towards its users, a number of responses focused upon the case taking too long to be heard, which they felt influenced their own opinion regarding the ETS not being a fair system. An interesting response from a claimant who won their case, was that they felt they were treated harshly for providing all the information the ET requested. The case respondents did not provide all of the information (despite a court order) were not punished for this

and subsequently were not cross-examined on the details of this information. However, the claimant was cross-examined very heavily, which they felt was extremely unfair in comparison to the lenient treatment of the respondents. A recommendation from this case suggested that there should be proper monitoring of ET Judges and statistics provided so that a transparent record can be viewed regarding the cases they had adjudicated over.

Another recommendation encouraged by both claimants and respondents, suggested that the ET panel should '*favour*' or give more latitude towards the claimant, who may not be able to present their case as well as the respondents. A final recommendation concerned legal representation. At present legal aid has not been extended to the ET's. Responses in the questionnaire suggested that if both claimant and respondent were legally represented, this would provide an equal basis for conducting the case. It may also expedite the tribunal process, as legally trained professionals will be aware of how the system operates and what is required of their client. ET's can be held up due to the ET Judge having to explain the ET process or the intricacies of the law.

4.2.7 Conclusion

The use of questionnaires in this study had a two-fold purpose. Firstly (as previously outlined in Chapter Three) they were completed separately to the interview process, and therefore enabled the collection of data, which would have taken valuable time away from the discussions. Secondly they have presented clear quantitative answers to how the ETS is perceived. The data outlined in this section clearly indicates that the ETS is a fair system, which generally provides a service that questionnaire respondents feel is satisfactory. Splitting the theory of justice into three segments has enabled the ETS to be examined from different perspectives and most importantly highlighted specific areas of concern. The areas of concern highlighted within the questionnaires included the expediency of tribunal claim handling, the removal of lay members, increases in compensation awards and equitable treatment of both parties.

The next section will build upon the questionnaire responses and provide details of the ramifications of the concerns highlighted above. Section 4.3 will provide a 'cloud based' summary of the key responses to the questions and section 4.4 will provide a more descriptive interpretation of the questions. These responses will be analysed and contextualised in section 4.5 with conclusions drawn in Chapter 5.

4.3 The Employment Tribunal System Interview results

The following section provides a summary of the key pieces of information derived from the interviews. The six individual maps were designed using '*imindmap*', a recognised mapping software tool that has enabled the researcher to provide an initial overview of the main points extrapolated from the interviews. The mapped responses retain the language and sense of the interviewees' points, highlighting the important elements of the responses to the central themes of the study. The interview responses are then outlined in more detail, providing a transcript of the various responses.

4.3.1 How would you evaluate the outcome of the case?

Case 3 •Settled case for £4,250 but claimant wanted £24,000•Felt went through a fair redundancy process but less costlier to settle•Genuinely did not want to settle it felt wrong•Claimant was pleased did not have to attend tribunal•About principle not money•Claimant had 51% chance of winning and had home insurance to cover the costs•COT3 signed as part of settlement

Case 4 •Disappointed with outcome•Outcome dependent on how they do during case hearing•Witnesses were not convincing enough•Felt we had followed a fair dismissal process•Acas tried to talk me out of following through with the case•Happy with winning the case•I wanted my day in court and prove these people were lying•I wanted to punish them•Eventually I wanted to get as much pay out of it as possible but this was not the original reason why I wanted to go•Acas said don't go you will lose•Support of my wife who believed me•Tribunal reduced award because I was in work but only as a contractor which meant I was better paid but no benefits or protection•Been at company for 14 years on a final salary pension, I lost that•Tribunal did not take into consideration my age and likelihood of getting another job

Case 5 •Happy tribunal was in our favour•When we won the case, we were not interested in how or why we won, just feel justified•Felt went through fair redundancy process •Tribunal made right decision they had to check the right process was followed•Have 12 cases a year, it is hard to control Managers in peripheral offices

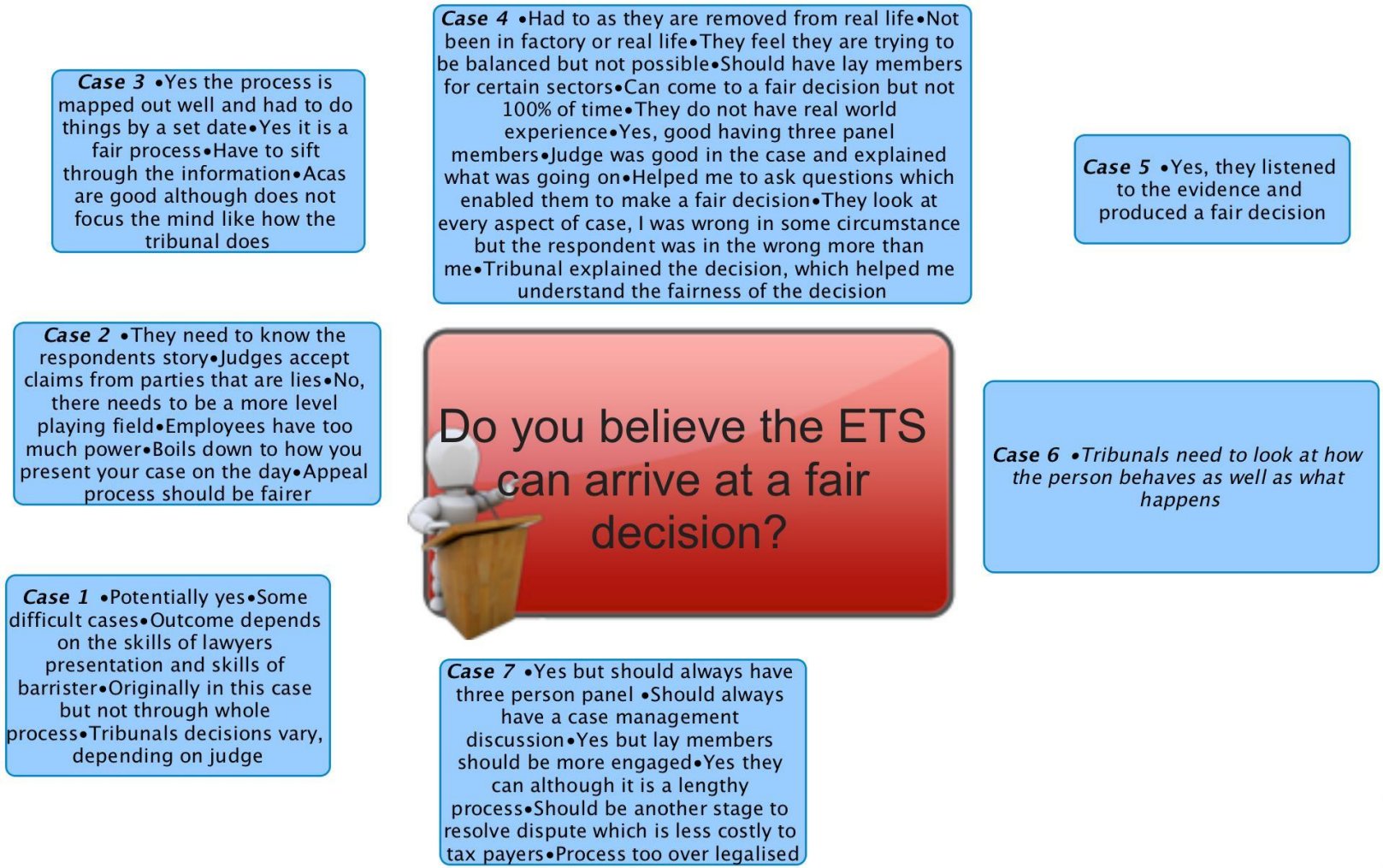
Case 2 •Would get legal representation next time•Not all questions were answered from allegations on ET1•No assistance or guidance from tribunal•Respondent lied but tribunal did not expose this•Judges did not act fairly•Won case- happy with this•Tried to settle case for small amount

Case 6 *•Claimant should have received something, holiday and notice pay but that's all•The tribunal award should have taken into consideration the benefits received but there was a lack of communication with job centre plus•Case should have been turned down by the judges •Tribunal extended the deadlines as the claimant did not meet the deadlines•Happy with the judge and panel. They took time and listened to the case and were professional•Claimant did not turn up with a bundle of documents so had to delay the hearing for a few hours•Not a fair decision, should not have been awarded anything•Acas were poor, Acas mediator only talked about herself•Did try to settle the case as we did not want to go through the case•Did not appeal, just had enough•Felt 25% was fair and 75% was not fair*

Case 1 •Decision was counter to flow of evidence•Punitive damages awarded•Clear when went back to tribunal, but surprised when judgement made•Still think outcome was wrong•Wonder whether tribunal had to support original decision•Employer lost tribunal when shouldn't have done•Reason not to appeal – no specific reason but combination•Claimant had accrued a huge cost to defend the case •Not satisfied•Very expensive•A long process •More fair towards respondents•They were aware remedy only just covered the expenses of taking respondent to tribunal•The first tribunal panel were fair and 'bought the story'•Demanded a lot of paperwork but judge only relied upon the 'meek' criteria

Case 7 •Outcome we wanted•We felt we dealt with person fairly•If we had lost we would have changed the way we worked•If lost we would have appealed•Was a fair outcome, this was a vexatious claim•Judgement provided some observations of the case that we can use to improve our processes•Quite a fluid process•Originally 2 day hearing but extended to 5•Process not a barrier to justice for small employers it may as they are 'timely and costly' •8 weeks before judgement was provided too long

4.3.2 Do you believe the ETS can arrive at a fair decision?



4.3.3 What aspects of the process do you think need changing?

Case 3 •Should not allow covert taped conservations as evidence •Should not be made public•In redundancy cases the tribunal should assume the company would always choose the best workers•Keep paperwork process easy to follow•Keep tribunals factual•Have a 3 person panel, lay members ask sensible straight forward questions•Insertion fees will hinder people from submitting claims•Too many cases have been delayed at the last minute•Make judgements quicker, reports are too comprehensive and are only there to prevent EAT claims

Case 4 •Have 3 person panel•Have lay members from specific sectors or industries•ET paperwork good and straightforward•Publicise all ET stats to show regional variances•Read witness statements•Should be advised to observe case before my own, was not aware could do this•Terminology is difficult to understand•Bundle difficult to collate had to contact respondent HR to get documents•Should force parties to conform to instructions about exchanging documents•Went straight to a full hearing, no CMD or PH

Case 5 •2 days instead of 1, not justified•Too time consuming•Case took 12 months to be heard•No legal representation for either side•Have a sifting process like the CPS•Implement insertions fees•Too costly to defend a case

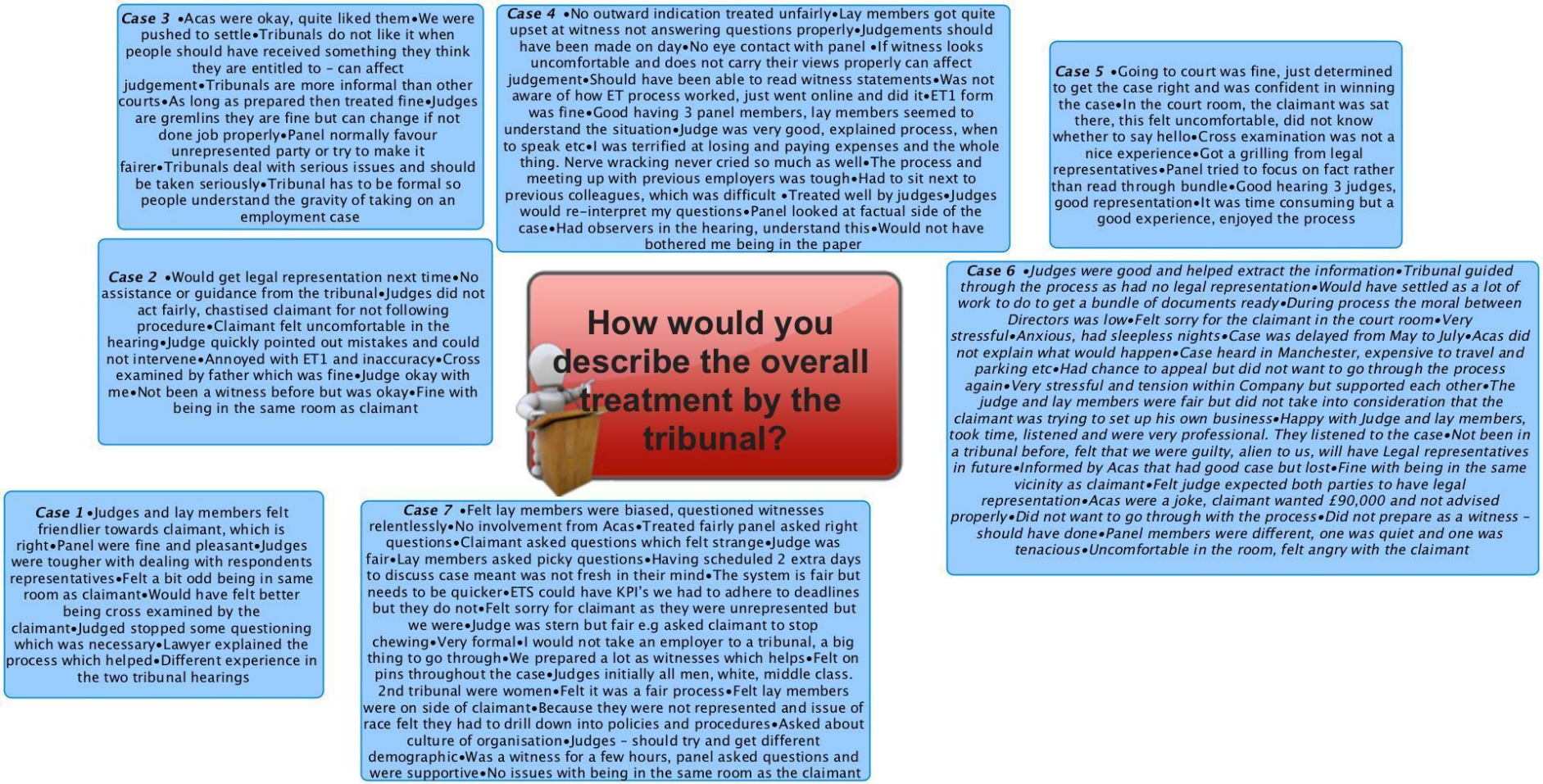
Case 2 •ET1 form easy to follow, stay same•Tribunal did not allow late disclosures should be allowed•Judge had 4 cases to deal with on day, rushed through evidence, should have 1 case a day •Should be able to cross examine all witnesses•Appeal process to rigid•Tribunal judgement reports should be to HSE etc to outline issues or patterns of behaviour•Have claim insertion fees•Poor administration, case listed but nobody told claimant or respondent•ET deadline of 3 months should be reduced •Sift through cases more•Appeal process should be fairer•Should not depend on how you present case on the day

Case 6 *•Acas not very good and prevented from mediating due to lack of communication with claimant. Have forced mediation•Took too long to hear claim, speed up•Got cold calls asking if want representation, should not publicise case details•Tribunal should consider parties not adhering to deadlines•Should be no legal representatives•Make less formal and legalistic •Tribunal should produce a step by step guide•Make Acas more effective•Cross examination too aggressive, should be monitored better•Adjournment are costly, more salary/compensation to pay. Tribunal should act quicker•Bundle takes too much time to prepare•Would like more details in the judgement as to why the decisions were made•Clerk minutes would have been useful•JCP did not write to the tribunal regarding claimants benefits so these were not reduced from the award*

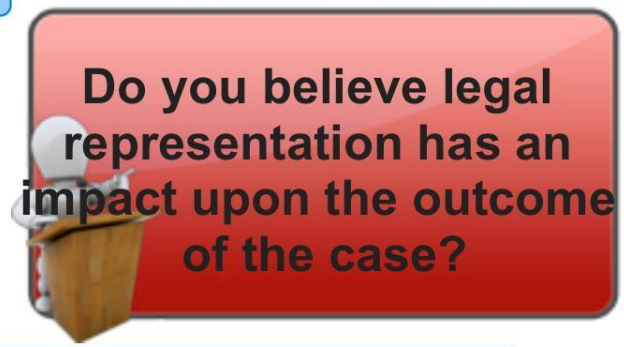
Case 1 •Nothing inherently wrong with process•Very time consuming•Massive amount of preparation•Check health of judges•Claimants do not have to pay a fee when submitting a claim•Fees will prevent people from submitting a claim•Have a qualified mediator before case hearing•Have the case documented/recorded like in other courts•Lay members being paid to take copious notes•Case took nearly a year to be heard too long •Parties should go through compulsory mediation•Lots of time wasting, lay member got dates wrong so had to re-arrange•Ban lawyers•Revise appeal process respondent used to maximise costs•Judges have known reputations for certain decisions, not fair

Case 7 •Could be quicker•Claimant was dismissed in March and case was heard 13 months later•Could have weeded out the claim more PH and CMD•Claimants who are not represented need to be directed more which delays the process•Compulsory mediation•Tribunal panel should not be seen to be taking sides•Inappropriate questions by lay members should not be asked•Keep tribunals open to press•Case postponed after doubling days from 3 to 6, could have part heard the case•Not sure how democratic having 3 panel members is, judge must have influence•Robust case management to filter out spurious cases•Start and finish times should be extended, earlier and later•Judges given more reading time•Insertion fees•Have judges sitting alone•Lay members with sector/industry experience

4.3.4 How would you describe the overall treatment by the tribunal?



4.3.5 Do you believe legal representation has an impact upon the outcome of the case?



Case 3 •Advised to have legal representation•You know the limits of awards but not costs •We advise a lot of clients but do not represent them at the tribunal but they still win•TUPE cases can be complex and would make it difficult to represent themselves•Judges and lay members possibly prefer legal representation as it possibly makes it easier for them•Legal representation will lay out what the panel should look at •The claimant and respondent know the facts of the case but legal representatives know what the legal points are•Legal representatives can help reduce award or costs as they know the system and the law

Case 4 •They are good at asking questions•Claimant asked questions but Judge stepped in and asked questions on his behalf•Would always have a legal representative•Have had Barristers in past but not been good•Yes would have been better•Did not have legal representation but still won•Legal representative would have understood notes and out in better wording and push the fact witnesses were not there•Would have been very much less stressful•Wife and I came home every night and looked through wording of statement•Could have been advised how to respond as a witness if had legal representation

Case 5 •Yes it did have impact upon the case•Either party should or should not have had legal representation

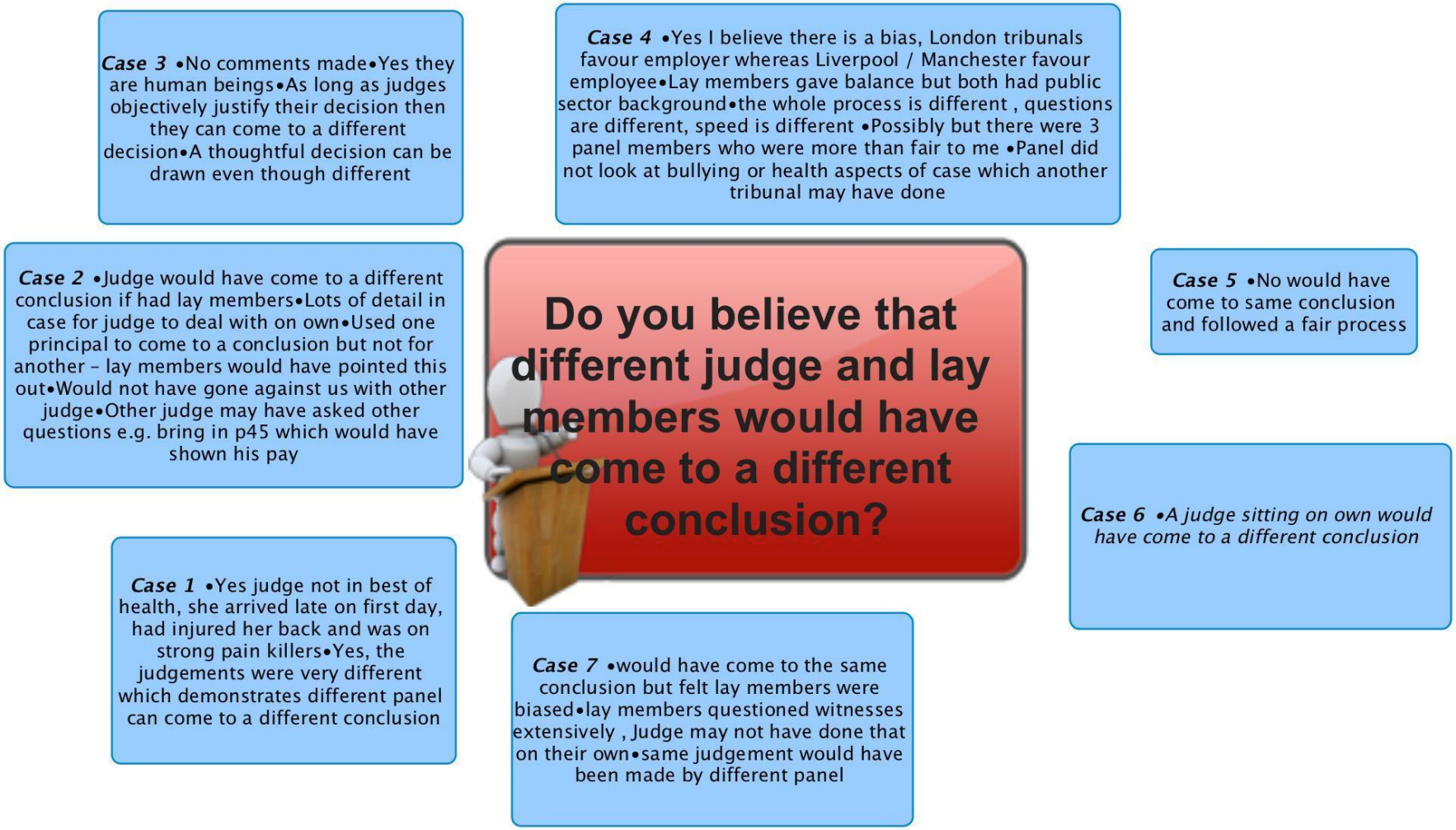
Case 2 •Employment Tribunals are a place for legal professionals•I would always use legal representation •Because the claimants Father represented the claimant the case took longer•Judge told claimant to "keep it relevant" which a legal representative will have done

Case 6 *•Legal insurance withdrawn so could not have legal representation •If we would have had legal representation then case would have been thrown out•Would have legal representation in future*

Case 1 •Representation did an excellent job•Judges expect legal representation •It is in the interest of the employee to have a legal representative •If both parties were not able to be represented then this would be detrimental to the employee•Representation useful for compliance•The presentation skills of solicitors and barristers can be important•Barrister kept asking the same question – employee would not have asked this•I would have stood no chance if I did not have legal representation•I would not have understood the case conference and other case hearings without representation•The respondents used a very expensive law firm and expensive barrister

Case 7 •We had legal representation which allowed us to concentrate just on own witness statement•Should be allowed for both parties•Only joined union for 3 months and would not get legal representation•Would be quite difficult for the employer as they would get quite passionate about the case•We had a mock tribunal which helped•Would have been different but claimant was clued up on law•Cost £30,000 in legal fees•Would have won case without legal representation

4.3.6 Do you believe that different judges and lay members would have come to a different conclusion?



4.4 Interview Analysis

The previous section provided a summary of the comments made during the interviews; the following section outlines the full responses in detail. Each question has the comments assigned to a specific case, as well as which party the interviewee represents i.e. r = respondent and c= claimant. Verbatim quotes have also been included to expand upon the discussion and highlight specific points made.

4.4.1 - How would you evaluate the outcome of the case?

The first question asked enabled the interviewee to summarise their overall thoughts on the case outcome.

1-C believed that the outcome of the case did not reflect the amount of evidence presented by the claimant and that the award made was punitive. Although the claimant was awarded nearly £30,000 in the appeal hearing, the original tribunal had awarded nearly £50,000. 1-C believes that the outcome was wrong in terms of the award made but the decision was fair. 1-R believed that they lost the tribunal when they should not have done. They had followed a long and stringent grievance procedure, which was highlighted within the second tribunal judgment. Both 1-r and 1-c stated that the tribunal was expensive, as both parties had legal representatives, in particularly barristers. 1-c stated that the award made only just covered the expenses of taking the claim to a tribunal.

1-r stated that there was no specific reason why they did not appeal, but a combination of reasons. The respondent believed that they should have won the case and that the claimant had incurred serious legal expenses by taking the case to tribunal. 1-c was extremely dismayed at this, stating that the respondents should not have publicly announced that the claimant had accrued large legal fees, therefore justifying the decision to continue with a lengthy tribunal case. The 1-c felt that a lot of paperwork was requested but that the Judgment relied predominantly on the ‘meek’ judgment. (Meek v City of Birmingham District Council,1987)

In case number 2, 2-c stated that they would definitely have legal representation if they had to go to a tribunal again. The rationale behind this stems from 2-c believing that legal representation would have done a “better job” whilst “carrying out different analysis on the case and what happened.” This would have helped when presenting the case to the panel and in cross-examining witnesses. 2-c believed that the Employment Judge would have behaved differently if they had legal representation. 2-c gave the example of the judge “chastising” the claimant for not following the correct tribunal procedure when exchanging documents etc. 2-c also conveyed that not all of the issues on the ET1 form were addressed and that legal representation would have ensured these were at least raised into the tribunal discussions. 2-c also believed that the respondent lied during the hearing and that a legal representative would have been able to expose this. Overall 2-c believed that the tribunal did not act fairly because of these issues, but it is clear that if 2-c had legal representation they believe the tribunal panel may have acted fairly.

2-r stated that they were happy with winning the case but had tried to settle the case before the hearing but the claimant would not agree to the £500 settlement. 2-r tried to use their legal insurance to cover legal costs but on initial analysis of the case, it was deemed that the respondent had 51% or less chance of success, and therefore would not cover the case. An arrangement was made with a law firm to represent the respondents for a flat fee of £1,500 plus VAT.

Case 3 emulates the allegations outlined in the BCC (2011) report, which stated that on average it is cheaper to settle a case rather than proceed straight to a tribunal. 3-r explained that they had gone through a fair redundancy procedure but that it was easier to settle the case. The case was settled for £4,250, although 3-r asserts that the clamant proposed a figure of £24,000. 3-r “*genuinely did not want to settle as it felt wrong*.”

3-c explained that the claimant was pleased they did not have to attend the tribunal hearing but that the case “… was about principle and not money.” 3-c explained that the claimant had used their home insurance policy to pay for the legal fees; the legal protection had decided that the claimant had 51% or more chance of success and therefore would represent them.

In case 4, the claimant won their claim and was awarded £15,000. 4-r stated that they were, “disappointed with the outcome of the case, and felt that the outcome of cases was dependent upon how parties conduct themselves during the hearing.” Although the claimant was successful in their claim, 4-c stated that they were advised not to take the claim to a tribunal by Acas. They were advised that, “it would cost £5,000-£7,000 if I lost and they used very threatening language.”

The claimant was also not supported by their trade union as they felt the claim had no reasonable chance of success. However 4-c was “passionate about the case, wanted to receive as much compensation as possible although this was not the original reason why I wanted to go to a tribunal. I wanted my day in court and prove these people were lying.” 4-c explained that it was the support of his wife who enabled him to submit and follow through with the claim. The biggest issue 4-c had with the outcome of the case involved the award. The tribunal reduced the award due to the fact that the claimant was in other employment at the period of claim assessment. However 4-c stated that, “ …I was in work but only as a contractor, which meant that I was better paid but had no benefits or protection. I had been at the company for fourteen years on a final salary pension, which I lost. The tribunal did not take into consideration my age and likelihood of getting another job.”

In case 5, 5-r exclaimed that they were happy it found in their favour and “were not interested in how or why we won, just feel justified.”

5-r believed that they went through a fair redundancy process and that the tribunal had to check they had gone through the right process.

An interesting comment was made regarding the number of claims made against the company, specifically that, “we have 12 cases a year that go to a tribunal and it is hard to control managers in peripheral offices.” 5-r indicated that although they had strong HR policies and procedures, it is difficult to ensure these are enforced and followed, which results in a number of tribunal claims.

With case 6, 6r-1 exclaimed that the claimant was entitled to holiday and notice pay but should not have won their claim for unfair dismissal. The main concern for 6-r-1 is how the award was calculated. The claimant had

been receiving Job Centre Plus benefits, which should have been deducted from the 'loss of earnings' calculation. However there had been a lack of communication with Job Centre Plus, and therefore they were not deducted and the claimant was awarded more than he eventually received.

Although 6-r-2 were not satisfied with the outcome of the case, they did state that, " we were happy with the Judge and the panel; they took their time, listened to the case and were professional." The only concern with the hearing involved the actions of the claimant who, " did not turn up with a bundle of documents which meant the tribunal was delayed by a few hours." 6r-3 did not feel the tribunal was fair, "25% was fair and 75% was not." 6-r-1 and 6-r-2 stated that they were both not satisfied with the Acas representative, stating that " the Acas process took very long and the claimant did not communicate very well with the Acas process," and that " Acas were poor as the mediator only spoke about themselves."

The respondents in case 7 were very happy with the outcome, 7-r-1 stating that, "It was the outcome we wanted as we had dealt with the person fairly. If we had lost then we would have changed the way we worked." This refers to the fact the respondents had set policies and procedures that they believed conformed to employment law. If the case would have been lost then they believe that their policies and procedures were not compliant to the law and therefore would need altering. 7-r-2 had a more fervent attitude about the claim, explaining that they believed, "It was a fair decision but it was a vexatious claim. There was no equivalent CPS to sift through the claim and it should not have proceeded to a tribunal."

7-r-3 felt that the, "Outcome was fair, even though it was in our favour." 7-r-3 did outline a few concerns about the ETS, mainly that "The hearing was extended from 2 days to 5 days and for small employers this is timely and costly." They also raised the concern of waiting eight weeks after the hearing for the judgment, which they felt was too long.

4.4.2 Do you believe the ETS can arrive at a fair decision?

1-r believed that tribunals could 'potentially' arrive at a fair decision. However there will be cases that will be difficult to adjudicate, for example

cases that have to decide between right and wrong, claims of theft as well as bullying and harassment cases. 1-r believed these types of cases had to make a judgment rather than determine the truth. 1-r also believed that, “The skills of lawyers and how cases are presented by barristers does affect whether a fair decision can be made.”

1-c believed that employment tribunal decisions vary, depending on the Judge. This view stems from the fact that Case 1 involved an appeal hearing as well as a re-hearing, which involved different panels presiding over each case. 1-c felt that each panel came to different conclusions and therefore believed that a tribunal judgment could vary depending on the panel.

2-r had a similar belief, affirming that; “The case would not have gone against us with another Judge. Another Judge would have asked other questions for example to produce his P45 which would have clearly shown what pay he had received. It all boils down to how the case is presented on the day.”

2-c explained that he understood the need for tribunals to understand,” the respondents story,” but “tribunal accept claims from parties that are lies.” In particularly 2-c believed that tribunals do not arrive at fair decisions and that, “ there needs to be a more level playing field, employers have too much power.” 2-c explained that during the hearing the respondents made a number of serious allegations against one of the claimants witnesses. Although 2-c initially objected to this the Judge allowed the respondents to continue with the allegation without any evidence. 2-c believed that had an impact on the case and most importantly the award made.

3-r considers the tribunal procedure to be fair and that it is “…mapped out well and I like how the process is time scaled.” 3-c believed tribunals were fair and that, “It is a fair process to resolve disputes if everything else has broken down.” An interesting comment was made regarding Acas. 3-c stated that, “Acas are good although following this process does not focus the mind that tribunals do.” They inferred that the process of mediation that Acas handles can potentially benefit both parties, however the thought of attending a tribunal can be sobering for the claimant and respondent, which may increase their propensity to participate in the process. This concurs with what

6-r-1 and 6-r-2 stated about the claimant not communicating well with the Acas mediator but did attend the tribunal hearing.

4-r was somewhat more scathing towards judges and lay members who were unable to arrive at a fair decision, “They are removed from real life and not been in a factory. They feel they are trying to be balanced but this is not possible.” 4-r believed that the panel, in particularly judges did not possess ‘real world knowledge’. Specifically that judges do not have the required insight into the working practices of businesses, especially in certain sectors. Although lay members are there to provide this perspective, judges sitting alone are becoming more prominent and even though there may be lay members on the panel, they may not necessary have the sector knowledge required. 4-r believes that having the sector knowledge will provide an insight into why companies behave or follow certain procedures.

4-c represented himself and felt that it was beneficial having a judge and two lay members on the panel. 4-c explained that, “The Judge was very good and explained what was going. They helped me to ask questions and looked at all aspects of the case, which enabled them to make a fair decision.” 4-c explained that during the case, “ I would make statements rather than ask questions. The panel would then interpret these statements into questions.”
4-c made an interesting reflective opinion that, “I was wrong in some circumstances but the respondents were more in the wrong than me.” 4-c believes that the panel understood the case and made a fair decision due to the fact they were able to comprehend all elements of the case.

5-r made similar comments to 4-c in that they considered tribunals can come to a fair decision and in this case, “The claimant produced lots of false statements, stated that there were recorded conversations when there was not. They listened to the evidence and produced a fair decision.”

6-r-1 believes that to make a fair decision, tribunals should also look at, “How the claimant behaves as well as what happens.” In this case the claimant arrived late for a disciplinary meeting after being reminded and did not adhere to the timescales set by the tribunal. 6-r-1 explained that if the claimant does not engage with internal processes or the tribunal process then this should be considered by the tribunal in their judgment.

7-r-1 believes that to arrive at a fair decision then the tribunal must have a three-person panel. 7-r-2 stated that tribunals can arrive at a fair decision but the process is very long and, “too over legalised.” 7-r-3 was not convinced that the ETS was too legalised and therefore affected a fair judgment. They did state that there does need to be a balance whereby parties are either represented or not represented. 7-r-3 also suggested that there should be another stage to resolving disputes, which is less costly to tax payers.

4.4.3 What aspects of the process do you think need changing?

1-r supposes that, “There is nothing inherently wrong with the tribunal process” although it was very, “Time consuming and involved massive amounts of preparation.” 1-r- commented that the health of Judges should also be checked as in this case, “The Judge arrived late on the first date, had injured her back and was on strong pain killers.” They believe that the process should test that Judges are not only experienced and legally qualified but also physically able to carry out the role. 1-r-1 could not prove that this had an impact on the case but the health of the Judge was a concern in how the case was handled. The issue around fees for submitting a claim was raised by 1-r who believed that, “Fees will prevent people from submitting a claim and lots of worthy cases will not be heard due to the financial risk.” 1-r suggested instead of introducing fees, a qualified mediator should be utilised prior to the hearing. Also cases should be documented or recorded as per other court cases. These notes can then be used within the appeal process.

1-c reflected that the tribunal process for hearing claims should be speedier as, “It took a year for the case to be heard. There was lots of time wasting with lay members getting dates wrong which resulted in the case being delayed.” 1-c highlighted various problems with the tribunal appeal process. 1-c highlighted points made in the appeal judgment that criticised the original tribunal judgment. 1-c believes that tribunals should be reprimanded in some way if the appeal judgment criticises the handling of the case, specifically “The ET Judge should have been reprimanded if the EAT feel this is the case, not make the individual go through another tribunal.”

2-c exclaimed that the ETS forms were “Easy to follow and should stay the same.” A number of issues were raised however, firstly that, “The tribunal did not allow the late disclosures of documents or evidence.” 2-c tried to submit a payslip and bank statements which would have proven his hourly pay figure but this was dismissed by the Judge. Secondly the number of cases that Judges have to deal with. 2-c explained that, “The judge had 4 cases to deal with on the day, it felt as if they rushed through the evidence. They should only deal with one case a day.” Thirdly 2-c believes that they should be able to cross-examine witnesses. They were not allowed to do this as signed witness statements were accepted. Cross-examining the witnesses would have potentially enabled 2-c to prove the respondent was lying. Fourthly 2-c stated that the appeal process should be simplified as, “You can only appeal for specific technical reasons, which is why they did not appeal.” Finally ET judgments should be passed on to the Health and Safety Executive (HSE) so that, “patterns of behaviour” by employers can be established.

2-r agreed that insertion fees should be introduced for submitting a claim but also that, “The three month deadline for submitting a claim should be reduced.” 2-c believes that if someone is going to claim then they should do so immediately and not wait for up to three months to do so.

2-r highlighted a number of administrative issues, “The ETS has poor administration, the case was listed but nobody told the claimant or respondent. The case was then delayed further.” Also there should be a more robust ‘*sifting*’ process to establish the merits of the claim. 2-r concurred with 2-c about simplifying the appeal process and commented that the tribunal process focuses too much on, “How you present your case on the day,” and should shift their emphasis on determining the facts of the case. Finally 2-r raised an issue outside of the ETS but linked to the tribunal system. 2-r discovered that the claimant applied to the JCP for benefits after they stopped working for the respondent. During this process the claimant was asked about whether they had claimed against their previous employer. 2-r felt that the JCP should not be encouraging claimants to take their previous employer to a tribunal and believes that the JCP do this so that benefits may be reduced if they are awarded any compensation.

3-r raised an issue regarding covert taped conversations, “Somebody taped the redundancy consultation meeting without the company knowing and had this transcribed. We were given a copy of the transcript as part of the claimants evidence.” 3-r believes that evidence such as this should not have been allowed to be used or potentially used.

3-r also raised concerns about the public nature of tribunals. Unless a case has ‘*restrictive reporting*’ then the details of the case can be published in newspapers and other public forums. 3-r believes that reputations can be damaged by cases being reported in this manner. The final aspect discussed by 3-r involved the jurisdiction of redundancy. This case centred around redundancy and 3-r believes that, “In redundancy cases the tribunal should assume the company would always choose the best workers.”

3-c vehemently believes in a three person panel presiding over cases, “Having a three person panel is beneficial; lay members ask sensible, straight forward questions.” 3-c did not agree that insertion fees will benefit the ETS and would, “Hinder people from submitting claims.”

3-c also concurred with a number of issues raised by 2-c and 2-r, namely that, “Too many cases have been delayed at the last minute. The worse aspect is that you get a date for the hearing, you get prepared, then the day before or a few days before you get a phone call asking if the case is likely to settle, then they will rearrange the date. I had five recent cases where the case was delayed the day before. They overbook cases with the hope of some cases being settled. ”

3-c also wanted judgments to be made in a speedier manner. 3-c commented that, “Judgment reports are too comprehensive and are only there to prevent EAT claims.”

4-r agreed with 3-c in that there should be a three-person tribunal panel, with lay members having specific sector experience. 4-r also believed that, “*The ET paperwork is good and straightforward. They should however publicise statistics, which show regional variances*.” 4-r believes that there is London employer bias and Liverpool / Manchester employee bias.

4-r also commented that, “Both parties should be forced to conform to instructions about exchanging documents. Also when the Judge asked the

claimant how much expenses he was claiming, there was no evidence to support these but were included in the award."

4-r raised a concern regarding the Acas conciliator, who would not "pressure the claimant into settling." 4-r stated that they had considered settling but the Acas conciliator did not seem to persuade the claimant to do this.

4-c qualified that, "I should have been advised to observe a case before my own, I was not aware that I could do this." 4-c explained that as he represented himself it would have been useful to watch another hearing so that he could understand the process and what actually happened during the hearing. He would have watched how to cross-examine witnesses and interact with the panel. 4-c explained that the terminology used during the process was difficult to understand. 4-c raised his concerns over the length of time it took for the hearing to take place, "The time delay was a big thing as judges couldn't get together, respondents couldn't meet on that day and so on. It was very stressful and hard to deal with the delay. I understand that the courts have to work slowly and correctly but it was always 30 days after a meeting."

4-c held the view that tribunals were very good and being a "layman" thought it was generally well run and, although he was not sure how the tribunal process worked, he managed to complete the ET1 form and represent himself. The only issues for 4-c were that as he was representing himself, "The bundle of documents was difficult to collate, I had to contact the respondents HR department to get documents. The tribunal should force parties to conform to instructions about exchanging documents."

4-c wanted to use witness statements, documents on his personnel file and HR policies, "We were supposed to exchange the bundle of documents but the respondent was three weeks behind. I had to email the company to explain that I had been contacting the courts about the delay in the exchange in the bundle and suddenly got the documents. I got the bundle only just before the tribunal started and only got minutes of meetings on the day of the tribunal. I believe they knew the system and tried to pull the wool over my eyes."

4-c affirms that rather than proceeding straight to a full hearing, there should have been a PH or CMD. This would have enabled 4-c to get used to

the tribunal hearing process and ensure the bundle of documents were properly agreed with set dates.

5-r commented that the process took long, “The claimant was made redundant in August, in November the ET1 arrived and the following August the tribunal hearing was held. Also the tribunal was set for one day but was extended to a second day.” 5-r felt that the process took too long and should not have gone onto a second day, “ Dealing with a tribunal case is time consuming and takes time outside of the normal day job.”

In this case a CMD was held which 5-r believed was, “Just another cog in the wheel to prolong the process. It was more for the claimant than the respondent. Just so they know how the tribunal process works.”

5-r believes that it is too costly to defend a case and that within the ETS there should be, “ A sifting process like the CPS. The CPS knows what the judges are interested in and would not let a case progress unless they think it is worthwhile and it is not spurious. It cost us £15,000 to defend the case.”

5-r also stated that both parties should not be allowed legal representation and that, “Insertion fees would be a good idea, get lots of disgruntled employees who submit spurious claims. Judges in this case were getting fed up as they just wanted to get to the facts of the case.”

6-r-1 believed that the Acas process took too long and that, “ The claimant was not very good at communicating and prevented from mediating due to this lack of communication. There should be forced mediation.” 6-r-2 concurred by explain that, “Acas were not effective, the case handler was claimant biased. The reps are not consistent as they changed during the process.” 6-r-3 also commented that, “Acas were a joke. They could have dealt with it quicker. The claimant wanted £90,000. They were not advised properly.”

6-r-1 raised concerns about tribunal cases being reported in public, “We got cold calls asking if we want representation. They should not publicise case details.”

6-r-2 commented that, “There should be no legal representation for either parties and that both parties should represent themselves.”

6-r-3 conveyed that, “The tribunal expected both parties to be legally represented.” Also 6-r-3 felt that the longevity of the process cost the company as, “The adjournments added to the costs. We had to pay his on-going salary. The tribunal were at fault and should have acted quicker.” As the case was delayed when the tribunal calculated the award they formulated the amount based up to the hearing date. If the tribunal had acted more expediently then the award would have been less. 6-r-3 was very angry about this.

6-r-1 recommended that tribunals produce a step-by-step guide so that both parties are aware of what their responsibilities are and also what to expect during the process.

6-r-3 also stated that they would have liked, “Further details in the judgment on why the decisions were made.”

7-r-1 believes that, “The process could be quicker. The claimant was dismissed in March and it wasn’t until the following April, thirteen months later, that the case was heard and judgment made.” There was no CMD in this case and 7-r-1 commented that if there more PH’s or CMD’s then more cases will be, “Weeded out.” Another issues raised by 7-r-1 involves claimants who were not represented. 7-r-1 stated that those who are not represented, “Need to be directed more, although this may delay the process.” 7-r-1 also concurred with 3-c about the benefits of mediation and that there should be compulsory mediation.

7-r-2 expressed their concerns regarding the tribunal hearing dates. “We prepared a lot for the tribunal, the day before it was rearranged due to diary clashes of the judges. Three days was changed to six days. It was like running through treacle.” 7-r-2 believes that the tribunal should have heard aspects of the case and then come back at a later stage rather than wait for six days availability of the panel.

7-r-3 concurs with 5-r in that there should be a more robust case management process to filter out spurious claims. Although the introduction of insertion fees are good but, “May stop genuine claims.” Also, “The hearing start and finish times should be extended. 10 a.m. to 4 p.m. should be extended earlier and later.” 7-r-3 also believes that judges sitting alone does make sense. If there is going to be a three person panel then as what 4-r

recommended, the lay members should have specific industry or sector experience in relation to the case.

4.4.4 How would you describe the overall treatment by the tribunal?

1-r noted that the, “Panel were fine and pleasant, although the Judge and lay members felt friendlier towards the claimant, which is right.” 1-r did state that it was, “A bit odd being in the same room as the claimant. Felt strange but necessary.” 1-r did comment that the respondent’s barrister was tenacious and that he would have felt better being cross examined by the claimant. 1-r commented that the barrister kept asking the same question over and over again, which the claimant would not have done. 1-c explained that their legal representatives clarified the tribunal process and what would happen during the hearing.

1-c noted that he had different experiences between the two-tribunal hearings. Both cases were handled differently and that the first tribunal was fine but the second hearing was not. 2c commented, “In the first tribunal the judge and lay members were fine and asked a few questions. In the second tribunal the Judge was supercilious, the lay members did not ask any questions and they might as well not have been there. At the remedy hearing one of the lay members didn’t turn up, they got the dates wrong, but we still went ahead with the hearing.”

2-c stated that the interactional aspect to the tribunal was very unfair, “*They didn’t support us or explain the process at the beginning*.” The claimant felt uncomfortable in the hearing process mainly because the judge chastised him for not following the procedure.

2-c believes that, “Tribunals are a place for legal professionals. We would get legal representation next time but in this case we wanted to maximise the award, as the claimant needed the money. A legal rep can describe a story in a different way.”

2-r commend that the, “*Judge was OK with me. I haven’t been a witness before but it was O*K.” 2-r stated that it was fine with being in the same room as the claimant and being cross-examined by the claimant’s father.

Case 3 did not proceed to a full hearing but 3-c commented that the process was fluid and easy to follow, especially the forms and deadlines. 3-c stated that Acas were fine and that he quite liked them. The only issue was that Acas pushed for a settlement, rather than trying to resolve the dispute in other ways. 3-c believes that tribunals, "*Do not like it when people should have received something they think they are entitled to*," and that this has had an influence on the tribunal panels assessment of the case. 3-c also noted that tribunals were necessary as there are bad construction firms in the industry. However in this case the respondent felt let down by the claimant by stating, "*The claimant thought bastards rather than thanking us for providing him with a job for so long*." 3-r affirmed that, "*Judges are fair if you are prepared well and know which case is relevant. Judges, however, can be gremlins; they are fine but can change if you have not done your job properly. They will also try to 'favour' the unrepresented party or try to make it fairer*." 3-r also commented that, "*I go to tribunal ten times a year, supporting the barrister or a nervous client. Although tribunals are more informal than other courts they are serious and respected in a manner that they should be. The proceedings have to be formal so that people understand the gravity of taking an employment case. It needs treating seriously.*"

4-r noted that, "*There was no outward indication of being treated unfairly. The lay members got quite upset at one of our witnesses for not answering questions properly*." 4-r explained that this affected the witness as, "*If the witness looks uncomfortable and does not carry their views properly then this can affect the judgment*." 4-r believes that their main witness was very nervous and came across badly in a court situation. 4-r believes that witnesses should have been allowed to read witness statements so that they convey their thoughts about the situation in a more structured manner.
4-r believes that the judgment should have been made on the day. Having to wait was not nice for them or the claimant.

4-c explained that he was not aware of how the tribunal process worked and just went online and did it himself, "*I was terrified of losing and paying expenses for the whole thing. It was very nerve wracking, I've never cried so much as well*." 4-c outlined the stressfulness of attending the hearing,

"*The process, meeting up with and sitting next to previous employers was difficult. Also seeing what they had said in print about me was also hard*."
4-c did state that he was treated well by the panel and that his statements or questions would be reinterpreted. 4-c noted that the fact cases can be reported publicly did not concern him.

5-r outlined that, "*I was a witness but going to court was fine. We were just determined to get the case right and was confident in winning the case*." 5-r explained that it was uncomfortable sitting in the hearing room with the claimant there. They did not know whether to say hello or acknowledge them. 5-r commented that being cross-examined was not nice and that it can be intimidating. They did get, "*A grilling from the claimant's legal representative*." Overall 5-r noted that it was very time consuming but a good experience and process to go through in resolving a dispute.

6-r-1 noted that the clerk and Judge were good and helped during the process, "*We had no legal representation but the tribunal guided us through the process. The Judge helped extract the information required*." 6-r-1 did state that in future they would settle due to, "*The amount of work we had to do. Collating the bundle of documents was time consuming and the morale was low between directors*." 6-r-1 made an interesting comment regarding informing employees about the case. The claimant was openly discussing the case and denigrating the respondent, specifically that he was going to bankrupt them. Therefore they wanted to inform the staff about what the case involved and to reassure them. 6-r-1 also stated that they felt sorry for the claimant in the hearing, as it was very intimidating.

6-r-2 stated that they had not been to a tribunal before and that they, "*Felt guilty, the process was alien to us. We will definitely have legal representation in the future*." 6-r-3 also stated that the process was very stressful and that they had sleepless nights due to anxiety just before the hearing. 6-r-3 concurred with 6-r-1 in that it was difficult to deal with internally and that it had an impact on employees and the company.

6-r-3 observed that the case delayed from May to July, which accentuated the problems. Also the case was heard at the Manchester tribunal offices, which was expensive for travel and parking. 6-r-3 praised the panel stating that, "*We were happy with the Judge and lay members, they*

took their time, listened to the case and were very professional." 6-r-3 stated that they were called as a witness but they did not prepare which they regretted. Also they felt uncomfortable in the hearing room, as they were very angry with the claimant who was sat there.

7-r-1 felt that the Judge was fair, but that "*One of the lay members asked picky questions about policies and questions such as What do you mean by that?*" 7-r-1 was the fifth witness, which helped as they could observe the previous witnesses. 7-r-1 questioned the decision to have two extra days after the hearing to consider the case. They felt that the case would not have been fresh in their minds. 7-r-1 believes that, "*The system is fair but needs to be quicker. Also the ETS should have KPI's. We had to stick to deadlines but they didn't have any*."

7-r-2 felt that they were treated fairly but the panel were stern, "*They asked the claimant to stop chewing gum*." 7-r-2 noted that, "*I wouldn't take any employer to a tribunal, it's quite a big thing to go through." 7-r-2 raised an issue about the demographics of the panel, stating that they were, "All men, white and looked middle class*."

7-r-3 believed they were treated fairly although they felt that the lay members were on the side of the claimant, "*Because the claimant wasn't represented and an issue of race, they felt they had to drill down into policies and procedures, as well as ask about the culture of the organisation*."

7-r-3 stated that the ETS should try and recruit a different demographic for the panel, as "*They may be out of depth or touch*."

Regarding the hearing, 7-r-3 stated that they attended all of the hearing days and spent a few hours as a witness. They were on the stand for a few hours, "*The panel asked a few questions but were polite and supportive*." They also had no issues with being in the same room as the claimant.

4.4.5 Do you believe legal representation has an impact upon the outcome of the case?

1-r believed that their legal representatives did an, "*Excellent job but Employment Judges expect legal representation. Employees cannot really represent themselves, it's in the interest of the claimant to have a legal*

representative." 1-r commented that it would be detrimental to the claimant, If both parties were not able to be represented, as the employer would have more resources such as HR to prepare and present the case. 1-r also believed that legal representation is necessary for, "*Governance and compliance*." 1-r was referring to the fact that legal representatives know the procedure very well and are able to conform to the processes and expectations of the tribunal. This will therefore support the panel in understanding the case and ensuring that the process runs effectively.

1-r did believe that legal representation had an effect on the case as the claimant's barrister, "*Kept asking the same question*." 1-r believed that Barristers are able to present information and ask questions that can be beneficial to their client's case.

1-c exclaimed that, "*I would have stood no chance if I did not have legal representation. I wouldn't have understood the case conference and other case hearings*." 1-c explained that it was a complex case that involved multifaceted aspects of employment law and various stages of the court system. Without legal representation 1-r believes that he would not have won the case or been able to present his account of what happened in the case. 1-c outlined his disappointment in the respondent, "*Using a very expensive law firm and barrister, who set about trying to prove me wrong through the cross examination*." One of the main benefits of using a legal representative was for them to explain the process to 1-c.

2-c believes that, "*Tribunals are a place for legal professionals. We would get legal representation next time but in this case we wanted to maximise the award, as the claimant needed the money. A legal rep can describe a story in a different way*." 2-c went on to qualify that legal representatives, especially barristers can present cases as a story, which helps the panel understand what the case is about, what happened in the case and why certain aspects of the case appear as they do.

2-r also believed that legal representation had an impact on the case and, "*Would always use legal reps*." 2-r explained that the Employment Judge told the claimant, "*To keep it relevant*." 2-r explained that if the claimant had been legally represented then the Judge would not have had to say this and also because, "*His father represented the claimant the case took longer*."

Therefore legal representatives do affect how the case is ran, how long it takes and how the Judge conducts the hearing.

3-r explained that he was advised to get legal representation but, "*You know the limits of the awards that can be made but you don't know the limits of the legal costs*." 3-r conveyed his belief that the ETS have limits and guidelines for compensation but legal costs are dependent on unknown variances and this is why the respondents did not seek legal representation and also settle the case before proceeding to a full hearing.

3-c explained that certain employment law jurisdictions such as, "*TUPE cases can be complex and would make it difficult for claimants to represent themselves*." 3-c explained that cases such as TUPE required a detailed knowledge of not only the statute element of the law but also relevant cases that also govern TUPE regulations. 3-c concurred with 6-r-3 and 1-r in that, "*Judges and lay members possibly prefer legal representation as it possibly makes it easier for them*." As outlined above 3-c agrees that tribunal panels prefer a legal representation that is familiar with the process and, "*Will lay out what the panel should be looking at*." Tribunal panels do not necessary read every document in the tribunal bundle and 3-c believes it is important that the panel should be directed to important pieces of information within the bundle. Also 3-c believes that, "*The claimant and respondent know the facts of the case but legal representatives know what the legal points are*."

An interesting observation was also made by 3-c who stated that, "Legal representatives can help reduce or increase awards and costs as they know the system and the law." 3-c explained that legal representatives were knowledgeable about the '*polkey principle*', mitigated losses and contributory faults which can all affect the awards. She also believed that they are also skilful at dissecting schedule of losses that are presented to the tribunal panel.

4-r rationalised that, "*Although we lost the case the legal representatives were good at asking questions*." 4-r noted that the claimant wasn't represented and when they asked questions the tribunal panel would assist by reinterpreting these questions in a more appropriate form. Although 4-r would always have legal representation, "*We have used barristers in the past but they were not very good*."

4-c noted that they did not have legal representation, as their trade union believed the case had no reasonable chance of success. However 4-c explained that although he won the case it would have been better to have representation and they did have a legal representative for the award hearing. 4-c commented that, "*The panel would have understood notes and put in better wording and push the fact witnesses weren't there and looked at witnesses statements they had and didn't correspond*." This represents the viewpoint of 1-r, 2-c, and 3-r in that legal professionals are able to dissect case information, present the case in a more eloquent manner and generally use documents to challenge witnesses and statement made by the parties.
4-c outlined the impact that not having legal representation had, "*It would have been very much less stressful. My wife and I came home every night and looked through wording of statements and other documents. Knowing that I had to go on the stand as a witness was stressful, I could have been coached or schooled by the legal representative*." 4-c believes that having legal representation would have removed some of the stress and anxiety that bringing a claim yields.

5-r also believes that having legal representation did affect the tribunal process as, "*They know the area*," although "*It cost £15,000 in fees to defend the case, with intangible fees not included*." 5-r did explain that they have a contract with a law firm and if they have a 70% chance of winning they will defend the claim. 5-r concurred with 7-r-3 and 6-r-2 in that the claimant and respondent should have or shouldn't have legal representation to ensure a balanced approach to the process and hearing.

The respondents in case 6 had legal insurance but legal representation was withdrawn and therefore had to represent themselves. 6-r-2 believes that, "*If we would have had legal representation then the case would have been thrown out. We would definitely have legal representation in the future*." 6-r-3 concurred by revealing that they should have had legal representation for this case. 6-r-2 agrees but also adds that, "*Having legal representation would have led to a different experience*." The experience being possibly winning the case and also the trepidation and anxiety in having to attend the tribunal.

7-r-1 explains that they held a mock tribunal for everyone involved which cost £2,000 which he felt was expensive but necessary for people involved, especially witnesses. 7-r-1 believes that there would have been an impact on the case if they did not have legal representation and the claimant did, although the claimant "*Was very clued up on the law and asked very structured questions*." 7-r-2 explained that it cost the respondent, " *£30,000 to defend the case plus intangible time spent on preparing for the tribunal*." 7-r-2 commented that if they would not have had legal representation then the HR Manager would have presented the case and they still feel they would have won the case. 7-r-3 commented that as the claimant represented themselves this may have influenced the panel as they had to redirect the claimant when questioning as he was being quite intimidatory. 7-r-1 added that although they would have represented themselves if necessary, "*It would be quite difficult for employers to represent themselves as they would get passionate about the case*."

4.4.6 Do you believe that different judge and lay members would have come to a different conclusion?

1-r considers that a different panel would have concluded the case differently, explaining that the, "*Judge was not in best of health. She arrived late on her first day, she had injured her back and was on strong pain killers. Also one of the lay members nodded off at one point and both didn't ask very many questions.*" 1-r believed that overall lay members were ineffectual and that, as outlined, the health of the Judge affected how the tribunal was chaired and possibly adjudicated.

1-c also believes that various panels can come to a different conclusion. As this case was heard in three separate hearings who all came to different conclusion about the case, 1-c uses this example to substantiate his belief that there is an issue with panels drawing distinct conclusions.

2-c affirmed that if the panel included lay members then there would have been a different outcome, "*The case involved lots of detail for a Judge to deal with on their own. The Judge used one principle to come to a conclusion but not for another, lay members would have pointed this out.*"

2-r believed another panel would have come to the same conclusion as the evidence favoured the respondent. 2-c did believe however that a different panel would have maybe asked more probing questions.

Although case 3 did not proceed to a hearing 3-r believes through past experience that panels can come to different conclusions, "*Yes, definitely, they just do. They are human beings, as long as Judges objectively justify their decision, it doesn't mean that other Judges can come to different decision. A thoughtful decision can be drawn even though it is different.*"

3-r also believed that the composition of the tribunal panel could also affect the decision, "*Judges have sat alone previously, however it is far better if there is a panel of three. If you just have a Judge who has only been a solicitor or barrister all their lives then they have no idea of what happens in the big bad world of commerce. Lay members also ask sensible straight forward questions such as, why didn't you go back and ask your employer that question?. Lay members balance the panel, it's more fair and make more grounded decisions. A Judge sitting alone will just look at the legal perspective, rather than other important aspects of the case*."

4-r believed that different panels would come to a different conclusion and suggested there was a London employer bias and Liverpool / Manchester employee bias. 4-r believes that having lay members is important and could affect the decision. In this case 4-r explained that both lay members had public sector experience and not the industry or sector related to the respondents company. 4-r also believed that different conclusions would also be drawn because each case is different and would be handled differently, "*Different questions would be asked that may affect the panel's judgment*."

4-c noted that it was possible that different judgments could be made but believed that, "*The panel were more than fair to me*." 4-c also believed that a different panel would take into consideration other factors of the case such as health and safety and bullying, but they refused to look at these issues.

5-r believed that the same conclusion would have been drawn because a fair process had been followed.

6-r-1 explained that the panel was fair but maybe another panel would have taken into consideration other matters such as the claimant trying to set up his own company, which contributed to his actions. 6-r-2 believes that, " *A Judge sitting on their own would come to a different conclusion*." 6-r-2 suggested that a Judge would not have been influenced by lay members and would have drawn conclusions based on the facts of the case.

7-r-1 felt that another panel would have drawn the same conclusions although in this case he believed that, "*The lay members were biased as they questioned our witnesses extensively. A Judge sitting alone may not have done that*." 7-r-1 also commented that as lay members were not legally trained whether they should be involved in a legal hearing. 7-r-2 also believed that a similar decision would have been made but felt there was disparity in the panel, "*The judge was for us, the trade union lay member just wanted to play golf and the other one seemed in favour the claimant*."

4.4.7 Conclusions

From the interviews and questionnaires four themes have been identified. The thematic areas are:

1) **Disposal times** - The length of time cases take to be settled

2) **Representation** – Legal representation throughout the tribunal process does affect the fairness of how the case is resolved.

3) **ETS administration inefficiencies** – The ETS has a series of rectifiable inefficiencies.

4) **Tribunal Judgments**- Difference in opinion regarding tribunal judges and lay members.

Firstly, the length of times it takes for tribunals to hear a claim was a major concern for both claimants and respondents. Claimants argued that the anxiety of waiting for the tribunal hearing was extremely unpleasant and also they had to wait for a long period of time before they received some form of compensation. Respondents were angry that the longer a tribunal case took to be heard the more compensation could have been awarded. As the cases

in this study were unfair dismissal cases, compensation was linked to loss of earnings, and respondents were aware that awards were in effect paying an employee but not receiving any services for this payment.

Secondly, from all of the interview data it was made clear that legal representation was very important and that having legal representation or not having legal representation would have an impact upon the case. Some interviewees believed that the ET panel expected legal representation; although if either party was not represented the ET panel were good at supporting the claimant or representative through the process. A potentially surprising outcome from the interviews involved comments that the introduction of claim fees in July 2013 would be unfair. Both claimants and respondents believed that this would prevent claims being submitted as the majority of claims involve people who have lost their jobs and would not be able to afford the costs of submitting a claim and then paying a further fee to proceed to a full tribunal hearing. This viewpoint would be expected from a claimant however all respondents expressed the view that although tribunal fees will prevent '*spurious*' claims it would also prevent those with genuine cases against their employer.

Thirdly, although the majority of interviewees believed that the ETS was a fair process, a number of interviewees outlined a variety of issues that they believed rendered the ETS as being inefficient. Examples such as the ETS not contacting the Job Centre Plus to determine whether a claimant had received job seekers allowance, which would have been deducted from the award given. As the ETS did not get the information the claimant received a full salary instead of his full salary being deducted with Job Seekers payments. The respondents therefore had to pay considerably more than necessary if the ETS and Job Centre Plus would have communicated in a more efficient manner.

The fourth and final theme derived from the interviews relates to the judgments made by the tribunal panel. Responses from both claimants and participants indicated that they believed that a different tribunal panel may

have come to a different conclusion. The discussion area was clearly hypothetical, but it was important to determine the participant's beliefs in distributive justice and whether they believed that the ETS is a barrier to justice. From the qualitative responses gained numerous interviewees indicated that it was a barrier to justice as a decision by a tribunal could be made differently depending on the tribunal panel with some providing a reasoned response to qualify their comments. Therefore even though the participants' comments are hypothetical it still impacts upon on their perception of justice and whether they have had their claim heard in a just manner.

A final observation from the interviews relates to the humanistic aspect of experiencing the ETS. All of the interviewees expressed a range of emotions regarding their involvement with the ETS, and it is sometimes difficult to express these emotions through the medium of text and also with the constraints of objectivity. To align with what Renton (2012) qualifies as the serious psychological suffering that can occur during the tribunal process, both claimants and respondents have suffered various levels of anguish, which has affected their mental state and considerations towards the workplace in the future.

The next chapter will draw the research aim, questions, literature and data together to present a series of findings that addresses the claim that the ETS is broken and biased towards the claimant (CBI, 2011; BCC, 2011)

4.5 Conclusions in relation to the research questions

4.5.1 Introduction

To highlight the key themes derived from the research findings and literature review, this section will answer the research questions, which will then enable further conclusions to be drawn in Chapter 5.

As outlined in Chapter 3 the research questions were devised through an initial exploration of the literature as well as interviews with various ETS stakeholders and commentators. The summary of the main findings in relation to the research questions and objectives are depicted below in Table 4.1:

Table 4.1 – **Summary of findings in relation to research questions**

Research Question	*Research Objectives*	*Main Findings*
	To critically analyse the history and importance of the tribunals to acquire an in-depth understanding of the ETS.	
1- What was the original aim and mission of tribunals, and how have they evolved since their inception?	1.1 Background of ETS 1.2 Development of the ETS 1.3 *Industrial Training Act* (1964) 1.4 Donovan Commission 1.5 *T.U Reform and ER Act* (1993) 1.6 *Employment Tribunals Act* (1996) 1.7 *Employment Rights (Dispute Resolution) Act* (1998) 1.8 *The Employment Tribunals (Constitution and Rules of Procedure) Regulations* (2004) 1.9 *The Employment Tribunals (Constitution and Rules of Procedure) Regulations* (2013)	Industrial Tribunals were established under the *Industrial Training Act* (1964) and were expanded under recommendations made by the 1968 Donovan Commission. Recommendations made by the commission were to not only broaden the remit of tribunals but also ensure they acted in a manner that was easily accessible, informal, speedy and inexpensive. Various acts over the following four decades expanded the remit and jurisdiction of tribunals resulting in a complex, legalised dispute resolution system.
2- How many claims are made to the ETS and what are their jurisdictions?	2.1 ETS annual statistics 2.2 Survey of Employment Tribunal Applications (SETA) 2.3 Government records	In 1971 claims made to the tribunal numbered 8,591, in 2012 this number had risen to 191,541. In 1971 tribunals mainly dealt with unfair dismissal cases. In 2012 the tribunal system has the authority to adjudicate over sixty-five different jurisdictions administered throughout 27 hearing centres.

3- What are the costs involved in operating the ETS and how much does it cost to bring or defend a claim?	3.1 Ministry of Justice records 3.2 ETS annual statistics	In 2009 the administration costs of operating the ETS has been gauged at £ 84,390,000. The amalgamation of the ETS into HMCTS has centralised the costs of all courts and tribunals. Until July 2013 there was no cost for claimants in submitting a claim, only potential legal representation costs and the emotional experience of pursuing a claim. For respondents it has been estimated that the cost of defending a claim is £8,500 and the average settlement costs being £5,400. Research, albeit from an employer perspective, has highlighted the propensity for respondents to settle a claim rather than proceed to a full hearing due to the high costs involved in defending the claim.
	To develop an understanding around the theory of justice and apply this to the ETS	
4- How has employment law regulated and altered the balance of power in the employment relationship?	4.1 Role of the ETS in conflict resolution 4.2 Types of conflict	The role of employment law has provided individual employment legislation to protect workers whereas historically protection had derived from a collective perspective. This has resulted in disputes being resolved '*internally*' through a tri-partite arrangement of management, worker and trade union. The implementation of employment legislation has mirrored a decline in trade union membership and a big increase in ET applications. It has also been argued that with the boosting in managers '*right to manage*' there has been an increase in work intensification, reduced terms and

		conditions of employment, redundancies and unemployment. Historically collective arrangements would have dealt with conflict between managers and workers. Employment law and ET's have enabled both managers and companies to act in a manner where collective arrangements would have prevented from manifesting into a situation where tribunals are requested to adjudicate in the dispute.
5- How does the theory of justice fit within the ETS?	5.1 Procedural justice 5.2 Interactional justice 5.3 Distributive justice	Rawls' (1999) and Cropanzano, Stein and Nadisics' (2011) have outlined justice in terms of three elements, Procedural, Interactional and Distributive. These three concepts that have been traditionally assimilated with organisational justice, have been used to analyse the workings and effectiveness of the ETS. Procedural justice focuses upon the ETS process, from the submission of claims to the outcome of the case. Interactional justice concentrates on how claimants and respondents are treated during the ETS process, mainly during the tribunal hearing but also before and after. Distributive justice focuses on the case outcome, the decision made by the tribunal panel. The qualitative aspect of the study enabled a further examination of participant's thoughts on the outcome of the case, which produced interesting results in terms of why they thought the outcome was fair or unfair. The use of the term justice was also aligned to the original aim of tribunals as recommended by the Donovan commission. The study has highlighted inefficiencies within the ETS that have affected the requirement of

		cases being dealt with in a '*speedy*' manner and acting fairly from a procedural justice perspective.
	Provide an insight into the workings of tribunals through questioning users and observers of the ETS	
6- Does the ETS act fairly towards claimants and respondents?	6.1 Fairness and unfairness of the process 6.2 Fairness and unfairness of the decision 6.3 Fairness and unfairness of how users are treated	Overall the results from the questionnaires and interviews deemed tribunals to act fairly in relation to all elements of the justice perspective. The main concerns have focused on specific areas of the process and case outcome. Issues were raised about the consistency of tribunal panels; with participants stating that they believed different panels or judges would have come to a different conclusion. Although this is a hypothetical question, rationale for the statements have explained why they believe this, including the actions of the panel during the hearing, the health of judges and the lack of ability in gaining full facts about the case.
	Through the exploration of Unfair Dismissal cases, determine whether the ETS is a barrier to justice	
7- What are the outcomes of ET applications?	7.1 ET application outcome statistics 7.2 SPSS tribunal & questionnaire analysis	Over a half of ET cases in 2012 – 13 were either settled through Acas (33.1%) or withdrawn (27%). Only 11% of cases were successful at the hearing. It is difficult to analyse the 61.1% of cases that were settled or withdrawn due to the confidential nature or lack of being

		able to access the reasons behind the outcome.
8 - Are there any inefficiencies within the ETS?	8.1 Interview analysis 8.2 Questionnaire analysis 8.3 Literature review	Results from the data collection and literature review reveal a series of issues that severely challenges the ETS' ability to achieve the aims as recommended by the Donovan commission. The main issue that concerned claimants and in particularly respondents is the length of time it takes for tribunals to dispose of claims. Although there is the obvious anxiety of waiting for the case to be heard and outcome decided, there are practical implications for respondents such as paying higher awards for loss of earnings. Another issue identified involved the administration of the ETS which resulted in hearings being cancelled on the day or the day before.
	To identify areas where the ETS could be developed to meet future continuing needs	
9- What are the future requirements of the ETS?	**9.1 –** Claimant, respondent and observer commentary **9.2** Literature review	Of the most consistent improvements to be highlighted during interviews and recorded in the questionnaires was to expedite the tribunal process. A future requirement that respondent's noted was the need to prevent spurious claims going to a full tribunal hearing. The introduction of tribunal fees will prevent potential spurious claims but could also preclude legitimate claims being made. The literature review also highlighted the need for spurious claims to be disposed of before progressing to a full hearing. The chapter also highlight the problem of the increase in discrimination claims being submitted due to the potential unlimited compensation awards and by-passing the two year unfair dismissal requirements.

		The issue of Judges sitting alone was also raised as a concern by interviewees. Both claimants and respondents stated that a different decision may have been made if lay members were present on the panel.

This section has outlined the links between research questions and objectives with a summary of the findings drawn from literature review, questionnaire data and interview analysis. The next section will provide further details of these findings by answering the research questions and drawing the themes of research together.

4.5.2 Research question 1

What was the original aim and mission of tribunals, and how have they evolved since their inception?

The literature review established that Industrial Tribunals (renamed Employment Tribunals by section 1 of the *Employment Rights (Dispute Resolution) Act* 1998) were created under the *Industrial Training Act* (1964) to hear appeals made by employers against the Industrial Training Boards (Lewis and Sargeant, 2013). This sole of area of law that tribunals were authorised to preside over was extended in 1965 under the *Redundancy Pay Act* (1965) as well as through the *Employment Payments Act* (1966) and *Docks and Harbours Act* (1966).

The principal evolution of the tribunal system was a result of various recommendations made by the Royal Commission on Trade Unions and Employers' Associations (1965-1968) that were implemented, though not wholly, through the *Industrial Relations Act* (1971). The jurisdiction of tribunals were extended to adjudicate:

> "… *all disputes between employers and employees from their contracts of employment or from any statutory claims they may have against each other in their capacity as employer and employee.*"
>
> (The Royal Commission on Trade Unions and Employers' Associations 1965-1968, Para. 573)

and were recommended to be easily accessible, informal, speedy and inexpensive. The implementation of the *Industrial Relations Act* (1971) was vehemently opposed by trade unions, who had a long chariness towards UK law courts (Renton, 2012), and scepticism was also prevalent as to the genuine reasons why tribunals were enabled to handle unfair dismissal cases (Shackleton, 2002). Although the *Industrial Relations Act* (1971) was repealed, Industrial Tribunals remained and were given additional authority through the *Equal Pay Act* (1970), *Sex Discrimination Act* (1975) and *Race Relations Act* (1976). Their jurisdiction also covers both English and Scots law, as well as European Union Law (Upex *et al.,* 2009).

As outlined above, tribunals were re-branded into Employment Tribunals in 1998 but the major development of ET's occurred in 1997 when the ETS was established to provide organisational and administrative support to ET's and EAT's (Lewis and Sargeant, 2013). Industrial Tribunals initially were required to utilise other courts or council chambers due to a lack of settled infrastructure or premises (Renton, 2012). In fact over 84 different locations such as hotels, libraries and houses were used to hear disputes (MacMillan, 1999). The First President of the Industrial Tribunals recounts in Greenhalgh (1996:22), that he heard cases in the Royal Courts of Justice as well as opulent Council chambers that did little to facilitate a relaxed atmosphere, and in fact resulted in cases being withdrawn due to claimants being intimidated by the surroundings.

The restriction on trade union activity as well as the explosion of individual employment law has increased the importance and use of ET's (Dickens, 2000). Semi-voluntary procedures such as the *Acas Code of Practice on Disciplinary and Dismissals* has effectively forced employers into following set procedures (Dickens and Neal, 2006) and facing an ET claim if they do not.

A consistent premise throughout the development ET's is that a person may appear before a tribunal with or without representation (*Employment Tribunals Act* 1996 S 6(1)) however it has become more apparent that both claimants and respondents are willing to choose to be represented during hearings. Peters *et al.,* (2010) state that nearly two-thirds of claimants and respondents had legal representation at a hearing. Within this study the majority of comments made, during the interviews, confirmed that legal representation had an impact on the case. Even if either party were not represented, interviewees stated that this had an impact on the outcome of the case. Responses in Cases 1 and 3 stated that Judges and lay members expect / prefer legal representation. Case 2 respondents stated that ET's are a place for legal professionals and Case 3 respondents explained that legal representatives know what the legal points are and can not only present the facts of the case but also align these to the relevant legal positions. There

were a number of clarifying responses regarding representation, for example Case 5 stated that either party should or should not be allowed to have legal representation. Therefore the importance is not based upon solely being represented but whether the other party is represented, ergo one party has an advantage over the other. This correlates with Peters *et al.,* (2010) in the SETA findings that 68% of respondents win their case when represented.

The development of tribunals has therefore shifted from an informal institution resolving disputes over minute areas of employment legislation to a mammoth service that:

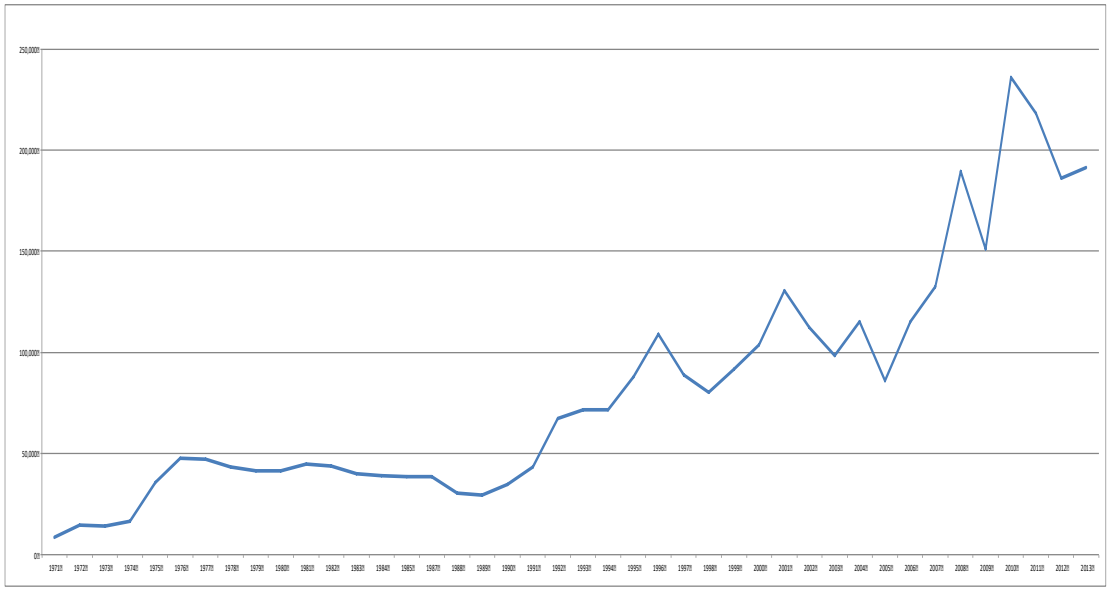
> "*… bears as much relationship (to the 1971 tribunal structure) as the computer does to the calculator. The jurisdiction of tribunals has grown massively. They now deal with law, which is of very considerable complexity, as any litigant caught up in indirect discrimination claims quickly learns. The amounts of compensation are in many fields unlimited, and complex cases may take weeks to be heard.*"
>
> (Swift *et al.,* 2007:v)

4.5.3 Research question 2

How many claims are made to the ETS and what are their jurisdictions?

In 1971 claims made to Industrial Tribunal's numbered 8,591, in 2012-2013 this number had risen to 191,541. The reasons behind the increase have been discussed within the literature review but include the widening of jurisdiction in tribunal applications (in 2012-2013 ET's have the authority to adjudicate over sixty-five different jurisdictions administered throughout 27 hearing centres). Fig 4.11 and Table 4.2 below outlines the number and types of claims made:

Fig. 4.11- **Employment Tribunal Applications 1971 – 2013**



(Sources: 1971 -1984 – Employment Gazette; 1985-1998 – Hawes (2000);
(1998-2013 –Employment Tribunal Service Annual Reports

Table 4.2- **Employment Tribunal Receipts by Jurisdictions**

	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009 / 10	2010 / 11	2011 / 12	2012 / 13
Total Claims Accepted	**91,913**	**103,935**	**130,408**	**112,227**	**98,617**	**115,042**	**86,181**	**115,039**	**132,577**	**189,303**	**151,028**	**236,100**	**218,100**	**186,300**	**191,541**
Singles		70,600	78,000	71,000	68,000	65,700	55,600	56,660	53,377	50,094	62,400	71,300	60,600	59,200	54,704
Multiples		33,300	52,400	41,200	30,700	49,400	30,600	36,300	35,357	34,414	88,700	164,800	157,500	127,100	136,837
Total Claims Initially Rejected								12,258	10,762	9,779	10,576	4,100	1,400	1,300	1,295
Of the total, those that were resubmitted and subsequently accepted								4,897	3,861	3,323	2,858	1,300	210	230	228
Of the total, those that were resubmitted and not accepted or never resubmitted								7,361	6,901	6,456	7,718	2,800	1,100	1,100	1,067
JURISDICTION MIX OF CLAIMS ACCEPTED	**1998/99**	**1999/00**	**2000/01**	**2001/02**	**2002/03**	**2003/04**	**2004/05**	**2005/06**	**2006/07**	**2007/08**	**2008/09**	**2009 / 10**	**2010 / 11**	**2011 / 12**	**2012 / 13**
NATURE OF CLAIM															
Unfair dismissal(1)	43,482	53,070	49,401	51,512	45,373	46,370	39,727	41,832	44,491	40,941	52,711	57,350	47,884	46,326	49,036
Unauthorised deductions (Formerly Wages Act)	29,660	39,894	41,711	42,205	39,451	42,524	37,470	32,330	34,857	34,583	33,839	75,536	71,275	51,185	53,581
Breach of contract	27,188	30,958	31,333	30,791	29,635	29,661	22,788	26,230	27,298	25,054	32,829	42,441	34,609	32,075	29,820
Sex discrimination	10,157	7,801	25,940	15,703	11,001	17,722	11,726	14,250	28,153	26,907	18,637	18,204	18,258	10,783	18,814
Working Time Directive	1,326	5,595	6,389	4,980	6,436	16,869	3,223	35,474	21,127	55,712	23,976	95,198	114,104	94,697	99,627
Redundancy pay	8,642	10,846	9,440	8,919	8,558	9,087	6,877	7,214	7,692	7,313	10,839	19,025	16,012	14,661	12,748
Disability discrimination	3,151	3,765	4,630	5,273	5,310	5,655	4,942	4,585	5,533	5,833	6,578	7,547	7,241	7,676	7,492
Red. failure to inform and consult			1,542	3,862	3,112	5,630	3,664	4,056	4,802	4,480	11,371	7,487	7,436	7,984	11,075
Equal pay	7,222	4,712	17,153	8,762	5,053	4,412	8,229	17,268	44,013	62,706	45,748	37,385	34,584	28,801	23,638
Race discrimination	3,318	4,015	4,238	3,889	3,638	3,492	3,317	4,103	3,780	4,130	4,983	5,712	4,992	4,843	4,818
Written statement of t's & c's	3,098	2,762	2,420	3,208	2,753	3,288	1,992	3,078	3,429	4,955	3,919	4,743	4,016	3,630	4,199
Written statement of reasons for dismissal			1,425	1,526	1,658	1,829	1,401	955	1,064	1,098	1,105	1,097	929	962	808
Unfair dismissal - TUPE	562	1,287	1,087	1,806	1,161	n/a	n/a	n/a	n/a	n/a	n/a				
Written pay statement			884	1,082	1,117	1,387	1,076	794	990	1,086	1,144	1,355	1,333	1,287	1,363
TUPE failure to inform and cons.	2,060	1,336	1,323	2,027	1,054	1,321	1,031	899	1,108	1,380	1,262	1,768	1,883	2,594	1,591
Suffer a detriment / unfair dismissal - pregnancy(2)	1,341	1,216	963	981	878	1,170	1,345	1,504	1,465	1,646	1,835	1,949	1,866	1,861	1,589
Part Time Workers Regulations			12,280	831	500	833	561	402	776	595	664	530	1,575	774	823
National minimum wage		1,306	852	556	829	613	597	440	806	431	595	501	524	511	500
Discrimination on grounds of Religion or Belief	n/a	n/a	n/a	n/a	n/a	70	307	486	648	709	832	1,000	878	939	979
Discrimination on grounds of Sexual Orientation	n/a	n/a	n/a	n/a	n/a	61	349	395	470	582	600	706	638	613	639
Age Discrimination							n/a	n/a	972	2,949	3,801	5,184	6,821	3,715	2,818
Others	7,564	8,186	5,090	6,207	4,805	5,371	5,459	5,219	5,072	13,873	9,274	8,059	5,528	5,919	6,901
Total	**148,771**	**176,749**	**218,101**	**194,120**	**172,322**	**197,365**	**156,081**	**201,514**	**238,546**	**296,963**	**266,542**	**392,777**	**382,386**	**321,836**	**332,859**

(Sources: 1998-2013 –Employment Tribunal Service Annual Reports)

The overall total of tribunal claims have significantly increased since 1971, but as can be seen from table 5.2, over the previous 14 years, unfair dismissal cases have remained constant whereas other areas have considerably increased, in particularly:

Table 4.3 - **Working time directive claims**

	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	**91,913**	**103,935**	**130,408**	**112,227**	**98,617**	**115,042**	**86,181**	**115,039**	**132,577**	**189,303**	**151,028**	**236,100**	**218,100**	**186,300**	**191,541**
WTD	1,326	5,595	6,389	4,980	6,436	16,869	3,223	35,474	21,127	55,712	23,976	95,200	114,100	94,700	99,627
% overall claims	1%	5%	5%	4%	7%	15%	4%	31%	16%	29%	16%	40%	52%	51%	52%

Table 4.4- **Unauthorised deduction of wages claims**

	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	**91,913**	**103,935**	**130,408**	**112,227**	**98,617**	**115,042**	**86,181**	**115,039**	**132,577**	**189,303**	**151,028**	**236,100**	**218,100**	**186,300**	**191,541**
Unauthorised Deductions	29,660	39,894	41,711	42,205	39,451	42,524	37,470	32,330	34,857	34,583	33,839	75,500	71,300	51,200	53,581
% overall claims	32%	38%	32%	38%	40%	37%	43%	28%	26%	18%	22%	32%	33%	27%	28%

Table 4.5 - **Equal pay claims**

	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11/12	12 / 13
Total	**91,913**	**103,935**	**130,408**	**112,227**	**98,617**	**115,042**	**86,181**	**115,039**	**132,577**	**189,303**	**151,028**	**236,100**	**218,100**	**186,300**	**191,541**
EP	7,222	4,712	17,153	8,762	5,053	4,412	8,229	17,268	44,013	62,706	45,748	37,400	34,600	28,801	23,638
% overall claims	8%	5%	13%	8%	5%	4%	10%	15%	33%	33%	30%	16%	16%	15%	12%

(Sources: 1998-2013 –Employment Tribunal Service Annual Reports and Statistics)

Working time directive claims have seen the most dramatic increase both in terms of the number of applications made within this jurisdiction and also in comparison with the number of overall claims made. Unauthorised deduction of wages claims have also significantly increased over the last fourteen years although the number of applications made in comparison with the overall total has remained constant. Equal pay claims have trebled over the same period and almost doubled in comparison to overall percentage of claims.

As explained in section 2.5, ET statistics have distorted figures due to singular issues in the reporting year. For example figures for Working Time cases include 10,600 airline cases that are resubmitted every three months, for technical reasons to do with time limits. That means that for those original 10,600 airline cases, another 42,400 cases are added every year, even though they are all the same case. Despite these statistical anomalies, accepted ET claims have doubled within fourteen years. As outlined above the reason(s) for the increase in applications have been aligned to a widening of jurisdictions but it can also be associated with the increase in individual employment law that has empowered the individual to resolve a dispute outside of the workplace. The alleged reduction in power and membership of trade unions has also been explained as a cause for the increase in applications, however it is unclear and difficult to assess how many disputes are rectified through collective arrangements.

4.5.4 Research question 3

What are the costs involved in operating the ETS and how much does it cost to bring or defend a claim?

Determining the costs of operating the ETS has been extremely difficult to ascertain due to the fact that ET's and EAT's have now been amalgamated into Her Majesty's Courts & Tribunals Service. Tribunal operating costs are now shared, for example courtrooms are now shared between different

tribunal hearings, so it can be possible to have employment law cases being heard next door to a tax or immigration tribunal hearing.

In 2009 / 10 the costs of operating the ETS has been gauged at £84,390,00. The amalgamation of the ETS into HMCTS has centralised the costs of all courts and tribunals.

Table 4.6 – **Operating costs of the ETS 2006 - 2010**

	2006/07	**2007/08**	**2008/09**	**2009/10**
	£000's	**£000's**	**£000's**	**£000's**
Administrative Staffing Costs	£15,338	£14,630	£15,091	£15,781
Accommodation costs	£13,415	£14,100	£12,791	£14,777
Administrative overheads	£11,556	£11,229	£11,084	£14,291
Hearing costs (including Judicial Salaries / Fees)	£30,762	£35,051	£36,915	£39,541
Total Expenditure	**£71,049**	**£74,975**	**£75,869**	**£84,390**

(Sources: 2006-2010 –Employment Tribunal Statistics Office)

Until July 2013 claimants were not required to pay a fee when submitting a claim, only potential legal representation costs and the emotional experience of pursuing a claim. The contentious introduction of fees (Corby, 2013; James 2011; TUC, 2013) has raised issues around access to justice. Under the *Employment Tribunals and the Employment Appeal Tribunal Fees Order* (2013) claimants will (except for specific exemptions) have to pay the following fees:

Table 4.7 – **Employment Tribunal fees**

Fee Type	Type A claims	Type B claims
Issue fee	£160	£250
Hearing fee	£230	£950

(Source: MoJ Fees Factsheet, 2013)

According to the MoJ Fees Factsheet (2013:3) the:

> "W*ages Act / refusals to allow time off / appeals etc will be defined in the Order as Type A claims, and attract the level 1 fee, as stated in the consultation response. Discrimination / detriment / dismissal claims will be defined in the Fees Order as Type B claims and consequently allocated to the higher level 2 fees.*"

For respondents it has been estimated that the cost of defending a claim is £8,500 and the average settlement costs being £5,400 (BCC, 2011). This research, albeit from an employer perspective, has highlighted the propensity for respondents to settle a claim rather than proceed to a full hearing due to the high costs involved in defending the claim.

4.5.5 Research question 4

How has employment law regulated and altered the balance of power in the employment relationship?

The increase of individual employment legislation over the last forty years has enabled employment law to protect workers where historically the safeguarding of workers rights had mainly derived from a collective perspective. Hepple (1983:393-4) explains that:

> "*…an underlying trend towards the juridifaction of individual disputes…Matters which were once entirely within the sphere of managerial prerogatives, or left to collective bargaining, are now directly regulated by positive legal rights and duties.*"
>
> (Hepple, 1983:393-4)

Historically disputes were resolved '*internally*' through a tri-partite arrangement of management, worker and trade union. With the protection of individual employment law Hepple (1983) believed that workers were essentially protected in an enhanced manner although Lewis (1986) asserts that this is a sweeping statement and that the statistics around unsuccessful claims indicate a different perspective. Williams and Adam-Smith (2010) also concur with Lewis (1986) although they cite the development of the economy and changing nature of employment as the reason for the change in the employment relationship rather than a high regulation of workers rights. Bridges (1995:45) also concurred stating that the traditional employment relationship has changed due to a change in the "*nature of the job"*, where jobs are "*artificial*" and "*Today's organisation is rapidly changing from a structure built out of jobs to a field of work needing to be done*."

The literature review intimated that one of the most significant changes in the balance of power within the employment relationship is the decline in trade union membership, which has mirrored the significant increase in ET applications. Machin (2000) believes that the balance of power has shifted away from trade unions and that the decline in organised labour can be attributed to the failure of unions in organising labour.

Membership of the EU has also led to the implementation of further employment rights that do not require collective agreements or consideration, which has further eradicated the power of organised labour within the employment relationship. Wilthagen and Tros (2004) explain that the EU have promoted a flexicurity approach to employment where labour markets are flexible but job security is strong.

It has also been argued that with the boosting in managers '*right to manage*' there has been an increase in work intensification, reduced terms and conditions of employment, redundancies and unemployment. Historically collective arrangements would have dealt with conflict between managers and workers, employment law and potentially ET's have enabled managers and companies to act in a manner that collective arrangements could have

prevented manifesting into a situation where tribunals would be required to adjudicate in the dispute. However Pilbeam and Corridge (2010) believe that the use of statutory regulation counteracts the inequality of bargaining power, which is inherent in the employment relationship. Edwards (2003:135) also concurs by stating that "*arbitrary hire and fire approaches to discipline have been curbed*" and that "*due process and corrective procedures instituted*".

The literature review highlighted concerns regarding statutory regulation of the working relationship, namely in its complexity and how the law is enforced (Lewis and Sargeant, 2010). Willey (2009) highlighted the potential unfairness of indirect discrimination as an example of the complex nature of legislation and how it has been interpreted. A report by the IoD contained in Lea (2001:57) demonstrates further concerns regarding the regulation of the employment relationship; firstly that some employers believe that they are legitimised in offering terms and conditions at the statutory minimum where ordinarily they will have provided terms above this, and secondly where employers are reluctant to employ staff who are heavily protected through employment legislation such as women of "*child-rearing age*". Gilmore and Williams (2012) labelled this the '*law of unintended consequences*' and has resulted in employers selecting staff based on those with potential less statutory employment rights.

The most significant change in the regulation of the employment relationship has been the bureaucratic and system orientated approach to managing people (Taylor and Emir, 2012; Pilbeam and Corbridge, 2010; Edwards, 2003). The *Statutory Disciplinary and Dismissal* procedures are an example of where regulation has promoted formal proceedings rather than an early informal resolution. Even though these procedures have been removed and 'Semi-voluntary' procedures introduced, it is a prime illustration of how employment law has shifted the power from the use of internal and collective dispute resolution strategies to a more formal external process which has in some ways afforded further protection for workers (Taylor and Emir, 2012) but also complicated the employment relationship and therefore hindered the rights and employability of individuals. Dubinsky (2000) believes that

employment regulation has enabled managers to 'manage' people through work intensification, reduced terms and conditions of employment and redundancies where previously collective arrangements would have controlled the employment relationship. Dubinsky (2000) also believes that despite of the increase in individual employment law and the ultimate threat of ET's, managers are still being allowed to act incompetently which has reduced workplace conflict and increased conflict in the workplace. Knight and Latreille (2000) highlight that despite unfair dismissal regulations, the dismissal rates are considerably lower where union membership is high. This suggests that within the employment relationship, collective arrangements are still powerful and beneficial for workers.

Clancy and Seifert (1999) have succinctly summarised the change in power of the employment relationship by stating that workplace discipline has altered from a controlled agreement between capital and labour towards a legal forum that adjudicates on arguments about managerial rights and reasonableness.

4.5.6 Research question 5

How does the theory of justice fit within the ETS?

Within this study, the theory of justice has been utilised to '*measure*' the fairness of the ETS. The literature review identified justice as being an important aspect within social institutions and these, as well as laws, must be reformed if they are unjust. As the term '*justice*' has a particularly extensive connotation the study adopted Rawls' (1999) and Cropanzano, Stein and Nadisics' (2011) description that outlines justice in terms of three elements; Procedural, Interactional and Distributive.

These three concepts that have been traditionally assimilated with organisational justice, have been used to analyse the workings and effectiveness of the ETS. Procedural justice refers to, "*various aspects that a procedure should meet in order to be perceived as fair by its user"* (Klaming

and Giesen, 2008:3) and focuses upon the ETS process, from the submission of claims to the outcome of the case. Interactional justice refers to the perception of the quality of treatment during the procedure (Bies and Moag, 1986) and concentrates on how claimants and respondents are treated during the ETS process, mainly during the tribunal hearing but also before and after. Distributive justice refers to the justice evaluation of the allocation outcome (Folger & Cropanzano, 1998; Greenberg, 1990) and focuses on the case outcome, the decision made by the tribunal panel. The qualitative aspect of the study enabled a further examination of participants' thoughts on the outcome of the case, which produced interesting results in terms of why they thought the outcome was fair or unfair.

The use of the term justice was also aligned to the original aim of tribunals as recommended by the Donovan Commission. As outlined in section 2.2.2, the Donovan Commission had a vision of tribunals being easily accessible, informal, acting speedily and were inexpensive for all stakeholders.

The study has highlighted inefficiencies within the ETS that have affected the requirement of cases being dealt with in a '*speedy*' manner and acting fairly from a procedural justice perspective. Procedural justice has also been questioned in the study, which has highlighted the expensive nature of defending a claim as well as operating the ETS. The introduction of tribunal fees in 2013 will assist the government in funding the ETS but will also make the service less accessible for workers who have genuine cases but cannot afford to process their claim. If workers cannot afford to access the tribunal process and employers cannot afford to defend the claim surely this aspect of the procedure is unfair? The cost of representation during the case has also been discussed which according to a number of respondents does affect the process and outcome of the case.

4.5.7 Research question 6

Does the ETS act fairly towards claimants and respondents?

Overall the results from the questionnaires and interviews deemed tribunals to act fairly in relation to all elements of the justice perspective. Over 75% stated that the process was fair, with the majority of claimants and respondents asserting this thought. Similarly nearly 80% of participants within the study believed that the decision by the tribunal was fair, although the claimants did provide an equal perspective on their thoughts. Over 90% of participants stated that they were treated fairly or the persons involved in the case were treated fairly, again with the majority of claimants and respondents asserting this thought.

The main concerns have focused on specific areas of the process and case outcome. Issues were raised about the consistency of tribunal panels; with participants stating that they believed different panels or judges would have come to a different conclusion. Although this is a hypothetical observation, rationale proposed for these statements have explained why they believe this, including the actions of the panel during the hearing, the health of judges and the lack of gaining full facts about the case. In terms of Procedural Justice, as defined by Klaming and Giesen (2008) aspects of the process have not been met to be perceived as fair by its user. In case 3 the respondent felt that the process of defending a case was too costly and eventually settled for £4,250. They stated that they, "*genuinely did not want to settle, it felt wrong*." This was a significant statement in terms of the analysis of justice within the ETS and the correlation with what had been alleged by the CBI and BCC that had instigated the study. The respondent felt that they had carried out a fair redundancy process but the clamant had set out £24,000 in their schedule of loss and the respondent felt that the cost of defending the case, as well as the time preparing and attending the tribunal hearing, would have far exceeded the agreed settlement.

Case 4 also highlighted issues with the procedural justice element of the ETS, believing that the outcome is dependent on, "*how you do during the case hearing*." This intimates that although a claimant or respondent believes they have strong cases, it is the 'performance' during the hearing that determines the outcome. As outlined above procedural justice refers to various aspects that a procedure should meet in order to be perceived as fair by its user, participants in this study believe that aspects of the process such as the length of time it takes for cases to be heard, the necessity of legal representation and the appropriateness of a three person panel has led to the conclusion that the tribunal is a barrier to justice from a procedural perspective. Respondents highlighted that the longer a case took to be heard, the higher the award could be. A significant facet of compensatory awards is that they are linked to loss of earnings and it is logical for respondents to feel that it is unjust for them to pay what is in effect someone's salary and for that person not to carry out the work they are being recompensed for, due to a process that has taken far too long to resolve. In one case the ETS failed to deduct Job Seeker Allowance payments from a claimants award, which resulted in the respondent paying a higher amount. Therefore from a procedural justice perspective this was deemed to be unfair and although the judgment was not considered to be an issue, the process followed by the ETS was thought to be unfair.

From this study it can be concluded that the ETS did receive a favourable response in terms of its function and ability to administer justice. However, fragmented concerns and issues have been raised that will be highlighted further in Research Question 8.

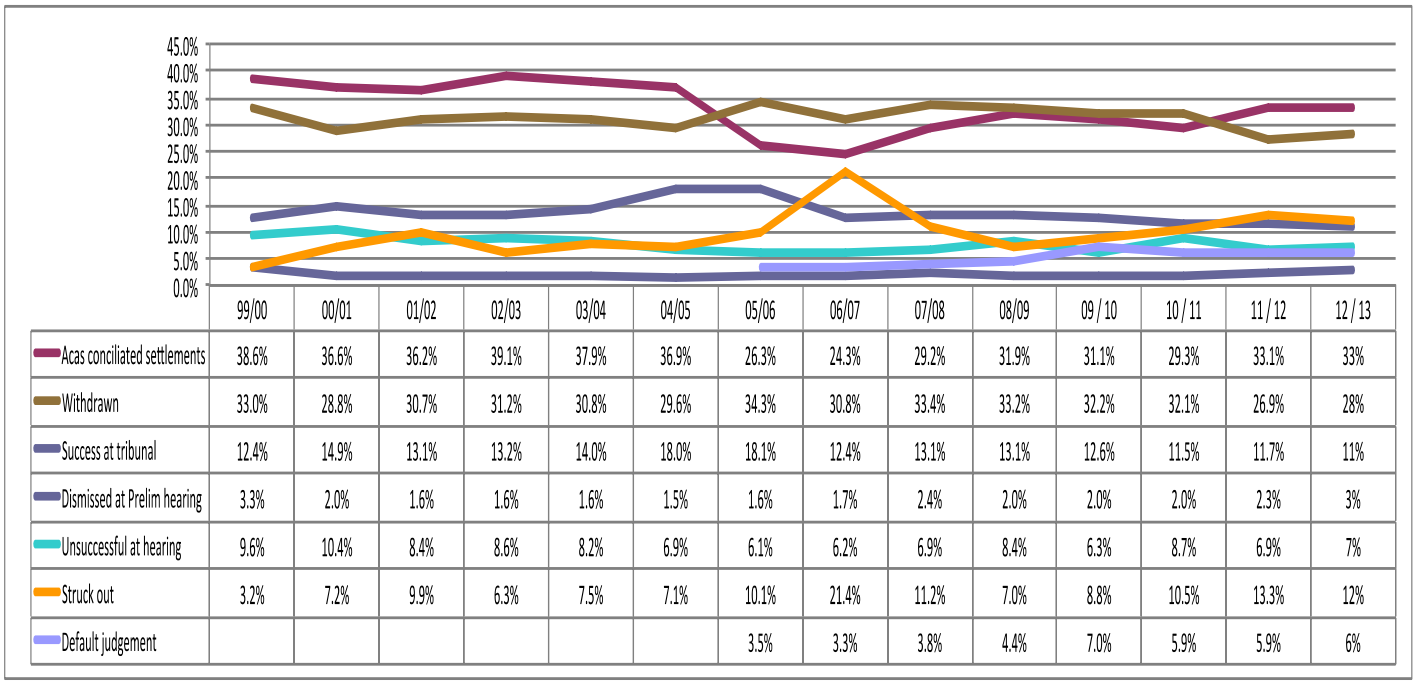
4.5.8 Research question 7

What are the outcomes of ET applications?

Over half of ET cases in 2011 – 12 were either settled through Acas (33.1%) or withdrawn (27%). Only 11.7% of cases submitted to the tribunal were successful at the hearing. It is difficult to analyse the 61.1% of cases that

were settled or withdrawn due to the confidential nature or lack of being able to access the reasons behind the outcome. Figures since ET statistics became more robust and widely available since 1999, and are detailed below in Fig 4.12:

Fig 4.12 - **Outcome of tribunal cases 1999 – 2013**



	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13
Acas conciliated settlements	38.6%	36.6%	36.2%	39.1%	37.9%	36.9%	26.3%	24.3%	29.2%	31.9%	31.1%	29.3%	33.1%	33%
Withdrawn	33.0%	28.8%	30.7%	31.2%	30.8%	29.6%	34.3%	30.8%	33.4%	33.2%	32.2%	32.1%	26.9%	28%
Success at tribunal	12.4%	14.9%	13.1%	13.2%	14.0%	18.0%	18.1%	12.4%	13.1%	13.1%	12.6%	11.5%	11.7%	11%
Dismissed at Prelim hearing	3.3%	2.0%	1.6%	1.6%	1.6%	1.5%	1.6%	1.7%	2.4%	2.0%	2.0%	2.0%	2.3%	3%
Unsuccessful at hearing	9.6%	10.4%	8.4%	8.6%	8.2%	6.9%	6.1%	6.2%	6.9%	8.4%	6.3%	8.7%	6.9%	7%
Struck out	3.2%	7.2%	9.9%	6.3%	7.5%	7.1%	10.1%	21.4%	11.2%	7.0%	8.8%	10.5%	13.3%	12%
Default judgement							3.5%	3.3%	3.8%	4.4%	7.0%	5.9%	5.9%	6%

(Sources: 1999-2013 –Employment Tribunal Annual Reports & Statistics)

Except for '*one-off*' peaks and troughs, the outcome rates have remained constant and provide an interesting picture in terms of what actually happens to claims. In terms of Acas settlements, it can be presumed that the respondent has in some way offered a remedy to resolve the dispute and the claimant has accepted this offer, with Acas co-ordinating the settlement.

Withdrawn cases are more difficult to assess, although some data has been collected through the *Survey of Employment Tribunal Applications* (SETA), 2008. Through this survey the following reasons were identified:

Table 4.8 - **Claimants reasons for withdrawal of case**

Reasons	Number
Was advised to withdraw	21
Too much financial cost / expense involved in continuing	19

Believed they could not win case / did not have valid case	16
Too much stress involved in continuing	11
Too much fuss / hassle / difficulty involved in continuing	9

(Source: SETA, 2008:228)

The reasons outlined above are not conclusive but do provide an indication of the rationale of the claimant. It would be interesting to probe further and find out why claimants were advised to withdraw. For cases that were settled the figures from the SETA (2008) survey reveal that the average settlement was £5,431 although the median figure was £2,000. These figures concur with the settlement averages purported by the BCC (2011) and are £3,000 less than the £8,500 that the BCC (2011) claims it costs employers to defend a case. The respondents in case 3 within this study agreed to a settlement of £4,250, which again concurs with the BCC (2011) report.

4.5.9 Research question 8

Are there any inefficiencies within the ETS?

Results from the data collection and literature review reveal a series of issues that severely challenges the ETS' ability to achieve the aims as recommended by the Donovan Commission. Concluding from the results in this study, the following inefficiencies have been identified:

1. The length of time cases take to be settled
2. Representation affects the outcome of the case
3. ETS Administration concerns
4. Consistency of the tribunal panel

The main issue that concerned claimants and in particularly respondents is the length of time it takes for tribunals to dispose of claims. Although there is the obvious anxiety of waiting for the case to be heard and outcome decided, there are practical implications for respondents such as paying higher awards for loss of earnings.

Another concern that was constantly raised involved legal representation. This was indicated by comments such as, "*ET's are a place for legal professionals*" (Case 2), "*Representation did a great job, Judges expect legal representation. I would not have stood a chance without legal representation. I would not have understood the case conference or other case hearings without representation*." (Case 1), "*Yes it did have an impact on the case*." (Case 5), "*Legal representatives can help reduce awards or costs as they know the system and the law*." (Case 3).

The comments made in this study clearly indicate that legal representation does influence the outcome of the case and that in all cases they would have legal representation if possible. The BERR report by Hammersley *et al.,* (2007:20) concluded that having legal representation (specifically contingency arrangements) "*extended access to justice"*. Even though the claimant in Case 4 did not have legal representation (the trade union appointed representative withdrew their services stating that the claimant had less than reasonable prospect of success) during the case hearing, after they had won the case they used legal representation at the remedy hearing. This was to ensure maximum compensation could be claimed, which the claimant believed could not be achieved if they had represented themselves. The data collected from this study and through the literature review demonstrate how important legal representation is within the ETS. As the majority of ET claims do not attract governmental '*legal help'* (except in discrimination cases) whichever party is not represented would be at a disadvantage, thus creating a barrier to justice because of the importance placed upon legal representation due to the complex nature of tribunals and employment law.

Another issue identified involved within this thesis involved the administration of the ETS, which resulted in hearings being cancelled on the day or the day before. Respondents and Claimants were angry that their cases, where they had waited for a considerable period, was postponed due to a mix up with the Employment Judge and lay members' diaries. This

resulted in further anxiety for the case to be heard as well as incurring further costs, in respect to legal fees and award to the claimant.

The final concern highlighted involved the consistency of the tribunal panel. These issues were determined from two perspectives, firstly that Case 1 appeared before various tribunals who all arrived at differing opinions and secondly from comments made in other cases regarding Employment Judges sitting alone. The second issue will be discussed in Research question 9 below, but the issue of consistency in relation to those observed by Case 1 is an area that is problematic to address for the ETS and also difficult to assess whether it is inefficiency or a natural element of justice. This study utilised *'Procedural Justice*' and '*Distributive Justice*' to assess the fairness of the ETS. Even though it maybe difficult to assess whether tribunals are consistent in their approach and decisions, what can be deduced using this form of measurement is the perception of justice from a procedural and outcome basis. The comments in Case 1 clearly express an opinion of unfairness in relation to the process followed and the outcomes derived from the different tribunals. Interviewees in other cases indicated that that they believed different judges and lay members would have come to a different conclusion although these opinions were mainly based on the fact that judges were sitting alone.

4.5.10 Research question 9

What are the future requirements of the ETS?

From the literature review employer organisations and '*independent*' governmental reports, such as the '*Beechcroft report on Employment Law*' (2012), have campaigned successfully for fees to be introduced when submitting a claim. This came into effect in July 2013 and will have an impact upon the number and types of claims (Renton, 2012**)** although it is far too early to be clear on the level of impact. The future requirement of the ETS in this respect will be to manage the cultural change that fees will bring to

tribunal proceedings, in that they will now mirror a civil court, (Corby and Latreille, 2012b) and the practical implications of processing fees, including the eligibility for exemptions, within the ETS (TUC, 2012).

The greatest improvement, that was consistently highlighted during interviews and within the questionnaires, involved the '*speeding up*' of the tribunal process. The length of time tribunals take to dispose of claims can be costly to both claimants and respondents. This study has noted the impact on claimants not being compensated for a long period of time and also, depending on their circumstances, not being able to attract similar terms and conditions. Respondents have paid more in compensation when cases have taken longer to be heard. It can be concluded therefore that cases still need to be heard, as the Donovan Commission recommended, in a speedy fashion. The introduction of '*Judges sitting alone*' will expedite the disposing of some claims although the lack of '*tri-partite adjudication'* does present other concerns (Corby and Latreille, 2012a). The ETS needs to focus more seriously on cases being heard and resolved quickly. The ETS annual statistics have historically included Primary Performance Indicators, which were largely based upon waiting times from receipt to disposal. Within HMCTS' Business Plan for 2011-2015, a pledge was undertaken to publish operational information about the effectiveness and efficiency of public services. As a result Impact indicators were suggested for ET's to work towards. Table 4.9 and 4.10 outline the timescales involved in the disposal of claims in 2011 – 2012:

Table 4.9 - **Cumulative percentage of Employment Tribunals clearances that took place in April 2012 to March 2013, by age of case at clearance Tribunal**

	25% point	**50% point**	**75% point**
Employment Tribunals (all)	16 weeks or less	33 weeks or less	2-3 years

(Source: ETS Annual Statistics, 2012-13)

Table 4.10 - **Cumulative percentage of ET clearances (for jurisdictional groups) that took place in April 2011 to March 2012, by age of case at clearance ET Jurisdictional Group (figures not available for 2012-13)**

	25% point	**50% point**	**75% point**
Equal Pay	1-2 years	3-4 years	4-5 years
Disability Discrimination	19 weeks or less	31 weeks or less	51 weeks or less
Race or Sexual Discrimination	28 weeks or less	1-2 years	3-4 years
Religious Belief, Sexual Preference	18 weeks or less	30 weeks or less	1-2 years
Age Discrimination	21 weeks or less	43 weeks or less	1-2 years
Working Time Regulations	11 weeks or less	20 weeks or less	37 weeks or less
Unfair dismissal, redundancy, insolvency	15 weeks or less	23 weeks or less	43 weeks or less
National Minimum Wage	13 weeks or less	23 weeks or less	46 weeks or less
Unauthorised Deductions (Wages Act)	13 weeks or less	27 weeks or less	1-2 years
Other	17 weeks or less	31 weeks or less	1-2 years

(Source: ETS Annual Report, 2011-12)

Although the tribunal service has released new indicator statistics, these are still somewhat confusing and barely reveal the true performance of ET's, most importantly being able to determine the effectiveness of ET's in disposing of claims. According to HMCTS Business Plan (2011 – 2015), tribunals will continue to use this method of measuring performance for the foreseeable future. Although this will provide some consistency of measurement for a number of years, more information needs to be provided

regarding the performance of regions and possibly tribunal offices. More details regarding the reasons for the disposal time could also be provided, for example explaining why Equal Pay and Race / Sex Discrimination cases take longer to be dealt with. Targeting regions and jurisdiction could assist tribunals in addressing areas of concern from a performance perspective.

Another future requirement that respondent's noted was the need to prevent spurious claims going to a full tribunal hearing. The introduction of tribunal fees will prevent spurious claims but this could also preclude legitimate claims being made (Corby and Latreille, 2012b; Law Society, 2012; TUC, 2013). The literature review and responses made by the respondents in this study also highlighted the need for spurious claims to be disposed of before progressing to a full hearing. The literature review chapter also highlight the problem of the increase in discrimination claims being potentially made due to the introduction of fees and by-passing the two year unfair dismissal requirements.

As stated above the issue of Judges sitting alone has been raised as a series issue in terms of justice being administered (Corby and Latreille, 2012a; Lord Monks, 2012); it was also raised as a concern by interviewees within this study. Employment tribunals usually sit with three members hearing a case, one of the three members is an Employment Judge, and the other two are members drawn respectively from panels of people appointed after consultation with organisations representative of employees, or of employers. Employment tribunals have traditionally sat with three members hearing a case. However under section 4(3) the *Employment Tribunals Act* (1996) and the *Employment Tribunals Act (1996) (Tribunal Composition) Order* (2012), cases regarding unfair dismissal, unpaid wages, holiday or redundancy payments, and interim relief applications, can be heard by an Employment Judge alone, without the need for a full panel. Cases in other jurisdictions, where all parties consent to the judge sitting alone, are also permitted to run in that way.

Both claimants and respondents stated that a different decision may have been made if lay members were present on the panel. Specific reasons were provided for this including the need for the panel to understand the industry or sector that the employer operates in, or for facts to be central to the judgment rather than the law. A lack of '*real world knowledge*' was cited as being a key concern, which could result in cases being handled from a purely legal perspective. The respondent in Case 2 believed that the Judge would have come to a different conclusion if lay members had have been present and the observers in case 9 identified an important decision made by the Employment Judge that may have been investigated and interpreted differently by someone who had '*business*' experience.

4.5.11 Conclusion

The study adopted nine research questions, which although is more than usual, conforms to the mixed method approach, where more questions are asked due to the higher usage of data collection methods.

The research questions were devised to primarily find out more about the ETS, which would then enable the research objectives and consequently aim to be met. The questions were also devised to focus the study on specific elements of the ETS and the theory of justice. This ensured that the study stayed within the research framework and did not become distracted by other aspects of the ETS. The ETS is constantly changing, with new procedures being introduced on an annual basis, and over the course of this study a series of measures have been introduced that could potentially have serious consequences for the ETS, such as the introduction of ET fees and Judges sitting alone in unfair dismissal cases. The research questions enabled these types of changes to be incorporated into the study, but they also retained the focus upon why tribunals were established and if they were a barrier to justice from the perspective of a user and observer.

Chapter 5

Conclusions

Chapter Five – Conclusions Contents

5.1 Introduction

The impetus for carrying out the research was triggered by accusations from the CBI (2011) and BCC (2011), who believed that the ETS was broken due to the abuse of the system by a high number of vexatious claims. These accusations have been counteracted by the TUC (2011) and differ from the views of tribunal researchers such as Adler (2004); Busby and McDermont (2012); Corby and Latreille (2012); Ewing and Hendy (2012); Renton (2012); and Shackleton (2002) who have maintained for a number of years that the tribunal system does need reform but to be focused more on assisting claimants rather than respondents. Renton (2012) specifically states that although claimants have a reasonable chance of winning a case, if it proceeds to a full hearing, the average compensation awarded is minimal in comparison to the loss of future earnings, benefits and pensions as well as the psychological impact the process can have on claimants and their families.

To explore some of these accusations and opinions, the research focused on three areas of justice; distributive, procedural and interactional, with the intention of analysing the ETS from a historical and contemporary perspective, to determine whether the ETS is a barrier to justice. This chapter will draw together the research questions, objectives and findings to establish a clear picture of how the ETS operates and what concerns there are with the current system. The chapter will then go onto outline the contributions the study has made and identify potential areas of future research.

5.2 Meeting the research aims

5.2.1 Objective 1 - Critically analyse the history and importance of the tribunals to acquire an in-depth understanding of the ETS

As outlined in the literature review, the ETS currently has a vital remit in adjudicating over workplace disputes. The original remit did not intend to resolve traditional workplace disputes, however through the implementation of individual employment law and a commission to inquire into questions

affecting industrial relations, a judicial system was established. The ETS adjudicated over 65 different jurisdictions, hearing 191,541 cases in 2012/2013, this would indicate that the ETS holds an important role within resolving workplace disputes. It is also a system, which attracts daily criticisms and comments, as well as providing a political tool for different parliamentary parties.

The extent of how important the ETS is, varies depending upon the individual or institution. Stakeholders within the ETS such as Judges, lay members and legal representatives believe that the system is vital in ensuring workers have an independent adjudicator in analysing and drawing conclusions regarding the dispute they have with their employer. With the reduction in trade union membership, and restrictions placed upon unions' power, they believe that the ETS is the only system which can effectively provide an avenue for their grievances to be heard. Even if the outcome of the case has not been found in their favour, they may still feel that a judicial process has been followed at the very least. Those commentators who have reservations regarding the trade union movement also believe that the ETS offers an alternative to conflicts in the workplace being resolved internally by non-legally qualified mediators. Historically workplace disputes would have been dealt with internally through a tri-partite arrangement consisting of management, worker and trade union. Through the introduction of individual legislation and positive legal rights, an alternative system was available for disgruntled workers.

Opponents to the ETS believe that the system is far too legalistic and does not provide the support mechanism required in resolving the dispute. Trade union supporters argued that the ETS is flawed as the dispute can never be resolved if it can no longer be dealt with internally. The majority of workers would prefer to remain in their jobs, and the argument of pro-trade unionists is that they are able to deal with disputes in a more effective and rational manner, and that employers will be more open to discussion or rectifying the problem if that person was still employed. Once a person has left the organisation, it is very rare for the person to request they are re-

instated or re-engaged within the organisation. Therefore the ETS is flawed immediately as it does not prevent a worker from being dismissed, merely compensated for the actions of their employer. This argument, however, does have some limitations of its own. The ETS has provided an opportunity for workers to claim compensation when they have resigned from their job (constructive dismissal) or re-claim monies that have been unlawfully deducted, whilst still in the employment of the organisation.

The importance of tribunals can also be demonstrated through the introduction of a vast array of individual employment legislation. It can be argued that this profusion of legislation would not have been introduced if an appropriate system or law court was available to adjudicate over the disputes. Governments may have been reluctant for traditional civil courts to hear these types of disputes, due to the costs involved or the competence of Judges in understanding employment legislation. Having specialist Judges who are trained to understand and interpret employment legislation has helped implement the complex matrix of employment legislation.

Although tribunals receive considerable media attention, the majority of the coverage focuses upon the sensationalism of the case, in particular discrimination cases where employers have acted inappropriately. The Information Commissioners investigation into the Consulting Associations' blacklisting activities involving 40 construction companies blacklisting workers, should have received wider media coverage and condemnation due to its seriousness and affect it had on workers in the sector. This highlights a serious issue with the perception of the ETS, which should act as a deterrent for employers not dealing with employers in a proper manner, and provide an opportunity for workers to hear their dispute.

The manner in which the ETS is portrayed can therefore alter its importance as claimants believe they can submit discrimination claims with huge schedules of losses, which in fact are the cases that are less likely to succeed. The ETS have recently introduced more stringent '*restrictive reporting*' standards (Rule 50 of the Employment Tribunal Rules 2013-

Privacy and Restrictions on Disclosure), which should quench the media's thirst for salacious cases, and re-address ETS users perception of the service so that when they are involved within a case they have realistic expectations.

5.2.2 Objective 2 - To develop an understanding of the theory of justice and apply this to the ETS

The recommendations outlined by the Donovan Commission (The Royal Commission on Trade Unions and Employers' Associations 1965-1968) easily accessible, informal, speedy, inexpensive and providing an opportunity of arriving at an amicable settlement, fit within the three areas of justice utilised in this study. To evaluate the ETS it was recognised that a mechanism was required to measure the comments and opinions of participants questioned, so that these could be aligned with the effectiveness of how the tribunals operate.

The theory of distributive, interactional and procedural justice enabled an analysis of the ETS from a perspective that has not been utilised before but one, which applied a framework for analysing the various aspects of the system. Focusing upon just one area of justice would not have addressed other areas of the ETS, such as distributive justice not being able to provide a platform to assess the informal or speedy manner in which a tribunal operates. It also allowed users and observers of the system to highlight areas with which they were satisfied or not satisfied. For example, in this study participants stated they were not satisfied with distributive justice aspect of their case but were content from a procedural justice perspective.

The ETS normally provides regular detailed information regarding the outcome of claims and there are sporadic pieces of research which analyses the interactional aspect of using the ETS, there is however, very little available research regarding the process of tribunals and whether users and observers believe that it is a fair process.

Combining all three justice theories has provided rigour to the research design and strategy, as well as providing an opportunity to align organisational justice with the ETS. The traditional theory of justice arises from conflict within the workplace with the people involved in the workplace wanting to see justice carried out. The study has highlighted that conflict plays an important role within the employment relationship, and that the ETS play a key role in resolving conflict. It not only resolves conflict through distributive justice, but it can also resolve conflict from a procedural and interactional basis. If conflict has arisen in the workplace and the worker feels a proper process was not followed then the ETS could act as a substitute and allow the worker to have the option of another process to be followed to resolve the conflict.

A key theme of Rawls' (1999) theory of justice is based around the problem of formulating justice for everyone in society. This is an impossible task, however, what can be worked towards is the dividing of justice into significant elements and allowing people to assess whether justice has been achieved through these elements, rather than through justice as a whole. This is a major contribution to the field of research and central to the theme of this study, justice can be classified and assessed differently. The three elements of justice theory can also help identify specific areas of concern that need to be addressed. Within this study the majority of users and observers felt that they had been treated fairly or the parties were treated fairly, but the outcome and process followed may not have been fair. The areas of inefficiencies highlighted later in this chapter have only been able to be drawn based on this framework of justice.

The literature review identified that the main theme of justice does not revolve around justice being carried out, but actually minimalising justice. As outlined above one party may not be happy with the distributive justice aspect but content with the procedural justice part, which is how the ETS should operate and focus its attention upon. Despite the Donovan Commission (The Royal Commission on Trade Unions and Employers' Associations 1965-1968) wanting an amicable settlement, it is impossible according to Rawls (1999:75)

to design the legal rules so that they always lead to the correct results. What the ETS can do however is put measures in place so that a clear and transparent process is followed, the outcome is clearly explained and rationalised, and that all users of the service are treated fairly in a timely and consistent manner.

5.2.3 Objective 3 - Provide an insight into the workings of tribunals through questioning users and observers of the ETS.

Linking with the justice parameters established in objective 2, this objective focused upon the collection of data to provide a '*first-hand account*' of what users and observers of the ETS had experienced. The justice framework enabled the participants to focus their comments on specific areas of the ETS, rather than randomly discuss areas with which they may have a positive or negative interest.

The feedback regarding the ETS is largely positive and all participants in the study felt that the system is a beneficial and appropriate arena for hearing workplace disputes. There were criticisms of the ETS, which were applicable to the specific tribunal cases under scrutiny, and it would be interesting to carry out further research to discover if these criticisms are widespread within the ETS. The criticisms identified such as cases taking too long to hear, schedule of losses not being calculated properly and Employment Judges not investigating the practical aspects of cases, are issues raised in previous research but this objective has provided tangible evidence of what specifically the issue is and more importantly what the ramifications have been on the organisation or individual. The interviews carried out were particularly revealing and provided a different insight into what would have been gained from interviewing ETS stakeholders, as originally planned. The study has focused on these insights to provide evidence as to why users of the ETS have particular feelings towards the ETS.

The comments made by the BCC (2011) and CBI (2011) include concerns about legal costs in defending claims. Cases in this study reveal, however, that although legal costs can be considered they can be controlled through fixing maximum costs or negotiating fixed representation costs. There have also been views shared with concerns of the BCC (2011) and CBI (2011) regarding settling a case rather than proceeding to a full hearing, despite respondents being confident in defending the case. The argument that tribunals favour claimants has also been addressed through this objective, as the study has proven that even if the claimant wins their case and receives considerable compensation, they still felt justice has not been administered. The interactional justice element of the system has meant they have been under considerable psychological pressure before, during and after the case, which has had a huge impact upon themselves, their families and ability to find further employment. The interactional aspect of the ETS can also have an impact on the respondents, as this study highlighted comments made by witnesses in the tribunal cases, who stated that the experience of being involved with the ETS was somewhat unpleasant, and had affected their work and domestic lives. Business owners have also highlighted the impact the claims have had on a company as a whole, with the threat of bankruptcy if they had lost the case. One of the respondents stated that the company was at a virtual standstill at one point whilst they were preparing for the case, drafting witness statements, collating documents and gathering other information for the bundle of documents. These types of examples highlight other serious consequences of tribunal claims, as the compensation amounts usually dominate ET research.

The significant element of this objective that has been achieved within this study revolves around the '*workings*' of the tribunal system. The accusations against the ETS are that they are biased and that they do not administer justice. To respond to these it was important to critically evaluate the day to day operational running of the ETS. The study has produced evidence that the tribunal does have serious faults such as Employment Judge's sitting alone not taking the '*real life*' inclusion into their judgment rationale, the process taking too long, the health of Judges affecting the

hearing, non-compliance of instructions and orders, diaries of ET panel members not being updated which delayed hearings and the listing of cases without informing the respondent or claimant. These are tangible evidence of how the ETS operates and how it can impact upon users within the system.

5.2.4 Objective 4 - Through the exploration of unfair dismissal cases, determine whether the ETS is a barrier to justice

This study has discussed and evaluated the accusation that the ETS is not fair and that it is a barrier to justice. The literature review highlighted these concerns, explaining that employer organisations felt that the system was weak and needed to be modernised to reflect contemporary working practices. The literature review also highlighted the contrasting opinions of trade unions and other commentators who believed that employees faced many barriers in accessing justice when utilising the ETS.

The first significant barrier to justice is the two-year minimum period for being eligible to claim unfair dismissal. There is no real clear rationale for this, apart from it being a tool for attracting political votes. This rule effectively puts employees on a two-year probationary period and could allow employers to act inappropriately in relation to that person's employment. The study also highlighted the bias that this has against female workers who are the predominant employees of short-term jobs, where they work for a relatively short period of time and then move onto another job. Due to the perpetual changing of jobs, these types of workers may never accrue the necessary continuous employment to hear their disputes, which is surely a major barrier to justice.

The next significant barrier to justice, which affects both employers and employees, is the length of time it takes to hear the claim. The study highlighted through the analysis of ETS annual statistics the length of time it took for cases to be heard, with only fifty percent of cases being cleared within thirty three weeks and more worryingly only seventy-five percent being cleared within two-three years. The analysis of unfair dismissal cases

produced evidence of this being a concern within the eleven cases used, with the consequences of the claim taking a long time to be heard. Higher increase of awards and the psychological impact of the case not being dealt with, were cited as major issues, resulting in claimants stating they would not wait to go through this experience again and respondents stating they would settle as it would be less expensive than waiting for the case to be heard.

Another concern, which could be classified as a barrier to justice, is the reliance upon legal representation in not only being successful at the hearing, but providing support throughout the ET process. This could be a barrier for both employers and employees, however it will affect employees more, as the cost implications of engaging legal representation would be more severe than for an employer, who should have the resources to cover this. Through an analysis of ETS annual reports as well as scrutiny of the literature, it has been demonstrated that an increased number of respondents and claimants are utilising some form of legal representation. In the last eight years, the number of claimants who were represented at the ET has almost doubled, and those engaging lawyers has risen from 67,442 to 160,116 claimants in the same period. Through the comments of users and observers of the ETS, this study has clarified how important legal representation is, why they have been used and what the perceived implications are if legal representation has not been utilised.

The study has found that all parties were heavily reliant upon legal representation, in fact the majority of parties concluded that they would not have progressed to a full hearing without representation. It has also found that claimants and observers believe that legal representation does have an affect on the case, and could be a key factor in winning or losing the case. Comments were made that legal representation can present and explain the case for their client in a more coherent manner, and they are more aware of the ETS process, which can assist in focusing on the main points of the case. If legal representation is not used, then a barrier is created to either party not submitting in the first place or not wanting to defend a claim, which could result in a workplace dispute not being heard and adjudicated over. It can also

be a barrier to justice in terms of the unrepresented party not having their case presented as well as the other represented party. Not all parties who win the case are legally represented; however what this study has demonstrated is that there is a perceived element of injustice if the party has not been legally represented.

From analysing the various concerns and issues within the ETS, the study can conclude that the ETS as a whole is not a barrier to justice, however, there are elements which can prevent justice being administered or being perceived not be administered. The introduction of fees will have a significant impact, but there are current inefficiencies within the ETS, that can be addressed to minimalise injustice.

5.2.5 Objective 5 - To identify areas where the ETS could be developed to meet future continuing needs

Within the study a number of inefficiencies have been identified to highlight the concerns of users and observers of the system. These included disposal times, ETS administration problems, the use of legal representation, ET panels and the cost of bringing / defending a claim. Addressing these issues the study identified areas for development, not necessarily weaknesses but elements that needed to be addressed so that it maintains a viable method of administering justice.

Through the interviews, it was noted that the ETS had serious problems with expediting the case through the system. Both parties rely on the case being expedited in a reasonable time, with the study also highlighting the ramifications of cases taking long periods to be disposed. The study has identified new initiatives by the ETS to improve disposal times, such as Judge's sitting alone in unfair dismissal cases and the introduction of ET fees. There are numerous objectives as to why these measures were implemented, however, one of the outcomes has been to reduce the overall number of claims and therefore speed up the process for the cases that are submitted. Although it may expedite the disposal of cases, the study has identified that it

could create new barriers to justice. The removal of the lay members has been identified as a concern within the literature review and also within the analysis of cases, which outlined problems with the case they were involved in and specifically highlighted a case that may have resulted in a different judgment if lay members had been present.

A contentious area discussed within the study involved the possibility of legal help being made available so that both parties would have an equal footing when progressing through the ETS. The ramifications of not having legal representation has been highlighted in the study, with specific examples of the psychological impact of having to prepare and present the case on their own. There would be an obvious cost for this but with the introduction of ET fees and Judge's sitting alone, the revenue saved could be re-invested into the system. As also established in the study, legal representation can also assist with speeding up and clarifying cases, which can again act as a cost saving measure. The other option which was proposed during the interviews, was to prevent any form of legal representation and the ET hearing would only allow the employer and claimant to be involved. This has many problems and would leave the system open to exploitation, with either party utilising the services of legal representation leading up to the ET hearing. The other major concern with this proposition is that the employer has the advantage of employing trained specialists in HR and ET's, to then become involved with the case, preparing the bundle and presenting the case. The employer would have a distinct advantage, therefore the rationale option is to provide legal representation to both parties, creating a system that provides the legal knowledge and support to guide users through the system.

The study also deliberated another contentious area, the proposition that the ETS should favour the claimant, as they were possibly at a disadvantage. Comments were made during the interviews from both claimants and respondents which alluded to the possibility that this could be a viable option but was also the right thing for the ETS to adopt. The study highlighted the concern for claimants and how they needed more support and guidance, and therefore the actual process as well as the manner in which the

case is conducted by the ET panel could favour the claimant. This may obviously produce a barrier to justice from the respondents perspective, but it could alleviate the initial problem of workers not submitting a claim or being '*put off*' by a hostile ETS process. Theoretically this sounds reasonable but the practicalities, as well as the affects on the respondents, would make this a difficult concept to implement.

The final area highlighted within the study that the ETS could investigate further, is the amount of compensation available for claimants to outline in their schedule of loss. At present the ET's sets an upper limit for unfair dismissal cases, with even this being set at the claimants' annual salary if it is lower. The ETS cannot make awards for injury to feelings in claims of unfair dismissal, although obscure pieces of legislation such as the *Protection from Harassment Act* (1997) could present an avenue of opportunity for such claims.

The study identified cases where the claimants had won cases but felt that they had not been compensated adequately for the psychological impact of what they had suffered whilst in employment and in having to progress through the ETS process. The cases analysed in the study provided tangible evidence of claimants being treated in a manner which could be construed as being similar to bullying, harassment or victimisation in discrimination cases. If the treatment by the employer is classified as being '*hurtful*', then the prevention of claimants being potentially compensated for this is a barrier to justice, and must be an area that the ETS should review. It is a barrier to justice in terms of both distributive and interactional, as the outcome of the case would not be seen to be fair and if the claimant is not compensated for the extra suffering of going through the ETS process, would be deemed to be unfair as well. As with the length of service criteria for submitting unfair dismissal claims, the ability to claim injury to feelings has fluctuated, albeit through a court's decision rather than political. This is a barrier that could be feasibly removed, providing an opportunity for claimants to seek fairness and is also a change to the ETS that employers have some control over, through ensuring their employees do not suffer any injury to feelings in the workplace.

5.3 Contributions

This section summarises the multi faceted nature of the contributions made within this research paper and discusses its application in relation to theory, practice and methodology.

5.3.1 Contribution to theory

The research contributes to analytical conceptual perspectives on the nature or workplace disputes and individual employment law. A review of the history and background of ET's has been presented, with a synthesis of views outlined to evaluate its purpose and effectiveness. The literature suggests that the ETS has developed into a complex and monolithic institution that is a barrier to justice for both employers and employees. However, the research provides evidence that the majority of ETS claims heard today, are no more different to those heard when tribunals were initially established, and therefore have not really changed, merely expanded upon its original foundations. The theory of justice has been explored through the research and the use of three justice theories, procedural, interactional and distributive, was utilised in the research process, which found evidence that the ETS was not a barrier to justice but needed to be continually monitored and updated to eradicate numerous inefficiencies within the system.

The research found evidence that developed a deeper understanding of justice within the ETS. Applying a theory (distributive, interactional and procedural justice) usually associated with social justice, the study has provided a new analytical conceptual framework for assessing the effectiveness of the ETS, which can potentially be applied to other areas of research within the legal system.

5.3.2 Contribution to practice

Through the application of the term '*justice*', the research has presented evidence regarding some of the practices within the ETS, highlighting the

concerns of both the claimant and the respondent. The research suggests there are certain practices and procedures within the ETS, that need to be addressed to ensure justice is administered. The research has not only highlighted these concerns, but also evaluated the impact they have had on the claimant and respondent.

The framework utilised to analyse the ETS could also be adopted by other researchers and government bodies to provide robust qualitative information, which could accompany the plethora of statistical data provided by the ETS on a quarterly and monthly basis. The data collected through the prism of justice, could provide commentary and analysis by claimants, respondents and possibly other stakeholders to enable an evidence-based approach when amending and shaping the future structure of the ETS.

5.3.3 Contribution to methodology

The research applied new methodology to the investigation of the ETS. The theory of justice was applied to evaluate the effectiveness and efficiency of the ETS, with an iterative approach adopted to develop appropriate data collection techniques as the research progressed. The mixed method approach enabled the triangulation of data from different methods to provide a contemporary and fresh insight into the research area, as well as produce new understandings of the practices within the ETS.

The use of case study analysis with semi-structured interviews has provided a deep insight into the outcomes of cases synthesised with the feelings of participants in the case. The strategy of analysing both claimants and respondents thoughts regarding specific cases has provided a concentrated understanding into the working practices of the ETS and the tangible impact this has had on the individuals involved within the case.

5.4 Directions for future research

Both the literature review and the findings of this thesis provide insights into areas of potential future research. One significant gap identified within the literature that the study highlighted but could not assess further due to the lack of data, is the implications of ET fees. The literature review and research discussed the possible benefits and ramifications of ET fees, however, the study had been completed by the time a full reporting year had released ET statistics, which demonstrated the potential impact fees have had on claims being submitted. As outlined in the literature review, quarterly statistics have highlighted the severe reduction in claims being submitted after the introduction of ET fees. This instantly depicts a bleak picture in terms of the impact of fees, however as demonstrated in this study, ET statistics have to be verified carefully and further scrutinised with more robust analysis. Further research based on the secondary data analysis techniques used in this study will enable a clear platform for ET commentators and the government to discuss the ramifications of fees.

Building upon the methodological approach adopted by this study, future research could also utilise the research framework of a mixed method approach to gain further evidence regarding how the ETS handles claims. The main limitation of the study was not being able to gain access to cases, specifically claimants and respondents. However, if access is granted by the MoJ, a framework of research has already been established to investigate not only practices that have already been examined but also recent initiatives implemented by the ETS.

Another area of future research that the study has already discussed involves the affect of the increase in length of service when being eligible to claim unfair dismissal. It has been noted in the study that this increase would affect jobs which are carried out predominantly by female workers, therefore a clear line of inquiry would be to investigate whether the change has affected female workers, or possibly even specific jobs in certain sectors. The initial evidence in this study suggests that it will affect female, part time and

seasonal workers therefore it would be appropriate to validate this and potentially influence future government thinking around employee length of service for ET claims.

A final area of future research could be to analyse further the ETS statistics. The study highlighted potential concerns regarding the regional differences in ET judgments, specifically that certain regions favour claimants or respondents. These concerns emanated from participants in the interviews and they are purely speculative, however, it would be interesting to discover if there are regional differences within ET judgments. Currently the ETS does not provide this data in available formats and would therefore have to be requested, it is an area of the ETS that has not been scrutinised or analysed in much detail. This information would be useful for claimants and respondents to be aware of success rates in their region, but it will be predominantly interesting for the MoJ to discover if there are any disparities between regions. There could be patterns of bias towards claimants or respondents, which need to be addressed and dealt with so that a clear and transparent ETS is in operation. Tribunals may be unintentionally bias towards either party based on the types of industries and sectors that are prevalent in that region, or attract high case loads and therefore treated differently by the ET to ensure cases are dealt with expediently. This type of research could further inform policy and practice in this area, so that future governments can make informed decisions based on clear and tangible evidence.

5.5 Conclusion

This chapter has evaluated the data collected from the questionnaires and interviews, as well as the literature review. From the study four themes have been derived regarding the ETS in unfair dismissal claims:

1. **Disposal times**
2. **Representation**
3. **ETS administration inefficiencies**
4. **Tribunal judgments**

For further research purposes these areas have been identified as potential subject matters to focus upon when evaluating the ETS.

To answer the accusations made by the CBI (2011) and BCC (2011) that the tribunal system is broken, the concerns need to be broken down and segmented. The accusation that vexatious claims are submitted is extremely difficult to answer and is even more problematic for a tribunal to decide without the claim being heard and evidence surveyed. The current government's answer to deterring claimants with spurious claims has been to introduce tribunal fees. This may only result in more discrimination claims being submitted to increase the potential compensatory award made. The accusations of claimants being opportunistic and blackmailing employers has some valid reasoning, in terms of the number of claims being settled, as the CBI (2011) outlined in their report that employers were more likely to settle a claim than defend the claim. This has also been evidenced in the case studies, however there can be an argument that employers have settled cases based on legal advice or on reflection of their behaviour. An area that the researcher intends to focus on in the future is the premise that the ETS should favour claimants as they have more to lose and employers have more resources in dealing with the ETS, as well as the capability to deal with the psychological impact of the claim. The respondent in case one also believed that claimants should be treated differently as they do not have the backing of an employer to cope with the demands of an ET.

The overall attitude towards the ETS is favourable, with the data and literature generally supporting the mission of the ETS, in particular its task to ensure that disputes are heard and adjudicated effectively. There are, however, tangible concerns with the ETS that need to be addressed to ensure that justice is both carried out and also perceived to be administered. The ETS has been continually evaluated, monitored, criticised and scrutinised from various stakeholders and commentators; however, through this study it has been demonstrated that the above concerns will only be addressed if the evaluation of the ETS includes the views of the two most important players within the system, the claimants and the respondents:

"*It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases*.**"**

(Leggatt Report, 2001:6)

Bibliography

Abbott, K., Pendlebury, N., & Wardman, K. (2007). *Business Law*. Cengage Learning EMEA.

Abizadeh, A. (2007). Cooperation, Pervasive Impact, and Coercion: On the Scope (not Site) of Distributive Justice. *Philosophy & Public Affairs*, *35*(4), 318–358.

ACAS. (1996). *ACAS Annual Report*.

ACAS. (2001). *Acas Annual Report*.

ACAS. (2009). *ACAS Annual Report*.

ACAS. (2010). *ACAS Annual Report*.

ACAS. (2011). *ACAS Annual Report*.

Acas Code of Practice (1997) - Disclosure of information to trade unions.

Acas Code of Practice (2009) - Disciplinary and Grievance Procedures.

Acas Code of Practice (2009) - Time off for trade union duties and activities.

Ackers, P. (2005). *Collective Bargaining as Industrial Democracy: Hugh Clegg and the Political Foundations of British Industrial Relations Pluralism*. Loughborough University.

Ackers, P., & Wilkinson, A. (2005). British industrial relations paradigm: A critical outline history and prognosis. *Journal of Industrial Relations*, *47*(4), 443–456.

Ackroyd, S., & Procter, S. (1998). British manufacturing organization and workplace industrial relations: Some attributes of the new flexible firm. *British Journal of Industrial Relations*, *36*(2), 163–183.

Adams, J. S. (1965). Inequity in social exchange. In L. Berkowitz (Ed.), *Advances in Experimental Social Psychology* (Vol 2. pp. 267–299). New York: Academic Press.

Adams, L., Moore, A., & Gore, K. (2009). *Research into enforcement of employment tribunal awards in England and Wales*.

Adler, M. (2004). *Can Tribunals Deliver Justice in the Absence of Representation ?* (Vol.11). Edinburgh.

Adler, M. (2008). *The Potential and Limits of Self-Representation at Tribunals* (Vol. 8).

Agency Worker Regulations 2010 (SI 2010/93).

Aikens, J. (2004). *Racial Differences In Diabetes-Depression Comorbidity*.

Aldridge, J., & Fraser, B. (2000). A cross-cultural study of classroom learning environments in Australia and Taiwan. *Learning Environments Research*, *3*(2), 101–134.

Allan, C., Loudoun, R., & Peetz, D. (2007). Influences on work / non-work conflict. *Journal of Sociology*, *43*(3), 219–239.

Ambrose, M., Hess, R. L., & Ganesan, S. (2007). The relationship between justice and attitudes: An examination of justice effects on event and system-related attitudes. *Organizational Behavior and Human Decision Processes*, *103*(1), 21–36.

Anderson, V. (2013). *Research Methods in Human Resource Management* (3rd ed.). London: CIPD.

Antcliff, V., & Saundry, R. (2009). Accompaniment, workplace representation and disciplinary outcomes in British workplaces - Just a formality? *British Journal of Industrial Relations*, *47*(1), 100–121.

Aquino, K. (1995). Relationships among pay inequity, perceptions of procedural justice and organisational citizenship. *Employee Responsibilities and Rights Journal*, *8*, 21–33.

Aristotle. (1962). *Politics by Aristotle*. Penguin.

Armstrong, E. (1984). The advisory function of ACAS - a preliminary appraisal of the advisory visit. *Industrial Relations Journal*, *15*(1), 17–28.

Armstrong, K., & Coats, D. (2007). *The costs and benefits of Employment Tribunal cases for employers and claimants*. (BERR, Ed.) (No.83 ed.). DTI.

Aston, J., Hill, D., & Tackey, N. D. (2006). *The Experience of Claimants in Race Discrimination Employment Tribunal Cases*.

Babbie, E. (2013). *The Practice of Social Research* (13th ed.). Wadsworth Cangage Learning.

Bach, S. (2002). Public-sector employment relations Reform under Labour : Muddling through on modernization ? *British Journal of Industrial Relations*, *40*(June), 319–339.

Bache v Essex County Council, Court of Appeal - Civil Division, January 21, 2000, [2000] EWCA Civ 3.

Bacon, N. (2003). Human resource management and industrial relations. In P. Ackers & A. Wilkinson (Eds.), *Understanding Work and Employment: Industrial Relations in Transition*. Oxford: Oxford University Press.

Bain, G. S., & Elsheikh, F. (1976). *Union Growth and the Business Cycle*. Oxford: Blackwell.

Baker, S. (2002). Laddering: Making sense of meaning. In D. Partington (Ed.), *Essential Skills for Management Research*. SAGE.

Baldamus, W. (1961). *Efficiency and Effort*. London: Tavistock.

Bales, R. F. (1950). *Interaction Process Analysis: A Method for the Study of Small Groups*. Cambridge, MA: Addison-Wesley.

Bales, R. F. (1970). *Personality and Interpersonal Behavior*. New York: Holt, Rinehart and Winston.

Bamber, G., Lansbury, R., & Wailes, N. (2009). *International and Comparative Employment Relations* (4th ed.). London: Sage.

Bank, L. Van Der, & Engelbrecht, A. S. (2005). Perceived fairness of disciplinary procedures in the Public. *Journal of Human Resource Management*, *6*(2), 1–8.

Barker and others v Birmingham City Council (ET 1305819/2006).

Barling, J., & Phillips, M. (1993). Interactional, formal and distributive justice in the workplace: An exploratory study. *Journal of Psychology*, *127*(6), 649–656.

Batstone, E. I., Boraston, & Frenkel, S. (1977). *Shop Stewards in Action: The Organisation of Workplace Conflict and Accommodation*. Oxford: Blackwell.

BBC. (2013). Birmingham City Council £200m short to pay equal pay bill. *BBC News*. Retrieved May 16, 2013, from http://www.bbc.co.uk/news/uk-england-birmingham-21242834

BCC. (2011a). *The Workforce Survey Small Business*.

BCC. (2011b, January). BCC urges revamp of employment tribunal system. *Stockmarket Wire*. British Chamber of Commerce.

Beech, A. R. (2009). Mediation — Transforming the Industrial Relations Landscape. *ADR Bulletin*, *10*(8 Article 4).

Beecroft, A. (2011). *Report on Employment Law*.

Bell, L. (2001). Patterns of interaction in multidisciplinary child protection teams in New Jersey. *Child Abuse & Neglect*, *25*(1), 65–80.

Benbasat, I., Goldstein, D. K., & Mead, M. (2011). The case research strategy in studies of information systems. *MIS Quarterly*, *11*(3), 369–386.

Bennett, O. (1967, April 1). Tribunals on Trial. *Management Today*, pp. 1083–1084.

Benson, P. (1991). The basis of corrective justice and its relation to distributive justice. *Iowa Law Review*, *77*, 515–624.

Bentley, D. J. (1973). John Rawls: A theory of justice. *University of Pennsylvania Law Review*, *121*(5), 1070–1078.

Benton, T., & Craib, I. (2001). *Philosophy of Social Science*. Hampshire: Palgrave Macmillan.

Beugre, C. D., & Baron, R. A. (2001). Perceptions of systemic justice : The effects of distributive , procedural , and interactional justice. *Journal of Applied Social Psychology*, *31*(2), 324–339.

Beynon, H. (1973). *Working for Ford* (1st ed.). Allen Lane.

Bias in Employment Tribunals. (2008, November 18). *Ashby Cohen Legal News*.

Bies, R. . (2001). Interactional (in)justice: The sacred and the profane. In J. Greenberg & R. Cropanzano (Eds.), *Advances in Organisational Justice* (pp. 89–118). California: Stanford University Press.

Bies, R. ., & Moag, J. . (1986). Interactional Justice: Communictaion Criteria of Fairness. In R. J. Lewicki, B. . Sheppard, & M. H. Bazerman (Eds.), *Research on Negotiations in Organisations* (Vol. 1, pp. 43–55). Greenwich: JAI Press.

Bies, R. ., & Shapiro, D. . (1987). Interactional justice: The influence of causal accounts. *Social Justice Research*, *1*, 199–218.

Bingham, L. B. (2009). *Designing Justice : Legal Institutions and Other Systems for Managing Conflict*.

Bird, D. K. (2009). The use of questionnaires for acquiring information on public perception of natural hazards and risk mitigation – a review of current knowledge and practice. *Natural Hazards and Earth System Science*, *9*(4), 1307–1325.

Blanchflower, D. G., Bryson, A., & Forth, J. (2007). Workplace industrial relations in Britain, 1980–2004. *Industrial Relations Journal*, *38*(4), 285–302.

Blyton, P., & Turnbull, P. (2004). *The Dynamics of Employee Relations* (3rd ed.). Houndmills: Palgrave.

Boeri, T., & Jimeno, J. (2005). The effects of employment protection: Learning from variable enforcement. *European Economic Review*, *49*(8), 2057–2077.

Bogdan, R. C., & Biklen, S. K. (1982). *Qualitative research for education: An introduction to theory and methods*. Boston: Allyn and Bacon Inc.

Bogg, A. L. (2005). Employment Relations Act 2004: Another false dawn for collectivism? *Industrial Law Journal*, *34*(1), 72–82.

Boland, R. J., & Hirschheim, R. A. (1987). *Critical Issues in Information Systems Research.* Chichester: John Wiley & Sons.

Booth, A. (1983). A reconsideration of trade union growth in the United Kingdom. *British Journal of Industrial Relations*, *21*(3), 379–91.

Bourque, L. B., & Clark, V. A. (1994). Processing data: the survey example. In M. S. Lewis-Beck (Ed.), *Research Practice* (pp. 1–88). London: Sage.

Boxall, P. F., Purcell, J., & Wright, P. M. (2007). *The Oxford Handbook of Human Resource Management*. Oxford: Oxford University Press.

Brannen, J. (2005). *Mixed Methods Research: A discussion paper*.

Brewer, B., & Lam, G. K. Y. (2009). Conflict handling preferences: A public - private comparison. *Public Personnel Management*, *38*(3).

Bridges, W. (1995). *How to Prosper in a Workplace Without Jobs*. London: Nicholas Brealey.

Brodie, D. (2008). Mutual trust and confidence: Catalysts, constraints and commonality. *Industrial Law Journal*, *37*(4), 329–346.

Brooke, L., & Taylor, P. (2005). Older workers and employment: managing age relations. *Ageing and Society*, *25*(3), 415–429.

Brough, I. (1987). Advice — the Cinderella service of ACAS? *Employee Relations*, *9*(4), 22–27.

Brown, A. (1992). ACAS arbitration: a case of consumer satisfaction? *Industrial Relations Journal*, *23*(3), 224–234.

Brown, A., & Erskine, A. (2006). *Review of judgments in race discrimination employment tribunal cases*.

Brown, R. (1988). *Group processes: dynamics within and between groups*. New York: Blackwell.

Brown, R. (2010, May 19). Employment tribunal award fast-track scheme. *Personnel Today*. Reed Business Information Ltd.

Brown, W., Bryson, A., Forth, J., & Whitfield, K. (2009). *The Evolution of the Modern Workplace*. Cambridge: Cambridge University Press.

Brown, W., Deakin, S., Hudson, M., Pratten, C., & Ryan, P. (1998). *The Individualisation of Employment Contracts in Britain, Employment Relations Research Series No. 4*.

Brown, W., Deakin, S., Nash, D., & Oxenbridge, S. (2000). The employment contract: From collective procedures to individual rights. *British Journal of Industrial Relations*, *38*(4), 611–629.

Bryman, A. (2012). *Social Research Methods* (4th ed., p. 808). Oxford: Oxford University Press.

Bryman, A., & Bell, E. (2007). *Business Research Methods* (2nd ed.). Oxford: Oxford University Press.

Bryman, A., & Bell, E. (2011). *Business Research Methods* (3rd ed.). Oxford: OUP Oxford.

Bryson, A., & Forth, J. (2010). *Union organisation and the quality of employment relations* (Vol. 44, p. 69).

Bryson, A., Gomez, R., & Willman, P. (2004). The end of the affair? The decline in employers' propensity to unionize. In J. Kelly & P. Willman (Eds.), *Union Organization and Activity* (pp. 129–147). London: Routledge.

Buchanan, D. A. (1997). The limitations and opportunities of business process re-engineering in a politicized organizational climate. *Human Relations*, *50*(1), 51–72.

Budd, J. W. (2004). *Employment with a Human Face*. New York: Cornell University Press.

Budd, J. W., & Bhave, D. (2010). The employment relationship. In S. S. Adrian Wilkinson, Nicolas Bacon, Tom Redman (Ed.), *The SAGE Handbook of Human Resource Management* (pp. 51–68). Sage.

Burchell, B., Deakin, S., Michie, J., & Rubery, J. (2003). *Systems of Production: Markets, Organisations and Performance*. London: Routledge.

Burgess, K. (1980). *The Challenge of Labour* (1st ed.). New York: St Martin's Press.

Burgess, S., Propper, C., & Wilson, D. (2001). *Explaining the growth in the number of applications to industrial tribunals 1972-1997*.

Burgess-Jackson, K. (2003). *Rawls on Procedural Justice: A flowchart* (pp. 1–2).

Busby, N., & MCDermont, M. (2012). Workers, marginalised voices and the employment tribunal system: Some preliminary findings. *Industrial Law Journal*, *41*(2), 166–183.

Butler, P. (2009). Non-union employee representation: exploring the riddle of managerial strategy. *Industrial Relations Journal*, *40*(3), 198–214.

CAB. (2008). *Justice Denied: The Deliberate Non-payment of Employment Tribunal Awards by Rogue Employers*.

Camerman, J., Cropanzano, R., & Vandenberghe, C. (2007). The benefits of justice for temporary workers. *Group & Organization Management*, *32*(2), 176–207.

Cameron, R. (2011). Mixed methods research : The five P's framework. *Journal of Business Research Methods*, *9*(2), 96–108.

Campbell, D. T., & Fiske, D. W. (1959). Convergent and discriminant validation by the multitrait-multimethod matrix. *Psychological Bulletin*, *56*, 81–105.

Campbell, F. (1999). *Survivors of Redundancy: A Justice Perspective*. *University of Wolverhampton*.

Carby-Hall, J. R. (1986). Industrial tribunal procedure in unfair dismissal claims. *Managerial Law*, *28*(2), 1–76.

Carruth, A., & Disney, R. (1988). Where have two million trade union members gone? *Economica*, *55*(1), 1–19.

Carter, R., Martin, J., Mayblin, B., & Munday, M. (1988). *Systems, Management and Change* (1st ed.). Open University.

CBI. (2010a). *A matter of confidence : Restoring faith in employment tribunals*.

CBI. (2010b). *Making Britain the Place to Work*.

CBI. (2011). *Settling the matter: Building a more effective and efficient tribunal system*.

Ceva, E. (2008). Impure procedural justice and the management of conflicts about values. *Polish Journal of Philosophy*, *2*(1), 5–22.

Chad, P. (2010, January 10). Employment tribunal system needs fixing. *Thompsons*.

Chamberlain, L. (2010, November 9). Will government proposals for employment tribunal charges reduce the number of claims. *Personnel Today*.

Chamberlain, L. (2011, January 6). Tribunal system in dire need of reform'. *Personnel Today*.

Chapman, C., Gibson, J., & Hardy, S. (2003). *ADR in Employment Law*. London: Routledge-Cavendish.

Charlton, L. W. of. (2009). Motion to Approve: Employment Tribunals ACT 1996 (Tribunal Composition) Order 2009. House of Lords.

Charlwood, A., & Terry, M. (2007). 21st-century models of employee representation: Structures, processes and outcomes. *Industrial Relations Journal*, *38*(4), 320–337.

Cherryholmes, C. H. (1992). Notes on pragmatism and scientific realism. *Educational Researcher*, *21*(6), 13–17.

CIPD. (2006). *Change Agenda: What is Employee Relations*.

CIPD. (2011). *Conflict Management*.

CIPD. (2013). *Zero-hours Contracts: Myth and Reality*. London.

CIPD. (2014). Tribunals backlog delays cases for years, law firm warns. *Employment Tribunals*.

Clancy, M., & Seifert, R. V. (2000). *Fairness at Work?: The Disciplinary and Grievance Provisions of the 1999 Employment Relations Act*. Institute of Employment Rights.

Clegg, H. . (1979). *The Changing System of Industrial Relations*. Oxford: Blackwell Publishing Limited.

Clifton, R., & Tatton-Brown, C. (1979). *The Impact of Employment Legislation on Small Firms*.

Coal Mines Act 1911 c.50.

Coal Mines Regulation Act 1887 c.58.

Colling, T. (2004). No claim, no pain? The privatization of dispute resolution in Britain. *Economic and Industrial Democracy*, *25*(4), 555–579.

Colling, T. (2006). What space for unions on the floor of rights? Trade unions and the enforcement of statutory individual employment rights. *Industrial Law Journal*, *35*(2), 140–160.

Colling, T. (2009). *Court in a trap ? Legal Mobilisation by Trade Unions in the United Kingdom*. *Industrial Relations*.

Collins, H. (2004). *Nine Proposals for the Reform of the Law on Unfair Dismissal*. London.

Colquitt, J. A. (2001). On the dimensionality of organizational justice: a construct validation of a measure. *The Journal of Applied Psychology*, *86*(3), 386–400.

Colquitt, J. a., & Rodell, J. B. (2011). Justice, trust, and trustworthiness: A longitudinal analysis integrating three theoretical perspectives. *Academy of Management Journal*, *54*(6), 1183–1206.

Colquitt, J. A., Zapata-Phelan, C. P., & Roberson, Q. M. (2005). Justice in teams: A review of fairness effects in collective contexts. *Research in Personnel and Human Resources Management*, *24*, 53–94.

Colvin, A. J. S. (2009). Employment arbitration : Empirical findings and research needs. *ADR News*, (August / October 2009).

Communities, C. of the E. (1993). *White Paper, Growth Competitiveness and Employment*.

Conaghan, J. (1986). Dismissed: A study of unfair dismissal and the industrial tribunal system. *Journal of Law and Society*, *13*(3), 439–442.

Contracts of Employment Act 1963 c.49.

Cooper, C. (1998). The changing nature of work. *Community, Work & Family*, *1*(3), 313–317.

Cooper, C. L. (1999). Can we live with the changing nature of work? *Journal of Managerial Psychology*, *14*(7/8), 569–572.

Corbin, J., & Strauss, A. (2008). *Basics of Qualitative Research* (2nd ed.). London: SAGE.

Corby, S. (2000). Unfair dismissal disputes : a comparative study of Great Britain and New Zealand. *Human Resource Management Journal*, *10*(1), 79–92.

Corby, S. (2003). *Public sector disputes and third party intervention*.

Corby, S. (2010). *The Shifting Sands of Employment Relations: 20 years of Research*. University of Greenwich.

Corby, S. (2013). *Labour courts in Great Britain and Sweden: a self-service model v collective regulation*. Greenwich Business School: Work and Employment Research Unit (WERU).

Corby, S., & Dennison, P. (2007). *Gender, Age and Employment Tribunal Claims*.

Corby, S., & Latreille, P. (2012). Tripartite adjudication-an endangered species. *Industrial Relations Journal*, *43*(2), 94–109.

Corby, S., & Latreille, P. L. (2012). Employment tribunals and the civil courts: Isomorphism exemplified. *Industrial Law Journal*, *41*(4), 387–406.

Council of Europe, European Social Charter, 18 October 1961, ETS 35.

Couper, M. P., Traugott, M. W., & Lamias, M. J. (2001). Web survey design and administration. *Public Opinion Quarterly*, *65*(2), 230–253.

Courts and Legal Services Act 1990 c.41.

Crawford, S. D., Couper, M. P., & Lamias, M. J. (2001). Web surveys: perceptions of burden. *Social Science Computer Review*, *19*(2), 146–162.

Creswell, J. (1999). Mixed methods research: Introduction and application. In T. Cijek (Ed.), *Handbook of Educational Policy* (pp. 455–72). San Diego, CA: Academic Press.

Creswell, J., & Plano Clark, V. L. (2007). *Designing and Conducting Mixed Methods Research* (1st ed.). London: SAGE.

Creswell, J. W. (1994). *Research Design: Qualitative & Quantitative Approaches*. Thousand Oaks, CA: SAGE.

Creswell, J. W. (2009). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (3rd ed.). Sage Publications, Inc.

Creswell, J. W. (2013). *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (3rd ed.). SAGE Publications, Inc.

Creswell, J. W., Clark, V. L. P., Gutmann, M., & Hanson, W. (2003). Advanced mixed methods research designs. In A. Tashakkori & C. Teddlie (Eds.), *Handbook on Mixed Methods in the Behavioral and Social Sciences* (pp. 209–40). Thousand Oaks, CA.

Creswell, J. W., & Plano Clark, V. L. (2011). *Designing and Conducting Mixed Methods Research* (2nd ed.). London: SAGE.

Cropanzano, R., Stein, J. H., & Nadisic, T. (2011). *Social Justice and the Experience of Emotion*. New York: Routledge.

Crotty, M. (1998). *The Foundations of Social Research*. London: Sage.

Crotty, M. (2003). *The Foundations of Social Research*. London: SAGE.

Crouch, C. (1979). *The Politics of Industrial Relations*. London: Fontana Collins.

Cullinane, N., & Dundon, T. (2012). Unitarism and employer resistance to trade unionism. *The International Journal of Human Resource Management*, *March*, 1–18.

Cully, M., O'Reilly, A., Millward, N., Forth, J., Woodland, S., Dix, G., & Bryson, A. (1998). *WERS 1998*.

Cunningham, N., & Reed, M. (2009). *Employment Tribunal Claims: Tactics and Precedents* (3rd ed.). Legal Action Group.

D.L.Morgan. (1998). Practical strategies for combining qualitative and quantitative methods:Applications to health research. *Qualitative Health Research*, *3*, 362–376.

Daft, R. L. (2008). *Management* (8th ed.). London: Thomson.

Daly, J. P., & Geyer, P. D. (1994). The role of fairness in implementing large-scale change: Employee evaluations of process and outcome in 7 facility relocations. *Journal of Organizational Behavior*, *15*(7), 623–638.

Darlington, R., & Upchurch, M. (2012). A reappraisal of the rank-and-file versus bureaucracy debate. *Capital & Class*, *36*(1), 77–95.

Datta, L. (1994). Paradigm wars: A basis for peaceful coexistence and beyond. *New Directions for Program Evaluation*, *1994*(61), 53–70.

David MacLeod, & Clarke, N. (2009). *Engaging for success: Enhancing performance through employee engagement*.

Davies, A. C. L. (2009). *Perspectives on Labour Law (Law in Context)* (2nd ed.). Cambridge: Cambridge University Press.

Davies, J., & Heys, T. (2011). *Increasing the Qualifying Period for Unfair Dismissal Rights to Two Years - An Age Discrimination Perspective*.

Davies, P., & Freedland, M. (1983). *Kahn-Freunds Labour and the Law*. London: Stevens.

Davies, P and Freedland, M. (2004). Changing perspectives upon the employment relationship. In C. Barnard, S. Deakin, & G. Morris (Eds.), *The Future of Labour Law*. Oxford: Hart Publishing.

Deakin, S. (1986). Labour law and the developing employment relationship in the UK. *Cambridge Journal of Economics*, *10*, 225–246.

Deakin, S. (2007). *The evolution of labour law: Calibrating and comparing regulatory regimes* (No. 352) (p. 43). Cambridge.

Deakin, S., & Wilkinson, F. (1996). *Labour Standards – Essential to Economic and Social Progress*. *Insititute of Employment Rights*.

Dees, D., Dickinson, T., Employment, D., Trends, T., Wilders, J., Union, E., & Bill, E. (2011). News Release Soaring employment tribunal numbers set to cost businesses billions over next three years. *Personnel Today*, (April 2010), 1–5.

Deffains, B., Gabuthy, Y., & Lambert, E.-A. (2010). Labour disputes, investment decisions and the judiciary. *Labour Economics*, *17*(2), 424–433.

Denscombe, M. (2006). Web-based questionnaires and the mode effect: An evaluation based on completion rates and data contents of near-Identical questionnaires delivered in different modes. *Social Science Computer Review*, *24*(2), 246–254.

Denzin, N. K. (1970). *The Research Act in Sociology*. Chicago: Aldine.

Denzin, N. K. (1978). *The Research act in sociology* (2nd ed.). New York: McGraw-Hill.

Department for Employment. (1986). *White Paper-building business... not barriers*.

Deutsch, M. (1975). Equity, equality, and need: What determines which value will be used as the basis of distributive justice? *Journal of Social Issues*, *31*(3), 137–149.

DeVaus, D. . (2002). *Surveys in Social Research* (5th ed.). London: Routledge.

Dewey, J. (1931). The development of American pragmatism. In H.S. Thayer (Ed.), *Pragmatism: The classic writings* (pp. 23–40). Indianapolis, IN: Hackett.

Dibb, S., & Meadows, M. (2001). The application of a relationship marketing perspective in retail banking. *The Service Industries Journal*, *21*(1), 169–194.

Dickens, L. (1995). Users of industrial tribunals: Characteristics and experiences. *Industrial Law Journal*, *24*(2), 187–189.

Dickens, L. (1998). Anticipating New Roles for Third Parties. *Industrial Law Journal*, *27*(4), 360–362.

Dickens, L. (2000). Doing more with less: Acas and individual conciliation. In W. Brown & B. Towers (Eds.), *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service* (pp. 67–92). Oxford: Blackwell.

Dickens, L. (2002). Individual statutory employment rights since 1997: constrained expansion. *Employee Relations*, *24*(6), 619–637.

Dickens, L. (2004). Problems of fit: Changing employment and labour regulation. *British Journal of Industrial Relations*, *42*(4), 595–616.

Dickens, L. (2007). The road is long: Thirty years of equality legislation in Britain. *British Journal of Industrial Relations*, *45*(3), 463–494.

Dickens, L., & Bordogna, L. (2008). Public service dispute management - Pertinence of comparative study. *Journal of Industrial Relations*, *50*(4), 539–544.

Dickens, L., & Hall, M. (2003). Labour law and industrial relations: A new settlement? In P. Edwards (Ed.), *Industrial Relations: Theory and Practice* (2nd ed., p. 552). Wiley-Blackwell.

Dickens, L., Hall, M., & Wood, S. (2005). *Review of Research into the Impact of Employment Relations Legislation*.DTI.

Dickens, L., Hart, M., Jones, M., & Weekes, B. (1981). Re-employment of unfairly dismissed workers: The lost remedy. *Industrial Law Journal*, *10*(1), 160–175.

Dickens, L., Jones, M., Weekes, B., & Hart, M. (1985). *Dismissed: A Study of Unfair Dismissal and the Industrial Tribunal System*. Oxford: Basil Blackwell.

Dickens, L., & Neal, A. (Eds.). (2006). The Advisory Conciliation and Arbitration Service. In *The Changing Institutional Face of British Employment Relations* (pp. 25–36). The Hague: Kluwer Law.

Dillman, D. . (1983). Mail and self-administered surveys. In P. H. Rossi, J. D. Wright, & A. B. Anderson (Eds.), *Handbook of Survey Research* (pp. 359–77). New York: Academic Press.

Dillman, D. A. (2000). *Mail and Internet Surveys, The Tailored Design Method*. New York: Wiley.

Directive on Temporary Agency Work (2008/104/EC).

Disability Discrimination Act 1995 c.50.

Disney, R. (1990). Explanations of the decline in trade union density in Britain: An appraisal. *British Journal of Industrial Relations*, *28*(2), 165–78.

Dix, G. (2000). Operating with style: The work of the ACAS conciliator in individual employment disputes. In B. Towers & W. Brown (Eds.), *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service* (pp. 93–122). London: Blackwell.

Dix, G., & Oxenbridge, S. (2004a). *Coming to the table : The role of Acas in collective disputes and improving workplace relationships*. *Employee Relations*.

Dix, G., & Oxenbridge, S. (2004b). Coming to the table with Acas: from conflict to co-operation. *Employee Relations*, *26*(5), 510–530.

Docks and Harbours Act C.28.

Donovan, J. (2002). Quality improvement report: Improving design and conduct of randomised trials by embedding them in qualitative research: ProtecT (prostate testing for cancer and treatment) study. Commentary: presenting unbiased information to patients can be difficult. *BMJ*, *325*(7367), 766–770.

Donovan, Lord. (1968). *Royal Commission on Trade Unions and Employers' Associations 1965 - 1968*. London.

Doughty, S. (2011, January 6). Number of tribunal's trebles in five years- Employer pays off worker in three out of five cases. *Daily Mail*.

Drinkwater, S., & Ingram, P. (2005). Have Industrial Relations in the UK really improved? *Labour*, *19*(2), 373–398.

Drinkwater, S., Latreille, P. L., & Knight, K. G. Ben. (2008). *When It's (Mostly) the Taking Part that Counts : The Post-Application Consequences of Employment Tribunal Claims*. *Human Resource Management Journal* (Vol. 21).

Drinkwater, S., Latreille, P. L., & Knight, K. G. Ben. (2011). The post-application labour market consequences of employment tribunal claims. *Human Resource Management Journal*, *21*(2), 171–189.

DTI. (1997). *The Influence of Workplace Disciplinary and Grievance Procedures and other Workplace Variables on Applications to Industrial Tribunals*.

DTI. (1998a). *Fairness at Work*.

DTI. (1998b). *Findings from the 1998 Survey of Employment Tribunal Applications (Surveys of Applicants and Employers)*.

DTI. (2004). *Employment Relations Monitoring and Evaluation Plan 2004*. *Analysis*.

Dubinsky, L. (2000). *Resisting Union-Busting Techniques: Lessons from Quebec*.

Dukes, R. (2009). Otto Kahn-Freund and Collective Laissez-Faire: An Edifice without a Keystone? *Modern Law Review*, *72*(2), 220–246.

Dundon, T., & Rollinson, D. (2011). *Understanding Employment Relations* (p. 424). McGraw-Hill Higher Education.

Dunlop, J. (1958). *Industrial Relations Systems* (1st ed.). Chicago: Southern Illinois University Press.

Dunstan, R., & Silk, C. (2011). *CAB Evidence Briefing : Give Us a Break!*

Dyson, R. (2008). *Review of the employment relationship problem resolution system*.

E.G. Guba. (1990). *The Paradigm Dialog*. London: SAGE Publications, Inc.

E.G. Guba, & Lincoln, Y. S. (1994). Competing paradigms in qualitative research. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of Qualitative Research* (pp. 105–117). California: Sage.

Earnshaw, J., Marchington, M., & Goodman, J. (2000). Unfair to whom? Discipline and dismissal in small establishments. *Industrial Relations Journal*, *31*(1), 62–73.

Easterby-Smith, M., Thorpe, R., & Jackson, P. (2012). *Management Research* (4th ed.). London: SAGE.

Easterby-Smith, M., Thorpe, R., & Jackson, P. R. (2009). *Management Research* (3rd ed.). London: SAGE.

Eden, C., & Huxham, C. (2007). Action research and the study of organisations. In S. Clegg, C. Hardy, & W. Nord (Eds.), *Handbook of Organisational Studies* (pp. 526–42). London: SAGE.

Edwards, P. K. (1986). *Conflict at Work: A Materialist Analysis of Workplace Relations*. Oxford: Basil Blackwell.

EIRO. (2001). *Employment Tribunal Reforms*.

Eisenhardt, K. M. (1989). Building theories from case study research. *The Academy of Management Review*, *14*(4), 532–550.

Eisenhardt, K. M., & Graebner, M. E. (2007). Theory building From cases: Opportunities and challenges. *Academy of Management Journal*, *50*(1), 25–32.

Elangovan, A. R. (1993). Managerial intervention in organisational disputes: Testing a prescriptive model of strategy selection. *International Journal of Conflict Management*, *9*(4), 301–335.

Elbaum, B., & Lazonick, W. (1984). The decline of the British economy: An institutional perspective. *The Journal of Economic History*, *44*(02), 567–583.

Eldridge, J. (2006). Data visualisation tools—a perspective from the pharmaceutical industry. *World Patent Information*, *28*(1), 43–49.

Elliott, M. S., & Williams, D. I. (2002). A qualitative evaluation of an employee counselling service from the perspective of client, counsellor and organization. *Counselling Psychology Quarterly*, *15*(2), 201–208.

Employee Study and Training (Procedural Requirements) Regulations 2010 (SI 2010/155).

Employers and Workman Act 1875 c.90.

Employment Act 1990 c.38.

Employment Act 2002 c.22.

Employment Act 2008 c.24.

Employment of Children Act 1903 c.45.

Employment Payments Act 1966 c.36.

Employment Policy Directorate. (2010). *Making Britain the Place to Work: An Employment Agenda for the New Government*.

Employment Protection (Consolidation) Act 1978 c.44.

Employment Protection Act 1975 c.71.

Employment Relations Act 1999 c.26.

Employment Rights (Dispute Resolution) Act 1998 c.8.

Employment Rights Act 1996 c.18.

Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 (S.I. 2001/1171).

Employment Tribunals Act 1996 c.17.

Employment Tribunal Rules 2013

Employment Tribunals and the Employment Appeal Tribunal Fees Order (S.I. 2013/1893).

Equal Pay Act 1970 c.41.

Equality Act 2010 c.15.

Esplin, D. (2007). *Employment Dispute Resolution in Great Britain: The Case for Change*. *Business*.

ETS. (1998). *Employment Tribunal annual report & accounts 1997- 1998*.

ETS. (1999). *Employment Tribunal annual report & accounts 1998- 1999*.

ETS. (2000). *Employment tribunal annual report & accounts 1999 - 2000*.

ETS. (2001). *Employment Tribunal annual report & accounts 2000 - 2001*.

ETS. (2002). *Employment Tribunal annual report & accounts 2001 -2002*.

ETS. (2003). *Employment Tribunal annual report & accounts 2002- 2003.*

ETS. (2004). *Employment Tribunal annual report & accounts 2003- 2004*.

ETS. (2005). *Employment Tribunal annual report & accounts 2004- 2005*.

ETS. (2006). *Employment Tribunal annual report & accounts 2005- 2006*.

ETS. (2007). *Employment Tribunal & EAT Statistics 2006- 2007*.

ETS. (2008). *Employment Tribunal & EAT Statistics 2007 - 2008*.

ETS. (2009a). *Employment Tribunal & EAT Statistics 2008- 2009*.

ETS. (2010a). *Employment Tribunal & EAT statistics 2009-2010*.

ETS. (2010b). *Report on consistency*.

ETS. (2011). *Employment Tribunal & EAT Statistics 2010- 2011*.

ETS. (2012a). *Employment Tribunal & EAT Statistics 2011- 2012*.

ETS. (2012b). London East Tribunal - Budget Letter. London East ETS.

ETS. (2013). *Employment Tribunal statistics quarterly & annually 2012 - 2013*.

European Commission. (1993). *Growth, competitiveness, and employment*.

Evans, S., Goodman, J., & Hargreaves, L. (1985). *Unfair Dismissal Law and Employment Practice in the 1980s*.

Ewing, K. D. (2009). Employment Act 2008. *Industrial Law Journal*, *38*, 50–57.

Ewing, K. D., & Hendy Qc, J. (2012). Unfair dismissal law changes-Unfair? *Industrial Law Journal*, *41*(1), 115–121.

Factory and Workshop Act 1878 c.16.

Factory and Workshop Act c.22.

Farnham, D. (2000). *Employee Relations in Context* (2nd ed.). Chartered Institute of Personnel and Development.

Farnham, D. (2010). *Human Resource Management in Context: Strategy, Insights and Solutions*. London: Chartered Institute of Personnel and Development.

Farnham, D., & Pimlott, J. (1995). *Understanding Industrial Relations* (5th ed.). London: Cassell.

Farquhar, J. D. (2012). *Case Study Research for Business*. London: SAGE.

Fenley, T. (1975). Reports and awards. *Industrial Law Journal*, *4*(1), 249–251.

Fennell, E. (2011, February 3). Employers' charter is window dressing. *The Times*.

Ferrara, A. (1998). *Reflective authenticity: Rethinking the project of modernity*. London and New York: Routledge.

Fetterman, D. M. (2010). *Ethnography: Step-by-Step* (3rd ed.). London: SAGE.

Fink, A. (2009). *How to Conduct Surveys* (4th ed.). Thousand Oaks, CA: Sage.

Flanagan, J. C. (1954). The critical incident technique. *Psychological Bulletin*, *51*(4), 327–358.

Foddy, W. (1994). *Constructing Questions for Interviews and Questionnaires*. Cambridge: Cambridge University Press.

Folger, R. (1996). Distributive and procedural justice: Multifaceted meanings and interrelations. *Social Justice Research*, *9*(4), 395–416.

Folger, R., & Cropanzano, R. (1998). *Organizational Justice and Human Resource Management*. California: Sage.

Fombrun, C., Tichey, N. M. and, & Devanna, M. . (1984). *Strategic Human Resource Management*. New York: Wiley.

Foot, M., & Hook, C. (2002). *Introducing Human Resource Management* (3rd ed.). London: Financial Times/ Prentice Hall.

Foot, M., & Hook, C. (2011). *Introducing Human Resource Management* (6th ed.). London: Financial Times Press.

Force, E. T. T. (2002). *Moving Forward :The Report of the Employment Tribunal Task Force*.

Forgas, J. P. (2002). Feeling and doing: Affective influences on interpersonal behavior. *Psychological Inquiry*, *13*, 1–28.

Forth, J., Dix, G., & Sisson, K. (2008). *Conflict at Work : The pattern of disputes in Britain since 1980*. *NIESR*.

Fox, A. (1966). *Industrial Sociology and Industrial Relations*. London.

Fox, A. (1973). Industrial relations: a social critique of pluralist ideology. In J. Child (Ed.), *Man and Organisation*. London: Allen & Unwin.

Fox, M., Martin, P., & Green, G. (2007). *Doing Practitioner Research* (p. 224). London: SAGE.

Freeman, R. B., & Diamond, W. (2001). *What Workers Want from Workplace Organisations*.

Freeman, R., & Pelletier, J. (1990). The Impact of Industrial Relations Legislation on British Union Density. *British Journal of Industrial Relations*, *28*(2), 141–164.

Freeth, S., Bryson, A., van Wanrooy, B., Bewley, H., Forth, J., Stokes, L., & Wood, S. (2013). *WERS 2011*.

French, W. L., & Bell, C. H. (1978). *Organisation development*. New Jersey: Prentice Hall.

French, J. R. P., J., & Raven, B. H. (1959). The bases of social power. In D. Cartwright (Ed.), *Studies in social power* (pp. 150–167). Ann Arbor. MI: Institute for Social Research.

Fuller, G. (2007). Equal Pay for Council Workers: Whose Bill is it Anyway? *Personnel Today*.

Gable, G. G. (1994). Integrating case study and survey research methods: an example in information systems. *European Journal of Information Systems*, *3*(2), 112–126.

Gage, N. (1989). The paradigm wars and their aftermath A “historical” sketch of research on teaching since 1989. *Educational Researcher*, *18*(7), 4–10.

Gall, G. (2003). *The Meaning of Militancy? Post Workers and Industrial Relations,*. Aldershot: Ashgate.

Gall, G., & Hebdon, R. (2008). Industrial conflict. In N. Bacon, P. Blyton, J. Fiorito, & E. Heery (Eds.), *The Handbook of Employment Relations*. London: SAGE.

Gallie, D., Rose, M., & Penn, R. (1996). The British debate on trade unionism: crisis and continuity. In D. Gallie, R. Penn, & M. Rose (Eds.), *Trade Unionism in recession*. Oxford: Oxford University Press.

Galliers, R. D. (1992). *Information Systems Research: Issues, Methods and Practical Guidelines*. Oxford: Blackwell Scientific Publications.

Galliers, R. D., & Land, F. F. (1987). Choosing an appropriate information systems research methodology. *Communications of the ACM*, *30*(11), 900–902.

Gaze, B., & Hunter, R. (2009). Access to Justice for Discrimination Complainants: Courts and Legal Representation. *UNSW Law Journal*, *32*(3), 699–724.

Genn, H., & Genn, Y. (1989). *The Effectiveness of Representation at Tribunals*.

Gennard, J. (2009). Voluntary arbitration : the unsung hero. *Industrial Relations Journal*, *40*(4), 309–323.

Gennard, J. (2010). UK industrial relations state agencies. *Employee Relations*, *32*(1), 5–9.

Gennard, J., & Judge, G. (2005). *Employee Relations* (4th ed., p. 414). London: CIPD.

Gennard, J., & Judge, G. (2010). *Employee Relations* (5th ed.). London: CIPD.

Gephart, R. P. (2004). Qualitative research and the academy of management journal. *Academy of Management Journal*, *47*(4), 454–462.

Gibbons, M. (2007). *A Review of Employment Dispute Resolution in Great Britain*. *Database*.

Gidney, J. (2010). *Dealing with Allegations of Tribunal Bias*.

Gilbert, K. (2004). Exploring equal value dispute procedures: Power and conflict under Labour. *Employee Relations*, *26*(4), 392–403.

Giles, H. (2011, January 4). Stop Legal Parasites Feeding on Small Business. *The Times*.

Gill, J., & Johnson, P. (2010). *Research Methods for Managers* (4th ed.). London: SAGE.

Gilmore, S., & Williams, S. (2012). *Human Resource Management* (2nd ed.). OUP Oxford.

Goldenberg, C., Gallimore, R., & Reese, L. (2005). Using mixed methods to explore latino children's literacy development. In T. S. Weisner (Ed.), *Discovering Successful Pathways in Children's Development: Mixed methods in the study of childhood and family life* (pp. 21–46). Chicago: University of Chicago Press.

Goodman, J. (2000). Building bridges and settling differences: collective conciliation and arbitration under Acas. In B. Towers & W. Brown (Eds.), *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service* (pp. 31–65). London: Blackwell.

Goodman, J., Earnshaw, J., Marchington, M., & Harrison, R. (1998). Unfair dismissal cases, disciplinary procedures, recruitment methods and management style: Case study evidence from three industrial sectors. *Employee Relations*, *20*(6), 536–550.

Gorse, C. a., & Emmitt, S. (2003). Investigating interpersonal communication during construction progress meetings: challenges and opportunities. *Engineering, Construction and Architectural Management*, *10*(4), 234–244.

Gospel, H., & Palmer, G. (1993). *British Industrial Relations* (2nd ed.). London: Routledge.

Gottschalk, A. W. (1974). Kahn Freund labour and the law book review. *Industrial Relations Journal*, *5*(2), 55–556.

Graeme, L. (2008). A legal analysis of sexual harassment employment tribunal cases 1995-2005. *International Journal of Law and Management*, *50*(6), 316–332.

Gramatikov, M., Barendrecht, M., Laxminarayan, M., Verdonschot, J. H., Klaming, L., & van Zeelan, C. (2009). *A Handbook for Measuring the Costs and Quality of Access to Justice*. Maklu.

Gramberg, B. Van, Justice, W., & Clauses, R. (2001). *Workplace Justice and the Design of Dispute* (No. 8/2001) (pp. 1–14).

Grant, D., Keenoy, T., & Oswick, C. (1998). Organizational discourse: of diversity, dichotomy and multi-disciplinarity. In D. Grant, T. Keenoy, & C. Oswick (Eds.), *Discourse and Organization*. London: SAGE.

Greenberg, J. (1982). Approaching equity and avoiding inequity in groups and organisations. In J. Greenberg & R. L. Cohen (Eds.), *Equity and Justice in Social Behaviour* (pp. 389–435). New York: Academic Press.

Greenberg, J. (1987). A taxonomy of organisation justice theories. *Academy of Management Review*, *12*, 9–22.

Greenberg, J. (1990). Organizational justice: Yesterday, today, and tomorrow. *Journal of Management*, *16*(2), 399–432.

Greene, J. C. (2008). Is mixed methods social inquiry a distinctive methodology? *Journal of Mixed Methods Research*, *2*(1), 7–22.

Greenhalgh, R. (1996). *Industrial Tribunals*. IPD.

Greenwood, M. (2012). Ethical analyses of HRM: A review and research agenda. *Journal of Business Ethics*, *114*(2), 355–366.

Gregory, D. L., & Cavanagh, F. A. (2007). A comparative assessment of labor dispute resolution in the united states and the united kingdom. *St. John's Law Review*, *81*, 29–40.

Gummesson, E. (1991). *Qualitative Methods in Management Research*. London: SAGE.

Gunn, H. (2002). Changing the survey process. *First Monday*, *7*(12).

Guthrie, J. (2007, July). Deliver us from employment tribunal hell. *Financial Times*.

Hague, P. (1993). *Questionnaire Design*. London: Kogan Page.

Hales, C. (2001). *Managing Through Organization: The Management of Process, Forms of Organization and the Work of Managers*. London: Thomson Learning Business Press.

Halsey, A. H. (1995). *Change in British Society*. Oxford: Oxford University Press.

Hammersley, G., Johnson, J., & Morris, D. (2007). *The influence of legal representation at Employment Tribunals on case outcome*. BERR

Hanson, W. E., Creswell, J. W., Clark, V. L. P., Petska, K. S., & Creswell, J. D. (2005). Mixed methods research designs in counselling psychology. *Journal of Counselling Psychology*, *52*(2), 224–235.

Harley, B. (1994). Post-Fordist theory, labour process flexibility and autonomy in Australian workplaces. *Labour and Industry*, *6*(1), 107–29.

Harris, L. (2000). Employment regulation and owner-managers in small firms: seeking support and guidance. *Journal of Small Business and Enterprise Development*, *7*(4), 352–362.

Haslett, S. J., & Govindaraju, K. (2012). Data cloning: Data visualisation, smoothing, confidentiality, and encryption. *Journal of Statistical Planning and Inference*, *142*(2), 410–422.

Hawes, W. (2000). Setting the pace or running alongside?: ACAS and the changing employment relationship. In B. Towers & W. Brown (Eds.), *Employment Relations in Britain: 25 years of the Advisory, Conciliation and Arbitration Service* (pp. 1–30). London: Blackwell.

Hayward, B., Peters, M., Rousseau, N., & Seeds, K. (2003). *Findings from the Survey of Employment Tribunal Applications 2003*. *Social Research*.

HCEC. (1994). *The Future of Trade Unions*.

Head, J. (2004). Does individual employment legislation constrain the ability of hospitality employers to hire and fire ? *International Journal of Hospitality Management*, *23*(3), 239–254.

Heery, E., & Simms, M. (2008). Constraints on union organising in the United Kingdom. *Industrial Relations Journal*, *39*(1), 24–42.

Hepple, B. (1983). *Judging Equal Rights: Current Legal Problems*. London: Stevens.

Hepple, B., & Morris, G. (2002). The Employment Act 2002 and the Crisis of Individual Employment Rights. *Industrial Law Journal*, *31*(3), 245–269.

Herriot, P. (2001). *The Employment Relationship: A psychological Perspective* (1st ed.). Routledge.

HMCTS Business Plan 2011-2015. (2011).

Hogler, R., Gross, M. a., & Byrne, Z. S. (2009). Making governance work in academia: Non-union arbitration as a method of dispute resolution for university faculty. *International Journal of Conflict Management*, *20*(1), 31–45.

Hoh, R. (2009). Interest arbitration under the proposed employee free choice act. *Dispute Resolution Journal*, *64*(4), 50–59.

Hohl, M. (2011). From abstract to actual: art and designer-like enquiries into data visualisation. *Kybernetes*, *40*(7/8), 1038–1044.

Holgate, J., Keles, J., & Pollert, A. (2009). Union decline , minority ethnic workers and employment advice in local communities. *Industrial Law Journal*, *38*(4), 412–416.

Hollinshead, G., Tailby, S., & Nicholls, P. (2002). *Employee Relations* (2nd ed., p. 608). London: Financial Times/ Prentice Hall.

Holt, L. T. (2009). Whither arbitration? What can be done to improve arbitration and keep out litigations ill effects. *DePaul Business & Commercial Law Journal*, *7*(3), 455–480.

Homans, G. C. (1961). *Social Behavior: Its Elementary Forms*. New York: Harcourt Brace Jovanovich.

Hough, M., Jackson, J., Bradford, B., Myhill, A., & Quinton, P. (2010). Procedural Justice, Trust, and Institutional Legitimacy. *Policing*, *4*(3), 203–210.

House, E. R. (1994). Integrating the quantitative and qualitative. *New Directions for Program Evaluation*, *61*, 13–22.

Howell, C. (2004). Is there a third way for industrial relations? *British Journal of Industrial Relations*, *42*(1), 1–22.

Hughes, J., & Sharrock, W. (1990). *The Philosophy of Social Research*. New York: Longman.

Hurley, J. (2011a, January). Business Assesses “Employers” Charter’. *Daily Telegraph*.

Hurley, J. (2011b, January). The red tape free way of firing people. *Daily Telegraph*.

Hussey, J., & Hussey, R. (1997). *Business Research. A Practical Guide for Undergraduate and Postgraduate Students*. Basingstoke: Palgrave.

Hyman, R. (1975). *Industrial Relations: A Marxist Introduction*. Basingstoke: Palgrave Macmillan.

Hyman, R. (1978). Pluralism, procedural consensus and collective bargaining. *British Journal of Industrial Relations*, *16*(1), 16–40.

Hyman, R. (1989). The sickness of British trade Unionism: Is there a cure? In R. Hyman (Ed.), *The Political Economy of Industrial Relations: Theory and Practice in a Cold Climate* (p. 167). Basingstoke: MacMillan.

IDS. (2006). *Employment Tribunal Practice and Procedure* (1st ed.). London.

ILO. (1963). *Termination of Employment Recommendation*. *Recommendation R119*.

ILO. (2006). *The Employment Relationship*.

Industrial Relations Act 1971 c.72.

Industrial Training Act 1964 c.16.

Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426).

International Labour Conference. (2003). ILC.

Ismail, A., Mashkuri, A. H., Sulaiman, A. Z., & Hock, W. K. (2014). Interactional justice as a mediator of the relationship between pay for performance and job satisfaction. *Intangible Capital*, *7*(2), 213–235.

Ivankova, N., Creswell, J. W., & Stick, S. (2006). Using mixed methods sequential explanatory design: From theory to practice. *Field Methods*, *18*(1), 3–20.

Ivankova, N., & Stick, S. (2007). Students' persistence in a distributed doctoral program in educational leadership in higher education: A mixed methods study. *Research in Higher Education*, *48*(1), 93–135.

Jackson, K. (2005). The concept of distributive justice. In *Encyclopedic dictionary of business ethics*. Oxford: Blackwell.

Jackson, M. C. (2006). Creative holism: a critical systems approach to complex problem situations. *Systems Research and Behavioural Science*, *23*(5), 647–657.

Jacobs, E. (2009). Something old, something new: The new tribunal system. *Industrial Law Journal*, *38*(4), 417–423.

James, S. (2011). The future of the employment tribunal? *Human Resource Management International Digest*, *19*(4), 46–47.

James, W. (1907). *Pragmatism*. Indianapolis, IN: Hackett.

Janner, G. (1976). What you need to know about "Job Courts." *Industrial Management & Data Systems*, *76*(4), 29–30.

Jenkins, J. E. (2001). Rural adolescent perceptions of alcohol and other drug resistance. *Child Study Journal*, *31*(4), 211–224.

Jennings, G. (2001). *Tourism research*. Milton: John Wiley & Sons Australia Ltd.

Jick, T. . (1979). Mixing qualitative and quantitative methods: Triangulation in action. *Administrative Science Quarterly*, *24*(4), 602–611.

Johnson, H. (1956). *Business Ethics*. New York: Pitman.

Johnson, J., & Hammersley, G. (2005). Access to justice: No win no fee, what chance of justice? *Nottingham Law Journal*, *14*(2).

Johnson, R. B., & Onwuegbuzie, A. J. (2004). Mixed methods research : A research paradigm whose time has come. *Educational Researcher*, *33*(7), 14–26.

Johnstone, S. (2009). Sex discrimination. *Equal Opportunities Review*, (192), 28–32.

Jones, S. (1985). The analysis of depth interviews. In R. Walker (Ed.), *Applied qualitative research* (pp. 56–70). Aldershot: Gower.

Jordan, E., Thomas, A. P., Kitching, J. W., & Blackburn, R. A. (2013). *Employment Regulation Part A: Employer perceptions and the impact of employment regulation*.

Juan Jr, E. S. (2007). Caveats on the Problem of Understanding Peirce's Semiotics and Pragmatism. *Kritika Kultura*, *8*, 92–98.

Justice, M. of. (2013). *Employment Tribunal Fees Factsheet*.

Kahn-Freund, O. (1954). The legal framework. In A. Flanders & H. Clegg (Eds.), *The System of Industrial Relations in Britain*. Oxford: Basil Blackwell.

Kahn-Freund, O. (1959). Labour law. In M. Ginsberg (Ed.), *Law and Opinion in England in the 20th Century* (pp. 215–63). London: Stevens.

Kahn-Freund, O. (1969). Industrial Relations and the Law-Retrospect and Prospect. *British Journal of Industrial Relations*, *7*(3), 301–316.

Kahn-Freund, O. (1978). *Selected Writings* (1st ed.). London: Stevens and Sons.

Kalleberg, A. L. (2000). Nonstandard employment relations: part-time , temporary and contract work. *Annual Review of Sociology*, *26*, 341–65.

Kalleberg, A. L. (2009). Precarious work, insecure workers: employment relations in transition. *American Sociological Review*, *74*(1), 1–22.

Kaplan, B., & Duchon, D. (1988). Combining qualitative and quantitative methods in information systems research: A case study. *MIS Quarterly*, *12*(4), 571.

Katsh, E. (2007). Online dispute resolution: Some implications for the emergence of law in cyberspace. *International Review of Law, Computers & Technology*, *21*(2), 97–107.

Kaufman, B. E. (2005). The social welfare objectives and ethical principles of industrial relations. In J. W. B. and J. G. Scoville (Ed.), *The Ethics of Human Resources and Industrial Relations* (pp. 23–59). Illinois: Labor and Employment Relations Association.

Kaufman, B. E. (2012). History of the British industrial relations field reconsidered: Getting from the Webbs to the new employment relations paradigm. *British Journal of Industrial Relations*, *July*, 1–31.

Kelly, D. (2003). A shock to the system? The impact of HRM on academic IR in Australia in comparison with USA and UK, 1980-95. *Asia Pacific Journal of Human Resources*, *41*(2), 149–171.

Kelly, D. (2004). The Transfer of Ideas in Industrial Relations. *Advances in Industrial Relations and Labor Relations Research*, *13*, 245–273.

Kelly, J. (1988). *Trade Unions and Socialist Politics*. London: Verso.

Kelly, J. (1998). *Rethinking Industrial Relations: Mobilization, Collectivism and Long Waves*. London: Routledge.

Kelly, J. (2011). The evolution of the modern workplace - Edited by William Brown, Alex Bryson, John Forth and Keith Whitfield. *Industrial Relations Journal*, *42*(3), 313–315.

Kelly, J. (2012). The decline of British trade unionism: markets, actors and institutions. *Industrial Relations Journal*, *43*(4), 348–358.

Kelly, J., & Bailey, R. (1989). British trade union membership, density and decline in the 1980s: a research note. *Industrial Relations Journal*, *20*(1), 54–61.

Kelly, J. E. (1998). *Rethinking Industrial Relations: Mobilisation, Collectivism and Long Waves: Mobilization, Collectivism and Long Waves*. *Routledge*. London.

Kerr, V. (2003). Employment Tribunals. (H. of Commons, Ed.).

Kersley, B., Alpin, C., Forth, J., Bryson, A., Bewley, H., Dix, G., & Oxenbridge, S. (2006). *WERS 2004*.

Kessler, I., & Dickens, L. (2008). Dispute resolution and the Modernisation of the Public Services in Britain: The case of the Local government pay commission. *Journal of Industrial Relations*, *50*(4), 612–629.

Kessler, S. (1993). Procedures and third parties. *British Journal of Industrial Relations*, *31*(2), 211–26.

Kessler, S., & Palmer, G. (1996). The commission on industrial relations in Britain 1969-74 : a retrospective and prospective evaluation. *Employee Relations*, *18*(4), 6–96.

Keter, V. (2003). *Employment Tribunals - Commons Library Research Paper 03/87*.

Kew, J., & Stredwick, J. (2010). *Human Resource Management in Context* (3rd ed.). London: Chartered Institute of Personnel and Development.

King, N., & Horrocks, C. (2010). *Interviews in Qualitative Research* (p. 256). London: SAGE Publications Ltd.

Kitzinger, J. (1994). The methodology of Focus Groups: the importance of interaction between research participants. *Sociology of Health and Illness*, *16*(1), 103–121.

Klaming, L., & Giesen, I. (2008). *Access to Justice : The Quality of the Procedure* (No. 002/2008).

Klein, R. D. (2010). Legal developments and practical implications of gene patenting on targeted drug discovery and development. *Clinical Pharmacology and Therapeutics*, *87*(6), 633–5.

Kloss, D. (2007). Employment tribunals and occupational health practitioners. *Occupational Medicine (Oxford, England)*, *57*(4), 234–7.

Knight, K. G., & Latreille, P. (2000). Discipline, dismissals and complaints to Employment Tribunals. *British Journal of Industrial Relations*, *38*(4), 533–555.

Koukiadaki, A. (2009). Case law developments in the area of fixed-term work. *Industrial Law Journal*, *38*, 89–100.

Kressel, K., & Pruitt, D. (1985). The mediation of social conflict. *Journal of Social Issues*, *41*(2), 1–10.

Kressel, K., & Pruitt, D. (1989). Conclusion: A research perspective on the mediation of social conflict. In K. Kressel & D. Pruitt (Eds.), *Mediation Research* (pp. 394–435). San Francisco: Jossey Bass.

Kuhn, T. S. (1962). *The Structure of Scientific Revolutions*. Chicago, IL: University of Chicago Press.

Kuhn, T. S. (1970). *The Structure of Scientific Revolutions* (2nd ed.). Chicago: University of Chicago Press.

Kumar, R. (2011). *Research Methodology: A Step-by-Step Guide for Beginners* (3rd ed., p. 440). London: SAGE Publications Ltd.

Kvale, S., & Brinkmann, S. (2009). *Interviews: Learning the Craft of Qualitative Research Interviewing*. Los Angeles, California: SAGE.

Laczniak, E., & Murphy, P. (2008). Distributive justice : Pressing questions , emerging directions , and the promise of Rawlsian analysis. *Journal of Macromarketing*, *28*(1), 5–11.

Ladebo, O. J., Awotunde, J. M., & Abdulsalaam-saghir, P. (2008). *Co-workers' and supervisor interactional justice: correlates of extension personnel's job satisfaction, distress and aggressive behaviour* (pp. 206–225).

Lafont, C. (2003). Procedural justice?: Implications of the Rawls-Habermas debate for discourse ethics. *Philosophy & Social Criticism*, *29*(2), 163–181.

Lambert, E. (2003). Justice in corrections: An exploratory study of the impact of organisational justice on correctional staff. *Journal of Criminal Justice*, *31*, 155–168.

Lambert, E. G., Hogan, N. L., Jiang, S., Elechi, O. O., Benjamin, B., Morris, A., … Dupuy, P. (2010). The relationship among distributive and procedural justice and correctional life satisfaction, burnout, and turnover intent: An exploratory study. *Journal of Criminal Justice*, *38*(1), 7–16.

Lambourne, E., Brown, S., Hawkins, J., & Allen, D. (2008). *Employment Law Admin Burdens Survey 2008*. *Online* (p. 162).

Lamont, J. (2004). Distributive Justice -Lamont.pdf. In G. F. Gaus & C. Kukathas (Eds.), *Handbook of Political Theory* (pp. 223–238). London: SAGE.

Larivet, S., & Brouard, F. (2010). Complaints are a firm's best friend. *Journal of Strategic Marketing*, *18*(7), 537–551.

Latreille, P. L. (2005). Making a difference? Legal representation in Employment Tribunal cases: Evidence from a survey of representatives. *Industrial Law Journal*, *34*(4), 308–330.

Latreille, P. L. (2007). *The settlement of Employment Tribunal cases : evidence from SETA 2003*. *Analysis*.

Latreille, P. L. (2009). *Characteristics of Rejected Employment Tribunal Claims*. *Analysis*.

Latreille, P. L., Latreille, J. a., & Knight, K. G. ('Ben'). (2007). Employment Tribunals and Acas: evidence from a survey of representatives. *Industrial Relations Journal*, *38*(2), 136–154.

Lea, R. (2001). *The Work Life Balance and All That: The Re-regulation of the Labour Market*. London.

Lee, H. (2000). *An Empirical Study of Organizational Justice as a Mediator of the Relationships among Leader-Member Exchange and Job Satisfaction, Organizational Commitment , and Turnover Intentions in the Lodging Industry*. Virginia Polytechnic Institute.

Leech, N., & Onwuegbuzie, A. (2009). A typology of mixed methods research designs. *Quality & Quantity*, *43*(2), 265–275.

Leggatt, S. A. (2001). *Tribunals For Users: One System, One Service*. London.

Leonard-Barton, D. (1990). A dual methodology for case studies: Synergistic use of a longitudinal single site with replicated multiple sites. *Organisation Science*, *1*, 1–19.

Leopold, J. (2002). *Human Resources in Organisations* (1st ed.). London: London Times / Prentice Hall.

Leventhal, G. S. (1976). Fairness in social relationships. In J. W. Thibaut, J. T. Spence, & R. C. Carson (Eds.), *Contemporary Topics in Social Psychology* (pp. 211–39). Morristown, NJ: General Learning Press.

Leventhal, G. S. (1980). What should be done with equity theory. In K. J. Gergen, M. S. Greenberg, & R. H. Willis (Eds.), *Social Exchanges: Advances in Theory and Research* (pp. 27–55). New York: Plenum.

Leventhal, G. S., Karuza, J., & Fry, W. . (1980). Beyond fairness: a theory of allocation preferences. In G. Mikula (Ed.), *Justice and Social Interaction*. New York: Springer-Verlag.

Lewin, K. (1946). Action research and minority problems. *Journal of Social Issues*, *2*(4), 34–46.

Lewis, D., & Sargeant, M. (2013). *Essentials of Employment Law* (10th ed.). London: CIPD.

Lewis, P., Thornhill, A., & Saunders, M. (2003). *Employee Relations: Understanding the Employment Relationship* (1st ed.). London: Financial Times/ Prentice Hall.

Lewis, R. (1976). The historical development of labour law. *British Journal of Industrial Relations*, *14*(1), 1–17.

Lewis, R. (1979). Kahn-Freund and labour law: An outline critique. *Industrial Law Journal*, *8*(1), 202–221.

Lewis, R. (1986). The role of law in employment relations. In R. Lewis (Ed.), *Labour Law in Britain* (pp. 3–43). Oxford: Blackwell.

Lincoln, Y. S., & E.G. Guba. (1985). *Naturalistic inquiry*. Thousand Oaks, CA: Sage.

Lind, E. A., Kulik, C. T., Ambrose, M., & De Vera Park, M. V. (1993). Individual and corporate dispute resolution: Using procedural fairness as a decision heuristic. *Administrative Science Quarterly*, *38*, 224–251.

Linda Dickens. (2007). The road is long: Thirty years of equality legislation in Britain. *British Journal of Industrial Relations*, *45*(3), 463–494.

Lockton, D. J. (2011). *Employment Law* (8th ed., p. 448). Oxford: Palgrave Macmillan.

Lockwood, G. (2008). A legal analysis of sexual harassment Employment Tribunal cases 1995-2005. *International Journal of Law and Management*, *50*(6), 316–332.

Lockyer, J. (1979). *Industrial Arbitration in Great Britain*.

Lord, J., & Redfern, D. (2013). Are UK Employment Tribunals a Barrier to Justice? In *Working Lives in the Age of Austerity*. Glasgow: BUIRA.

Loretto, W., Duncan, C., & White, P. J. (2000). Industrial relations codes of practice: the 1999 Age Discrimination Code in context. *Employee Relations*, *22*(2), 146–163.

Lucy, W. (2007). *Philosophy of Private Law*. OUP Oxford.

Maanen, J. Van. (1998). *Qualitative Studies of Organizations*. SAGE.

Machin, S. (2000). Union decline in Britain. *British Journal of Industrial Relations*, *38*(4), 631–645.

MacKenzie, R. (2000). Subcontracting and the re-regulation of the employment relationship: A case study from the telecommunications Industry. *Work, Employment and Society*, *14*(04), 707–726.

MacMillan, J. (1999). Employment Tribunals: Philosophies and practicalities. *Industrial Law Journal*, *28*(1), 33–56.

MacPartlin, B., & Darcy, C. (2007). *Theories of Procedural Justice and Criteria for Fairness Judgements* (No. Working Papers in Human Resource Management No . 18).

Madden, R. (2010). *Being Ethnographic: A Guide to the Theory and Practice of Ethnography*. London: SAGE.

Mahony, D. M., & Klaas, B. S. (2007). The role of compensatory and retributive justice in determining damages in employment disputes. *Journal of Management*, *34*(2), 218–243.

Mak, L., & Marshall, S. K. (2004). Perceived mattering in young adults' romantic relationships. *Journal of Social and Personal Relationships*, *21*(4), 469–486.

Mangan, D. (2013). Employment Tribunal reforms to boost the economy. *Industrial Law Journal*, *42*(4), 409–421.

Manscour-Cole, D. ., & Scott, S. G. (1998). Hearing it through the grapevine: The influence of source, leader-relations and legitimacy on survivors' fairness perceptions. *Personnel Psychology*, *51*, 25–54.

Marchington, M. (1982). *Managing Industrial Relations*. London: McGraw-Hill.

Markovsky, B., & Younts, C. (2001). Prospects for distributive justice theory: Recent developments and future directions. *Social Justice Research*, *14*(1), 45–59.

Marsden, D. (1999). *A Theory of Employment Systems*. *A Theory of Employment Systems* (Vol. 1). Oxford: Oxford University Press.

Marshall, C., & Rossman, G. B. (2010). *Designing Qualitative Research* (5th ed.). SAGE Publications.

Marshall, T. F. (1985). *Alternatives to Criminal Courts: The Potential for Non-Judicial Dispute Settlement*. Brookfield, VT: Gower.

Masterman, M. (1970). The nature of paradigm. In I. Lakatos & A. Musgrave (Eds.), *Criticism and the growth of knowledge* (pp. 59–89). Cambridge: Cambridge University Press.

Maternity and Parental Leave Regulations 1999 (S.I. 1999/3312).

May, D. B., & Etkina, E. (2002). College physics students' epistemological self-reflection and its relationship to conceptual learning. *American Journal of Physics*, *70*(12), 1249–1258.

McCoubrey, H., & N.White. (1999). *Textbook on Jurisprudence*. Blackstone Press.

McCoubrey, H., & White, N. (2012). *McCoubrey & White's Textbook on Jurisprudence*. (J. Penner & E. Melissaris, Eds.) (5th ed., p. 288). OUP Oxford.

Mcdermont, M., & Busby, N. (2009). *Barriers to Justice in the Employment Tribunal System Report of Pilot Research Project* (pp. 1–8).

McGovern, P. (2007). Immigration, labour markets and employment relations: Problems and prospects. *British Journal of Industrial Relations*, *45*(2), 217–235.

McIIroy, J., & Campbell, A. (1999). Organising the militants: The liaison committee for the defence of trade unions, 1966-1979. *British Journal of Industrial Relations*, *37*(1), 1–31.

Mckay, S. (2001). Shifting the focus from tribunals to the workplace. *Industrial Law Journal*, *30*(3), 331–333.

McKenna, E. ., & Beech, N. (2008). *Human Resource Management: A Concise Analysis* (2nd ed.). Harlow: Pearson Education Limited.

McKinstry, L. (2001). Employment tribunal cases rocketed under Labour. *Daily Mail*.

Meadows, P. (2007). *A Review of the Economic Impact of Employment Relations Services Delivered by Acas*.

Meager, N., Tyers, C., Perryman, S., Rick, J., & Willison, R. (2002). *Awareness , Knowledge and Exercise of Individual Employment Rights*. *Labour Market Trends*.

Meek v City of Birmingham District Council [1987] IRLR 250.

Meisel, S., & Mattfeld, D. (2010). Synergies of operations research and data mining. *European Journal of Operational Research*, *206*(1), 1–10.

Messer, L., Steckler, A., & Dignan, M. (1999). Early detection of cervical cancer among Native American women: a qualitative supplement to a quantitative study. *Health Education & Behavior : The Official Publication of the Society for Public Health Education*, *26*(4), 547–62.

Metcalf, D. (2003). “Trade unions.” In R. Dickens, J. Wadsworth, & P. Gregg (Eds.), *The Labour Market Under New Labour: The State of Working Britain* (pp. 170–190). Basingstoke: Palgrave-Macmillan.

Millar, M., & Berry, M. (2006, June 6). Tribunals in dock over alleged bias against HR. *Personnel Today*.

Millington, J. (2011a, January 5). Shock at tribunal fees ploy. *Morning Star*.

Millington, J. (2011b, March 11). Workers face threat to tribunals. *Morning Star*.

Millward, N., Bryson, A., & J, F. (2000). *All change at work*. London: Routledge.

Milward, N., Stevens, M., Smart, D., & Hawes, W. (1992). *Workplace industrial relations in transition* (1st ed.). Dartmouth, Aldershot: Dartmouth Publishing Company Limited.

Mitchell, E. (1973). Threadbare response to sacking law. *Industrial Management & Data Systems*, *73*(7/8), 5–6.

Mitchell, V. (1996). Assessing the reliability and validity of questionnaires: an empirical example. *Journal of Applied Management Studies*, *5*(2), 199–207.

MoJ. (2012). *Charging Fees in Employment Tribunals and the Employment Appeal Tribunal*.

Monks, Lord. (2012). *Employment Tribunals Act 1996 (Tribunal Composition) Order 2012 [28 March 2012]*.

Moore, S., Tasiran, A., & Jeffery's, S. (2008). *The Impact of Employee Representation Upon Workplace Industrial Relations Outcomes*.

Moorhead, R. (2010). An American future ? Contingency fees , claims explosions and evidence from Employment Tribunals. *The Modern Law Review*, *73*(5), 752–784.

Moorhead, R., & Cumming, R. (2009). *Something for nothing ? Employment Tribunal claimants' perspectives on legal funding*.

Moorman, R. H. (1991). Relationship between organisational justice and organisational citizenship behaviours : Do fairness perceptions influence employee citizenship. *Journal of Applied Psychology*, *76*, 845–855.

Morgan, D. L. (2007). Paradigms lost and pragmatism regained: Methodological implications of combining qualitative and quantitative methods. *Journal of Mixed Methods Research*, *1*(1), 48–76.

Morris, A. (2010). *Employment Regulation : Up to the job?*

Morris, A. (2011). *The Workforce Survey: Medium / Large businesses*.

Morris, J. C. (2000). Work futures. *Management Research News*, *23*(9/10/11), 1–170.

Morse, J. M. (1991). Approaches to qualitative-quantitative methodological triangulation. *Nursing Research*, *40*, 120–23.

Moser, C. A., & Kalton, G. (1971). *Survey Methods in Social Investigation*. London: Heinemann Educational Books.

Moser, C., & Kalton. (1989). *Survey Methods in Social Investigation* (2nd ed.). Aldershot: Gower.

Murphy, L. B. (1999). Institutions and the demands of justice. *Philosophy and Public Affairs*, *27*(4).

Myers, K. K., & Oetzel, J. G. (2003). Exploring the dimensions of organizational assimilation: Creating and validating a measure. *Communication Quarterly*, *51*, 438–457.

National Insurance Act 1911 c.55.

National Insurance Act 1913 c.37.

National Minimum Wage Act 1998 c.39.

Nelson, W. (1980). The very idea of pure procedural justice. *Ethics*, *90*(4), 502–511.

Neuman, W. L. (2010). *Social Research Methods: Qualitative and Quantitative Approaches: Quantitative and Qualitative Methods* (7th ed.). Michigan: Pearson.

New Victoria Hospital v Ryan [1993] ICR 201.

Newsome, K., Thompson, P., & Commander, J. (2013). "You monitor performance at every hour": labour and the management of performance in the supermarket supply chain. *New Technology, Work and Employment*, *28*(1), 1–15.

Niehoff, B. ., & Moorman, R. H. (1993). Justice as a mediator of the relationship between methods of monitoring and oranisational citizenship behaviours. *Academy of Management Journal*, *36*(3), 527–556.

Niven, M. (1967). *Personnel Management: 1913-63: The Growth of Personnel Management and the Development of the Institute*. London: IPM.

Niven, M. (1978). *Personnel Management, 1913-63 (Management in perspective)*. London: IPM.

Northam, S. (2009). Conflict in the workplace: Part 1. *AJN The American Journal of Nursing*, *109*(6), 70–73.

Nowak, P. (2013). *The Future of Trade Unionism: Challenges and Opportunities*. TUC.

Noy, C. (2008). Sampling knowledge: The hermeneutics of snowball sampling in qualitative research. *International Journal of Social Research Methodology*, *11*(4), 327–344.

Old Age Pensions Act 1908 c.40.

Olson, M. (1965). *The Logic of Collective Action: Public Goods and the Theory of Groups* (1st ed.). Cambridge, MA: Harvard University Press.

Olson, M. (1971). *The Logic of Collective Action: Public Goods and the Theory of Groups* (2nd ed.). Harvard University Press.

ONS. (2011). *UK Jobs by sector*.

Onwuegbuzie, A. J., & Teddlie, C. (2003). A framework for analyzing data in mixed methods research. In A. Tashakkori & C. Teddlie (Eds.), *Handbook of Mixed Methods in Social and Behavioral Research* (pp. 351–383). Thousand Oaks, CA: SAGE.

Overell, S. (2009). *The Meaning of Work During Early Retirement*. *The good work commission* (Vol. 43).

Overell, S., Mills, T., Roberts, S., Lekhi, R., & Blaug, R. (2010). *The Employment Relationship and the Quality of Work*.

P.K.Edwards. (2003). The employment relationshipand the field of industrial relations. In P. K. Edwards (Ed.), *Industrial Relations: Theory and Practice* (2nd ed.). Oxford: Blackwell.

Pagano, M. E., Hirsch, B. J., Deutsch, N. L., & McAdams, D. P. (2003). The transmission of values to school-age and young adult offspring: Race and gender differences in parenting. *Journal of Feminist Family Therapy*, *14*(3-4), 13–36.

Partington, M., Kirton-darling, E., & Mcclenaghan, F. (2007). *Empirical Research on Tribunals An Annotated Review of Research Published between 1992 and 2007*. *Review Literature And Arts Of The Americas*.

Patten, J. (2008). *Keeping Away from Employment Tribunals and Court Room Battles*. London.

Patton, M. (2002). *Qualitative Research & Evaluation Methods*. Thousand Oaks, CA: SAGE.

Peirce, C. S. (1878). How to Make Our Ideas Clear. *Popular Science Monthly*, *12*, 286–302.

Peirce, C. S. (1905). What Pragmatism Is. *The Monist*, *15*, 161–181.

Pemberton, H. (2001). *The 1964 Industrial Training Act : A Failed Revolution*.

Pencavel, J. H. (2001). *Worker Participation: Lessons from the Worker Co-ops of the Pacific Northwest* (6th ed.). New York: Russell Sage Foundation.

Peninsula Business Services v Rees & ors; Peninsula Business Services v Malik UKEAT/0333/08/RN UKEAT/0340/08/RN.

Peters, M., Seeds, K. E. N., Harding, C., & Garnett, E. (2010). *Findings from the Survey of Employment Tribunal Applications 2008*. *Social Research*.

Pfeffer, J. (1998). Seven practices of successful organisations. *California Review*, *40*(2), 36–155.

Pilbeam, S., & Corbridge, M. (2010). *People Resourcing: Contemporary HRM in Practice:* (4th ed.). London: Financial Times/ Prentice Hall.

Plano Clark, V. L., & Creswell, J. W. (2008). *The Mixed Methods Reader*. Thousand Oaks, CA: SAGE Publications.

Polkey v A E Dayton Services [1987] IRLR 503; [1988] ICR 142 (HL).

Polkey v A E Dayton Services Ltd [1987] IRLR 503.

Pollert, A. (2005a). The unorganised worker: The decline in collectivism and new hurdles to individual employment rights. *Industrial Law Journal*, *34*(3), 217–238.

Pollert, A. (2005b). *What do Unrepresented Workers do about Problems at Work?* (No. The Unrepresented Worker Survey 2004).

Pollert, A. (2007). Britain and individual employment rights: “Paper tigers, fierce in appearance but missing in tooth and claw.” *Economic and Industrial Democracy*, *28*(1), 110–139.

Pollert, A. (2009). The lived experience of isolation for vulnerable workers facing workplace grievances in 21st-Century Britain. *Economic and Industrial Democracy*, *31*(1), 62–92.

Pollert, A., & Charlwood, A. (2009). The vulnerable worker in Britain and problems at work. *Work, Employment & Society*, *23*(2), 343–362.

Poole, M., & Mansfield, R. (1993). Patterns of Continuity and Change in Managerial Attitudes and Behaviour in Industrial Relations, 1980-1990. *British Journal of Industrial Relations*, *31*(1), 11–35.

Poole, M., Mansfield, R., & Mendes, P. (2001). *Two Decades of Management: A survey of the attitudes and behaviour of managers over a 20 year period*.

Prahalad, C. K., & Hamel, G. (1994). Strategy as a field of study: Why search for a new paradigm? *Strategic Management Journal*, *15*(S2), 5–16.

Pratten, C., & Ryan, P. (1998). *The Individualisation of Employment Contracts in Britain*.

Protection from Harassment Act 1997 (S.I. 1997/1498).

Race Relations Act c.74.

Rahim, M. A., Magner, N. R., & Shapiro, D. L. (2000). Do justice Perceptions Influence Styles of Handling Conflict With Supervisors?: What Justice Perceptions, Precisely? *International Journal of Conflict Management*, *11*(1), 9–31.

Rawls, J. (1999). *A Theory of Justice* (Revised Ed.). Harvard: Harvard University Press.

Rawls, J. (2005). *Political Liberalism: Expanded Edition*. Columbia University Press.

Re Trepca Mines (No 2); CA 1962.

Redmond, K., & Gorse, C. a. (2004). Influencing and Persuasion Techniques Used During Initial One to One Negotiations. In *Cobra 2004*. The International Construction Research Conference of the Royal Institution of Chartered Surveyors.

Redundancy Payments Act 1965 c.62.

Remenyi, D., & Williams, B. (1995). Some aspects of methodology for research in information systems. *Journal of Information Technology*, *10*, 191–201.

Remenyi, D., Williams, B., Money, A., & Swartz, E. (1998). *Doing Research in Business and Management: An Introduction to Process and Method*. London: SAGE Publications Ltd.

Remenyi, D., Williams, B., Money, A., & Swartz, E. (2005). *Doing Research in Business and Management: An Introduction to Process and Method* (2nd ed.). London: SAGE Publications.

Remler, D. K., & Van Ryzin, G. G. (2011). *Research Methods in Practice: Strategies for Description and Causation*. London: SAGE.

Renton, D. (2008). *"Deliver us from employment tribunal hell": employment law, industrial relations and the Employment Bill* (Vol. 44, pp. 1–16).

Renton, D. (2009). Tribunals and tribulations. *International Socialism*, (124).

Renton, D. (2012). *Struck Out: Why Employment Tribunals Fail Workers and What Can be Done*. London: Pluto Press.

Research, L. (2011a, March). Labour Research - Mean Minded Tribunals. *Labour Research*.

Research, L. (2011b, March). Workers' Rights Dismissed. *Labour Research*.

Resolving Workplace Disputes : A Consultation. (2011).

Rhenman, E., Stromberg, L., & Westerlund, G. (1970). *Conflict and Co-operation in Business Organisations*. London: Wiley-Interscience.

Robert Nozick. (1974). *Anarchy, State, and Utopia*. New York: Basic Books.

Roch, S. G., & Shanock, L. R. (2006). Organizational justice in an exchange framework: Clarifying organizational justice distinctions. *Journal of Management*, *32*(2), 299–322.

Rogowski, R., & Withagen, T. (2002). Legal regulation of transnational labour markets. In Schmidt & Gazier (Eds.), *The Dynamics of Full Employment? Social Integration through Transitional Labour Market* (pp. 233–273). Cheltenham: Edward Elgar.

Rollinson, D. (1993). *Understanding Employee Relations*. Workingham: Addison-Wesley.

Rose, E. (2008). *Employment Relations* (3rd ed.). London: Prentice Hall.

Ross, C. (2013). New unions in the UK: the vanguard or the rear-guard of the union movement? *Industrial Relations Journal*, *44*(1), 78–94.

Ross, N. S. (1958). Organised labour and management. In E. M. Hugh-Jones (Ed.), *Human Relations and Modern Management*. Amsterdam: Elsevier.

Rubin, H. J., & Rubin, I. S. (2011). *Qualitative Interviewing: The Art of Hearing Data* (3rd ed., p. 288). SAGE Publications, Inc;

Rutherford, I., & Achur, J. (2010). *Survey of pay & work rights helpline callers*.

Ruysseveldt, J. Van. (1995). *International Human Resource Management: An Integrated Approach*. (A.-W. H. Ruysseveldt & J. Van, Eds.). London: SAGE.

Ryan, B. (2010). Unfinished Business ? The Failure of Deregulation in Unfinished Law Employment. *Journal of Law and Society*, *23*(4), 506–528.

Salamon, M. (1992). *Industrial Relations: Theory and Practice*. London: Prentice Hall.

Salamon, M. (2000). *Industrial Relations: Theory and Practice* (4th ed.). London: Prentice Hall.

Sale, J. E. M., & Brazil, K. (2002). Revisiting the quantitative-qualitative debate : Implications for mixed-methods research. *Community Health*, *36*(1), 43–53.

Saltari, E., & Tilli, R. (2011). Firing costs and labor market tightness: Is there any relationship? *Research in Economics*, *65*, 1–4.

Sanchez, M. E. (1992). Effects of questionnaire design on the quality of survey data. *Public Opinion Quarterly*, *56*, 206–217.

Sandelowski, M. (2000). Combining qualitative and quantitative sampling, data collection, and analysis techniques in mixed-method studies. *Research in Nursing & Health*, *23*(3), 246–255.

Sandelowski, M. (2000). *Focus on Research Methods Combining Qualitative and Quantitative Sampling, Data Collection , and Analysis Techniques in Mixed-Method Studies*. *Techniques* (pp. 246–255).

Sanders, A. (2008). The “Minimalist” Approach to Minimum Standards of Procedural Fairness. *Industrial Law Journal*, *37*(1), 89–99.

Sanders, A. (2009). Part one of the Employment Act 2008: “Better” dispute resolution? *Industrial Law Journal*, *38*(1), 30–49.

Sanders, A. (2010). A “right” to legal representation (in the workplace) during disciplinary proceedings? *Industrial Law Journal*, *39*(2), 166–182.

Sanderson, M., & Taggart, J. (1999). ACAS advice – a lost cause? *Employee Relations*, *21*(2), 128–144.

Sarantakos, S. (1998). *Social research* (2nd ed.). Melbourne: MacMillan Education Australia.

Sargeant, M., & Lewis, D. (2010). *Employment Law* (4th ed.). London: Prentice Hall.

Saridakis, G., Sen-Gupta, S., Edwards, P., & Storey, D. J. (2008). The impact of enterprise size on employment tribunal incidence and outcomes: Evidence from Britain. *British Journal of Industrial Relations*, *46*(3), 469–499.

Saunders, M. N. K., Lewis, P., & Thornhill, A. (2012). *Research Methods for Business Students* (6th ed., p. 728). London: Financial Times/ Prentice Hall;

Saunders, M. N. K., & Thornhill, A. (2003). Organisational justice, trust and the management of change: An exploration. *Personnel Review*, *32*(3), 360–375.

Schieman, S., & Reid, S. (2008). Job authority and interpersonal conflict in the workplace. *Work and Occupations*, *35*(3), 296–326.

Schneider, M. (2000). Employment Litigation on the Rise - Comparing British Employment Tribunals and German Labor Courts. *Comparative Labor Law and Policy Journal*, *22*(2/3), 261–280.

Scott, B. A., Colquitt, J. A., & Zapata-Phelan, C. P. (2007). Justice as a dependent variable: Subordinate charisma as a predictor of interpersonal and informational justice perceptions. *The Journal of Applied Psychology*, *92*(6), 1597–609.

Sekaran, U., & Bougie, R. (2013). *Research Methods for Business: A Skill Building Approach* (5th ed.). Wiley.

Sennett, R. (1998). *The Corrosion of Character: Personal Consequences of Work in the New Capitalism* (p. 176). London: W. W. Norton & Co.

Sex Discrimination Act 1975 c.65.

Shackleton, J. R. (2002). *Employment Tribunals: Their Growth and the Case for Radical Reform*. Institute of Economic Affairs.

Short, A. (2011). *Latest Lessons and Litigating Large Scale Losses: Local Authority Equal Pay Cases*. Bristol.

Silverman, D. (1997). *Qualitative Research*. Thousand Oaks, CA: SAGE Publications.

Simon, H. A. (1951). A Formal Theory of the Employment Relationship. *Econometrica*, *19*(3), 293–305.

Singh, R. (1995). Dispute resolution in Britain: contemporary trends. *International Journal of Manpower*, *16*(9), 42–52.

Skarlicki, D. P., & Folger, R. (1997). Retaliation in the workplace: The role of distributive, proedural and interactional justice. *Journal of Applied Psychology*, *82*, 434–443.

Smith, C. (2009). A critical pragmatism: Marcuse, Adorno, and Peirce on the artificial stagnation of individual and social development in advanced industrial societies. *Kritike*, *3*(2), 30–52.

Smith, H. W. (1975). *Strategies of social research: The methodological imagination*. Englewood Cliffs, NJ: Prentice Hall.

Smith, I., & Baker, A. (2010). *Employment Law*. Oxford: OUP Oxford.

Smith, P., & Morton, G. (1993). Union exclusion and the decollectivization of Industrial Relations in contemporary Britain. *British Journal of Industrial Relations*, *31*(1), 97–114.

Smith, P., & Morton, G. (2001). New Labours reform of Britain's employment law: The devil is not only in the detail but in the values and policy too. *British Journal of Industrial Relations*, *39*(1), 119–138.

Smith, P., & Morton, G. (2006). Nine years of New Labour: Neoliberalism and workers' rights. *British Journal of Industrial Relations*, *44*(3), 401–420.

Smith, P., & Morton, G. (2009). Employment legislation: New labour's neoliberal legal project to subordinate trade unions. In *Trade unions in a neo liberal world: British trade unions under new labour* (pp. 205–29). Abingdon: Routledge.

Sneath, D. (2005). *Employment Tribunals*. Jordan Publishing Ltd.

Social Security Contributions and Benefits Act 1992 c.4.

Society, L. (2012). Employment tribunal fees are a barrier to justice. *The Law Society*.

Society, T. I. (Ed.). (1973). Legal Problems of Employment. The Industrial Society.

Solum, L. B. (2005). *Procedural Justice* (No. 12).

Southey, K. (2010). A typology of employee explanations of misbehaviour: An analysis of unfair dismissal cases. *Journal of Industrial Relations*, *52*(1), 81–102.

Stake, R. (1995). *The Art of Case Study Research* (p. 192). Thousand Oaks, CA: SAGE Publications, Inc.

State, T. S. of (Ed.). The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations (2008). UK.

Statistics, O. for N. (2009). *Labour Force Survey 2009*.

Statistics, O. for N. (2011a). *170 Years of Industrial Change across England and Wales*.

Statistics, O. for N. (2011b). *Labour Force Survey 2011*.

Statistics, O. for N. (2012). *Trade union density*.

Statute of Westminster 1275 (3 Edw. I).

Statutory Disciplinary and Dismissal Procedures (2004).

Statutory Sick Pay Act 1994 c.2.

Sternberg, E. (2010). The Knowledge Inheritance Theory of Distributive Justice. *Economic Affairs*, *30*(1), 33–37.

Stoecker, R. (1991). Evaluating and rethinking the case study. *The Sociological Review*, *39*(1), 88–112.

Storey, J. (1992). *Development in the Management of Human Resources*. Oxford: Blackwell Publishers Ltd.

Strauss, A., & Corbin, J. (1988). *Shaping the new health care system: The explosion of chronic illness as a catalyst for change*. San Francisco: Jossey Bass.

Stuart, M., & Martinez Lucio, M. (2008). The new benchmarking and advisory state: The role of the British Advisory, Conciliation and Arbitration Service in facilitating labour-management consultation in public sector transformation. *Journal of Industrial Relations*, *50*(5), 736–751.

Sturm, S., York, N., & Gadlin, H. (2007). Conflict resolution and systemic change. *Journal of Dispute Resolution*, (1), 07–147.

Sullivan, P. (2005). Developing an administrative plan for transfusion medicine: a global perspective. *Transfusion*, *45*(4), 224S–40S.

Supiot, A. (2001). *Beyond Employment* (1st ed.). Oxford: Oxford University Press.

Susman, G., & Evered, R. (1978). An assessment of the scientific merits of action-research. *Administrative Science Quarterly*, *23*(4), 582–603.

Svejnar, J. (1982). Employee participation in management, bargaining power and wages. *European Economic Review*, *18*, 291–303.

Swift, J., & Chapman, C. (2007). *Employment Court Practice*. London: Sweet and Maxwell.

Tang, T. L. P. (1996). Distributive and procedural justice as related to satisfaction and commitment. In *Annual Meeting of the Southwestern Psychological Association*. Houston, TX.

Tashakkori, A., & Creswell, J. W. (2007). Editorial: The new era of mixed methods. *Journal of Mixed Methods Research*, *1*(1), 3–7.

Tashakkori, A., & Teddlie, C. (1998). *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. London: SAGE.

Tata, J., & Bowes-Sperry, L. (1996). Emphasis on distributive, procedural and interactional justice: Different perceptions of men and women. *Psychological Reports*, *79*, 1327–1330.

Taylor, F. W. (1903). Shop management. *ASME Transactions*, *24*, 1337–1480.

Taylor, F. W. (1911a). *Shop Management*. New York: Harper & Row.

Taylor, F. W. (1911b). *The Principles of Scientific Management*. New York: Harper & Row.

Taylor, P. (2013). *Performance Management and the New Workplace Tyranny*.

Taylor, P., & Walker, A. (1998). Employers and older workers: attitudes and employment practices. *Ageing and Society*, *18*(6), 641–658.

Taylor, S., & A Emir. (2008). *Employment Law: An introduction* (2nd ed.). Oxford: Oxford University Press.

Taylor, S., & Emir, A. (2012). *Employment Law An Introduction* (3rd ed.). Oxford: Oxford University Press.

Taylor, S. J., & Bogdan, R. (1975). *Introduction to Qualitative Research Methods: A Phenomenological Approach to the Social Sciences* (Vol. 6, p. 259). New York: Wiley.

Teddlie, C., & Tashakkori, A. (2003). Major issues and controversies in the use of mixed methods in the social and behavioral sciences. In A. Tashakkori & C. Teddlie (Eds.), *Handbook on Mixed Methods in the Behavioral and Social Sciences* (pp. 3–50). Thousand Oaks, CA: Sage.

Teddlie, C., & Tashakkori, A. (2009). *Foundations of Mixed Methods Research.* Thousand Oaks, CA: SAGE Publications.

Tekleab, A. G., & Taylor, M. S. (2003). Arent there two parties in an employment relationship? Antecedents and consequences of organization-employee agreement on contract obligations and violations. *Journal of Organizational Behaviour*, *24*(5), 585–608.

The Employment Equality (Age) Regulations 2006 (SI 2006/1031).

The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2005 (SI 2005/435), 7 Office.

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 ((S.I. 2004/1861).

The Industrial Training (Levy Exemption References) Regulations 1974 (S.I. 1974/1335), Secretary.

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (S.I. 2000/1551).

The Working Time (Amendment) Regulations 2007 (SI 2007 No 2079). (n.d.).

Thibaut, J. W., & Walker, L. (1975). *Procedural justice: A psychological analysis*. Hillsdale, NJ: Erlbaum.

Thomason, G. (1984). *A Textbook of Industrial Relations Management* (1st .). Institute of Personnel Management.

Thompson, A. (2006). *The work of the Advisory, Conciliation and Arbitration Service*.

Thompson, P. (2011). The trouble with HRM. *Human Resource Management Journal*, *21*(4), 355–367.

Thurley, K., & Wood, S. (1983). *Industrial Relations and Management Strategy* (1st ed.). Cambridge: Cambridge University Press.

Tjahjono, H. K. (2009). Configuration pattern distributive and procedural justice and its consequences to organizational commitment. In *Proceedings of 2009 International Conference on Economics, Business Management and Marketing* (pp. 9–11).

Tjosvold, D. (2008). The conflict-positive organization : it depends upon us. *Journal of Organizational Behaviour*, *28*(April 2007), 19–28.

Towers, B. (1989). Running the gauntlet: British trade unions under Thatcher, 1979 - 1988. *Industrial & Labor Relations Review*, *42*(2), 163–168.

Townley, B. (1993). Foucault, Power/Knowledge, and its relevance for Human Resource Management. *The Academy of Management Review1*, *18*(3), 518–545.

Tracy, J. (1987). An empirical test of an asymmetric information model of strikes. *Journal of Labor Economics*, *5*(5), 149–173.

Trade Boards Act 1909 c.22.

Trade Boards Act 1918 c.32.

Trade Disputes Act 1906 c.47.

Trade Union Act 1871 c.31.

Trade Union Act Amendment Act 1876 c.22.

Trade Union and Labour Relations (Consolidation) Act 1992 c.52.

Trade Union Reform and Employment Rights Act 1993 c.19.

Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794).

Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

Tribunals and Inquiries Act 1971 c.62, 10 Managerial Law.

Trowler, P. (2012). *Doctoral Research into Higher Education: Thesis structure, content and completion*.

Truck Act 1896 c.44.

Tsui, A. S., & Wu, J. B. (2005). The new employment relationship versus the mutual investment approach: Implications for human resource management. *Human Resource Management*, *44*(2), 115–121.

TUC. (2008). *Hard Work, Hidden Lives: Report of the Commission on Vulnerable Employment*.

TUC. (2011). Trades Union Congress - TUC urges ministers to stand firm in the face of employer tribunal lobbying. *Trades Union Congress*. Retrieved January 07, 2011, from http://www.tuc.org.uk/industrial-issues/tuc-urges-ministers-stand-firm-face-employer-tribunal-lobbying

TUC. (2013). Trades Union Congress - TUC urges MPs to make last gasp intervention on tribunal fees.

Turner, H. A. (1969). The Donovan report. *The Economic Journal*, *79*(313), 1–10.

Tyler, R. (2011, January 5). Employment tribunal system “broken” claim employers. *Daily Telegraph*.

Tyler, T., & Bies, R. . (1990). Beyond formal procedures: The interpersonal context of procedural justice. In J. CarrolL (Ed.), *Applied Social Psychology and Organisational Settings* (pp. 77–98). Hillsdale, NJ: Erlbaum.

Tyler, T. R. (2005). Procedural justice and the courts. *Court Review*, *44*(1994), 26–31.

Tyler, T. R. (2011). Procedural Justice , Legitimacy, and the Effective Rule of Law. *Crime and Justice*, *30*(2003), 283–357.

Unite. (2013). *Zero Hours Contract Brief*.

Upex, R., Benny, R., & Hardy, S. (2009). *Employment Law*. Oxford: OUP Oxford.

Urwin, P., Karuk, V., Latreille, P., Michielsens, E., Page, L., Siara, B., … Chevalier, P. (2010). *Evaluating the use of judicial mediation in Employment Tribunals*.

Van den Bos, K. (2003). On the subjective quality of social justice: The role of affect as information in the psychology of justice judgments. *Journal of Personality and Social Psychology*, *85*, 482–498.

Van Gramberg, B. (2006). Managing neutrality and impartiality in workplace conflict resolution: The dilemma of the HR manager. *Asia Pacific Journal of Human Resources*, *44*(2), 197–210.

Vann, J. (1979). Protection from employment protection. *Industrial Management & Data Systems*, *79*(3), 15–15.

Venn, D. (2009). *Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators*. *Labour*.

Victor, C. R., Ross, F., & Axford, J. (2004). Capturing lay perspectives in a randomized control trial of a health promotion intervention for people with osteoarthritis of the knee. *Journal of Evaluation in Clinical Practice*, *10*(1), 63–70.

Villalba v Merrill Lynch & Co Inc and others UKEAT/0223/05;[2006] IRLR 437.

Waddington, J. (2003). Trade union organisation. In P. Edwards (Ed.), *Industrial Relations: Theory and Practice* (2nd ed.). Oxford: Blackwell.

Wages Councils Act 1945 c.17.

Waite, J.-P., Payne, A., & Isted, B. (2011). *Employment Tribunal Handbook: Practice, Procedure and Strategies for Success* (3rd ed.). London: Bloomsbury Professional.

Wajcman, J. (2000). Reflections on Gender and Technology Studies: In What State is the Art? *Social Studies of Science*, *30*(3), 447–464.

Walden, R. M. (2001). The ACAS Arbitration Scheme for unfair dismissal (1): reinventing the wheel." *Industrial Relations Law Bulletin*, 12–20.

Walden, R. M. (2013). Employment: Controversial New Fees, Revised Tribunal Rules and Lower Cap for Most on Unfair Dismissal Compensation. *Business Law Review*, *34*(5), 195–197.

Walker, B., & Hamilton, R. T. (2011). Employee-employer grievances: A review. *International Journal of Management Reviews*, *13*(1), 40–58.

Walker, R. (1985). *Applied Qualitative Research*. Aldershot: Gower.

Walumbwa, F. O., Cropanzano, R., & Hartnell, C. A. (2009). Organizational justice, voluntary learning behavior, and job performance: A test of the mediating effects of identification and leader-member exchange. *Journal of Organizational Behavior*, *30*(8), 1103–1126.

Walzer, M. (1985). *Spheres of justice*. Oxford: Basil Blackwell.

Webb, D. A., Sweet, D., & Pretty, A. (2002). The emotional and psychological impact of mass casualty incidents on forensic odontologists. *Journal of Forensic Sciences*, *47*(3), 539–41.

Webberburn, Lord. Employment Tribunals Act 1996 (Tribunal Composition) Order 2009, Pub. L. No. c74 (2009).

Weber, M. (1925). *Max Weber on Law*. *Economy and Society*. New York: Simon and Schuster.

Wedderburn, K. W. (1968). Report of the Royal Commission on Trade Unions and Employers' Associations. *Modern Law Review*, *31*(6), 674–682.

Wedderburn, L. (2007). Labour law 2008: 40 years on. *Industrial Law Journal*, *36*(4), 397–424.

Werhane, P., Radin, T. J., & Bowie, N. E. (2004). *Employment and Employee Rights* (1st ed.). Oxford: Blackwell Publishers Ltd.

White, P. G. (2007). Family Friendly Employment Policies and Practices: An East-West Perspective on Work Life Balance. In *14th International Employment Relations Association Conference*.

White, P. J. (1989). ACAS and the lawyers: some survey evidence. *Industrial Relations Journal*, *20*(4), 280–285.

Wiley, J. (2010). Strategy as a field of study: Why search for a new paradigm? *Search*, *15*, 5–16.

Willey, B. (2009). *Employment Law in Context: An Introduction for HR professionals* (3rd ed.). London: Longman.

Willey, B. (2012). *Employment Law in Context: An introduction for HR professionals* (4th ed.). London: Pearson.

Williams, S., & Adam-Smith, D. (2010). *Contemporary Employment Relations* (2nd ed.). Oxford: Oxford University Press.

Williams, S., & Scott, P. (n.d.). Shooting the past? The modernisation of Conservative Party employment relations policy under David Cameron. *Industrial Relations Journal*, *41*(1), 4–18.

Williams, S., & Scott, P. (2010). Shooting the past? The modernisation of Conservative Party employment relations policy under David Cameron. *Industrial Relations Journal*, *41*(1), 4–18.

Willmott, H. (1993). Strength is ignorance; slavery is freedom: Managing culture in modern organizations. *Journal of Management Studies*, *30*(4), 515–552.

Wilson, A. (2003). *Marketing Research: An Integrated Approach*. FT Prentice Hall.

Wilthagen, T., & Rogowski, R. (2002). Legal regulation of transitional labour markets. In G.Schmid & B. Gazier (Eds.), *The Dynamics of Full Employment? Social Integration through Transitional Labour Market* (pp. 233–273). Cheltenham: Edward Elgar.

Wilthagen, T., & Tros, F. (2004). The concept of “flexicurity”: a new approach to regulating employment and labour markets. *Transfer: European Review of Labour and Research*, *10*(2), 166–186.

Wood, S. (1983). The study of management in british industrial relations. *British Journal of Industrial Relations*, *13*(2), 51–61.

Wood, S. (1997). The future of employment relations. *Industrial and Labor Relations Review*, *50*(2), 343.

Wood, S. J. (1992). Dispute resolution – conciliation, mediation and arbitration. In W. McCarthy (Ed.), *Legal Intervention in Industrial Relations: Gains and Losses*. Oxford: Blackwell.

Work and Families Act 2006 c.18.

Workers Rights Come Under Siege. (2012). *Labour Research*, *January*.

Working Time (Amendment) Regulations 2007 (SI 2007/2079).

Working Time Regulations 1998 (SI 1998/1833).

Workmen’s Compensation Act c.58.

Yarrow, S. (1998). *The Price of Success, Lawyers, Clients and Conditional Fees*. London.

Yin, R. . (2009). *Case Study Research: Design and Methods* (4th ed.). Thousand Oaks, CA: SAGE.

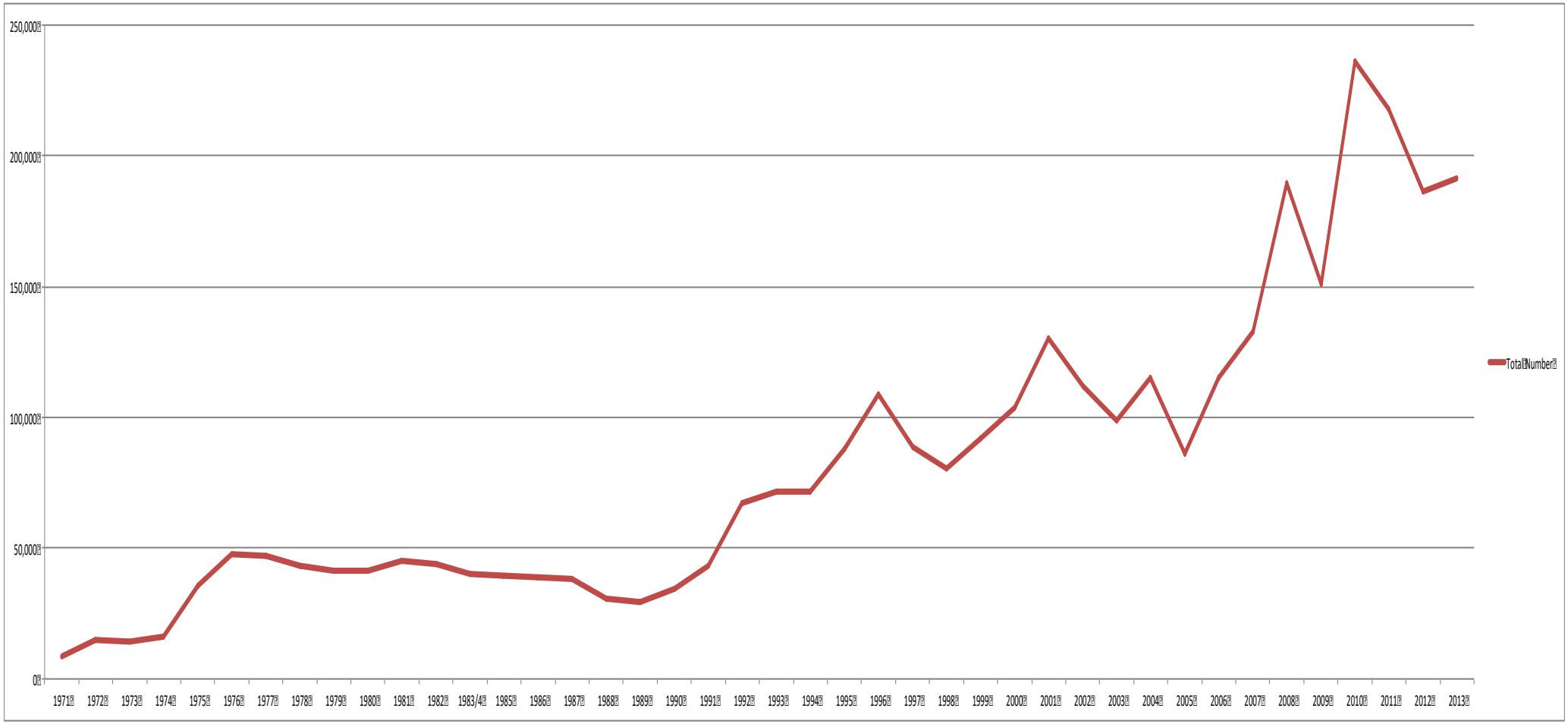
Zygmunt Bauman. (1998). *Work, Consumerism and the New Poor* (1st ed.). London: Open University Press.

Appendices

Appendix 1

Employment Tribunal Statistics

Employment Tribunal Applications 1971 – 2013



N.B. The increase in 2009 / 2010 includes figures containing 10,600 airline cases that were resubmitted every three months.
(Sources: 1971 -1984 – Employment Gazette; 1985-1998 – Hawes (2000); (1998-2013 –Employment Tribunal Service Annual Reports)

Employment Tribunal Applications 1971 - 2013

Year	Number	Year	Number
Jan - Dec 1971	8,592	April 1992 - March 1993	71,821
Jan - Dec 1972	14,857	April 1993 - March 1994	71,661
Jan - Dec 1973	14,062	April 1994 - March 1995	88,061
Jan - Dec 1974	16,320	April 1995 - March 1996	108,827
Jan - Dec 1975	35,897	April 1996 - March 1997	88,910
Jan - Dec 1976	47,804	April 1997 - March 1998	80,435
Jan - Dec 1977	46,961	April 1998 - March 1999	91,913
Jan - Dec 1978	43,321	April 1999 - March 2000	103,935
Jan - Dec 1979	41,244	April 2000 - March 2001	130,408
Jan - Dec 1980	41,424	April 2001 - March 2002	112,227
Jan - Dec 1981	44,852	April 2002 - March 2003	98,617
Jan - Dec 1982	43,660	April 2003 - March 2004	115,042
Jan - Dec 1983	39,959	April 2004 - March 2005	86,189
April 1984 - March 1985	**39,191**	April 2005 - March 2006	115,039
April 1985 - March 1986	38,593	April 2006 - March 2007	132,577
April 1986 - March 1987	38,385	April 2007 - March 2008	189,303
April 1987 - March 1988	30,543	April 2008 - March 2009	151,028
April 1988 - March 1989	29,304	April 2009 - March 2010	236,100
April 1989 - March 1990	34,697	April 2010 - March 2011	218,100
April 1990 - March 1991	43,243	April 2011 - March 2012	186,300
April 1991 - March 1992	67,448	April 2012 - March 2013	191,541

N.B. The counting year for ET claims changed from calendar to financial year in April 1984. Figures for this and subsequent years run from April to March of the following year (e.g. 1st April 1984 to 31st March 1985)

(Sources: 1971 -1984 – Employment Gazette; 1985-1998 – Hawes (2000); (1998-2013 –Employment Tribunal Service Annual Reports)

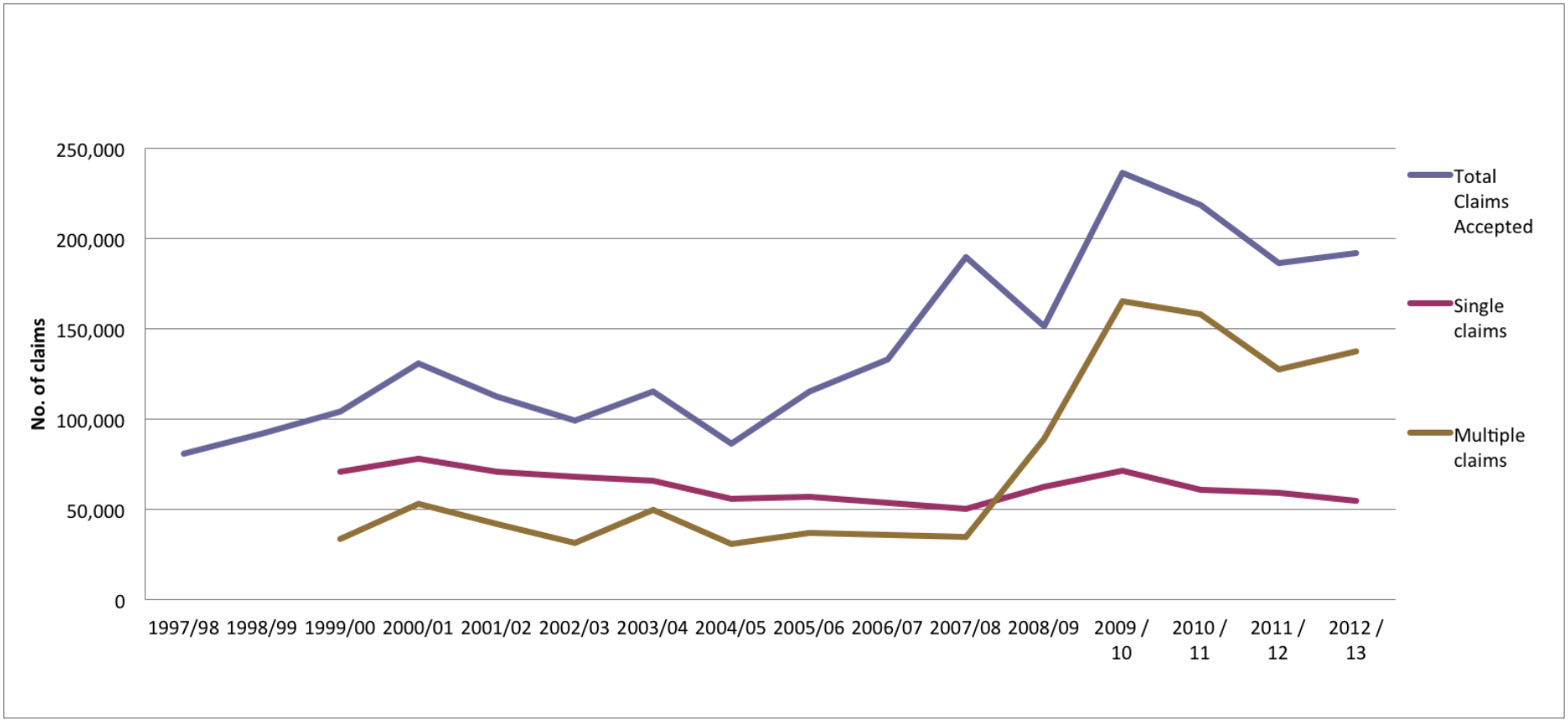
Employment Tribunal Applications: Single and multiple claims

	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05
Total	80,400	91,900	103,900	130,400	112,200	98,600	115,000	86,200
Singles			70,600	78,000	71,000	68,000	65,700	55,600
Multiples			33,300	52,400	41,200	30,700	49,400	30,600

Employment Tribunal Applications: Single and multiple Claims cont…

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Total	115,000	132,600	189,300	151,000	236,100	218,100	186,300	191,541
Singles	51,600	54,000	54,500	62,400	71,300	60,600	59,200	54,704
Multiples	63,500	78,500	134,800	88,700	164,800	157,500	127,100	136,837

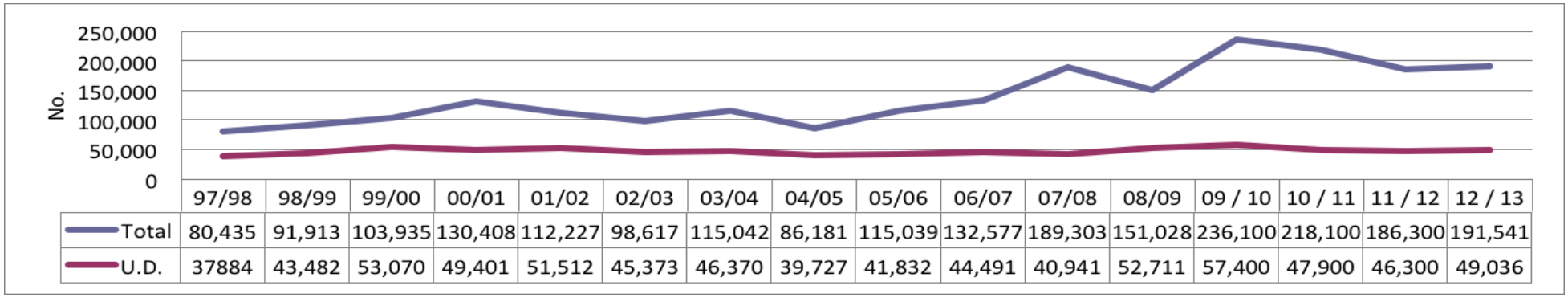
Employment Tribunal Applications: Single and multiple claims graph



Employment Tribunal Receipts by Jurisdiction

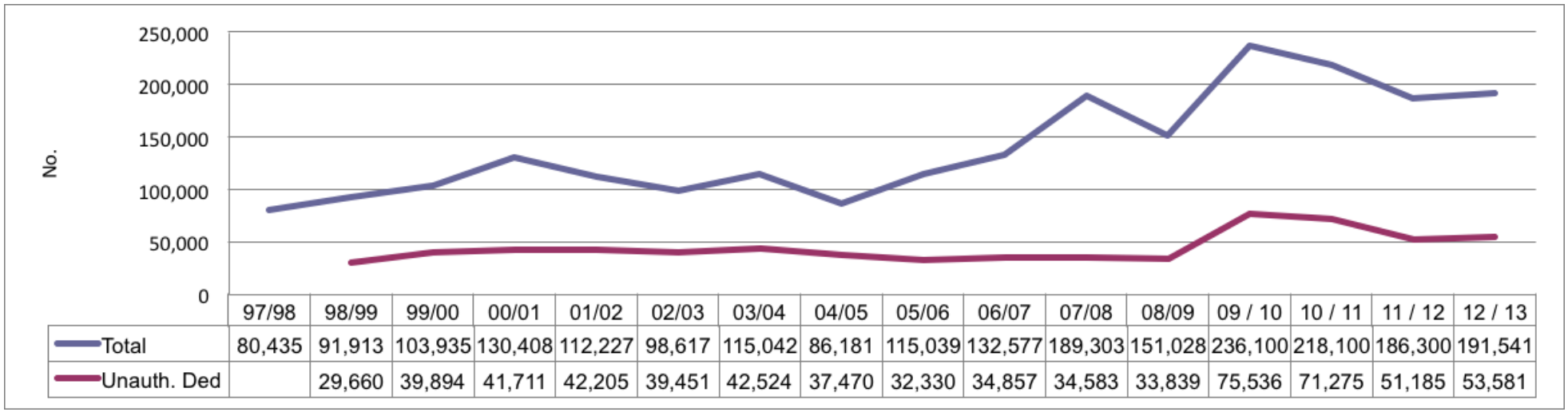
	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009 / 10	2010 / 11	2011 / 12	2012 / 13
Total Claims Accepted	**91,913**	**103,935**	**130,408**	**112,227**	**98,617**	**115,042**	**86,181**	**115,039**	**132,577**	**189,303**	**151,028**	**236,100**	218,100	186,300	**191,541**
Singles		70,600	78,000	71,000	68,000	65,700	55,600	56,660	53,377	50,094	62,400	71,300	60,600	59,200	54,704
Multiples		33,300	52,400	41,200	30,700	49,400	30,600	36,300	35,357	34,414	88,700	164,800	157,500	127,100	136,837
JURISDICTION MIX OF CLAIMS ACCEPTED	**1998/99**	**1999/00**	**2000/01**	**2001/02**	**2002/03**	**2003/04**	**2004/05**	**2005/06**	**2006/07**	**2007/08**	**2008/09**	**2009 / 10**	**2010 / 11**	**2011 / 12**	**2012 / 13**
NATURE OF CLAIM															
Unfair dismissal(1)	43,482	53,070	49,401	51,512	45,373	46,370	39,727	41,832	44,491	40,941	52,711	57,400	47,900	46,300	49,036
Unauthorised deductions (Formerly Wages Act)	29,660	39,894	41,711	42,205	39,451	42,524	37,470	32,330	34,857	34,583	33,839	75,500	71,300	51,200	53,581
Breach of contract	27,188	30,958	31,333	30,791	29,635	29,661	22,788	26,230	27,298	25,054	32,829	42,400	34,600	32,100	29,820
Sex discrimination	10,157	7,801	25,940	15,703	11,001	17,722	11,726	14,250	28,153	26,907	18,637	18,200	18,300	10,800	18,814
Working Time Directive	1,326	5,595	6,389	4,980	6,436	16,869	3,223	35,474	21,127	55,712	23,976	95,200	114,100	94,700	99,627
Redundancy pay	8,642	10,846	9,440	8,919	8,558	9,087	6,877	7,214	7,692	7,313	10,839	19,000	16,000	14,700	12,748
Disability discrimination	3,151	3,765	4,630	5,273	5,310	5,655	4,942	4,585	5,533	5,833	6,578	7,500	7,200	7,700	7,492
Redundancy failure to inform and consult			1,542	3,862	3,112	5,630	3,664	4,056	4,802	4,480	11,371	7,500	7,400	8,000	11,075
Equal pay	7,222	4,712	17,153	8,762	5,053	4,412	8,229	17,268	44,013	62,706	45,748	37,400	34,600	28,800	23,638
Race discrimination	3,318	4,015	4,238	3,889	3,638	3,492	3,317	4,103	3,780	4,130	4,983	5,700	5,000	4,800	4,818
Written statement of terms and conditions	3,098	2,762	2,420	3,208	2,753	3,288	1,992	3,078	3,429	4,955	3,919	4,700	4,000	3,600	4,199
Written statement of reasons for dismissal			1,425	1,526	1,658	1,829	1,401	955	1,064	1,098	1,105	1,100	930	960	808
Unfair dismissal - transfer of an undertaking	562	1,287	1,087	1,806	1,161	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Written pay statement			884	1,082	1,117	1,387	1,076	794	990	1,086	1,144	1,400	1,300	1,300	1,363
Transfer of an undertaking - failure to inform and consult	2,060	1,336	1,323	2,027	1,054	1,321	1,031	899	1,108	1,380	1,262	1,800	1,900	2,600	1,591
Suffer a detriment / unfair dismissal - pregnancy(2)	1,341	1,216	963	981	878	1,170	1,345	1,504	1,465	1,646	1,835	1,900	1,900	1,900	1,589
Part Time Workers Regulations			12,280	831	500	833	561	402	776	595	664	530	1,600	770	823
National minimum wage		1,306	852	556	829	613	597	440	806	431	595	500	520	510	500
Discrimination on grounds of Religion or Belief	n/a	n/a	n/a	n/a	n/a	70	307	486	648	709	832	1,000	880	940	979
Discrimination on grounds of Sexual Orientation	n/a	n/a	n/a	n/a	n/a	61	349	395	470	582	600	710	640	610	639
Age Discrimination							n/a	n/a	972	2,949	3,801	5,200	6,800	3,700	2,818
Others	7,564	8,186	5,090	6,207	4,805	5,371	5,459	5,219	5,072	13,873	9,274	8,100	5,500	5,900	6,901
Total	**148,771**	**176,749**	**218,101**	**194,120**	**172,322**	**197,365**	**156,081**	**201,514**	**238,546**	**296,963**	**266,542**	**392,800**	**382,400**	**321,890**	**332,859**

Unfair dismissal claims compared to total claims accepted



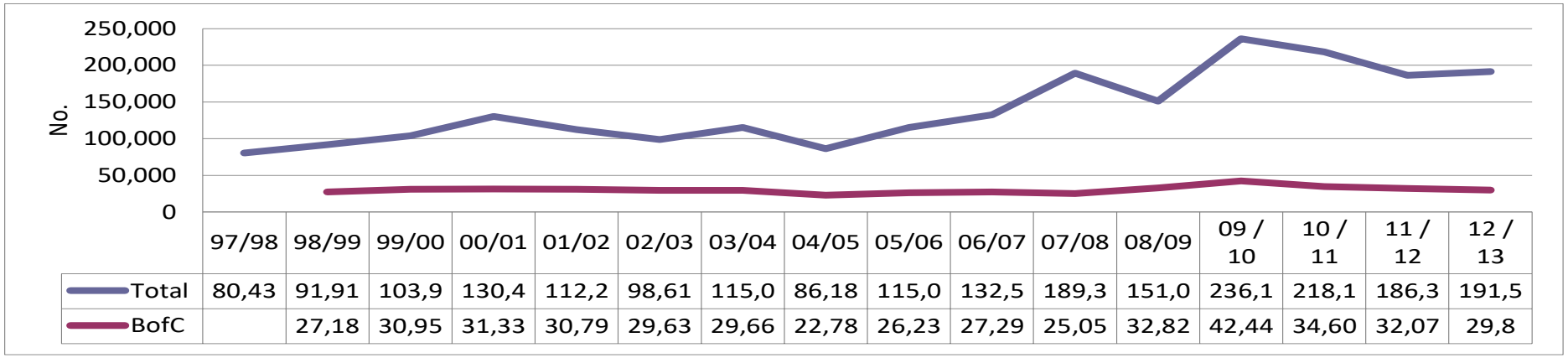
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
U.D.	37884	43,482	53,070	49,401	51,512	45,373	46,370	39,727	41,832	44,491	40,941	52,711	57,400	47,900	46,300	49,036

Unauthorised deduction claims compared to total claims accepted



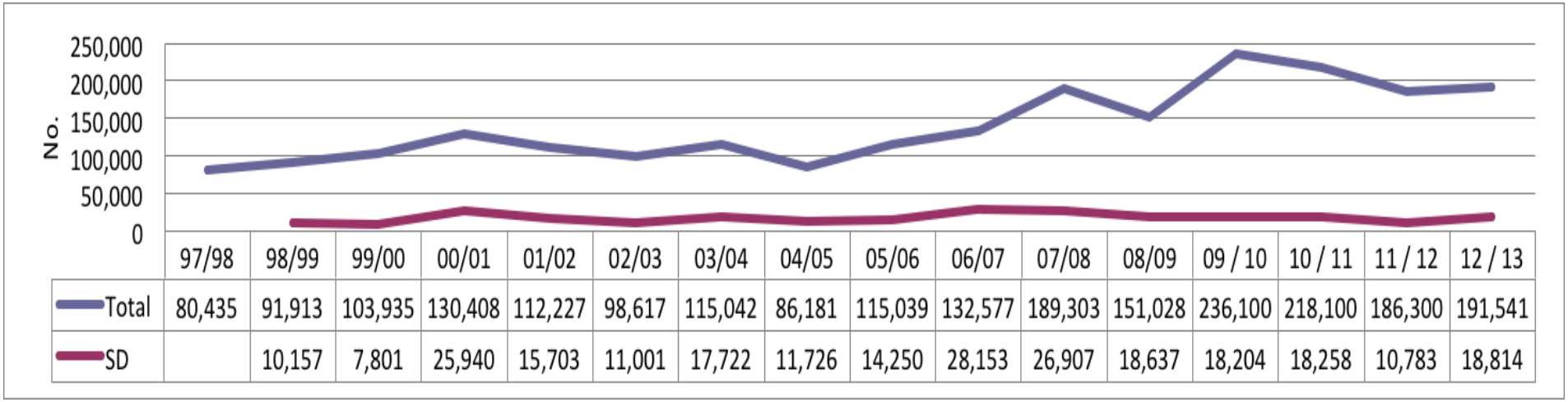
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
Unauth. Ded		29,660	39,894	41,711	42,205	39,451	42,524	37,470	32,330	34,857	34,583	33,839	75,536	71,275	51,185	53,581

Breach of contract claims compared to total claims accepted



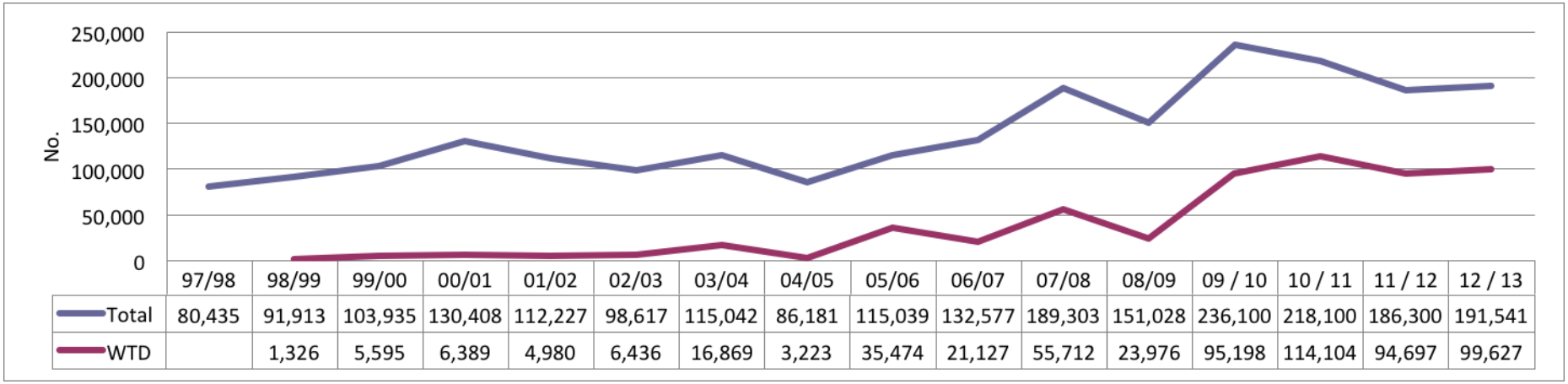
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,43	91,91	103,9	130,4	112,2	98,61	115,0	86,18	115,0	132,5	189,3	151,0	236,1	218,1	186,3	191,5
BofC		27,18	30,95	31,33	30,79	29,63	29,66	22,78	26,23	27,29	25,05	32,82	42,44	34,60	32,07	29,8

Sex discrimination claims compared to total claims accepted



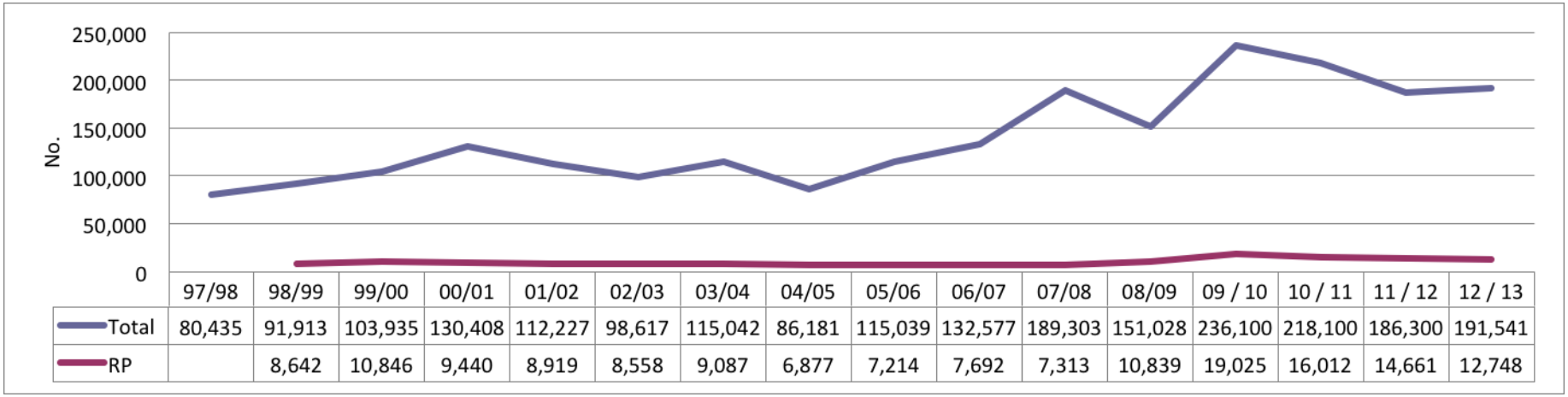
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
SD		10,157	7,801	25,940	15,703	11,001	17,722	11,726	14,250	28,153	26,907	18,637	18,204	18,258	10,783	18,814

Working time directive claims compared to total claims accepted



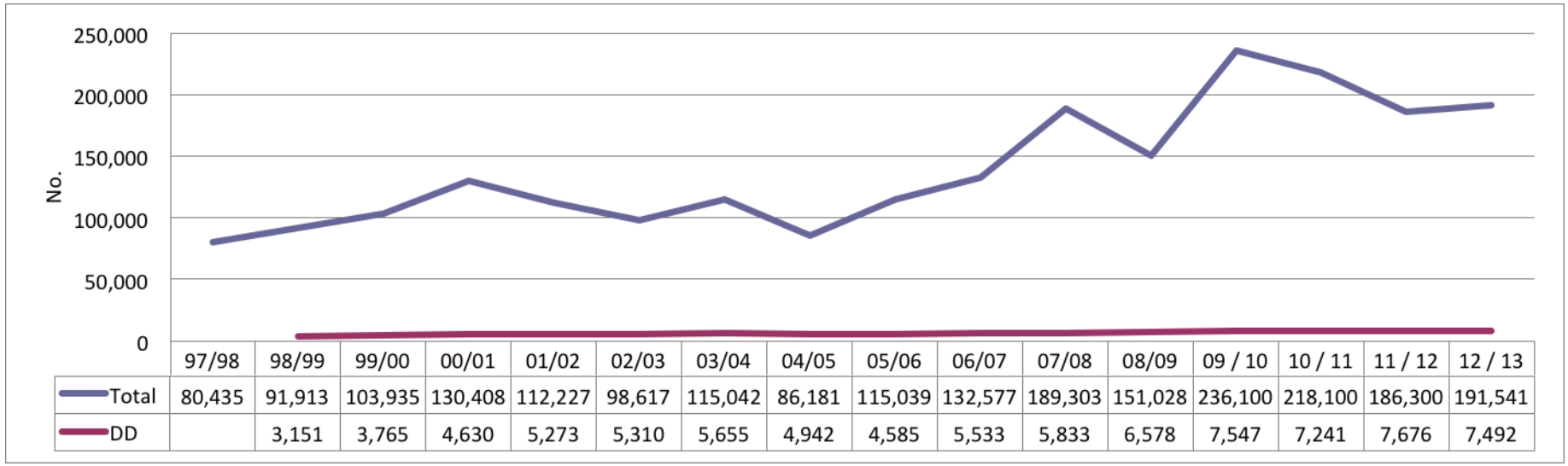
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
WTD		1,326	5,595	6,389	4,980	6,436	16,869	3,223	35,474	21,127	55,712	23,976	95,198	114,104	94,697	99,627

Redundancy pay claims compared to total claims accepted



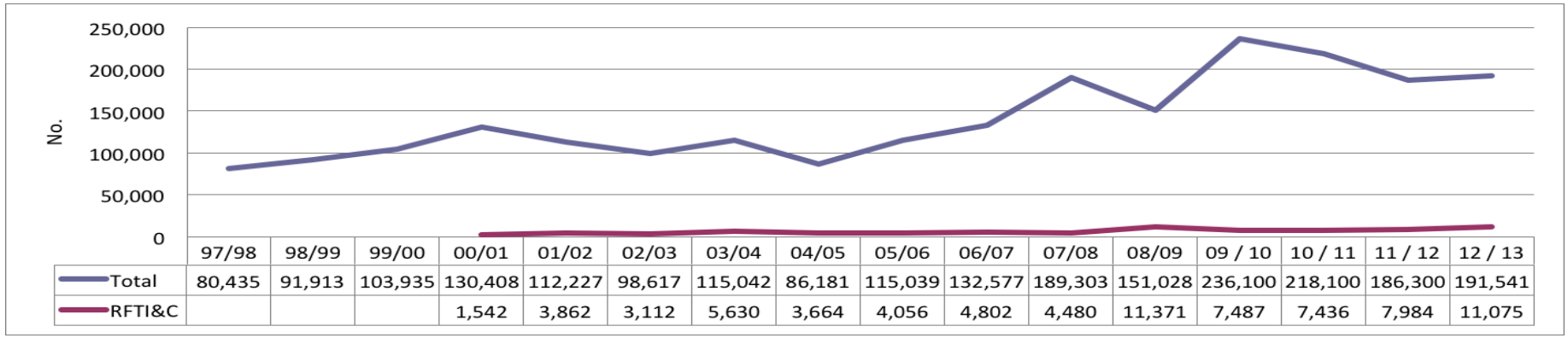
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
RP		8,642	10,846	9,440	8,919	8,558	9,087	6,877	7,214	7,692	7,313	10,839	19,025	16,012	14,661	12,748

Disability discrimination claims compared to total claims accepted



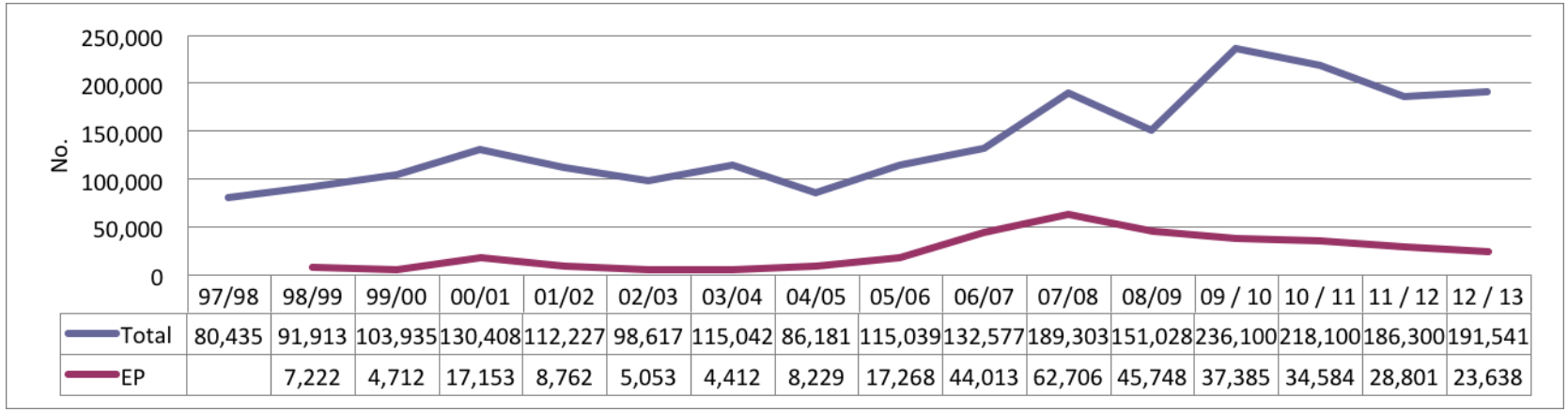
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
DD		3,151	3,765	4,630	5,273	5,310	5,655	4,942	4,585	5,533	5,833	6,578	7,547	7,241	7,676	7,492

Redundancy – failure to inform & consult claims compared to total claims accepted



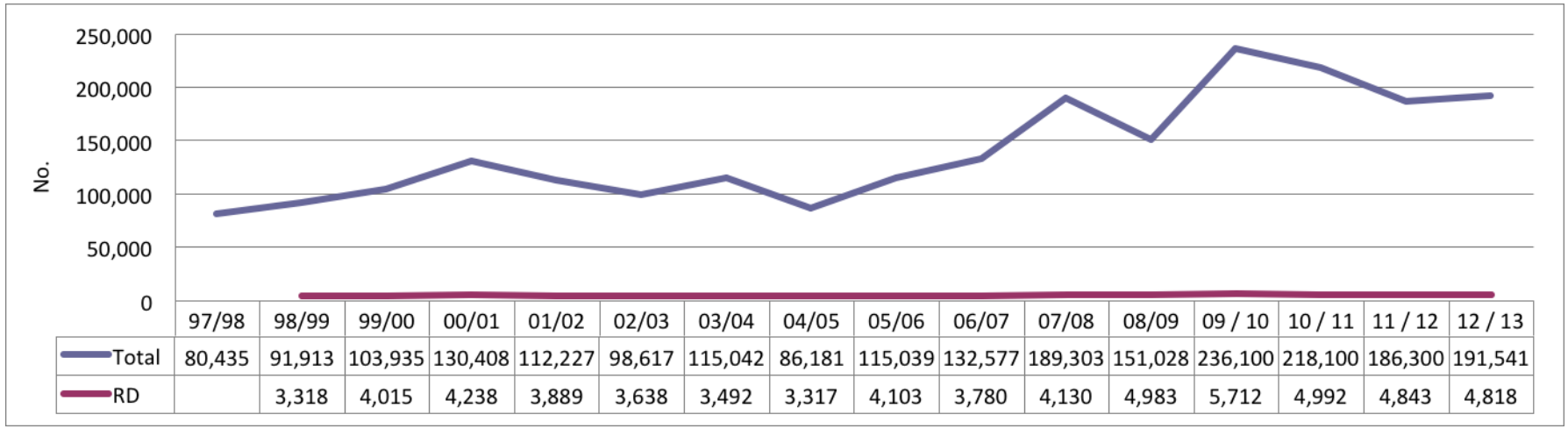
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
RFTI&C				1,542	3,862	3,112	5,630	3,664	4,056	4,802	4,480	11,371	7,487	7,436	7,984	11,075

Equal pay claims compared to total claims accepted



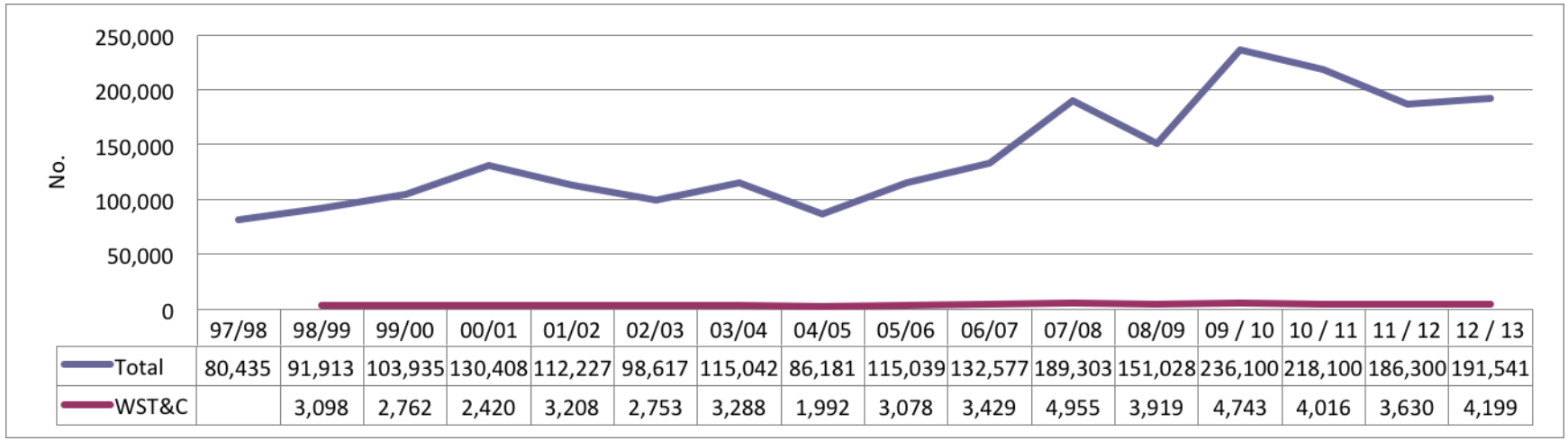
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
EP		7,222	4,712	17,153	8,762	5,053	4,412	8,229	17,268	44,013	62,706	45,748	37,385	34,584	28,801	23,638

Race discrimination claims compared to total claims accepted



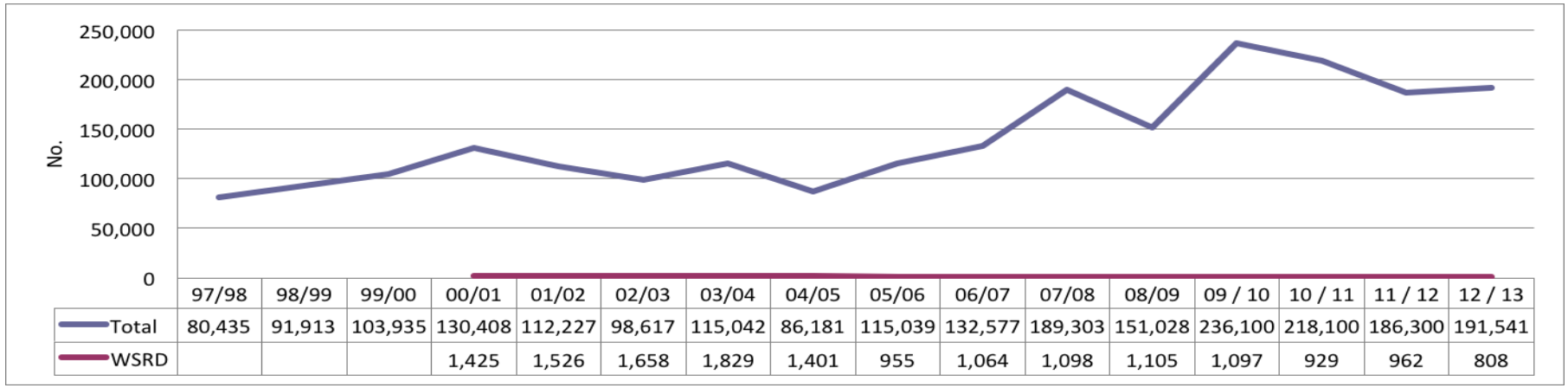
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
RD		3,318	4,015	4,238	3,889	3,638	3,492	3,317	4,103	3,780	4,130	4,983	5,712	4,992	4,843	4,818

Written statement of terms & conditions claims compared to total claims accepted



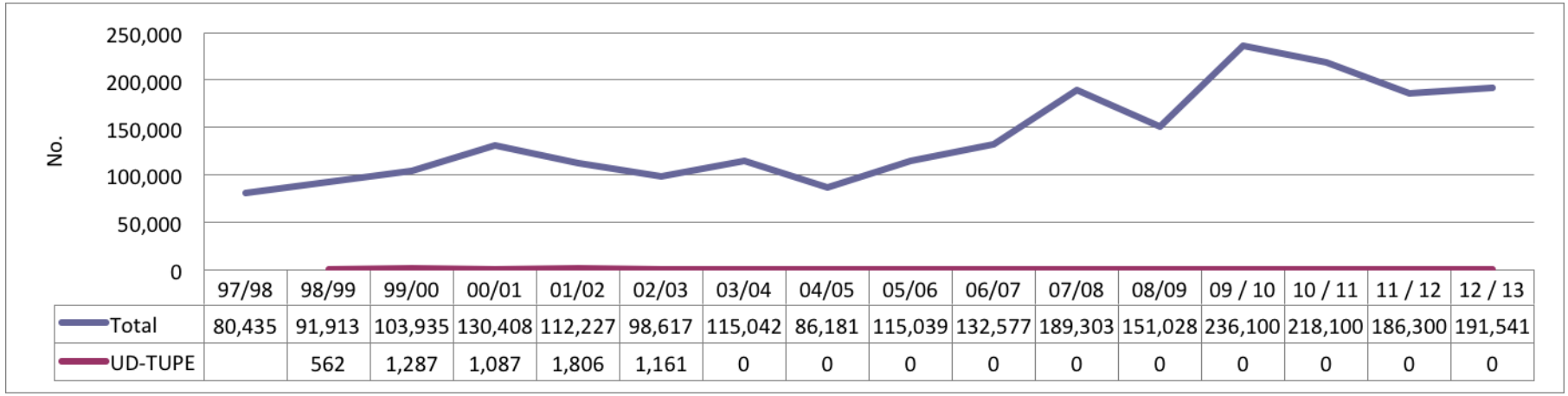
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
WST&C		3,098	2,762	2,420	3,208	2,753	3,288	1,992	3,078	3,429	4,955	3,919	4,743	4,016	3,630	4,199

Written statement of reasons for dismissal claims compared to total claims accepted



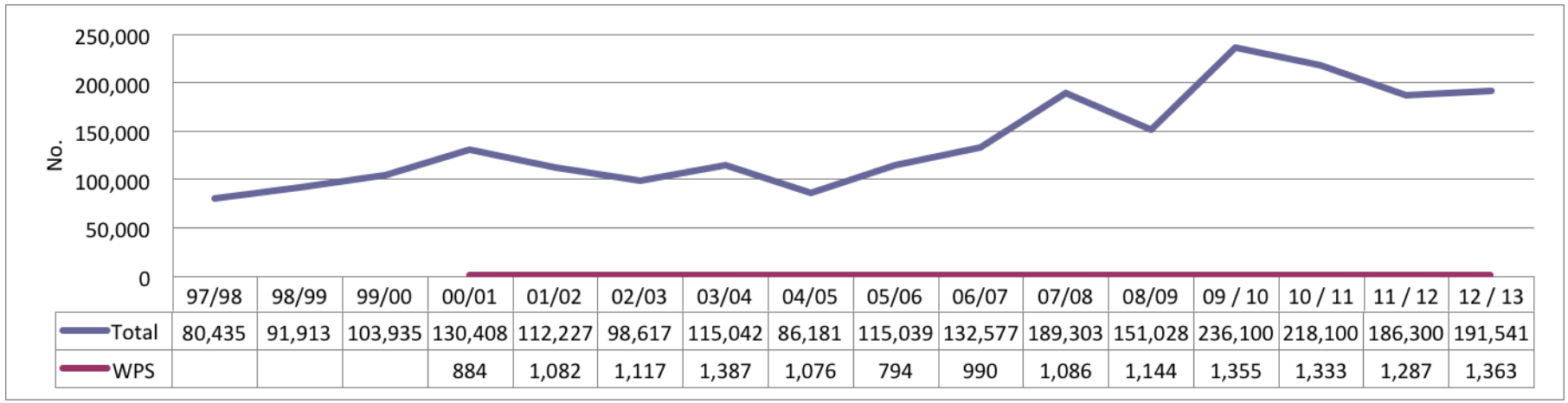
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
WSRD				1,425	1,526	1,658	1,829	1,401	955	1,064	1,098	1,105	1,097	929	962	808

Unfair dismissal -TUPE claims compared to total claims accepted



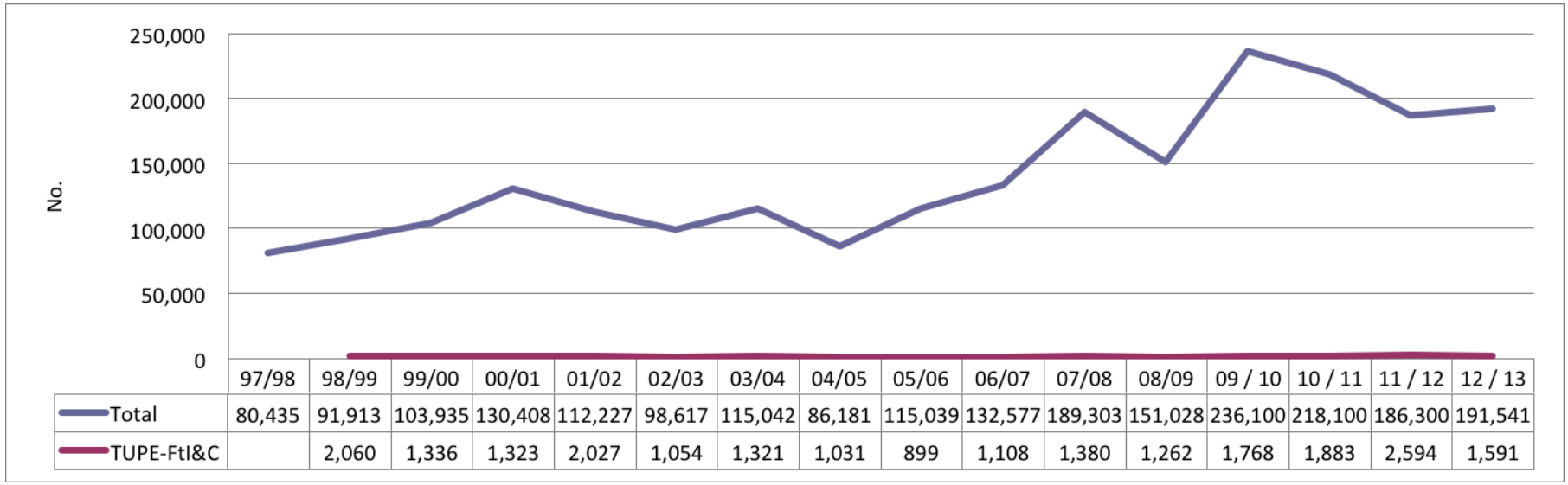
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
UD-TUPE		562	1,287	1,087	1,806	1,161	0	0	0	0	0	0	0	0	0	0

Written pay statement claims compared to total claims accepted



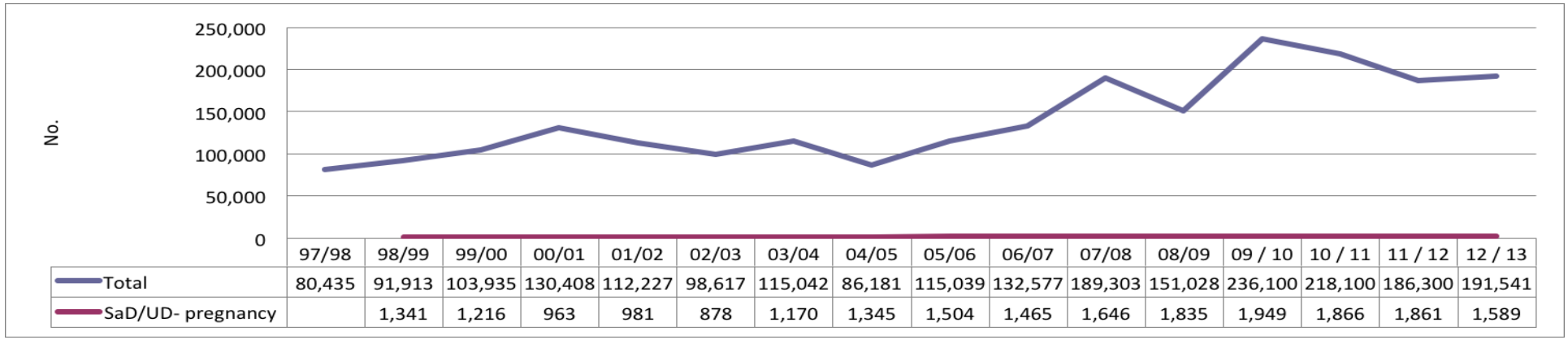
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
WPS				884	1,082	1,117	1,387	1,076	794	990	1,086	1,144	1,355	1,333	1,287	1,363

TUPE- Failure to inform & consult claims compared to total claims accepted



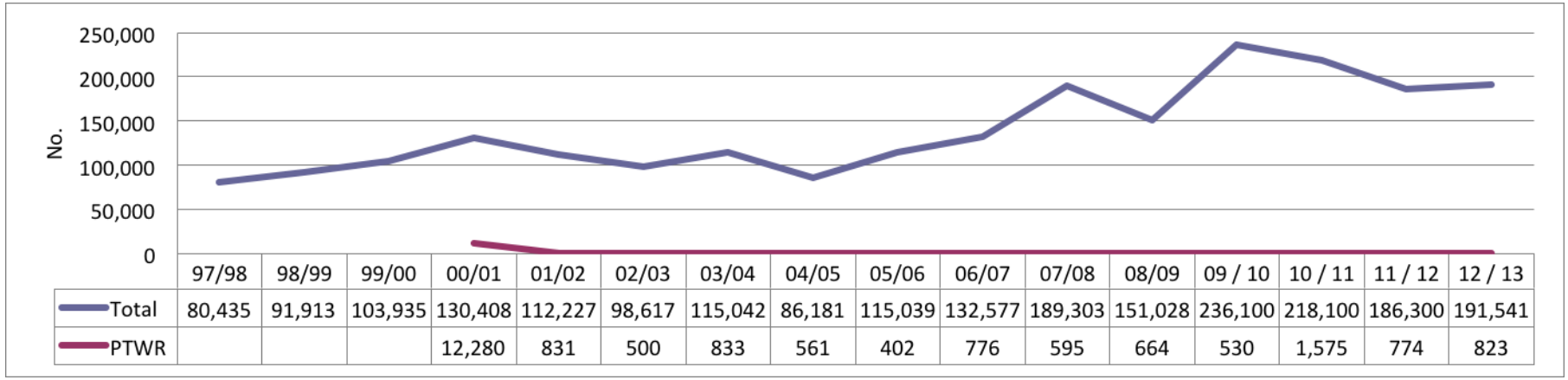
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
TUPE-FtI&C		2,060	1,336	1,323	2,027	1,054	1,321	1,031	899	1,108	1,380	1,262	1,768	1,883	2,594	1,591

Suffering a detriment / Unfair Dismissal - Pregnancy claims compared to total claims accepted



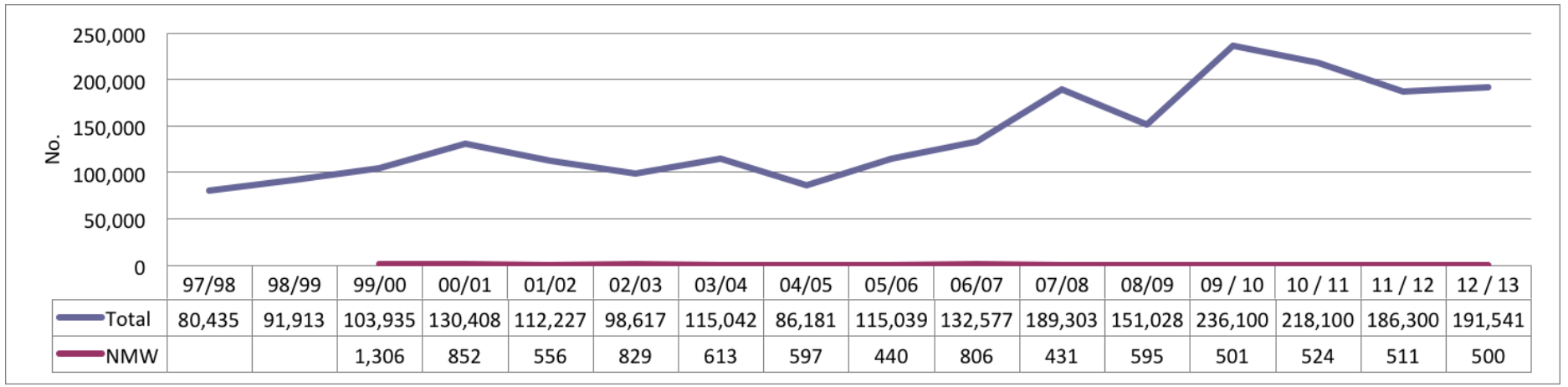
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
SaD/UD- pregnancy		1,341	1,216	963	981	878	1,170	1,345	1,504	1,465	1,646	1,835	1,949	1,866	1,861	1,589

Part time worker regulations claims compared to total claims accepted



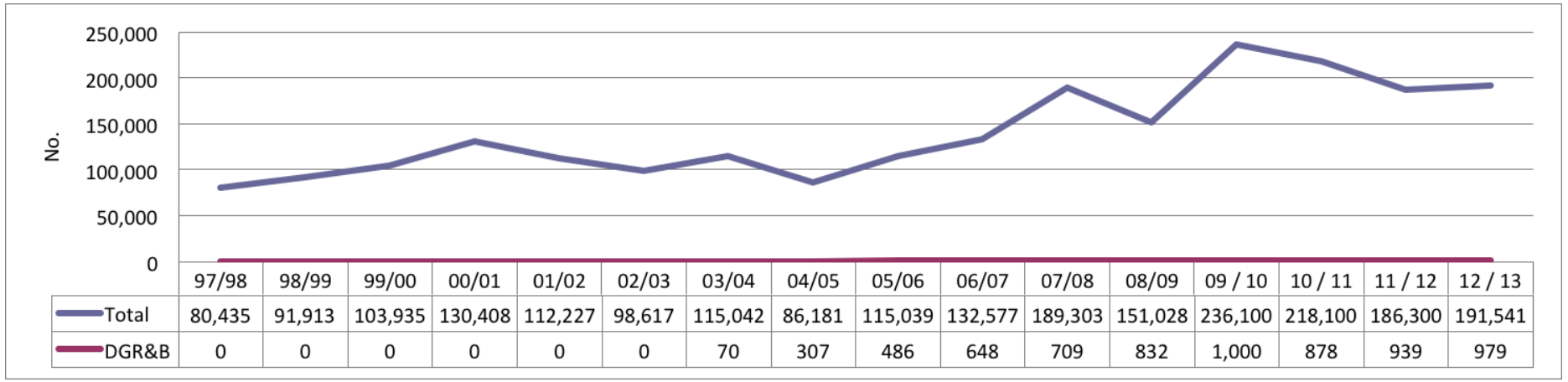
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
PTWR				12,280	831	500	833	561	402	776	595	664	530	1,575	774	823

National minimum wage claims compared to total claims accepted



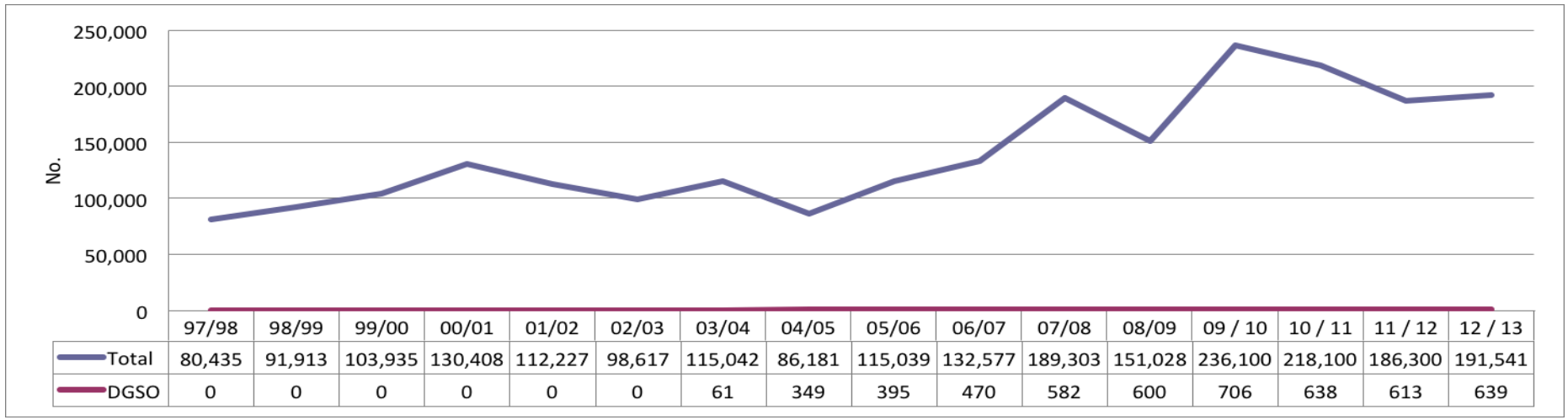
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
NMW			1,306	852	556	829	613	597	440	806	431	595	501	524	511	500

Discrimination on the grounds of religion & belief claims compared to total claims accepted



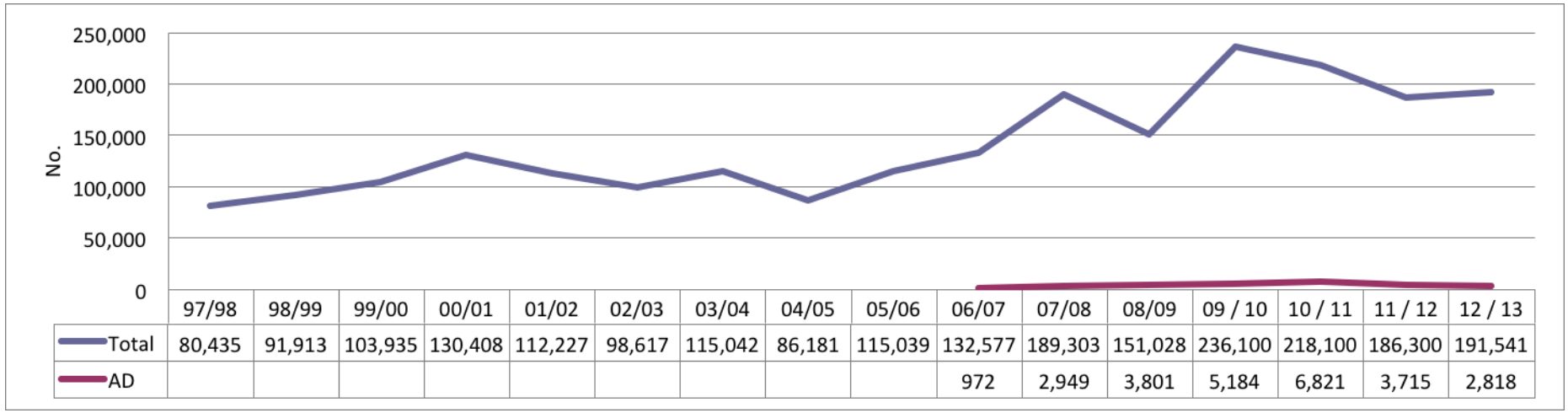
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
DGR&B	0	0	0	0	0	0	70	307	486	648	709	832	1,000	878	939	979

Discrimination on the grounds of sexual orientation claims compared to total claims accepted



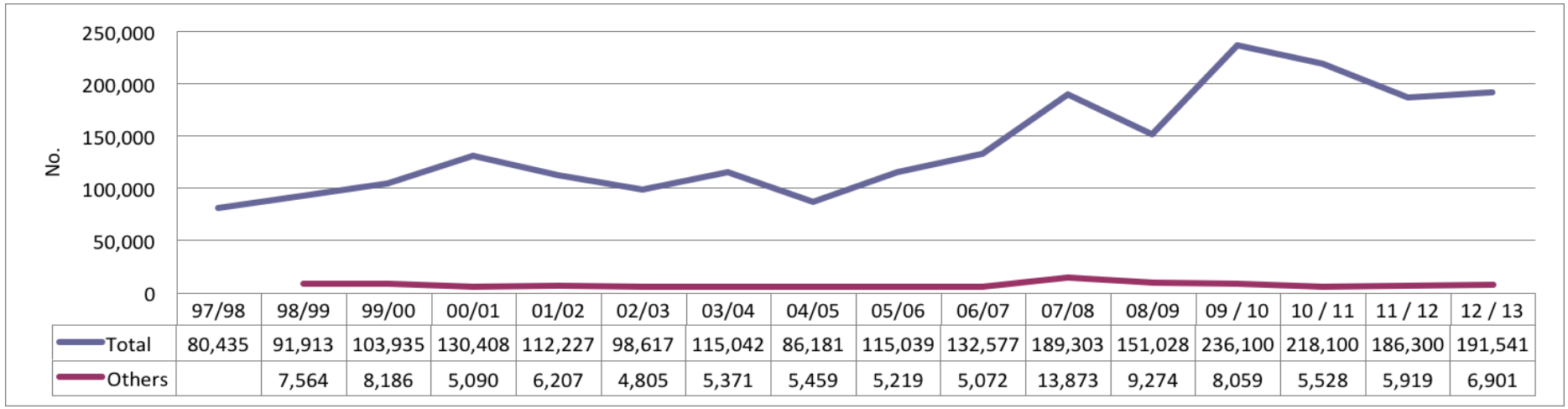
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
DGSO	0	0	0	0	0	0	61	349	395	470	582	600	706	638	613	639

Age discrimination claims compared to total claims accepted



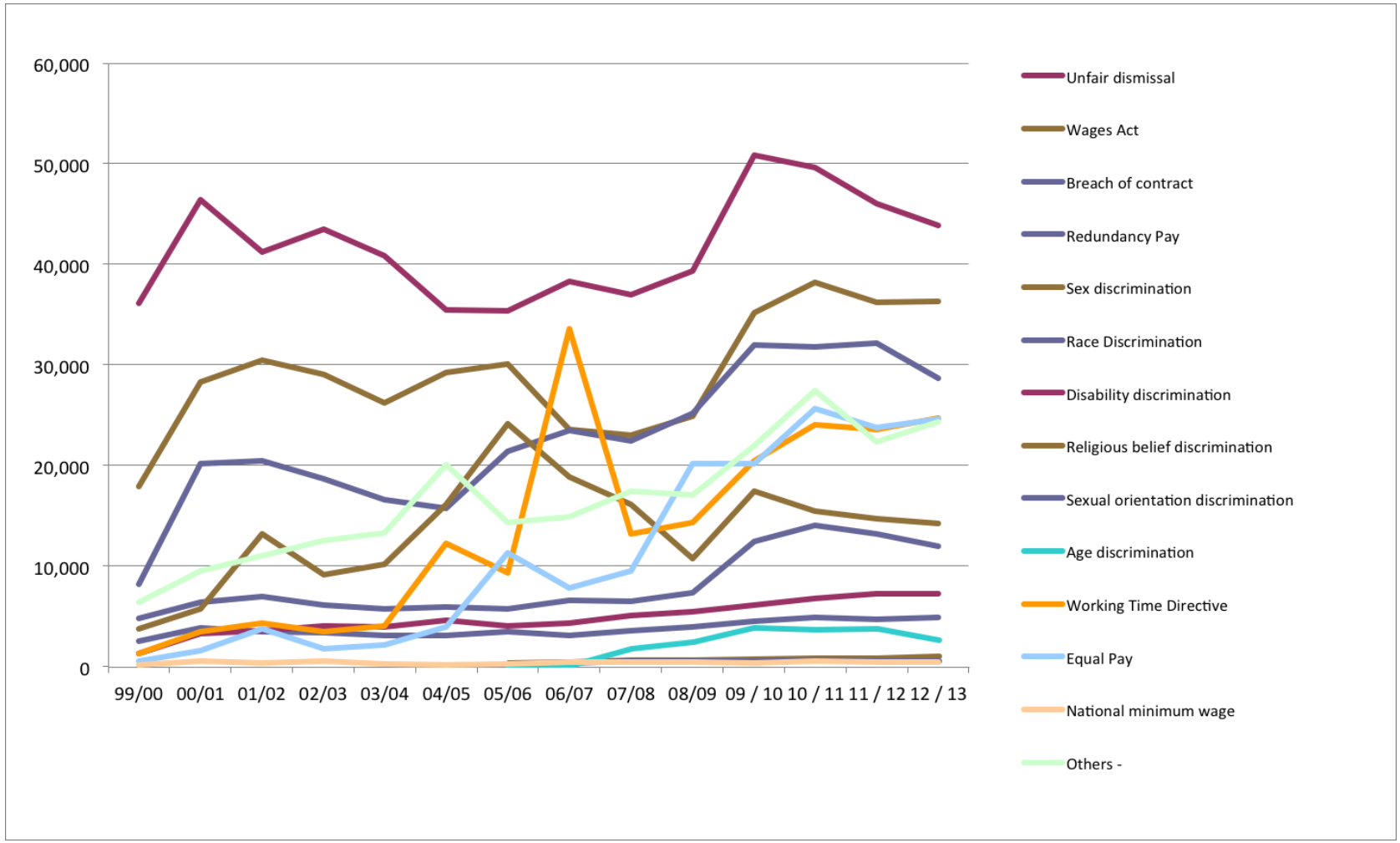
	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
AD										972	2,949	3,801	5,184	6,821	3,715	2,818

Other claims compared to total claims accepted



	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total	80,435	91,913	103,935	130,408	112,227	98,617	115,042	86,181	115,039	132,577	189,303	151,028	236,100	218,100	186,300	191,541
Others		7,564	8,186	5,090	6,207	4,805	5,371	5,459	5,219	5,072	13,873	9,274	8,059	5,528	5,919	6,901

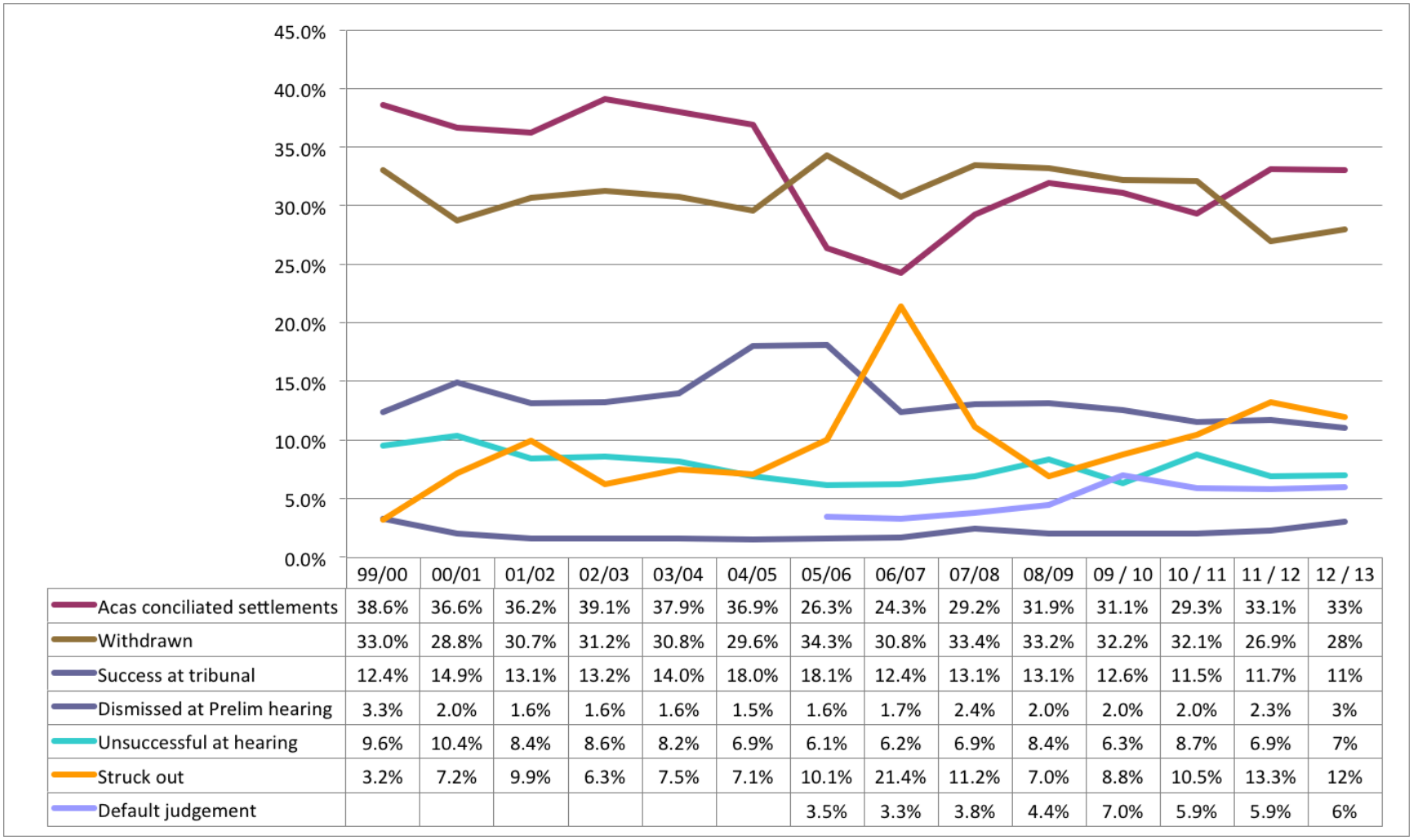
Total cases disposed of 1999 - 2013



Total cases disposed of 1999- 2013

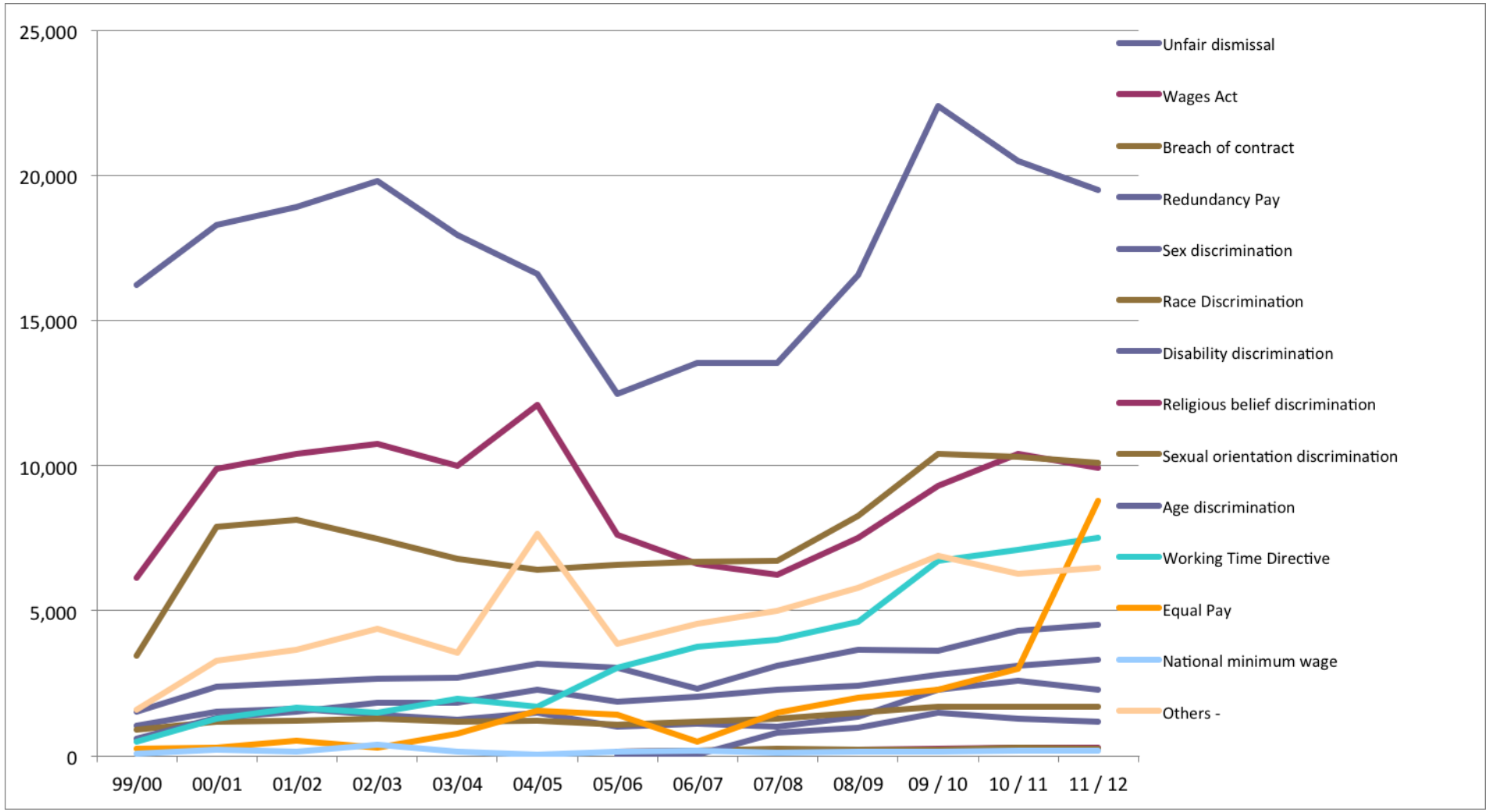
	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Unfair dismissal	36,197	46,497	41,258	43,510	40,927	35,482	35,415	38,376	37,004	39,427	50,900	49,600	46,100	43,956
Wages Act	17,953	28,327	30,509	29,117	26,250	29,286	30,169	23,624	23,022	24,945	35,200	38,200	36,200	36,323
Breach of contract	8,193	20,218	20,459	18,659	16,664	15,736	21,444	23,504	22,516	25,252	32,100	31,800	32,200	28,700
Redundancy Pay	4,854	6,460	6,951	6,177	5,719	5,963	5,747	6,643	6,559	7,388	12,400	14,100	13,200	12,023
Sex discrimination	3,809	5,857	13,268	9,249	10,254	16,211	24,217	18,909	16,184	10,804	17,500	15,600	14,700	14,271
Race Discrimination	2,499	3,831	3,438	3,390	3,117	3,080	3,430	3,117	3,535	3,970	4,500	4,900	4,700	4,887
Disability discrimination	1,374	3,341	3,627	4,030	3,925	4,673	4,072	4,345	5,133	5,460	6,100	6,800	7,300	7,260
Religious belief discrimination	n/a	n/a	n/a	n/a	n/a	n/a	340	498	608	620	760	850	850	1,024
Sexual orientation discrimination	n/a	n/a	n/a	n/a	n/a	n/a	321	384	516	533	540	660	590	603
Age discrimination	n/a	n/a	n/a	n/a	n/a	n/a	n/a	135	1,778	2,472	3,900	3,700	3,800	2,674
Working Time Directive	1,376	3,475	4,367	3497	4,099	12,255	9,388	33,607	13,263	14,376	20,500	24,100	23,600	24,719
Equal Pay	**590**	1,591	3,717	1,730	2,195	3,943	11,323	7,854	9,471	20,148	20,100	25,600	23,800	24,626
National minimum wage	**197**	623	436	613	341	239	378	544	511	508	410	600	520	496
Others -	**6,367**	9,505	11,029	12,520	13,302	20,083	14,313	14,894	17,393	17,041	21,900	27,400	22,300	24,334
All	**83,409**	**129,725**	**139,059**	**132,492**	**126,793**	**146,951**	**160,557**	**176,434**	**157,493**	**172,944**	**226,810**	**243,910**	**229,860**	**225,896**

Cases proceeding to a tribunal hearing - outcomes (% of total claims) 1999- 2013



	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Acas conciliated settlements	38.6%	36.6%	36.2%	39.1%	37.9%	36.9%	26.3%	24.3%	29.2%	31.9%	31.1%	29.3%	33.1%	33%
Withdrawn	33.0%	28.8%	30.7%	31.2%	30.8%	29.6%	34.3%	30.8%	33.4%	33.2%	32.2%	32.1%	26.9%	28%
Success at tribunal	12.4%	14.9%	13.1%	13.2%	14.0%	18.0%	18.1%	12.4%	13.1%	13.1%	12.6%	11.5%	11.7%	11%
Dismissed at Prelim hearing	3.3%	2.0%	1.6%	1.6%	1.6%	1.5%	1.6%	1.7%	2.4%	2.0%	2.0%	2.0%	2.3%	3%
Unsuccessful at hearing	9.6%	10.4%	8.4%	8.6%	8.2%	6.9%	6.1%	6.2%	6.9%	8.4%	6.3%	8.7%	6.9%	7%
Struck out	3.2%	7.2%	9.9%	6.3%	7.5%	7.1%	10.1%	21.4%	11.2%	7.0%	8.8%	10.5%	13.3%	12%
Default judgement							3.5%	3.3%	3.8%	4.4%	7.0%	5.9%	5.9%	6%

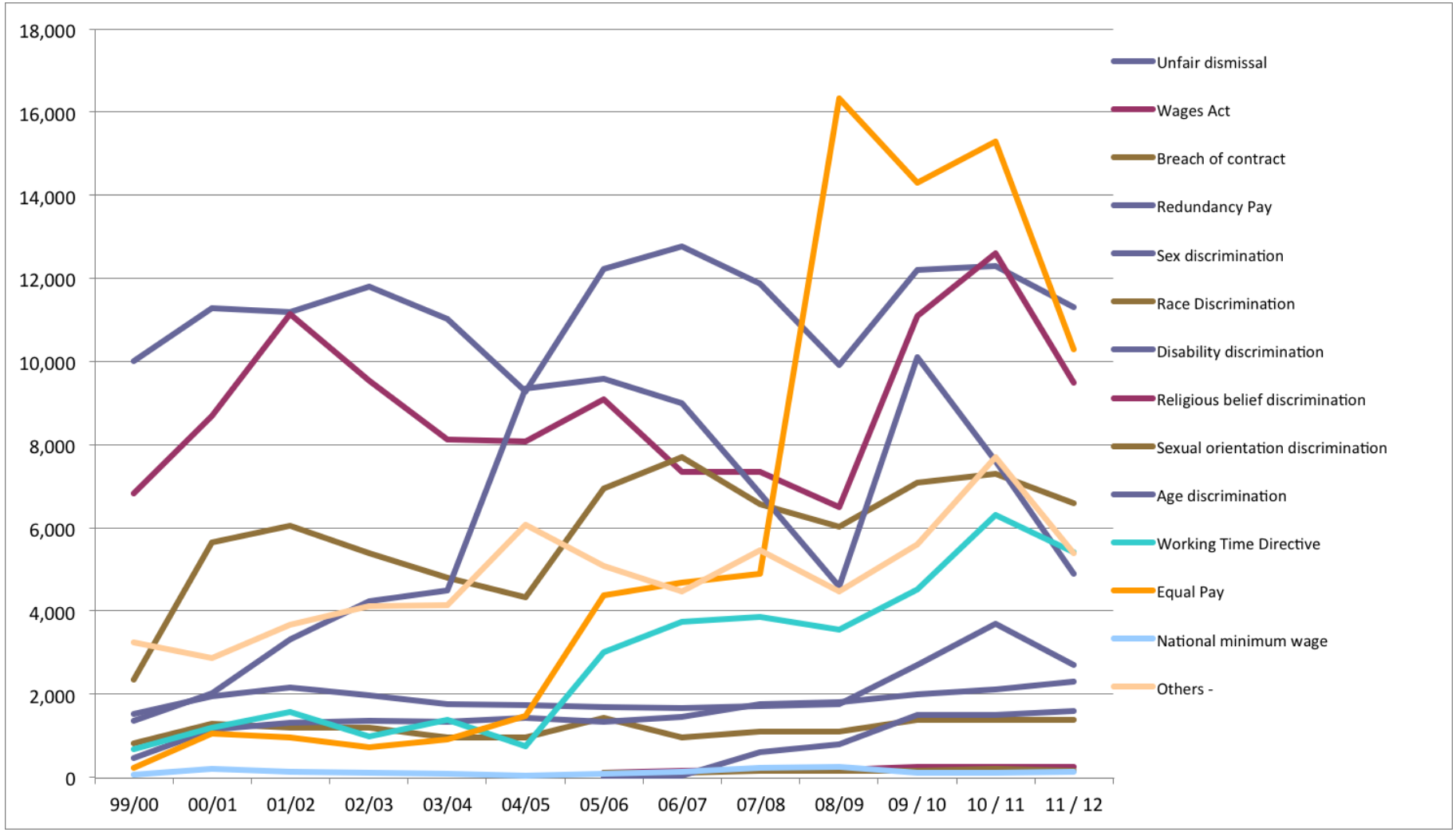
Acas conciliated settlements 1999 – 2012 (statistics not available for 2013)



Acas conciliated settlements 1999- 2012

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	16,251	18,311	18,915	19816	17,973	16,631	12,484	13,540	13,552	16,579	22,400	20,500	19,500
Wages Act	6,109	9,880	10,405	10734	9,971	12,078	7,586	6,615	6,222	7,515	9,300	10,400	9,900
Breach of contract	3,453	7,896	8,133	7482	6,791	6,409	6,563	6,693	6,711	8,251	10,400	10,300	10,100
Redundancy Pay	1,037	1,517	1,640	1434	1,245	1,501	999	1,110	1,019	1,369	2,300	2,600	2,300
Sex discrimination	1,504	2,368	2,492	2634	2,661	3,157	3,031	2,302	3,100	3,653	3,600	4,300	4,500
Race Discrimination	913	1,180	1,223	1287	1,200	1,215	1,064	1,173	1,295	1,493	1,700	1,700	1,700
Disability discrimination	576	1,297	1,526	1825	1,828	2,280	1,849	2,014	2,258	2,391	2,800	3,100	3,300
Religious belief discrimination	N/A	N/A	N/A	N/A	N/A	N/A	126	176	233	212	250	290	290
Sexual orientation discrimination	N/A	N/A	N/A	N/A	N/A	N/A	129	157	231	211	210	270	250
Age discrimination	N/A	V	V	V	N/A	N/A	n/a	56	800	990	1,500	1,300	1,200
Working Time Directive	473	1,261	1,655	1468	1,942	1,693	3,022	3,740	3,975	4,612	6,700	7,100	7,500
Equal Pay	229	307	522	300	780	1,559	1,441	499	1,512	2,000	2,300	3,000	8,800
National minimum wage	75	236	161	391	140	47	145	175	114	133	160	200	170
Others -	1,572	3,283	3,654	4386	3,577	7,663	3,862	4,555	5,022	5,790	6,900	6,300	6,500
All	**32,192**	**47,536**	**50,326**	**51,757**	**48,108**	**54,233**	**42,301**	**42,805**	**46,044**	**55,199**	**70,520**	**71,360**	**76,010**

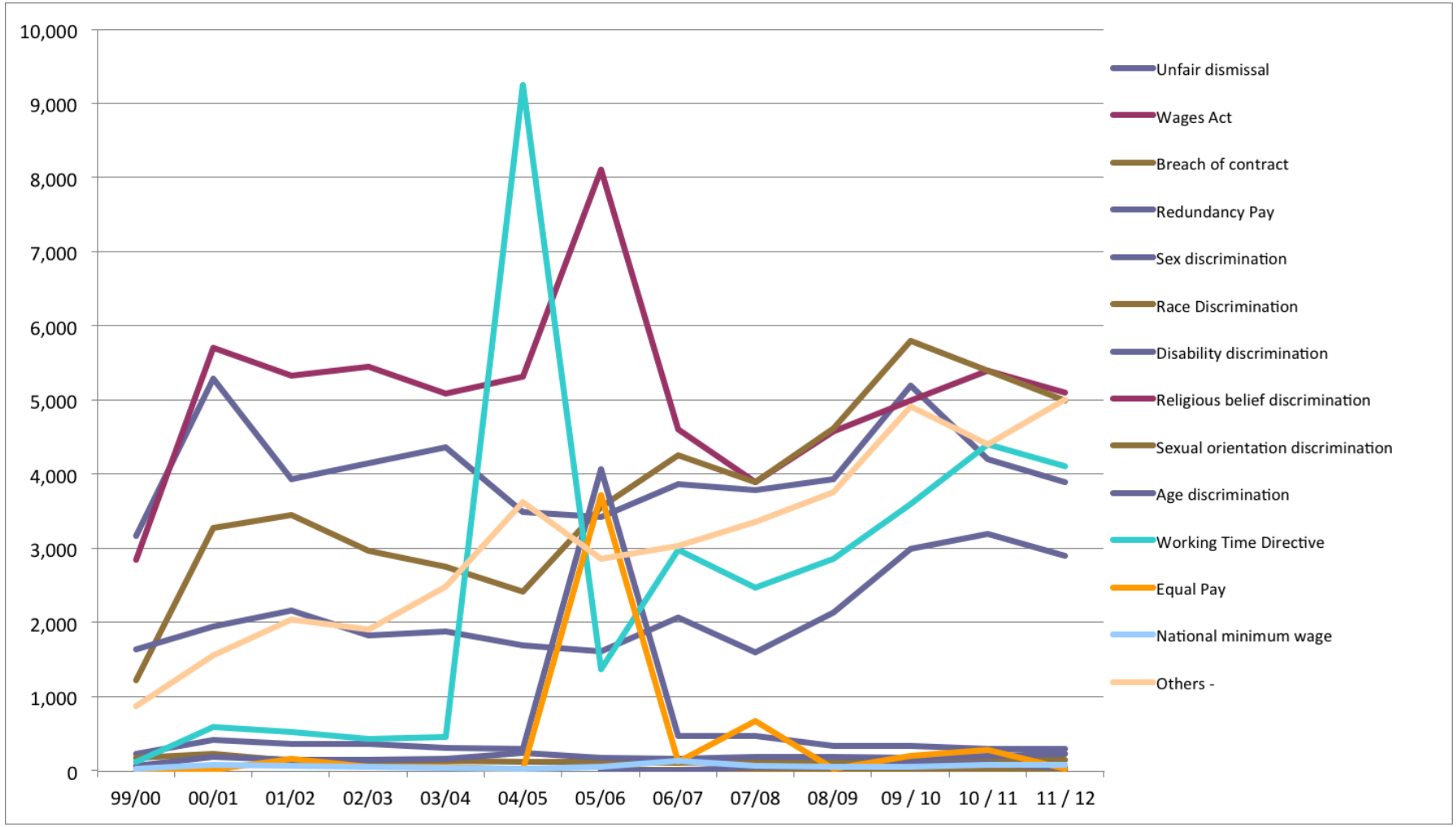
Withdrawn cases 1999 -2012



Withdrawn cases 1999 – 2012

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	10,013	11,273	11,191	11802	11,023	9,274	12,228	12,764	11,870	9,914	12,200	12,300	11,300
Wages Act	6,817	8,691	11,138	9525	8,110	8,066	9,094	7,354	7,353	6,495	11,100	12,600	9,500
Breach of contract	2,337	5,648	6,056	5387	4,800	4,323	6,955	7,702	6,580	6,029	7,100	7,300	6,600
Redundancy Pay	1,528	1,953	2,176	1975	1,778	1,747	1,691	1,668	1,710	1,763	2,700	3,700	2,700
Sex discrimination	1,348	2,003	3,309	4238	4,480	9,355	9,586	8,998	6,830	4,577	10,100	7,600	4,900
Race Discrimination	809	1,292	1,197	1202	966	960	1,437	968	1,113	1,110	1,400	1,400	1,400
Disability discrimination	468	1,134	1,307	1351	1,331	1,419	1,336	1,442	1,768	1,816	2,000	2,100	2,300
Religious belief discrimination	n/a	n/a	n/a	n/a	n/a	n/a	119	167	198	184	250	250	260
Sexual orientation discrimination	n/a	n/a	n/a	n/a	n/a	n/a	100	127	158	164	160	210	170
Age discrimination	n/a	n/a	n/a	n/a	n/a	n/a	n/a	51	616	792	1,500	1,500	1,600
Working Time Directive	663	1,175	1,564	979	1,384	747	2,989	3,742	3,851	3,548	4,500	6,300	5,400
Equal Pay	233	1,056	960	720	923	1,493	4,373	4,691	4,899	16,335	14,300	15,300	10,300
National minimum wage	74	202	143	110	89	34	83	127	232	253	100	120	140
Others -	3,246	2,874	3,660	4113	4,142	6,066	5,087	4,470	5,460	4,469	5,600	7,700	5,400
All	**27,536**	**37,301**	**42,701**	**41,402**	**39,026**	**43,484**	**55,078**	**54,271**	**52,638**	**57,449**	**73,010**	**78,380**	**61,970**

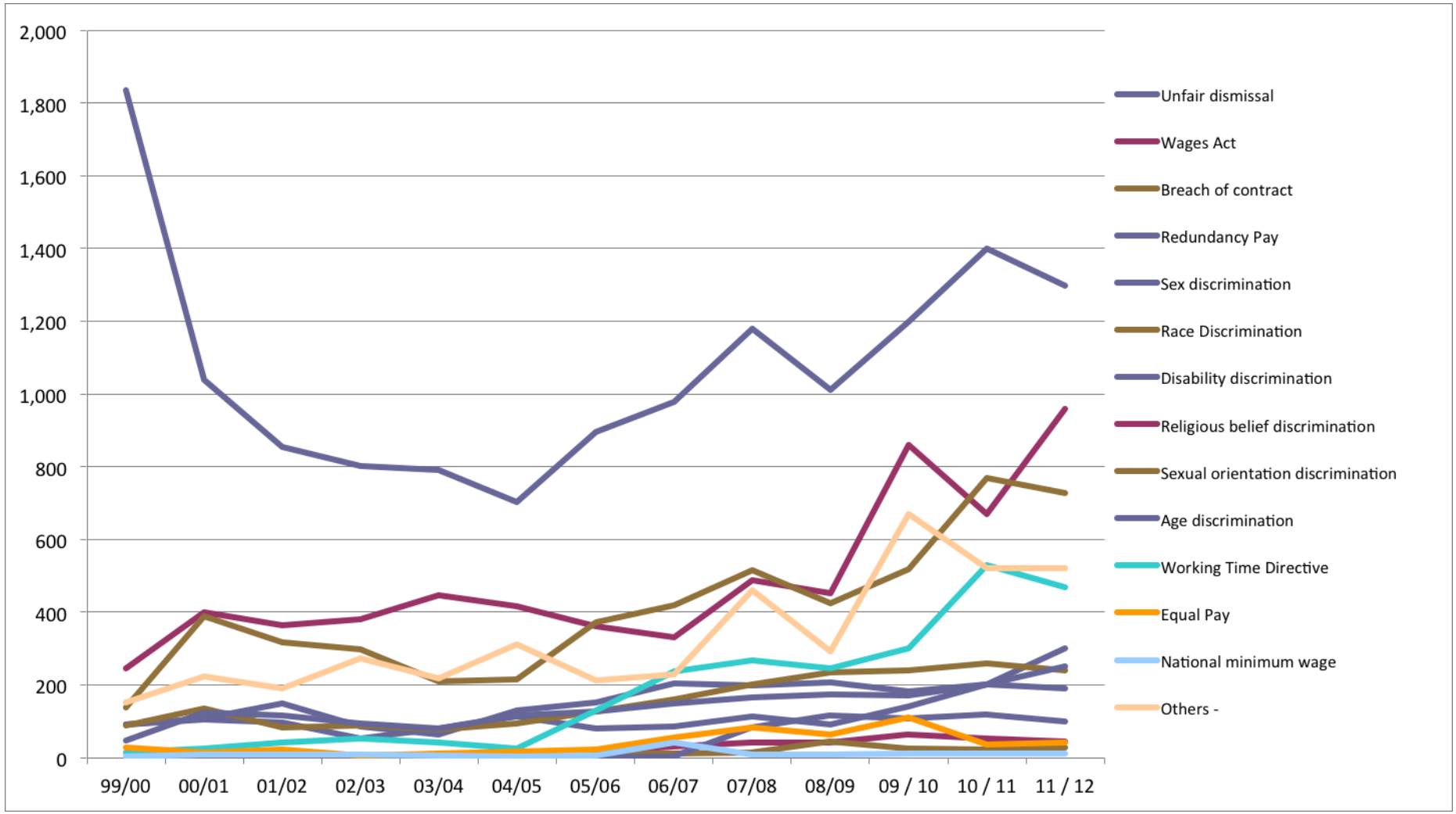
Success at tribunal cases 1999 – 2012



Success at tribunal cases 1999 – 2012

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	3,168	5,294	3,933	4158	4,363	3,493	3,425	3,870	3,791	3,935	5,200	4,200	3,900
Wages Act	2,842	5,715	5,332	5458	5,089	5,314	8,112	4,606	3,897	4,581	5,000	5,400	5,100
Breach of contract	1,221	3,282	3,447	2961	2,757	2,414	3,559	4,260	3,889	4,617	5,800	5,400	5,000
Redundancy Pay	1,640	1,945	2,160	1832	1,890	1,699	1,609	2,069	1,591	2,143	3,000	3,200	2,900
Sex discrimination	233	417	368	363	306	299	4,068	463	469	341	340	290	290
Race Discrimination	170	220	129	115	120	107	119	102	121	129	130	150	140
Disability discrimination	67	185	137	148	156	236	173	149	178	177	170	190	220
Religious belief discrimination	n/a	n/a	n/a	n/a	n/a	n/a	9	12	14	19	19	27	24
Sexual orientation discrimination	n/a	n/a	n/a	n/a	n/a	n/a	14	21	29	13	27	22	20
Age discrimination	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	56	53	95	90	48
Working Time Directive	119	583	521	426	459	9,249	1,374	2,983	2,469	2,862	3,600	4,400	4,100
Equal Pay	**9**	18	161	59	58	20	3,722	126	678	36	200	280	32
National minimum wage	**19**	77	56	51	33	25	47	127	55	52	49	75	77
Others -	**861**	1,551	2,027	1898	2,476	3,616	2,847	3,028	3,348	3,748	4,900	4,400	5,000
All	**10,349**	**19,287**	**18,271**	**17,469**	**17,707**	**26,472**	**29,078**	**21,816**	**20,585**	**22,706**	**28,530**	**28,124**	**26,851**

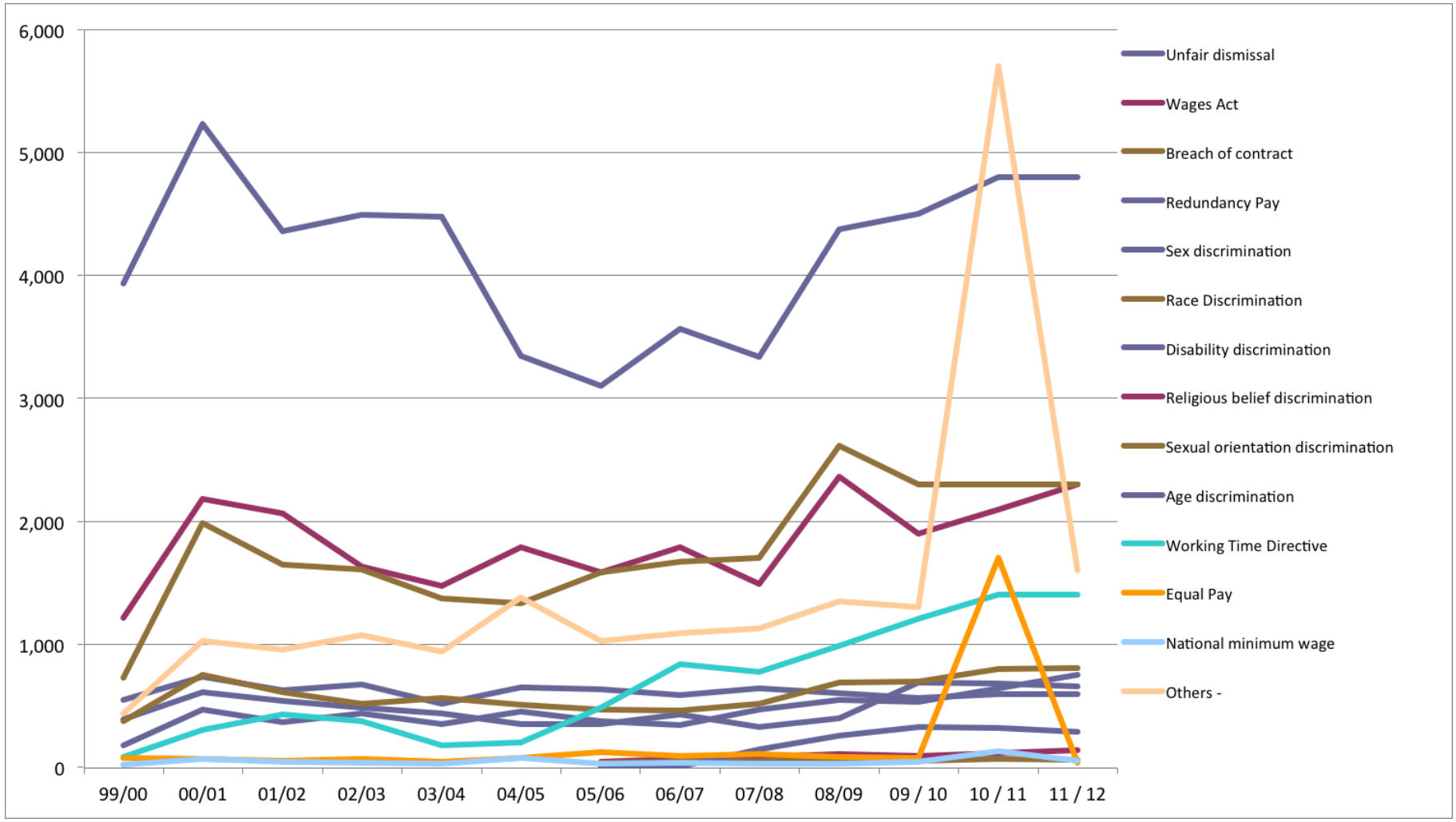
Dismissed at Preliminary hearing - (Prev. Dismissed at hearing (out of scope))



Dismissed at Preliminary hearing - (Prev. Dismissed at hearing (out of scope)) 1999 - 2012

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	1,836	1,040	854	803	791	703	896	978	1,180	1,012	1,200	1,400	1,300
Wages Act	245	402	365	381	447	417	362	333	489	453	860	670	960
Breach of contract	138	389	317	300	212	217	372	421	516	426	520	770	730
Redundancy Pay	92	105	97	53	79	112	79	86	113	91	140	200	300
Sex discrimination	91	108	148	86	62	130	150	203	199	206	180	200	190
Race Discrimination	90	137	85	89	78	94	129	161	201	236	240	260	240
Disability discrimination	47	122	114	94	80	114	127	148	164	172	170	200	250
Religious belief discrimination	n/a	n/a	n/a	n/a	n/a	n/a	18	31	43	43	64	53	45
Sexual orientation discrimination	n/a	n/a	n/a	n/a	n/a	n/a	14	11	16	45	26	22	29
Age discrimination	n/a	n/a	n/a	n/a	n/a	n/a	n/a	5	83	117	110	120	100
Working Time Directive	13	26	43	54	42	27	131	239	267	247	300	530	470
Equal Pay	26	13	23	5	11	17	23	56	83	62	110	36	41
National minimum wage	3	7	9	8	5	3	6	41	7	7	10	11	12
Others -	153	223	191	272	217	312	212	229	461	293	670	520	520
All	**2,734**	**2,572**	**2,246**	**2,145**	**2,024**	**2,146**	**2,519**	**2,942**	**3,822**	**3,410**	**4,600**	**4,992**	**5,187**

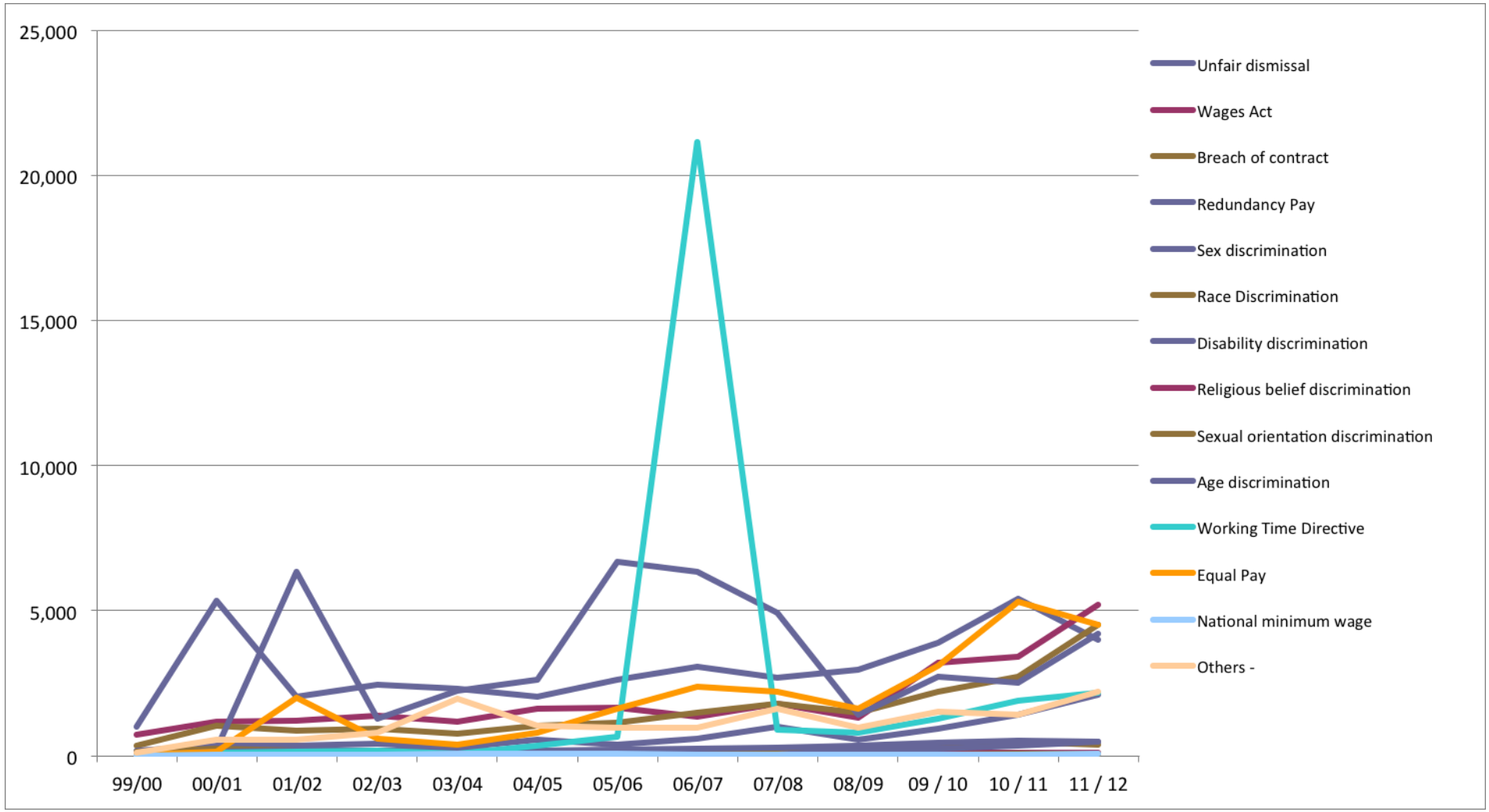
Unsuccessful at hearing (Prev Dismissed at hearing (other reasons)) 1999 - 2012



Unsuccessful at hearing (prev Dismissed at hearing (other reasons)) 1999 - 2012

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	3,931	5,231	4,356	4495	4,480	3,348	3,098	3,567	3,341	4,372	4,500	4,800	4,800
Wages Act	1,217	2,187	2,065	1630	1,475	1,789	1,584	1,792	1,493	2,364	1,900	2,100	2,300
Breach of contract	725	1,984	1,651	1609	1,371	1,336	1,585	1,674	1,705	2,615	2,300	2,300	2,300
Redundancy Pay	394	613	539	486	435	352	350	427	330	396	690	680	660
Sex discrimination	542	733	620	672	514	647	628	587	638	597	560	590	590
Race Discrimination	372	755	615	521	563	509	471	465	517	694	700	800	810
Disability discrimination	178	465	367	436	351	452	371	343	466	543	530	640	750
Religious belief discrimination	n/a	n/a	n/a	n/a	n/a	n/a	45	69	83	110	89	120	140
Sexual orientation discrimination	n/a	n/a	n/a	n/a	n/a	n/a	33	43	53	65	47	62	60
Age discrimination	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6	147	259	330	320	290
Working Time Directive	77	297	422	369	177	195	481	835	774	986	1,200	1,400	1,400
Equal Pay	**75**	68	52	69	45	76	124	87	105	82	77	1,700	35
National minimum wage	**23**	68	47	36	24	76	24	36	26	26	47	130	55
Others -	**432**	1,028	953	1073	941	1,380	1,026	1,091	1,125	1,347	1,300	5,700	1,600
All	**7,966**	**13,429**	**11,687**	**11,396**	**10,376**	**10,160**	**9,820**	**11,022**	**10,803**	**14,456**	**14,270**	**21,342**	**15,790**

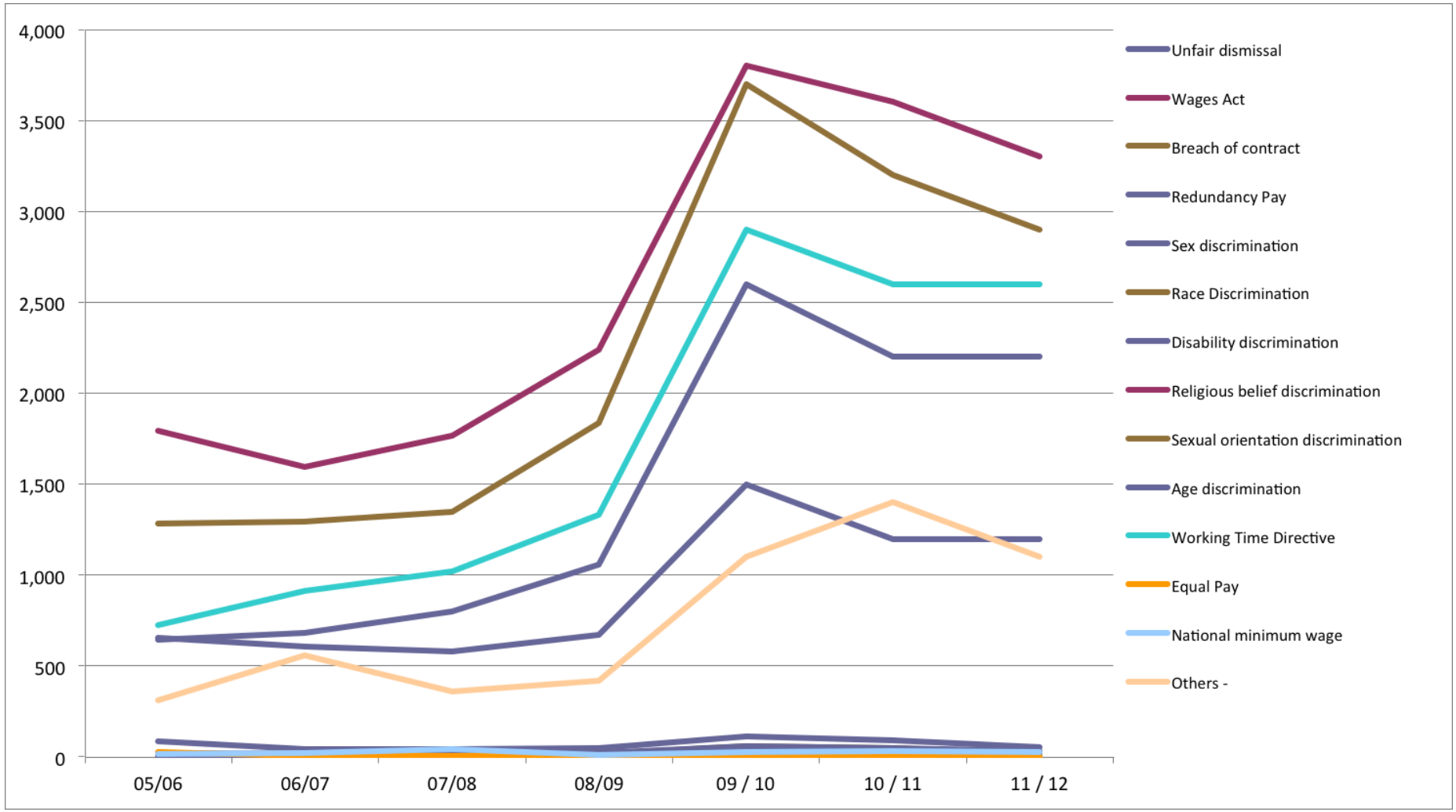
Struck out (Not at a hearing) (Prev. Disposed of otherwise) 1999 - 2012



Struck out (Not at a hearing) (Prev. Disposed of otherwise) 1999 - 2012

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	998	5,348	2,009	2436	2,297	2,033	2,627	3,049	2,691	2,942	3,900	5,400	4,000
Wages Act	723	1,182	1,204	1389	1,158	1,622	1,638	1,330	1,805	1,298	3,200	3,400	5,200
Breach of contract	319	1,019	855	920	733	1,037	1,129	1,461	1,768	1,477	2,200	2,700	4,500
Redundancy Pay	163	327	339	397	292	552	373	601	993	565	930	1,400	2,100
Sex discrimination	91	228	6,331	1256	2,231	2,623	6,669	6,315	4,908	1,386	2,700	2,500	4,200
Race Discrimination	145	247	189	176	190	195	200	224	273	293	330	500	400
Disability discrimination	38	138	176	176	179	172	194	231	286	338	430	510	490
Religious belief discrimination	n/a	n/a	n/a	n/a	n/a	n/a	22	38	37	47	83	93	85
Sexual orientation discrimination	n/a	n/a	n/a	n/a	n/a	n/a	30	25	27	33	49	70	56
Age discrimination	n/a	n/a	n/a	n/a	n/a	n/a	n/a	11	67	243	270	350	500
Working Time Directive	31	133	162	201	95	344	669	21,156	906	789	1,300	1,900	2,200
Equal Pay	**18**	129	1,999	577	378	778	1,614	2,390	2,189	1,629	3,100	5,300	4,500
National minimum wage	**3**	33	20	17	50	54	58	20	35	26	25	37	44
Others -	**103**	546	544	778	1,949	1,046	969	966	1,621	977	1,500	1,400	2,200
All	**2,632**	**9,330**	**13,828**	**8,323**	**9,552**	**10,456**	**16,192**	**37,817**	**17,606**	**12,043**	**20,017**	**25,560**	**30,475**

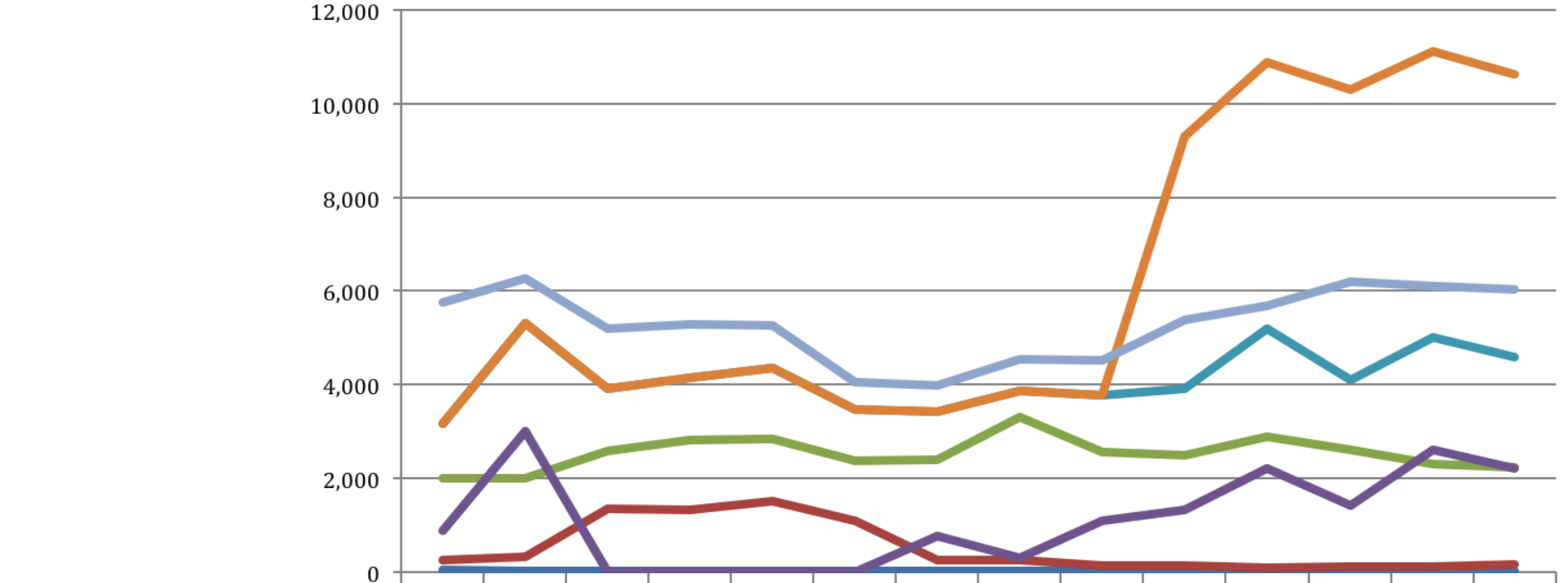
Default judgment's 2005 – 2012



Default judgment 2005 – 2012

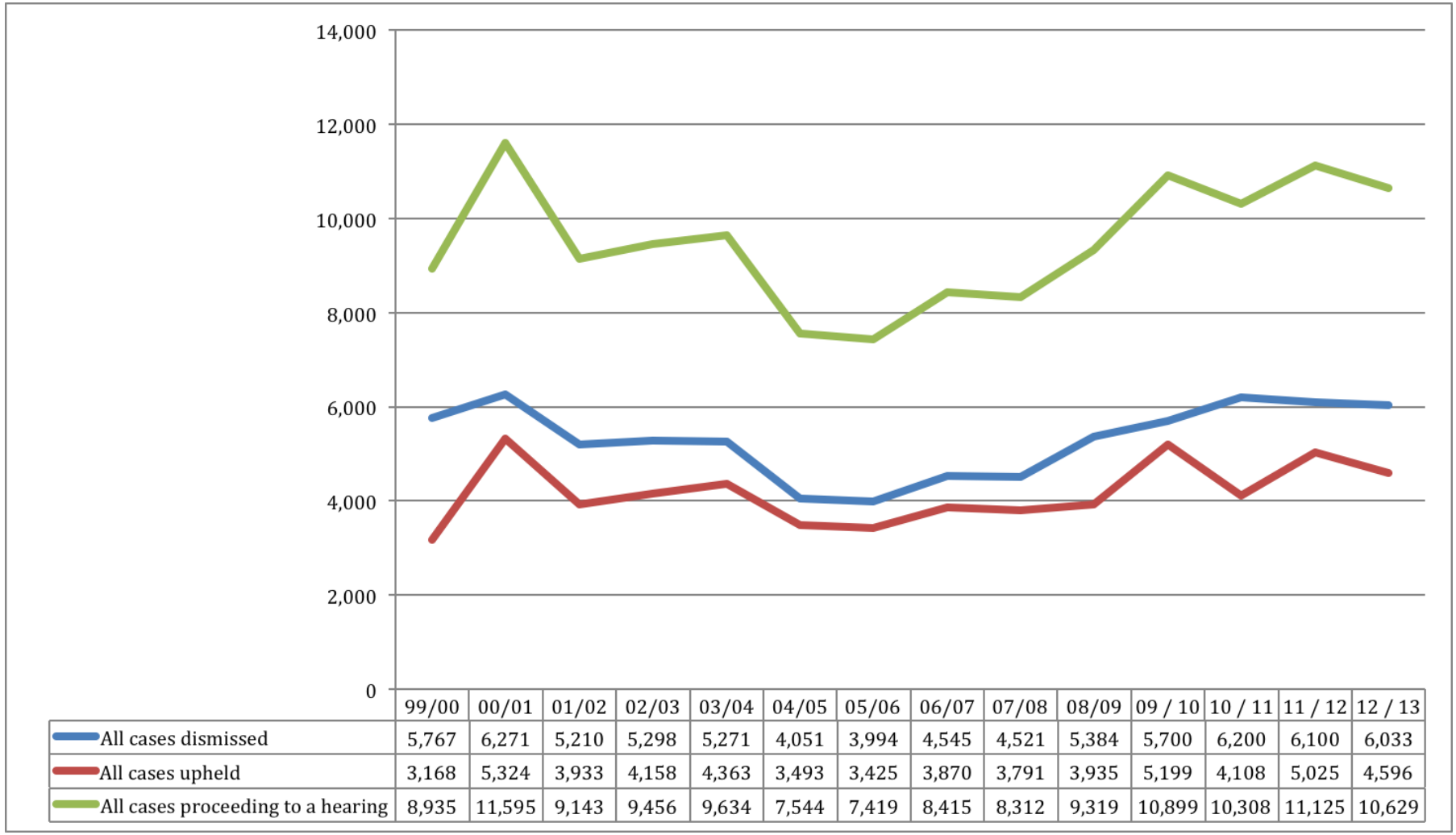
	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12
Unfair dismissal	657	608	579	673	1,500	1,200	1,200
Wages Act	1,793	1,594	1,763	2,239	3,800	3,600	3,300
Breach of contract	1,281	1,293	1,347	1,837	3,700	3,200	2,900
Redundancy Pay	646	682	803	1,061	2,600	2,200	2,200
Sex discrimination	85	41	40	44	110	87	53
Race Discrimination	10	24	15	15	60	48	24
Disability discrimination	22	18	13	23	60	48	34
Religious belief discrimination	1	5	0	5	9	12	n/a
Sexual orientation discrimination	1	0	2	2	10	9	n/a
Age discrimination	n/a	6	9	18	31	21	26
Working Time Directive	722	912	1,021	1,332	2,900	2,600	2,600
Equal Pay	26	5	5	4	10	7	n/a
National minimum wage	15	18	42	11	26	30	27
Others -	310	555	356	417	1,100	1,400	1,100
All	**5,569**	**5,761**	**5,995**	**7,681**	**15,916**	**14,462**	**13,464**

Unfair Dismissal cases proceeding to a tribunal hearing



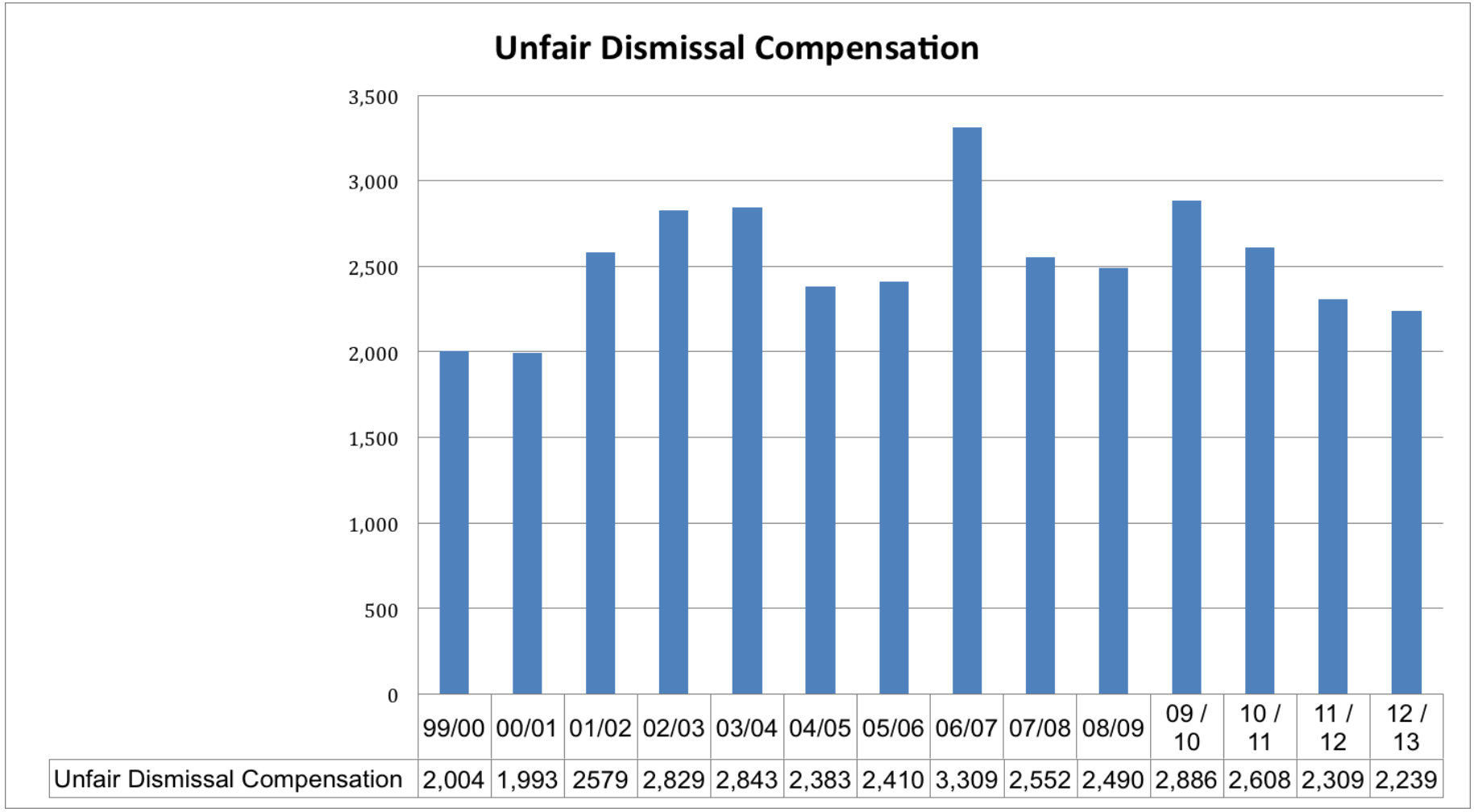
	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Reinstatement or reengagement	38	15	11	16	11	14	8	23	8	7	6	8	5	5
Remedy left to parties	261	320	1,343	1,313	1,509	1,096	255	256	141	132	93	100	120	152
Compensation	2,004	1,993	2,579	2,829	2,843	2,383	2,410	3,309	2,552	2,488	2,900	2,600	2,300	2,242
No award made	865	2,996	0	0	0	0	752	282	1,090	1,308	2,200	1,400	2,600	2,197
All cases upheld	3,168	5,324	3,933	4,158	4,363	3,493	3,425	3,870	3,791	3,935	5,199	4,108	5,025	4,596
All cases proceeding to a hearing	3,168	5,324	3,933	4,158	4,363	3,493	3,425	3,870	3,791	9,319	10,899	10,308	11,125	10,647
All cases dismissed	5,767	6,271	5,210	5,298	5,271	4,051	3,994	4,545	4,521	5,384	5,700	6,200	6,100	6,033

Unfair Dismissal cases proceeding to a tribunal hearing outcomes



	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
All cases dismissed	5,767	6,271	5,210	5,298	5,271	4,051	3,994	4,545	4,521	5,384	5,700	6,200	6,100	6,033
All cases upheld	3,168	5,324	3,933	4,158	4,363	3,493	3,425	3,870	3,791	3,935	5,199	4,108	5,025	4,596
All cases proceeding to a hearing	8,935	11,595	9,143	9,456	9,634	7,544	7,419	8,415	8,312	9,319	10,899	10,308	11,125	10,629

Unfair dismissal compensation – Number of cases where compensation was awarded

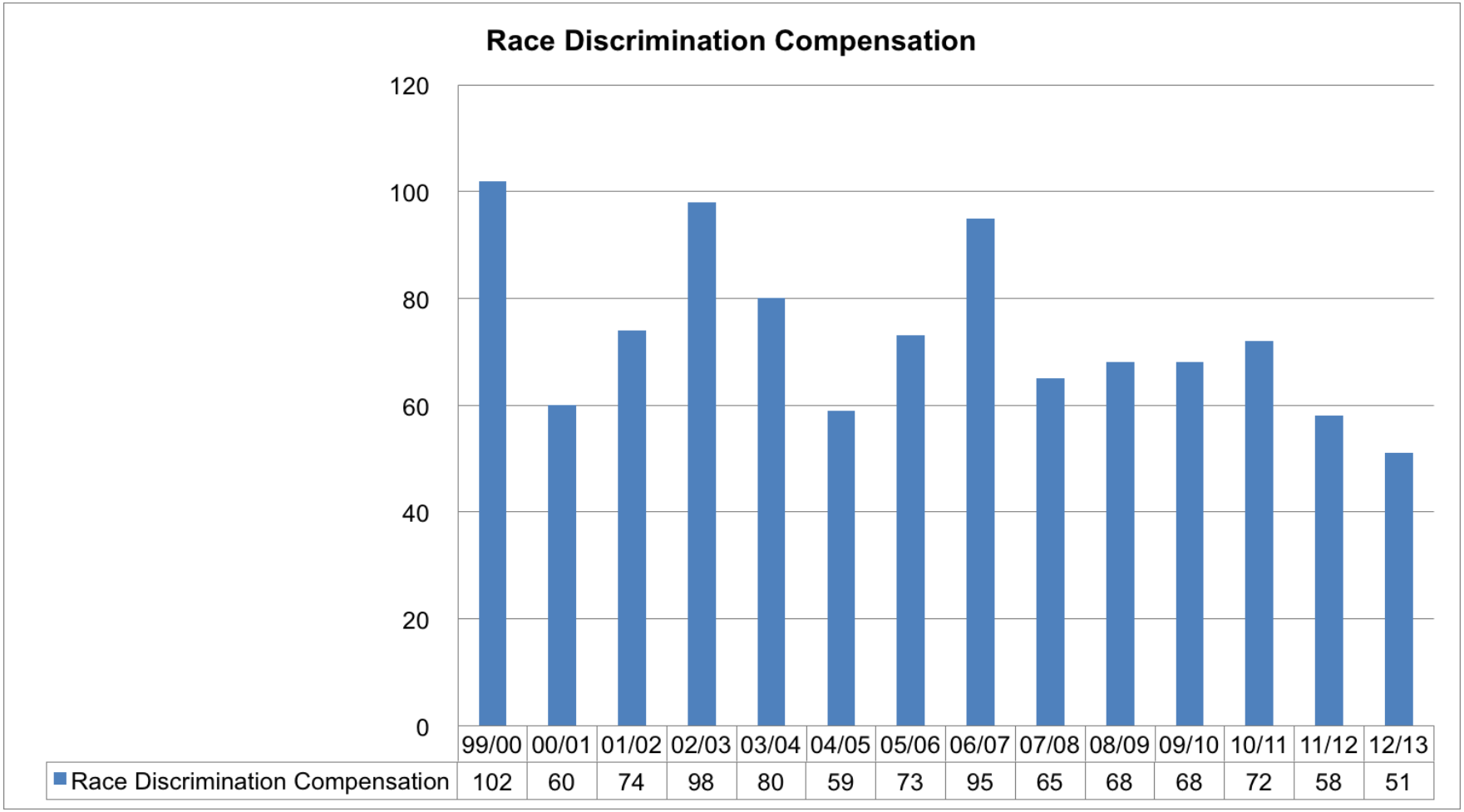


	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Unfair Dismissal Compensation	2,004	1,993	2579	2,829	2,843	2,383	2,410	3,309	2,552	2,490	2,886	2,608	2,309	2,239

Unfair dismissal compensation - Number of cases where compensation was awarded

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
<£500	269	223	377	281	277	197	172	252	148	124	168	243	227	228
£500 – £999	240	245	306	320	259	258	194	231	173	181	190	194	178	154
£1000 - £1999	362	327	430	434	451	360	335	528	416	420	404	308	292	254
£2000 - £2,999	231	268	275	332	325	278	262	420	331	253	298	245	199	202
£3000 - £3,999	172	168	183	231	255	199	202	282	205	210	208	198	177	173
£4000 - £4,999	149	139	161	192	176	161	151	235	169	174	189	179	132	133
£5000 - £5999	100	105	113	127	141	128	152	181	156	135	156	121	103	141
£6000 - £6999	99	75	114	106	124	106	125	137	117	144	133	123	108	103
£7000 - £7999	60	63	83	114	94	94	103	129	104	112	106	108	93	101
£8000 - £8999	58	57	73	89	71	78	74	89	73	83	116	89	75	86
£9000 - £9999	31	40	47	61	57	62	59	78	65	66	96	67	82	66
£10000 - £12499	93	103	102	132	130	96	124	163	145	148	169	163	130	112
£12500 - £14999	67	58	72	89	100	71	100	127	86	97	150	122	100	83
£15000 - £19999	31	54	82	91	130	83	107	146	117	118	185	165	125	118
£20000 - £29999	42	30	66	109	122	94	109	144	110	112	149	130	140	95
£30000 - £39999	n/a	12	38	47	50	41	49	48	57	48	69	71	65	52
£40000 - £49999	n/a	9	20	27	35	29	30	35	20	16	38	31	34	33
£50000 +	n/a	17	37	47	46	48	62	84	60	49	62	51	49	105
Total	**2,004**	**1,993**	**2579**	**2,829**	**2,843**	**2,383**	**2,410**	**3,309**	**2,552**	**2,490**	**2,886**	**2,608**	**2,309**	**2,239**
Maximum Award		**£69,912**	**£61,134**	**£60,081**	**£113,117**	**£75,250**	**£477,603**	**£250,470**	**£76,536**	**£84,005**	**£234,549**	**£181,754**	**£173,408**	**£236,147**
Median Award	**£2,515**	**£2,744**	**£2,563**	**£3,225**	**£3,375**	**£3,476**	**£4,228**	**£3,800**	**£4,000**	**£4,269**	**£4,903**	**£4,591**	**£4,560**	**£4,832**
Average award	**n/a**	**£5,122**	**£5,917**	**£6,776**	**£7,275**	**£7,303**	**£8,679**	**£7,974**	**£8,058**	**£7,959**	**£9,120**	**£8,924**	**£9,133**	**£10,127**

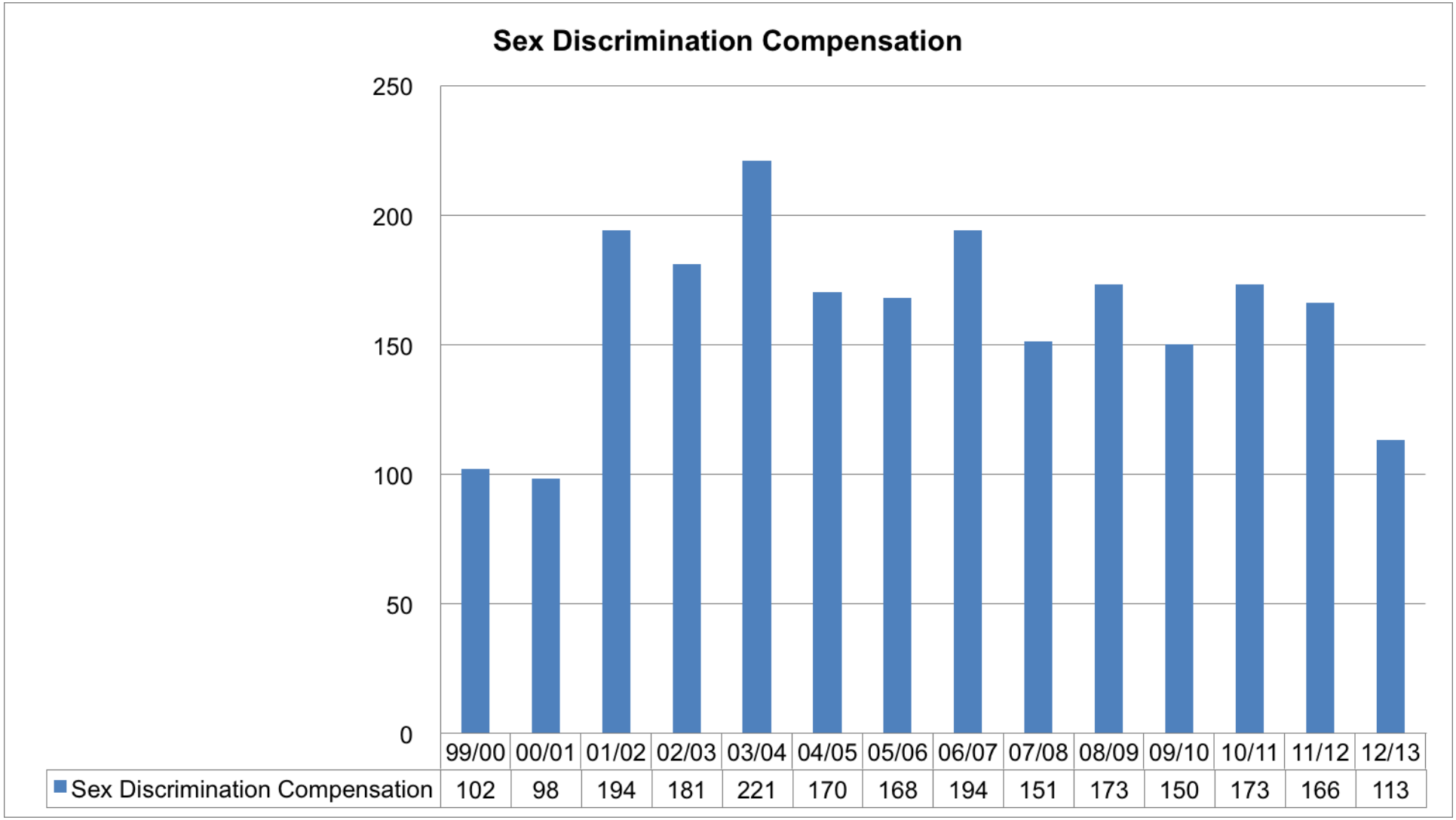
Race discrimination compensation - Number of cases where compensation was awarded



Race discrimination compensation - Number of cases where compensation was awarded

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12/13
<£500	8	2	1	1	1	1	2	1	1	1	1	0	1	1
£500 - £999	17	4	1	3	1	3	8	6	3	6	4	6	2	5
£1000 - £1999	21	3	7	5	7	8	7	11	5	5	12	9	6	3
£2000 - £2,999	16	6	11	8	7	2	8	9	3	3	8	4	8	8
£3000 - £3,999	11	4	10	7	1	7	6	7	0	9	5	7	5	4
£4000 - £4,999	5	1	5	8	5	1	3	6	4	8	1	3	5	5
£5000 - £5999	3	6	8	11	9	5	2	5	6	4	6	4	3	5
£6000 - £6999	3	3	2	3	5	3	2	2	4	4	4	6	6	4
£7000 - £7999	2	1	2	4	1	0	4	6	6	3	5	1	2	2
£8000 - £8999	3	1	3	5	4	2	3	2	1	5	3	2	3	4
£9000 - £9999	5	1	3	3	5	3	1	3	0	1	3	1	0	0
£10000 - £12499	2	5	7	6	7	5	4	10	6	3	4	2	5	4
£12500 - £14999	3	4	1	4	4	3	6	2	5	1	0	2	5	0
£15000 - £19999	2	6	4	5	7	6	5	9	8	2	2	9	1	2
£20000 - £29999	1	13	9	11	5	1	5	6	4	3	3	8	0	0
£30000 - £39999	n/a	n/a	n/a	5	3	3	1	4	2	4	1	2	1	1
£40000 - £49999	n/a	n/a	n/a	2	2	0	1	0	3	2	1	3	0	0
£50000 +	n/a	n/a	n/a	7	6	6	5	6	4	4	5	3	5	3
Total	**102**	**60**	**74**	**98**	**80**	**59**	**73**	**95**	**65**	**68**	**68**	**72**	**58**	**51**
Maximum Award	**n/a**	**£201,260**	**£66,086**	**£814,877**	**£635,150**	**£170,953**	**£984,465**	**£123,898**	**£68,991**	**£1,353,432**	**£374,922**	**£62,530**	**£4,445,023**	**£65,172**
Median Award	**£2,378**	**£8,012**	**£5,263**	**£7,942**	**£8,410**	**£6,699**	**£6,640**	**£7,000**	**£8,120**	**£5,172**	**£5,392**	**£6,277**	**£5,256**	**£4,831**
Average award	**n/a**	**£15,484**	**£10,007**	**£27,041**	**£26,660**	**£19,114**	**£30,361**	**£14,049**	**£14,566**	**£32,115**	**£18,584**	**£12,108**	**£102,259**	**£8,945**

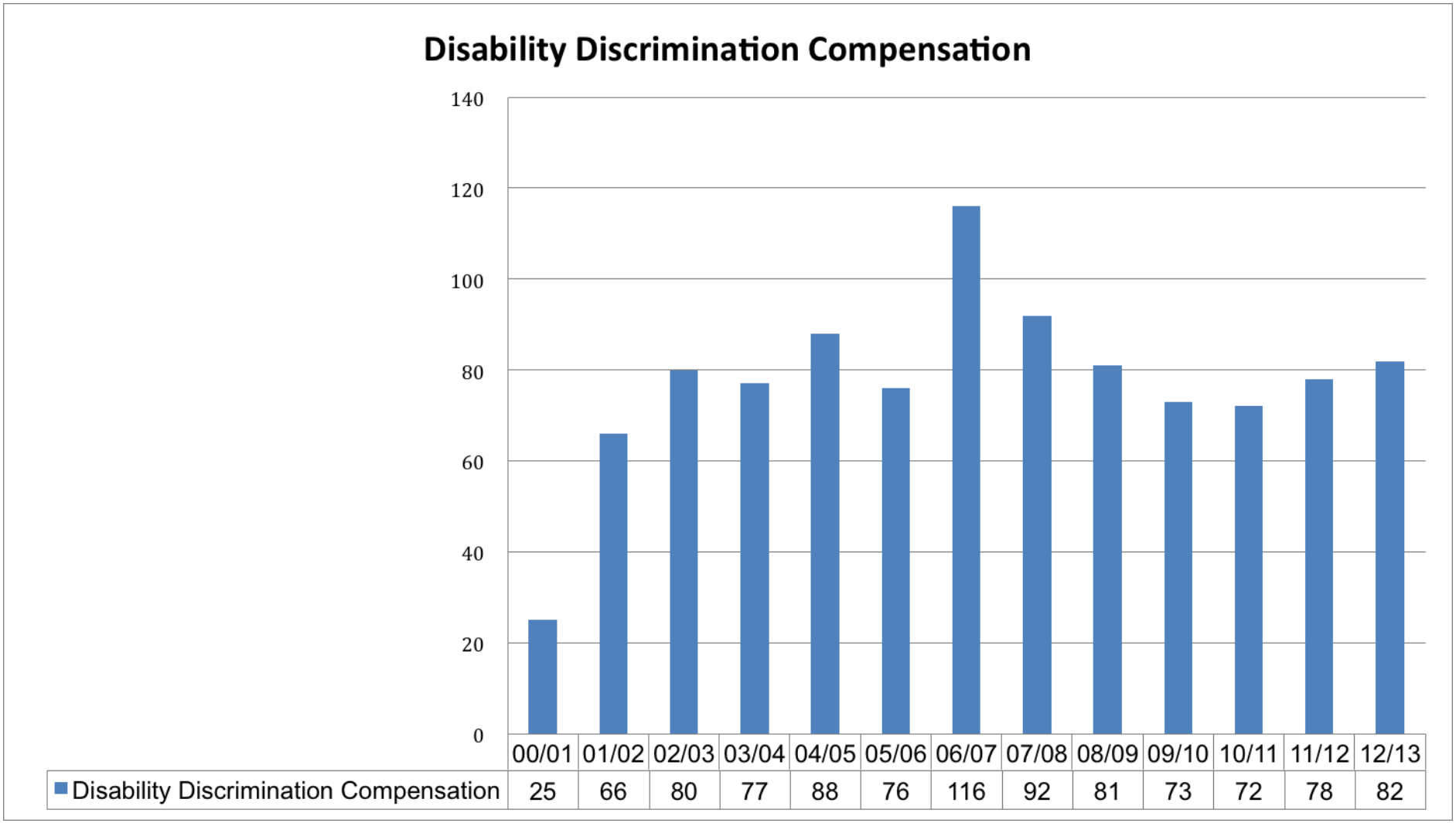
Sex discrimination compensation - Number of cases where compensation was awarded



Sex discrimination compensation - Number of cases where compensation was awarded

	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12/13
<£500	8	4	1	2	2	2	5	4	1	3	1	3	0	1
£500 - £999	17	10	11	7	11	8	5	5	6	3	9	10	6	3
£1000 - £1999	21	7	27	29	34	16	13	12	16	10	13	18	15	12
£2000 - £2,999	16	7	27	19	20	16	14	16	23	13	11	9	11	8
£3000 - £3,999	11	8	20	18	18	13	16	19	10	10	16	9	12	9
£4000 - £4,999	5	9	11	13	15	14	16	15	15	9	10	10	6	10
£5000 - £5999	3	7	15	18	22	14	21	15	12	16	9	20	15	14
£6000 - £6999	3	5	9	5	12	4	10	15	5	21	11	13	21	8
£7000 - £7999	2	6	8	11	13	7	12	11	7	11	12	14	11	9
£8000 - £8999	3	2	7	7	9	13	7	6	4	8	3	9	7	7
£9000 - £9999	5	3	4	4	7	6	6	9	11	11	7	5	5	3
£10000 - £12499	2	15	14	16	17	12	16	17	8	12	11	14	18	9
£12500 - £14999	3	3	6	7	8	9	4	7	8	7	6	5	9	6
£15000 - £19999	2	3	8	10	9	7	8	17	3	11	13	11	11	6
£20000 - £29999	1	9	26	8	16	8	6	15	10	20	8	6	15	5
£30000 - £39999	n/a	n/a	n/a	1	3	8	2	6	7	4	3	9	0	0
£40000 - £49999	n/a	n/a	n/a	1	0	2	3	3	1	1	0	3	0	2
£50000 +				5	5	11	4	2	4	3	7	5	4	1
Total	**102**	**98**	**194**	**181**	**221**	**170**	**168**	**194**	**151**	**173**	**150**	**173**	**166**	**113**
Maximum Award	**n/a**	**£139,896**	**£1,414,620**	**£91,496**	**£504,433**	**£179,026**	**£217,961**	**£64,862**	**£131,466**	**£113,106**	**£442,366**	**£289,167**	**£89,700**	**£318,630**
Median Award	**£2,180**	**£5,499**	**£5,000**	**£5,000**	**£5,425**	**£6,235**	**£5,546**	**£6,724**	**£5,200**	**£7,000**	**£6,275**	**£6,078**	**£6,746**	**£5,900**
Average award		**£11,024**	**£19,279**	**£8,787**	**£12,971**	**£14,158**	**£10,807**	**£10,052**	**£11,263**	**£11,025**	**£19,499**	**£13,911**	**£9,940**	**£10,552**

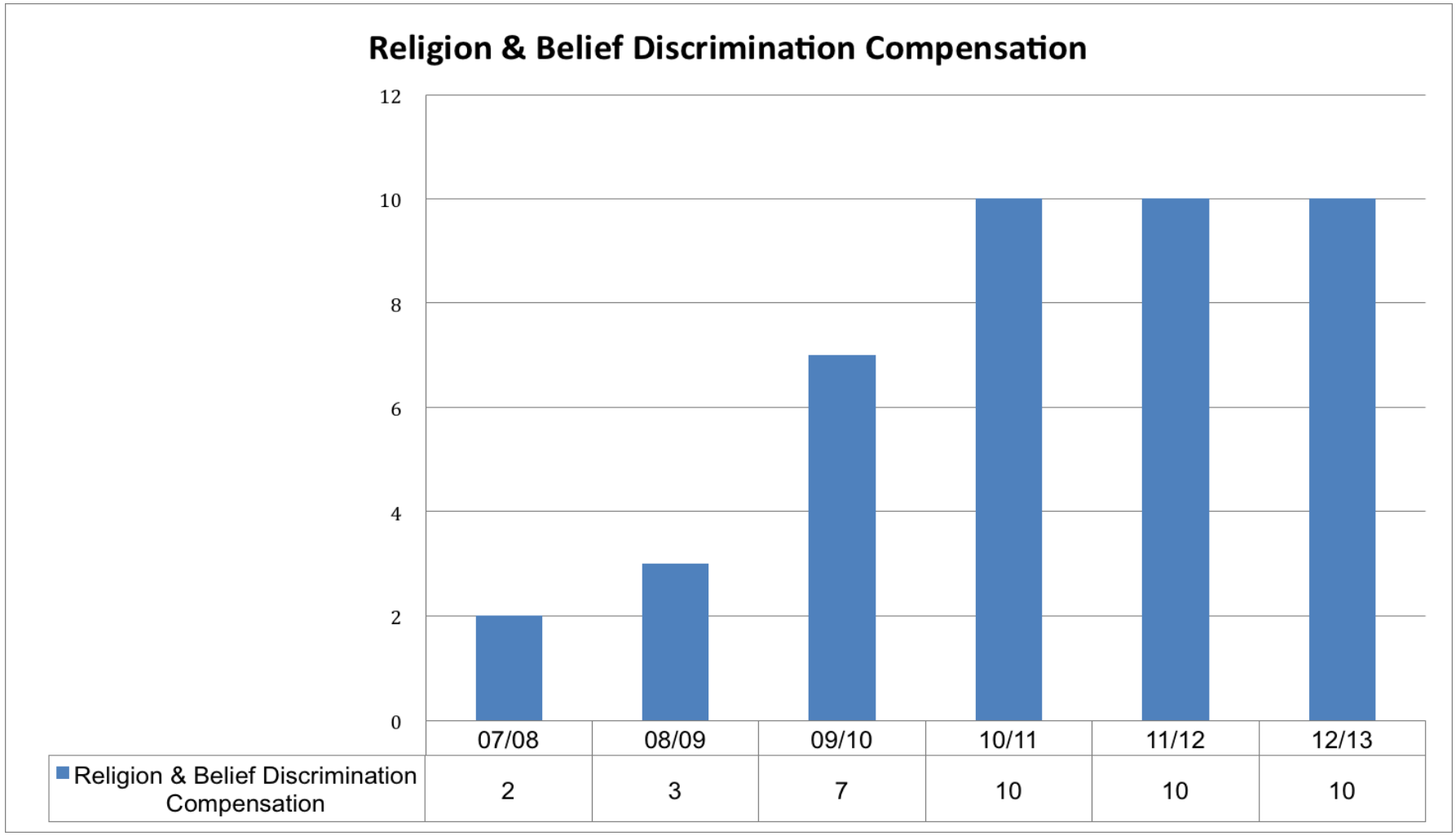
Disability discrimination compensation - Number of cases where compensation was awarded



Disability discrimination compensation - Number of cases where compensation was awarded

	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12/13
<£500	0	0	2	2	5	2	1	1	2	1	0	1	4
£500 - £999	2	2	1	5	5	2	4	1	1	0	3	2	3
£1000 - £1999	6	7	13	13	8	5	11	10	7	2	5	5	4
£2000 - £2,999	1	8	6	2	2	4	4	7	9	10	11	5	3
£3000 - £3,999	2	6	7	6	8	7	7	8	5	2	4	7	5
£4000 - £4,999	1	3	8	5	2	1	8	6	5	3	2	4	4
£5000 - £5999	2	6	4	7	9	9	11	8	8	3	6	4	6
£6000 - £6999	0	1	6	1	4	2	3	1	2	7	10	2	9
£7000 - £7999	1	1	3	5	3	5	8	3	4	6	2	5	6
£8000 - £8999	1	0	4	2	3	0	3	2	5	4	3	4	5
£9000 - £9999	0	1	2	1	1	5	6	1	1	1	2	4	2
£10000 - £12499	1	4	4	3	6	3	10	9	9	7	8	5	10
£12500 - £14999	3	3	7	7	0	5	11	7	3	0	2	5	1
£15000 - £19999	0	6	8	4	8	7	7	4	6	7	4	10	9
£20000 - £29999	5	18	1	5	10	5	9	9	3	5	3	0	5
£30000 - £39999	n/a	n/a	0	3	5	3	5	5	3	1	0	5	2
£40000 - £49999	n/a	n/a	0	1	2	2	1	3	1	3	3	2	0
£50000 +			4	5	7	9	7	7	7	11	4	8	4
Total	**25**	**66**	**80**	**77**	**88**	**76**	**116**	**92**	**81**	**73**	**72**	**78**	**82**
Maximum Award	**£71,063**	**£215,000**	**£90,000**	**£173,139**	**£148,681**	**£138,650**	**£138,648**	**£227,208**	**£388,612**	**£729,347**	**£181,083**	**£390,871**	**£387,472**
Median Award	**£5,000**	**£6,019**	**£5,573**	**£5,652**	**£7,500**	**£9,021**	**£8,232**	**£8,363**	**£7,226**	**£8,553**	**£6,142**	**£8,928**	**£7,536**
Average award	**£12,978**	**£23,365**	**£10,157**	**£16,214**	**£17,736**	**£19,360**	**£15,059**	**£19,523**	**£27,235**	**£52,087**	**£14,137**	**£22,183**	**£16,320**

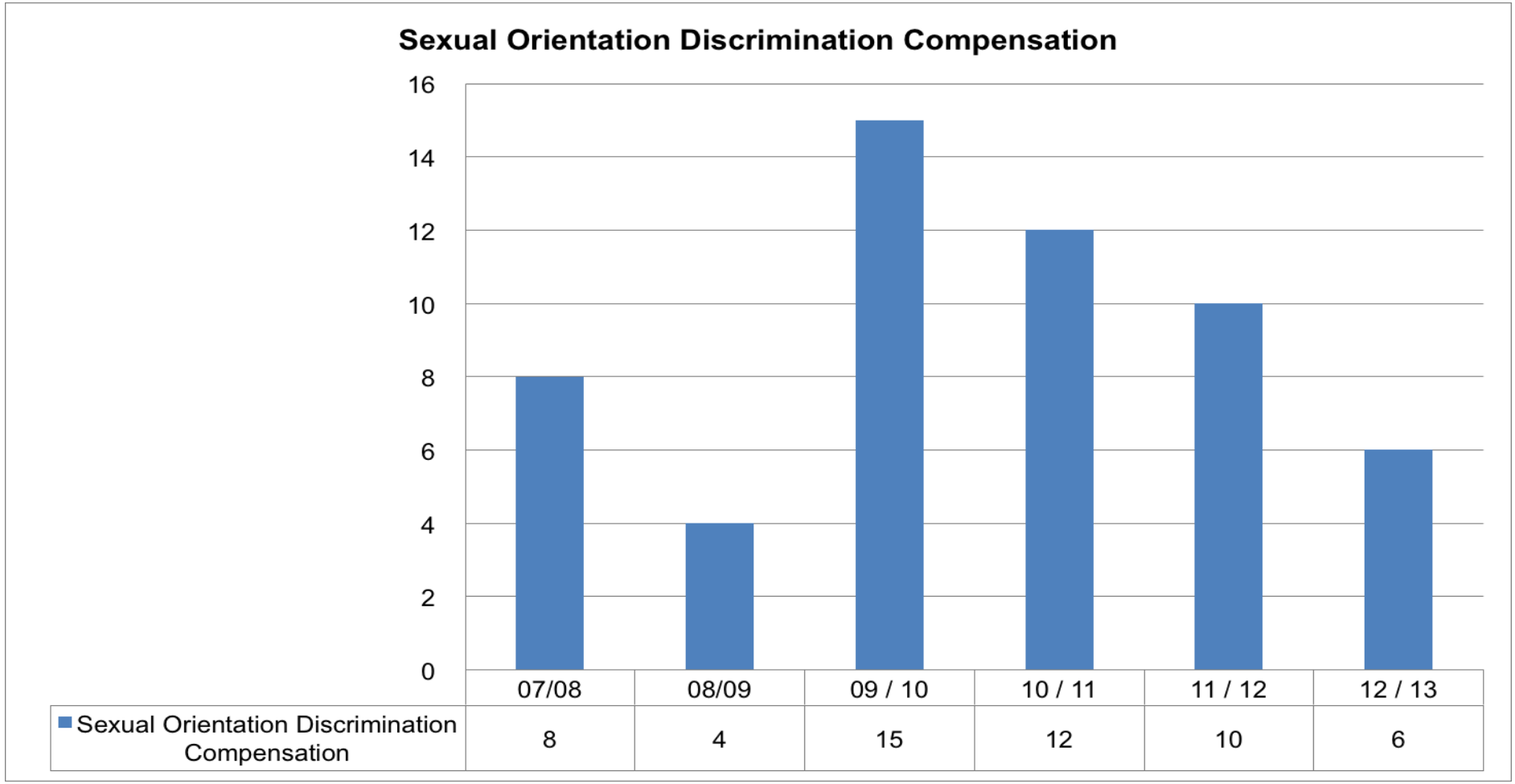
Religion and belief discrimination compensation - Number of cases where compensation was awarded



Religion and belief discrimination compensation - Number of cases where compensation was awarded

	07/08	08/09	09 / 10	10 / 11	11 / 12	12/13
<£500	0	0	0	0	0	0
£500 - £999	1	0	0	2	1	1
£1000 - £1999	0	0	0	0	2	0
£2000 - £2,999	0	1	3	0	1	2
£3000 - £3,999	0	0	0	0	1	1
£4000 - £4,999	0	1	0	0	0	1
£5000 - £5999	1	0	2	2	2	3
£6000 - £6999	0	0	0	1	0	0
£7000 - £7999	0	0	1	1	0	1
£8000 - £8999	0	0	0	0	0	0
£9000 - £9999	0	0	1	0	0	0
£10000 - £12499	0	0	0	1	0	0
£12500 - £14999	0	0	0	2	0	0
£15000 - £19999	0	0	0	0	0	0
£20000 - £29999	0	1	0	1	0	1
£30000 - £39999	0	0	0	0	1	0
£40000 - £49999	0	0	0	0	0	0
£50000 +	0	0	0	0	2	0
Total	**2**	**3**	**7**	**10**	**10**	**10**
Maximum Award	**£5,750**	**£24,876**	**£9,500**	**£20,221**	**£59,522**	**£24,004**
Median Award	**N/A**	**£4,291**	**£5,000**	**£6,892**	**£4,267**	**£4,759**
Average award	**£3,203**	**£10,616**	**£4,886**	**£8,515**	**£16,725**	**£6,137**

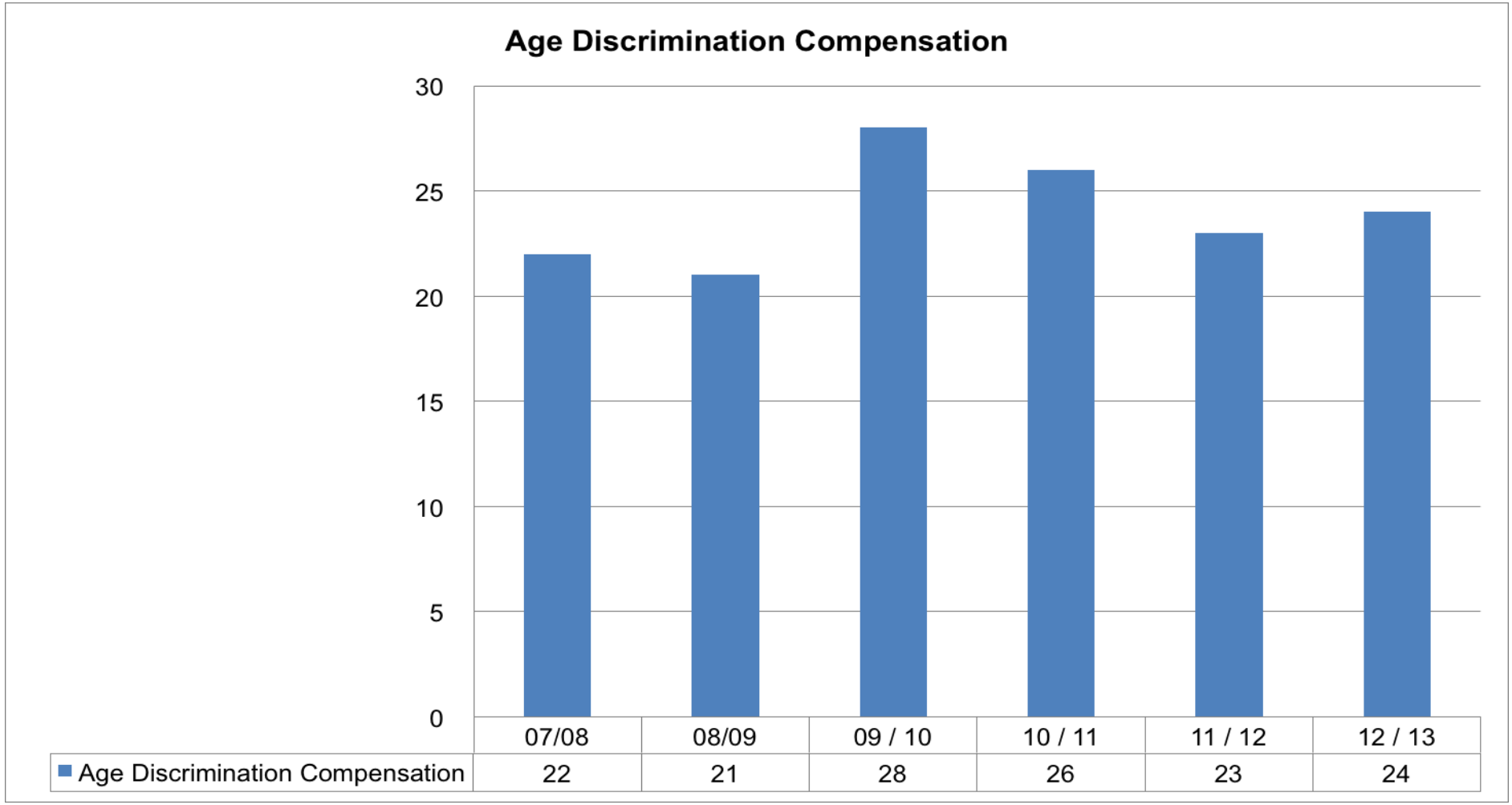
Sexual orientation discrimination compensation - Number of cases where compensation was awarded



Sexual orientation discrimination compensation - Number of cases where compensation was awarded

	07/08	08/09	09 / 10	10 / 11	11 / 12	12/13
<£500	0	0	0	0	0	0
£500 - £999	2	1	3	0	0	0
£1000 - £1999	2	0	1	3	0	2
£2000 - £2,999	0	0	1	0	0	0
£3000 - £3,999	1	0	0	1	0	0
£4000 - £4,999	0	0	1	0	0	0
£5000 - £5999	0	0	3	2	1	1
£6000 - £6999	0	0	0	1	1	0
£7000 - £7999	0	1	0	0	0	1
£8000 - £8999	0	0	0	0	1	0
£9000 - £9999	0	0	0	0	0	0
£10000 - £12499	0	0	0	1	2	0
£12500 - £14999	1	0	0	0	1	0
£15000 - £19999	1	0	1	1	0	0
£20000 - £29999	1	1	4	2	4	2
£30000 - £39999	0	0	0	0	0	0
£40000 - £49999	0	0	0	1	0	0
£50000 +	0	1	1	0	0	0
Total	**8**	**4**	**15**	**12**	**10**	**6**
Maximum Award	£22,850	**£63,222**	**£163,725**	**£47,633**	**£27,473**	**£28,251**
Median Award	£2,103	**£15,351**	**£5,000**	**£5,500**	**£13,505**	**£6,319**
Average award	£7,579	**£23,668**	**£20,384**	**£11,671**	**£14,623**	**£10,757**

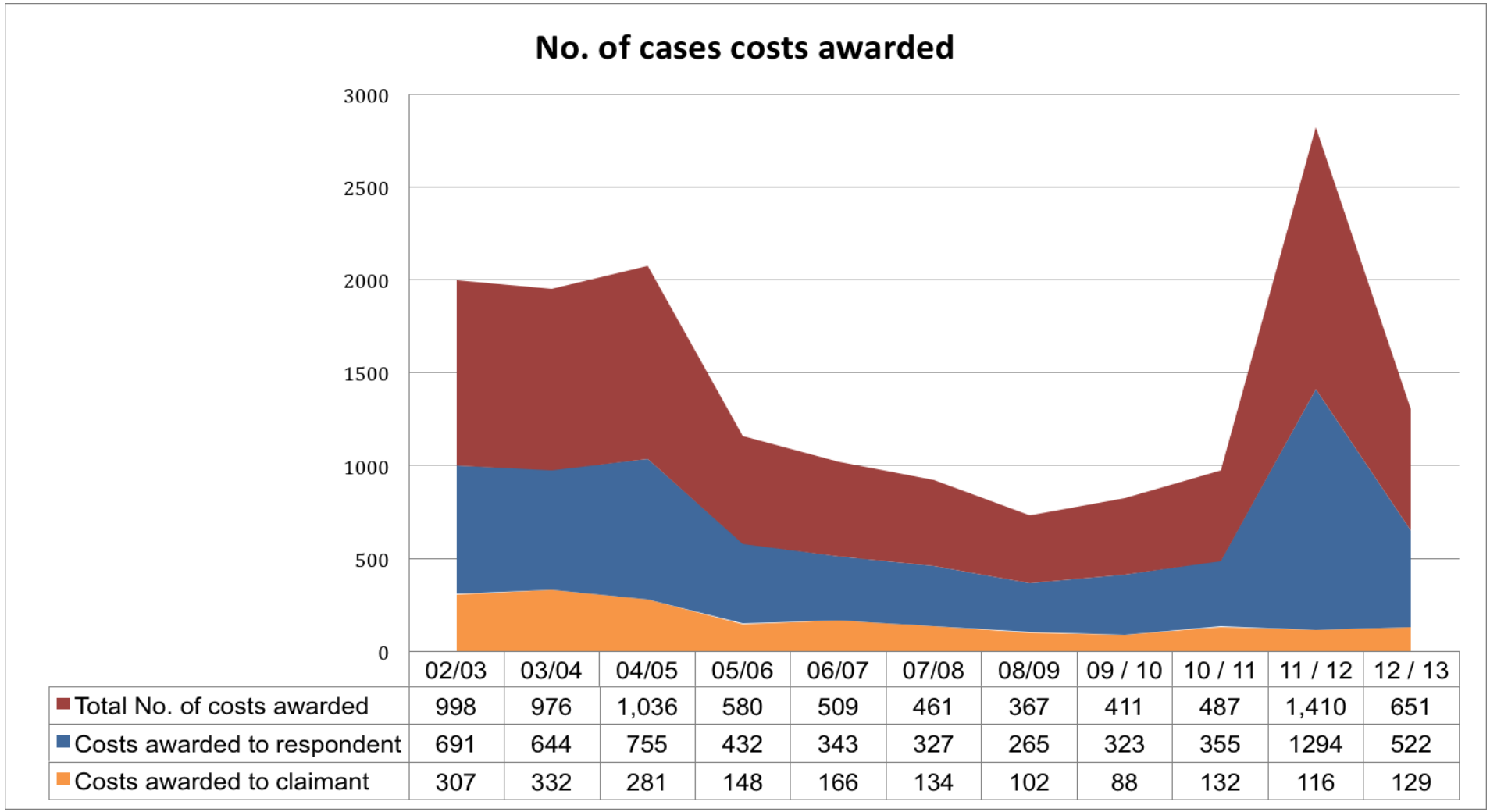
Age discrimination compensation - Number of cases where compensation was awarded



Age discrimination compensation - Number of cases where compensation was awarded

	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
<£500	2	0	0	0	1	0
£500 - £999	2	3	0	0	1	0
£1000 - £1999	11	3	5	6	2	3
£2000 - £2,999	1	3	0	1	0	2
£3000 - £3,999	0	3	2	0	3	3
£4000 - £4,999	2	1	3	1	1	5
£5000 - £5999	0	0	4	2	1	2
£6000 - £6999	0	2	1	0	3	2
£7000 - £7999	0	1	2	0	1	2
£8000 - £8999	0	1	1	1	1	1
£9000 - £9999	0	1	1	0	0	0
£10000 - £12499	4	0	1	2	1	2
£12500 - £14999	0	1	2	1	1	1
£15000 - £19999	0	1	2	2	1	0
£20000 - £29999	0	0	1	2	1	0
£30000 - £39999	0	0	1	2	1	0
£40000 - £49999	0	0	2	2	1	0
£50000 +	0	1	0	4	3	1
Total	**22**	**21**	**28**	**26**	**23**	**24**
Maximum Award	**£12,124**	**£90,031**	**£48,710**	**£144,100**	**£144,100**	**£72,500**
Median Award	**£1,526**	**£3,000**	**£5,868**	**£12,697**	**£6,065**	**£4,499**
Average award	**£3,334**	**£8,869**	**£10,931**	**£30,289**	**£19,327**	**£8,079**

No. of cases where costs were awarded



	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Total No. of costs awarded	998	976	1,036	580	509	461	367	411	487	1,410	651
Costs awarded to respondent	691	644	755	432	343	327	265	323	355	1294	522
Costs awarded to claimant	307	332	281	148	166	134	102	88	132	116	129

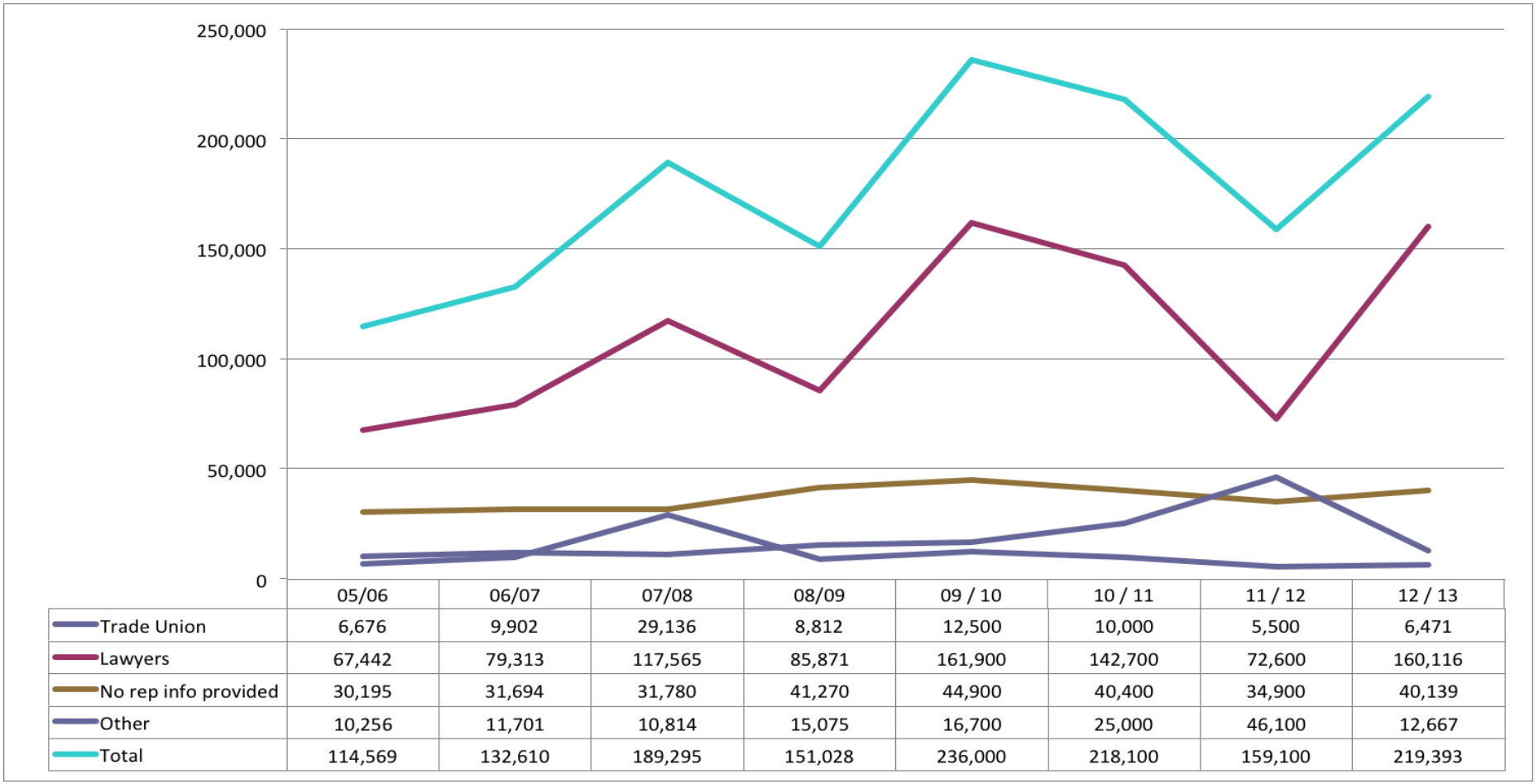
Costs awarded in ET cases – claimant

	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
<£200	59	49	30	16	16	22	9	4	13	9	18
£201 - 400	37	53	33	14	26	6	20	15	6	6	8
£401 - 600	43	38	42	15	21	14	16	14	15	8	13
£601 - 800	26	19	20	5	6	11	6	8	12	8	5
£801 - 1000	28	23	28	14	23	15	8	10	12	10	8
£1001 - 2000	44	65	60	35	33	26	21	18	28	24	28
£2001 - 4000	40	40	33	20	22	18	8	15	30	22	16
£4001 - 6000	12	29	13	19	5	10	5	1	10	10	13
£6001 - 8000	7	6	10	5	7	3	2	0	3	6	9
£8001 - 10000	11	10	12	4	7	6	4	2	3	3	0
£10000 +	0	0	0	1	0	3	3	1	0	10	11
Total	**307**	**332**	**281**	**148**	**166**	**134**	**102**	**88**	**132**	**116**	**129**

Costs awarded in ET cases – respondent

	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
<£200	133	84	84	35	35	33	27	30	28	829	37
£201 - 400	87	81	75	47	34	34	21	36	33	40	48
£401 - 600	121	78	117	58	49	47	24	52	44	77	70
£601 - 800	44	39	52	36	24	24	20	12	16	21	24
£801 - 1000	70	61	87	38	44	35	29	37	42	39	28
£1001 - 2000	94	106	140	81	54	60	46	52	62	72	78
£2001 - 4000	73	97	110	60	54	47	45	40	51	98	92
£4001 - 6000	31	53	51	32	23	19	19	26	19	54	61
£6001 - 8000	18	16	12	16	9	9	14	9	19	23	24
£8001 - 10000	20	29	26	27	15	17	18	29	37	3	12
£10000 +	0	0	1	2	2	2	2	0	4	38	48
Total	**691**	**644**	**755**	**432**	**343**	**327**	**265**	**323**	**355**	**1294**	**522**

Representation of claimants at ET



	05/06	06/07	07/08	08/09	09 / 10	10 / 11	11 / 12	12 / 13
Trade Union	6,676	9,902	29,136	8,812	12,500	10,000	5,500	6,471
Lawyers	67,442	79,313	117,565	85,871	161,900	142,700	72,600	160,116
No rep info provided	30,195	31,694	31,780	41,270	44,900	40,400	34,900	40,139
Other	10,256	11,701	10,814	15,075	16,700	25,000	46,100	12,667
Total	114,569	132,610	189,295	151,028	236,000	218,100	159,100	219,393

Appendix 2

Research Information Pack

University of Salford MANCHESTER

Research information Pack
Employment Tribunal Research

Thank you for agreeing to participate in this study. Below are further details regarding the purpose of the study and also information regarding the ethical process of the interviews. If you have any questions please do not hesitate to contact me on the following:

Jonathan Lord	
Tel No.	0161-295-2071
Mobile No.	
E-Mail	j.d.lord@salford.ac.uk
Address	
Maxwell 327 University of Salford Salford Greater Manchester M5 4WT	

Before agreeing to participate in this study, it is important that you read the following explanation of this study. This statement describes the purpose, procedures, benefits, risks, discomforts, and precautions of the research. Also described are the alternative procedures available to you, as well as your right to withdraw from the study at any time. No guarantees or assurances can be made as to the results of the study.

Explanation of Procedures

Jonathan Lord, a lecturer at Salford Business School, University of Salford, is conducting this study to provide an insight into the workings of tribunals by selecting a number of cases, whereby participants from both the claimants and respondents party will be interviewed to assess their opinions of the employment tribunal system.

Participation in the study involves undertaking a semi-structured interview, which will last for approximately one hour. If agreed beforehand the interview will be audio-taped by the interviewer and later transcribed for the purpose of data analysis. The interview will be conducted at a setting that is mutually agreeable to the participant and the researcher. Only the interviewer will access to the audiotape which will be stored securely in a locked office and destroyed once transcribed.

Risks and Discomforts

Potential risks or discomforts include possible emotional feelings when asked questions during the interview. The interview may be stopped at anytime, and if requested terminated.

Benefits

The anticipated benefit of participation is the opportunity to discuss feelings, perceptions, and concerns related to the experience of the Employment Tribunal Service, and having access to the finding of the study.

Confidentiality

The information gathered during this study will remain confidential in a locked filing system during this project. Only the interviewer will have access to the study data and information. There will not be any identifying of names on the tapes, and participant's names will not be available to anyone. The tapes will be destroyed once they have been transcribed. The results of the research may be published in a professional journal or presented at professional meetings. The information will help understand how tribunals operate and also outline how the ETS can be developed to meet the changing needs of employment in the UK.

Withdrawal without Prejudice

Participation in this study is voluntary; refusal to participate will involve no penalty. Each participant is free to withdraw consent and discontinue participation in this study at any time without prejudice from this institution and would be understood fully by the interviewer

Purpose of the study

Through analysing a number of unfair dismissal claims, establish whether the tribunal system is a barrier to justice.
Two recent publications from the British Chamber of Commerce and Chartered Institute of Personnel and Development have stated that the system is broken and a barrier to justice due to a number of reasons, including the amount of vexatious claims and the abuse of the system by claimants. The statements by the two employers' organisations will be used to highlight a problem that has instigated this investigation.

Interview Design

Interview Type	Semi-Structured
Length of Interview	1 hour
Interview subject areas	
• Interactional Justice • Procedural Justice • Distributive Justice • Employment law regulation • The effectiveness of the ETS in enforcing employment law • The effectiveness of the ETS from a participatory perspective • The costs involved in bringing and defending a case through the ETS • The ETS in the future	

Confidentiality

Due to the confidential nature of the subject area, all participant comments will remain anonymised. The factual names of the cases will NOT be listed within the study; a coding mechanism will be used for the reader's purpose.

New Findings

Any significant new findings that develop during the course of the study, which may affect a participant's willingness to continue in the research, will be provided to each participant by the interviewer.

Cost and / or Payment to Subject for Participation in Research

There will be no cost for participation in the research. Also, participants will not be paid to participate in this research project.

Payment for Research Related Injuries

The University of Salford has made no provision for monetary compensation in the event of injury resulting from the research. In the event of such injury, assistance will be provided to access health care services.

Questions

Any questions concerning the study can contact:
Research & Graduate College
The University of Salford
Faraday House
Salford
Greater Manchester
M5 4WT

+ 44 (0)161 295 5000

Complaints

If you have any concerns regarding this study please contact the following person at the University of Salford:

Matthew Stephenson
Head of Information Governance
Information & Learning Services
Clifford Whitworth Building
University of Salford
Salford
M5 4WT

Tel: 0161 295 3152
Email: m.stephenson@salford.ac.uk

If you have exhausted the university complaints procedure and you are still not satisfied with the outcome, you have the right to complain to the Information Commissioner, the independent body who oversees the Freedom of Information and Data Protection in the UK.

To complain to the Information Commissioner, please write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 700
http://www.ico.gov.uk

Agreement

This agreement states that you have received a copy of this informed consent. The completion of the consent form below indicates that you agree to participate in this study.

Authorisation Form

Full Name		
I am willing to be interviewed regarding the Employment Tribunal Service and am aware that my views and opinions may be made available in the public arena.		Yes
I understand that all comments will be anonymised and that no personal details will be released as part of this study.		Yes
Signature		

I WILL COLLECT THE FORM ON THE DAY OF THE INTERVIEW

Many thanks

Jonathan Lord
Lecturer in HRM
BA(Hons), MSc, CFCIPD

Room 327, Maxwell Building, University of Salford, Salford, Manchester, M5 4WT, UK
Tel. ++ 44 (0)161 295 2071

University of Salford MANCHESTER

Accredited by Association of MBAs
Salford Business School
global thinking, sustainable practice, professional success

Appendix 3

Sample Questionnaire

University of Salford MANCHESTER

The Employment Tribunal System

This piece of research is designed to carry out an evaluation into the competence of employment tribunals in delivering justice for employers and employees. Jonathan Lord, a Lecturer at Salford Business School, University of Salford, is conducting this study to provide an insight into the workings of tribunals by interviewing participants who have gone through the tribunal process.

Case Name		
Case No.		
Claimant / Respondent / Observer		
Role in the claim	Please tick (√)	
Witness / employee		
Legal representative		
Acas representative		
Other		
	Please state role	

Tribunal Decision

	Please tick (√)
Case dismissed	
Compensation award	
Reinstatement / re-engagement	
Remedy left to parties	
Case won by claimant but no remedy awarded	

Award of costs

	Please tick (√)	Amount (£)
Costs awarded to the claimant		
Costs awarded to the respondent		

Procedural Justice

Definition

Procedural justice refers to various aspects that a procedure should meet in order to be perceived as fair by its user

Do you believe the process followed by the tribunal was fair?

	Please tick (√)
Yes	
No	

How would you score the process followed by the tribunal?

	Please tick (√)
Very unfair	
Unfair	
Neither fair nor unfair	
Fair	
Very fair	

What aspects of the tribunal process would you change?

	Please list up to 5 changes
1	
2	
3	
4	
5	

Distributive Justice

Definition

Distributive justice refers to the justice evaluation of the allocation outcome

Do you believe the decision by the tribunal was correct?

	Please tick (√)
Yes	
No	

How would you score the decision by the Employment Tribunal Service?

	Please tick (√)
Very unfair	
Unfair	
Neither fair nor unfair	
Fair	
Very fair	

Do you believe the remedies made by the tribunal were fair?

	Please tick (√)
Yes	
No	
No remedies made	

At present the tribunal can award costs against both parties as well as awarding compensation to the claimant and reinstatement / reengagement to the company. Do you believe there are other remedies that the tribunal should consider?

	Please list up to 5 considerations
1	
2	
3	
4	
5	

Interactional Justice

Definition
Interactional justice refers to the perception of the quality of treatment during the procedure

Do you feel that you were treated fairly during the tribunal process?

	Please tick (√)
Yes	
No	

How would you score your treatment by the Employment Tribunal Service?

	Please tick (√)
Very unfair	
Unfair	
Neither fair nor unfair	
Fair	
Very fair	

How do you believe the tribunal could improve upon their treatment of you during the process?

	Please list up to 5 improvements or changes
1	
2	
3	
4	
5	

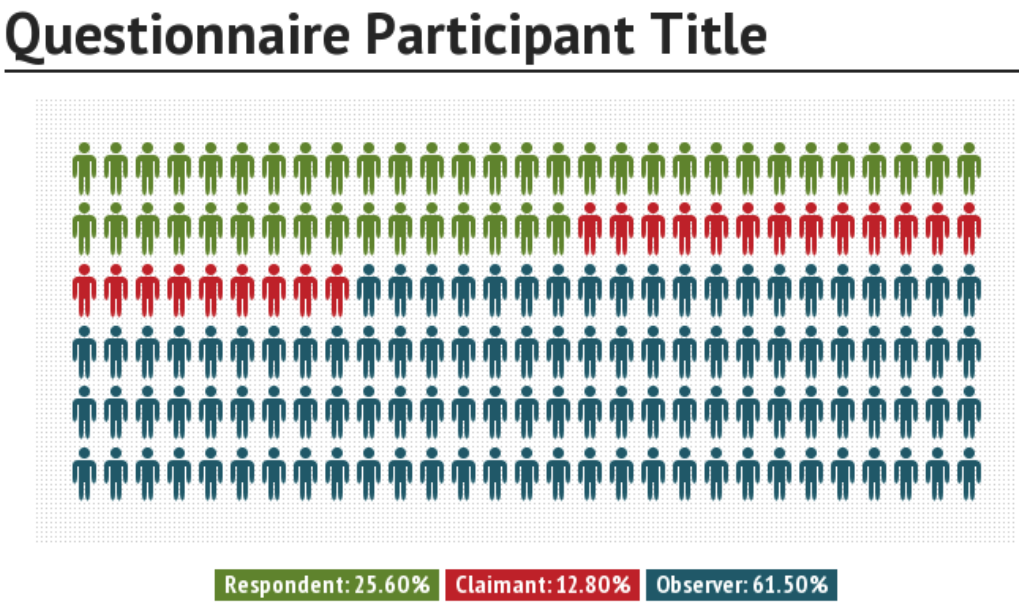
Thank you for taking the time to complete this questionnaire. I will collect the completed questionnaire at the interview.
Many thanks

Jonathan Lord
Lecturer in HRM
BA(Hons), MSc, CFCIPD
Room 327, Maxwell Building, University of Salford, Salford, Manchester, M5 4WT, UK
Tel. ++ 44 (0)161 295 2071

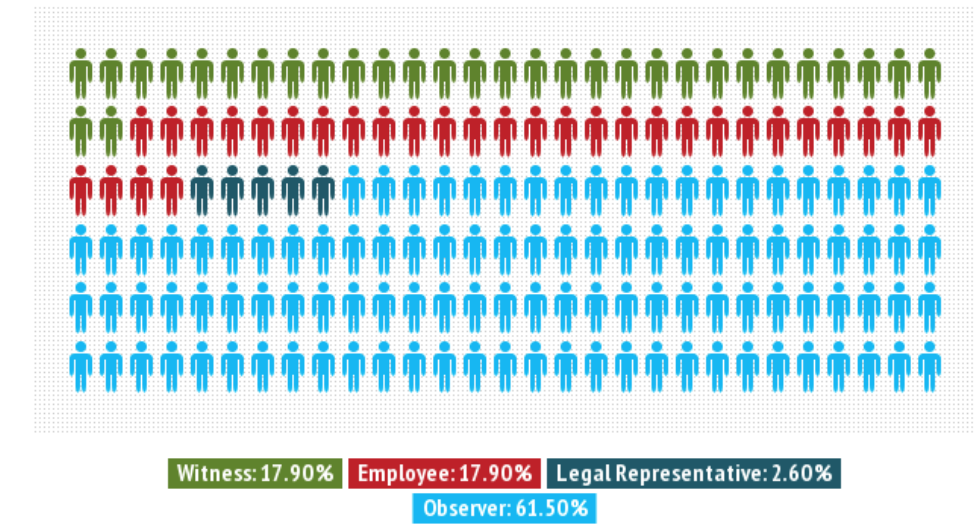
Appendix 4

Questionnaire Results

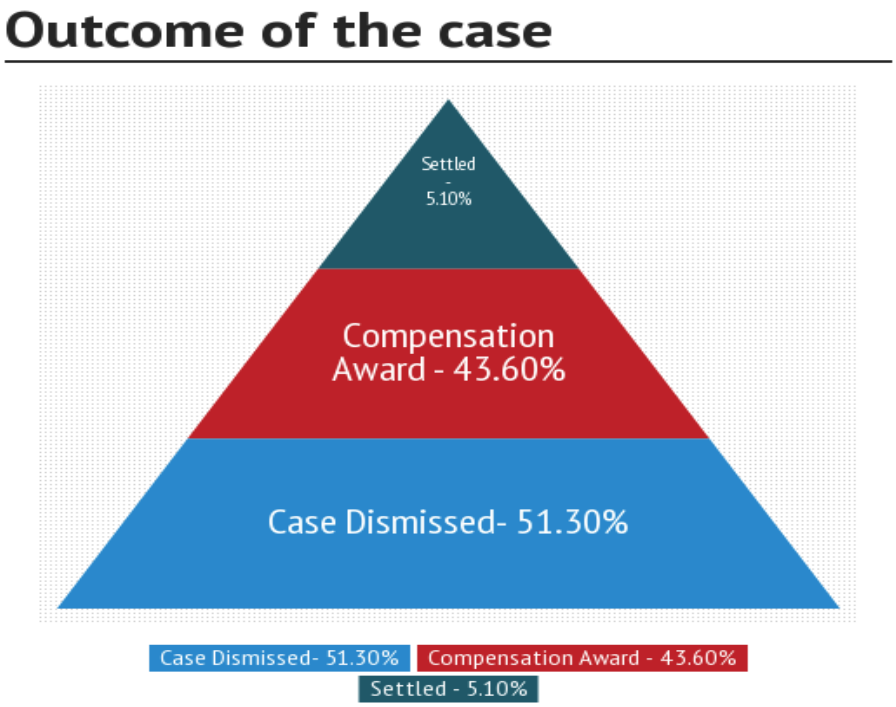
Questionnaire participant title



Role in the tribunal case

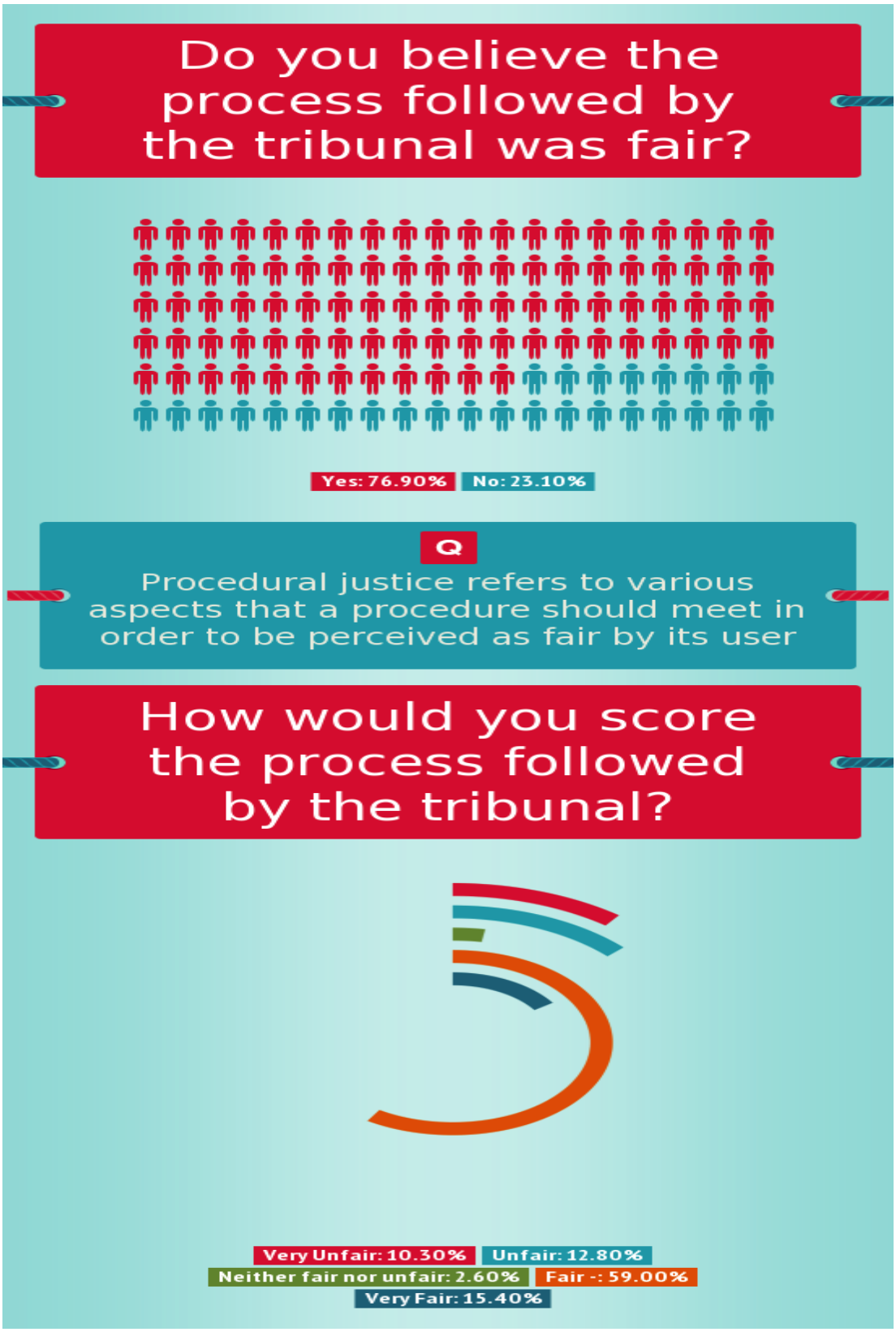


Outcome of the case



Procedural justice

Procedural justice overall



Do you believe the process followed by the tribunal was fair – individual perspective?

Do you believe the process followed by the tribunal was fair – individual perspective?

	Do you believe the process followed by the tribunal was fair?		**Total**
	Yes	No	
Respondent	15.4%	10.3%	**25.6%**
Claimant	7.7%	5.1%	**12.8%**
Observer	53.8%	7.7%	**61.5%**
Total	**76.9%**	**23.1%**	**100.0%**

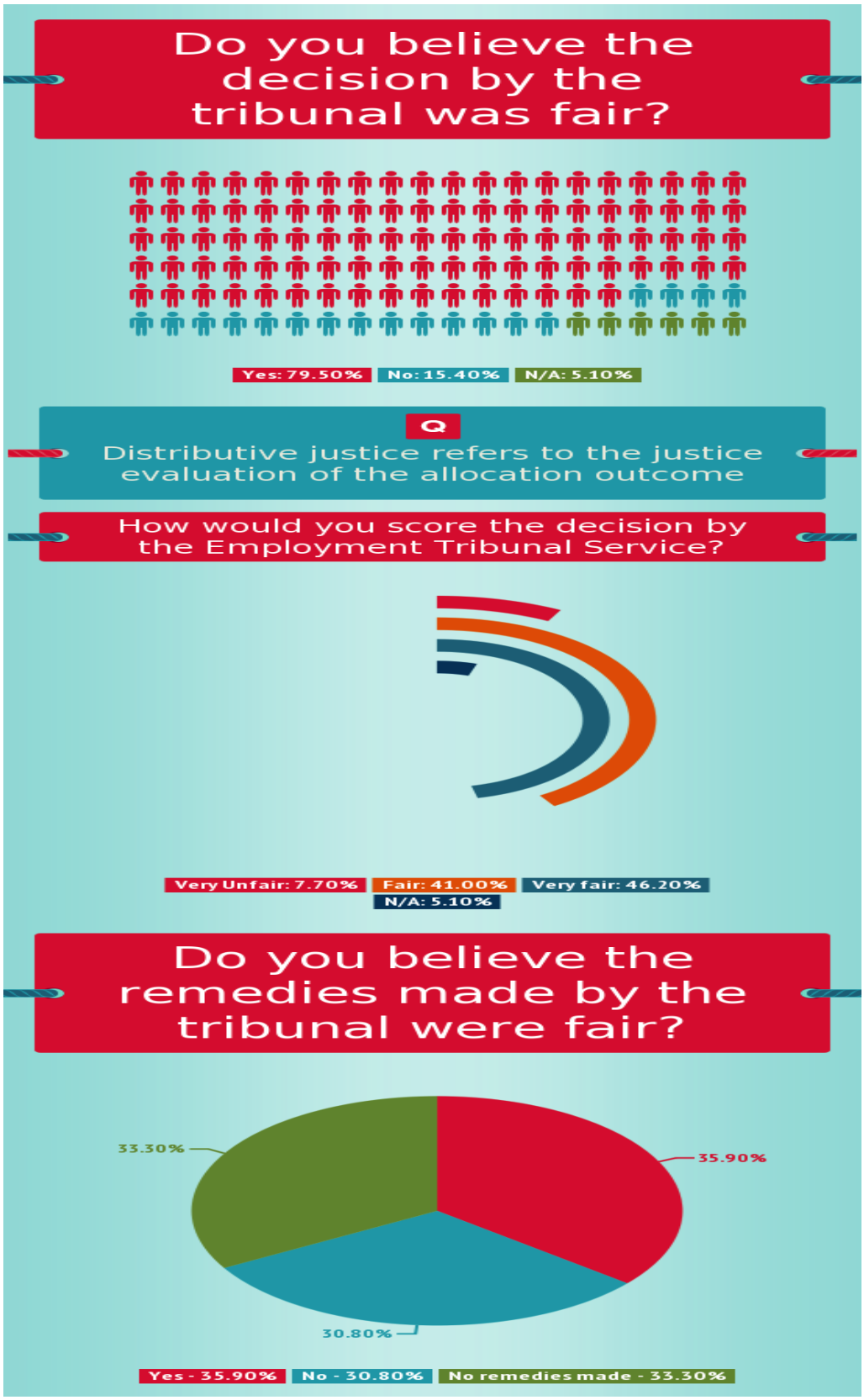
How would you score the process followed by the tribunal – individual perspective?

How would you score the process followed by the tribunal – individual perspective?

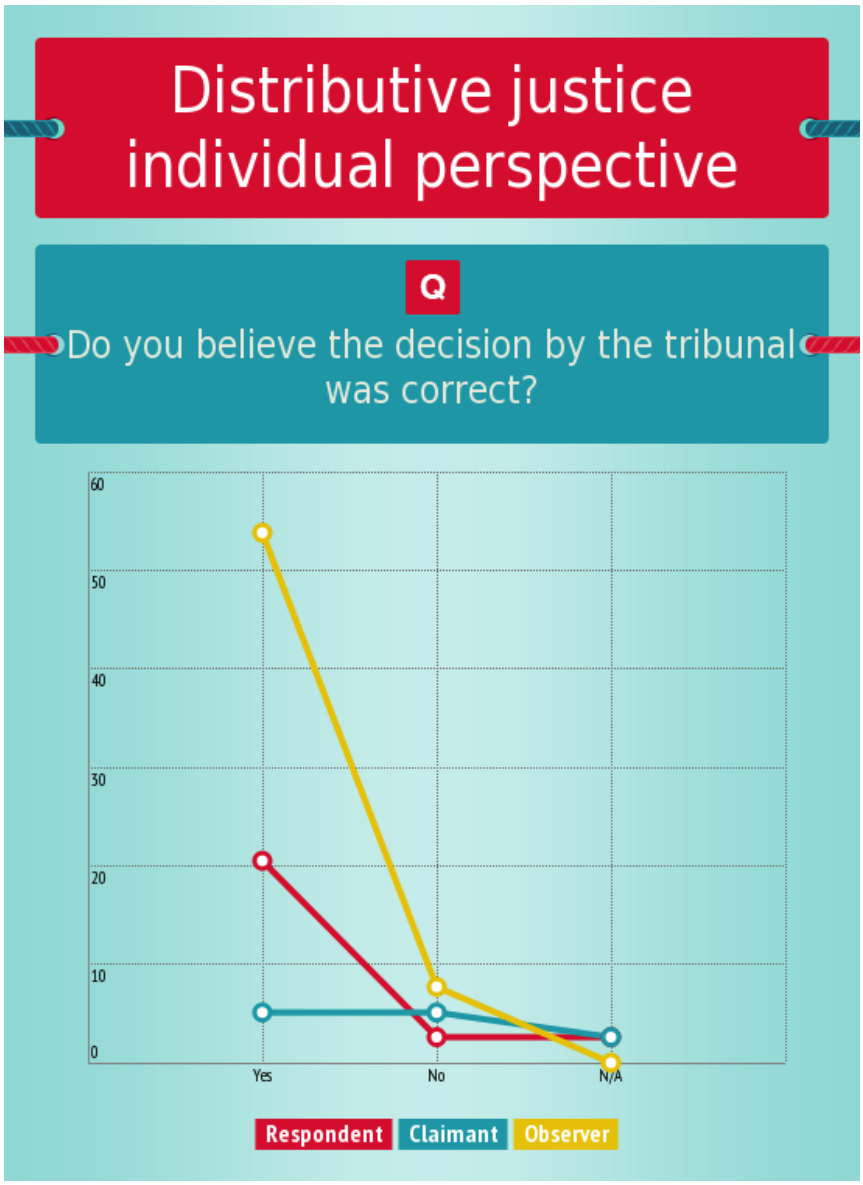
	How would you score the process followed by the tribunal?					
	Very Unfair	Unfair	Neither fair nor unfair	Fair	Very Fair	**Total**
Respondent	5.1%	5.1%	2.6%	10.3%	2.6%	**25.6%**
Claimant	5.1%	0.0%	0.0%	5.1%	2.6%	**12.8%**
Observer	0.0%	7.7%	0.0%	43.6%	10.3%	**61.5%**
Total	**10.3%**	**12.8%**	**2.6%**	**59.0%**	**15.4%**	**100.0%**

Distributive justice

Distributive justice overall



Do you believe the decision by the tribunal was correct – individual perspective?



Do you believe the decision by the tribunal was correct- individual perspective?

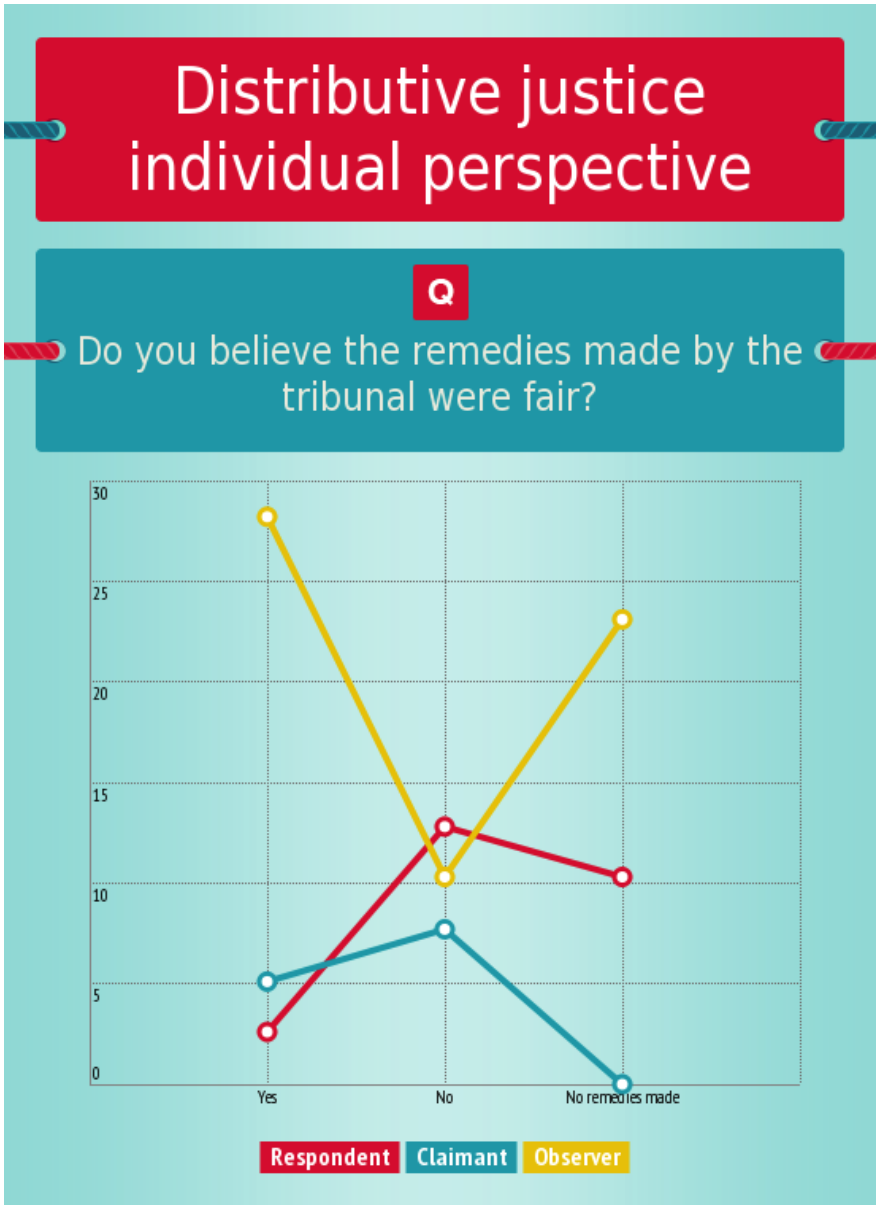
	Do you believe the decision by the tribunal was correct?			
	Yes	No	N/A	**Total**
Respondent	20.5%	2.6%	2.6%	**25.6%**
Claimant	5.1%	5.1%	2.6%	**12.8%**
Observer	53.8%	7.7%	0.0%	**61.5%**
Total	**79.5%**	**15.4%**	**5.1%**	**100.0%**

How would you score the decision by the Employment Tribunal Service- individual perspective?

How would you score the decision by the Employment Tribunal Service- individual perspective?

	How would you score the decision by the Employment Tribunal Service?				
	Very Unfair	Fair	Very fair	N/A	**Total**
Respondent	0.0%	10.3%	12.8%	2.6%	**25.6%**
Claimant	0.0%	2.6%	7.7%	2.6%	**12.8%**
Observer	7.7%	30.8%	23.1%	0.0%	**61.5%**
Total	**7.7%**	**43.6%**	**43.6%**	**5.1%**	**100.0%**

Do you believe the remedies made by the tribunal were fair – individual perspective?

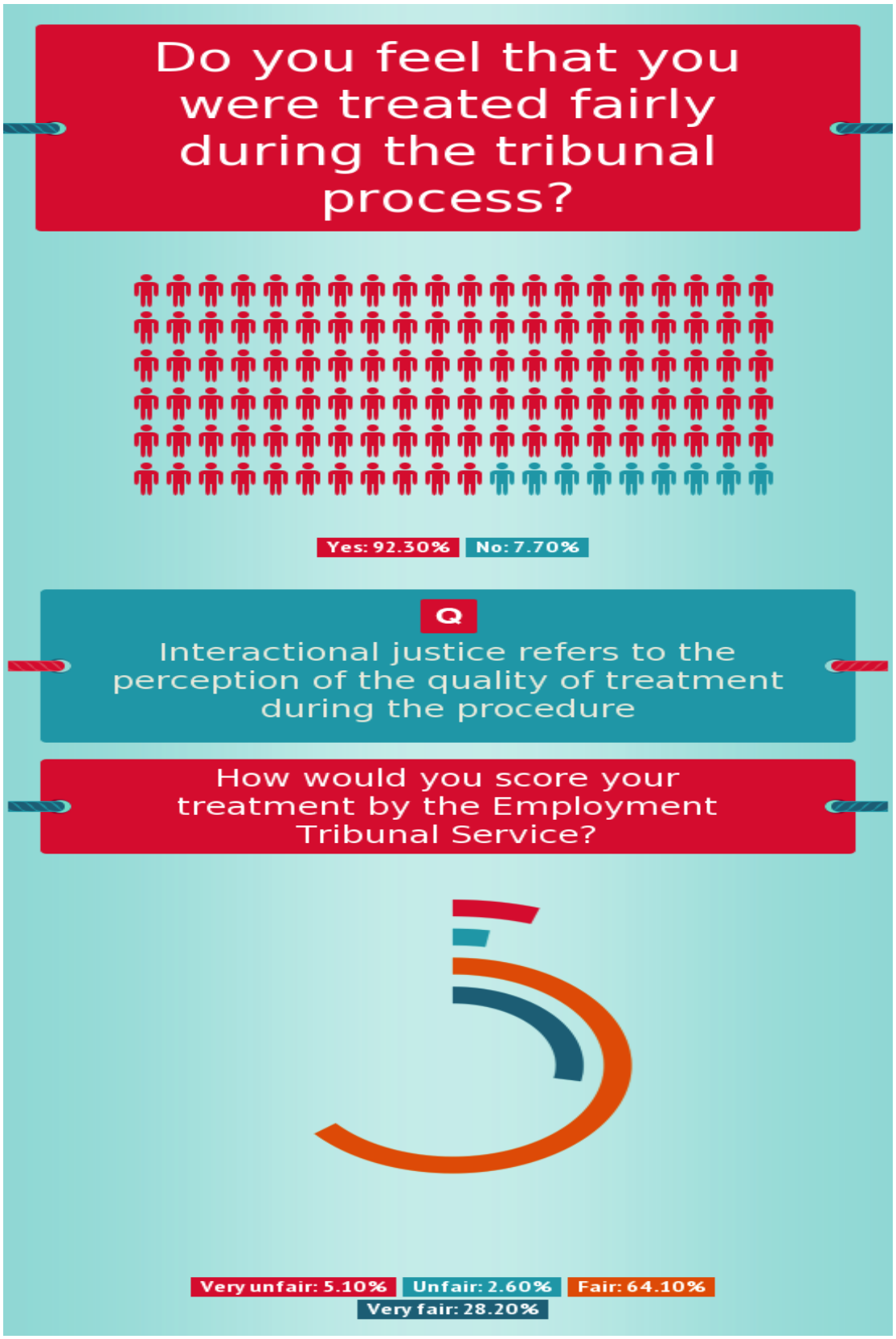


Do you believe the remedies made by the tribunal were fair- individual perspective?

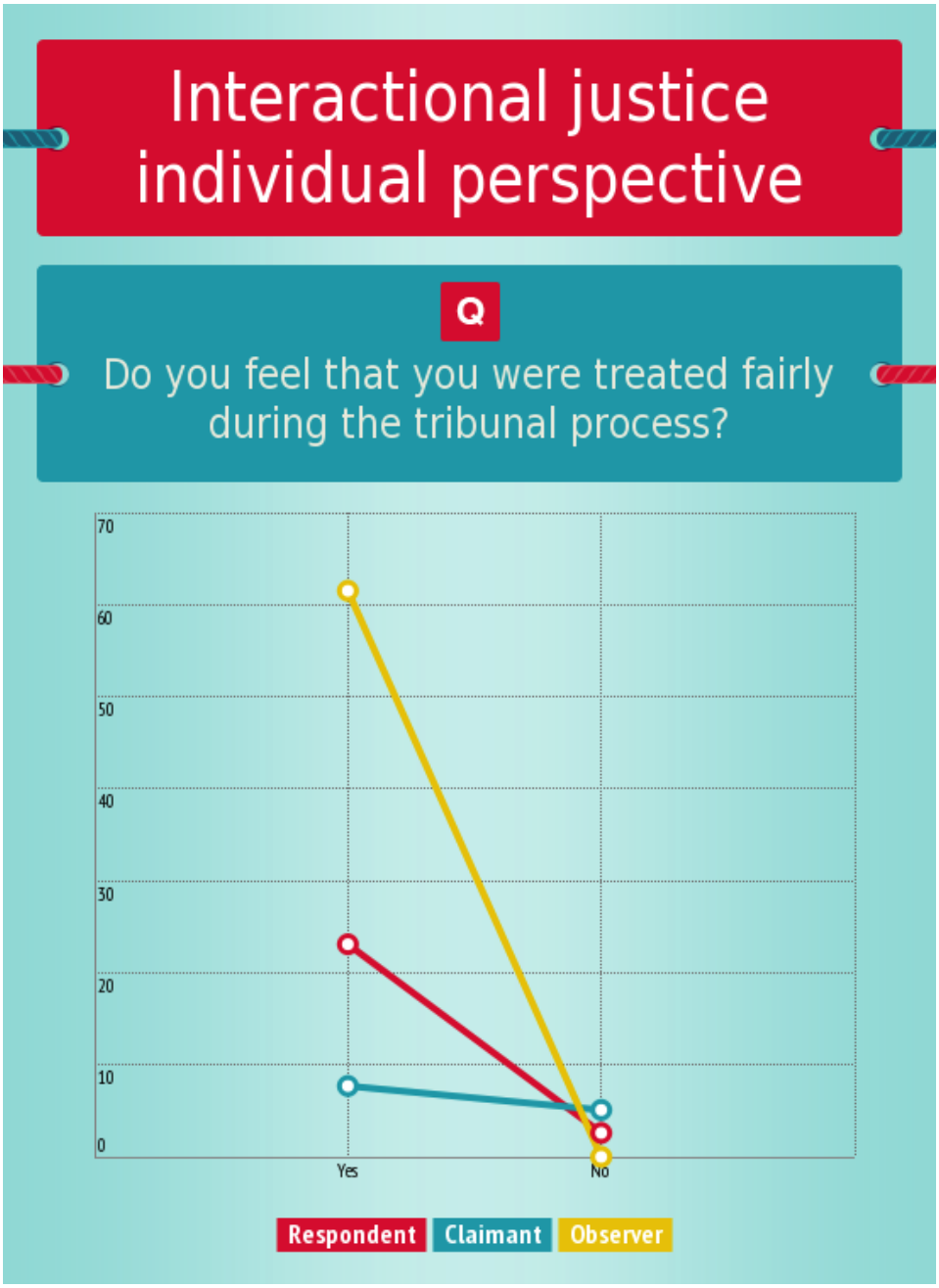
	Do you believe the remedies made by the tribunal were fair?			
	Yes	No	No remedies made	**Total**
Respondent	2.6%	12.8%	10.3%	**25.6%**
Claimant	5.1%	7.7%	0.0%	**12.8%**
Observer	28.2%	10.3%	23.1%	**61.5%**
Total	**35.9%**	**30.8%**	**33.3%**	**100.0%**

Interactional Justice

Interactional justice overall



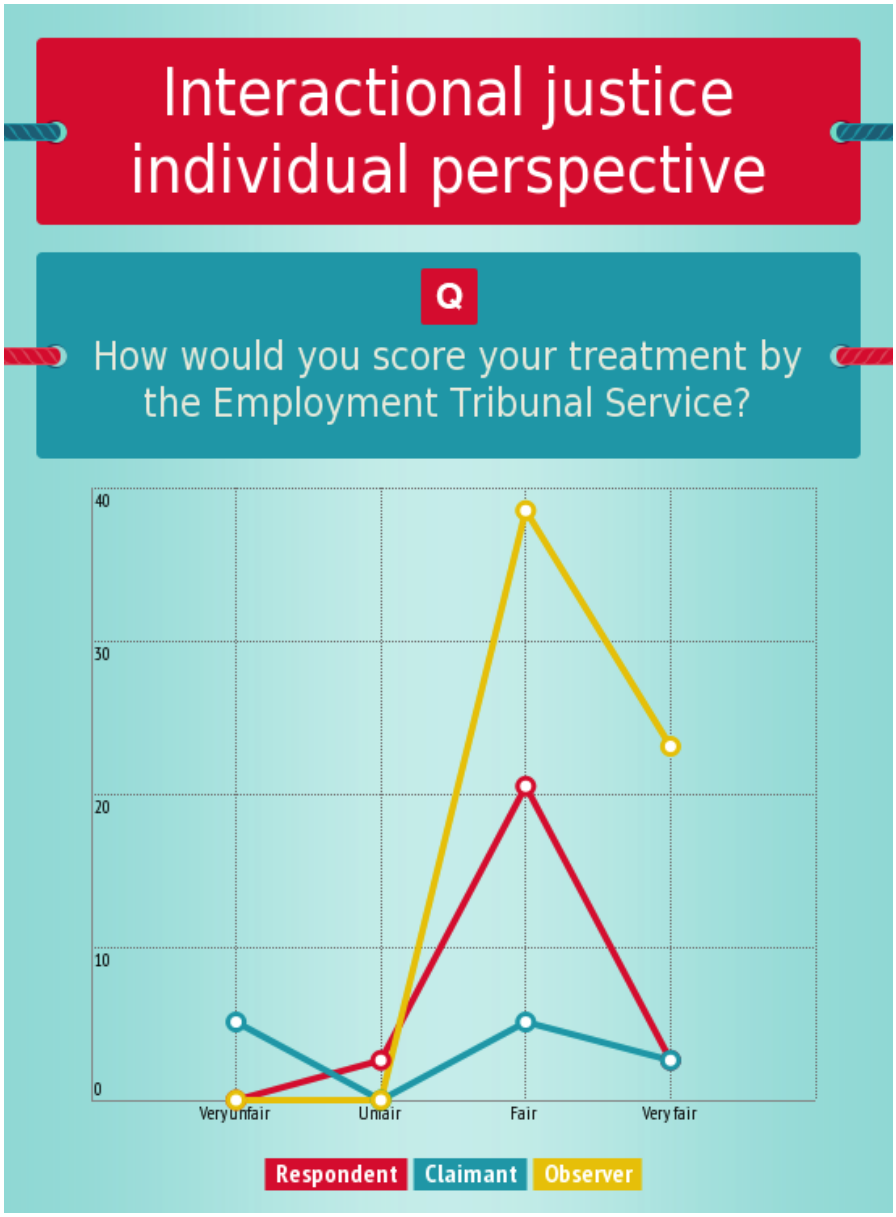
Do you feel that you were treated fairly during the tribunal process – Individual perspective?



Do you feel that you were treated fairly during the tribunal process – Individual perspective?

	Do you feel that you were treated fairly during the tribunal process?		
	Yes	No	**Total**
Respondent	23.1%	2.6%	**25.6%**
Claimant	7.7%	5.1%	**12.8%**
Observer	61.5%	0.0%	**61.5%**
Total	**92.3%**	**7.7%**	**100.0%**

How would you score your treatment by the Employment Tribunal Service – individual perspective?

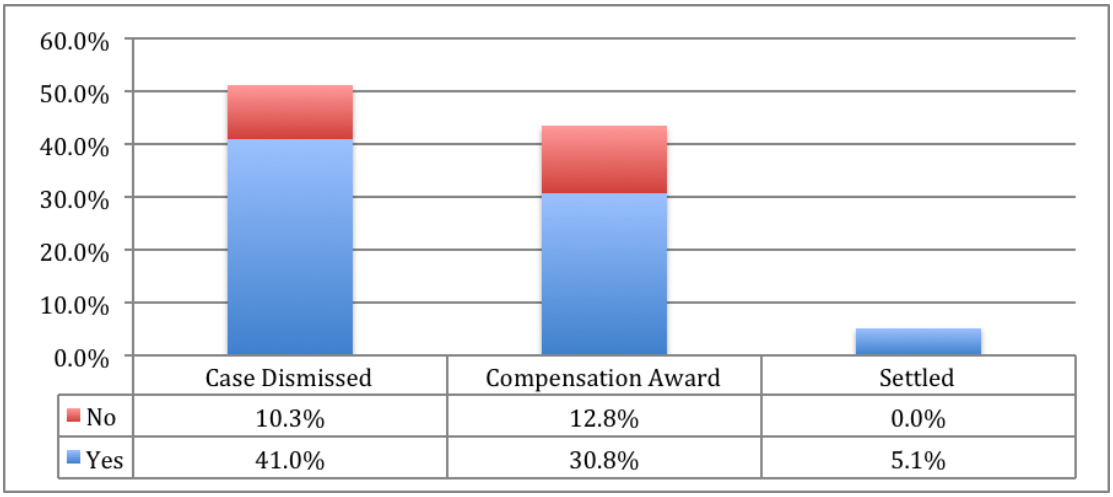


How would you score your treatment by the Employment Tribunal Service – Individual perspective?

	How would you score your treatment by the Employment Tribunal Service?				
	Very unfair	Unfair	Fair	Very fair	**Total**
Respondent	0.0%	2.6%	20.5%	2.6%	**25.6%**
Claimant	5.1%	0.0%	5.1%	2.6%	**12.8%**
Observer	0.0%	0.0%	38.5%	23.1%	**61.5%**
Total	**5.1%**	**2.6%**	**64.1%**	**28.2%**	**100.0%**

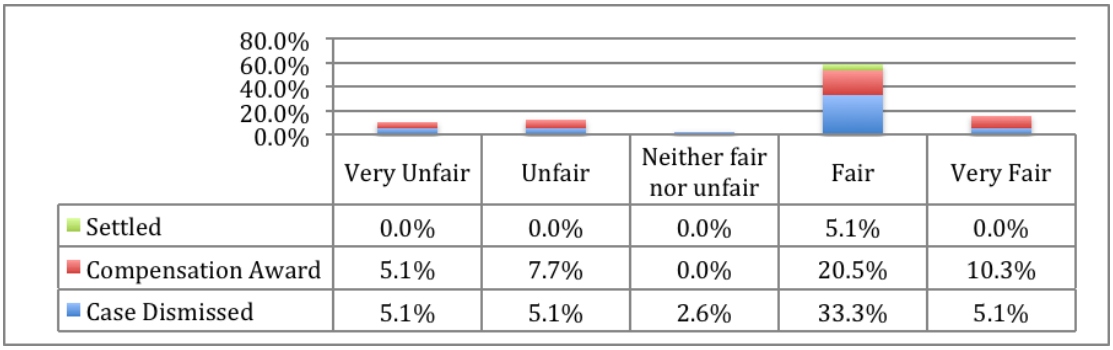
Questionnaire correlation data

Tribunal Decision * Do you believe the process followed by the tribunal was fair? Cross tabulation



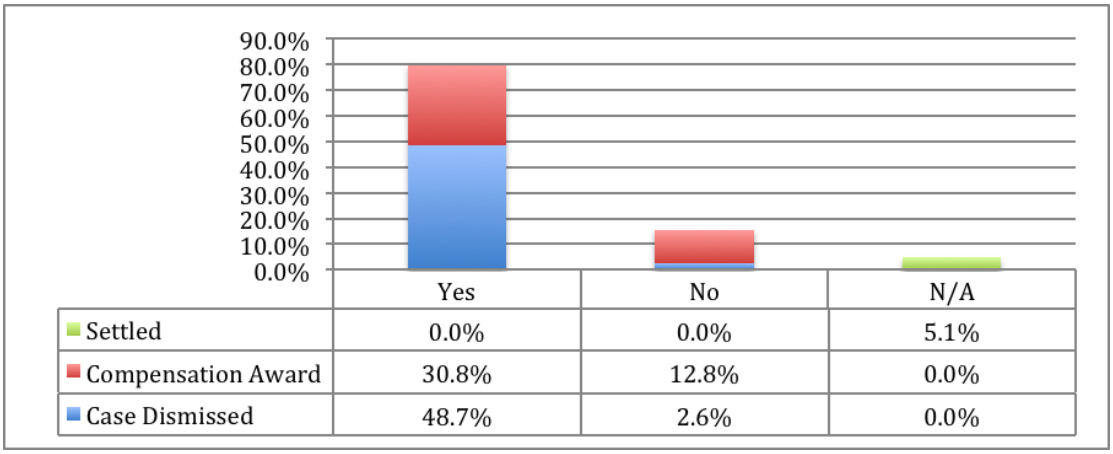
	Case Dismissed	Compensation Award	Settled
No	10.3%	12.8%	0.0%
Yes	41.0%	30.8%	5.1%

Tribunal Decision * How would you score the process followed by the tribunal? Cross tabulation



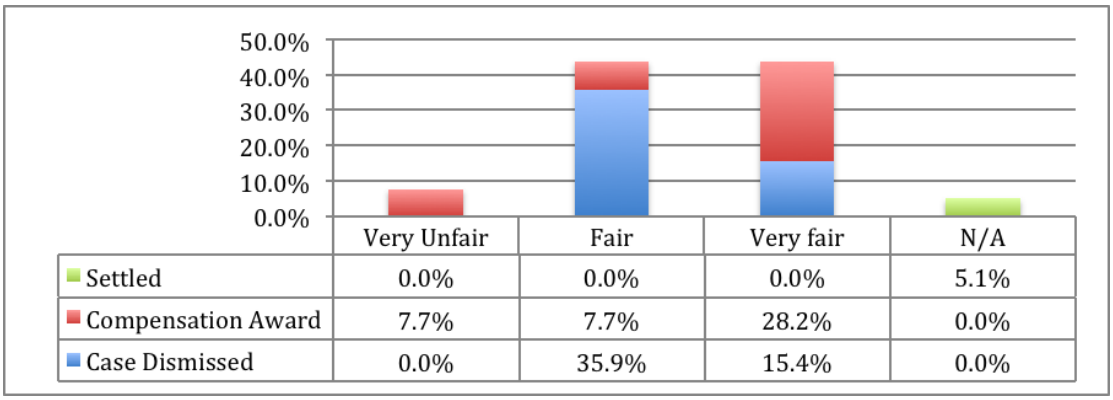
	Very Unfair	Unfair	Neither fair nor unfair	Fair	Very Fair
Settled	0.0%	0.0%	0.0%	5.1%	0.0%
Compensation Award	5.1%	7.7%	0.0%	20.5%	10.3%
Case Dismissed	5.1%	5.1%	2.6%	33.3%	5.1%

Tribunal Decision * Do you believe the decision by the tribunal was correct? Cross tabulation



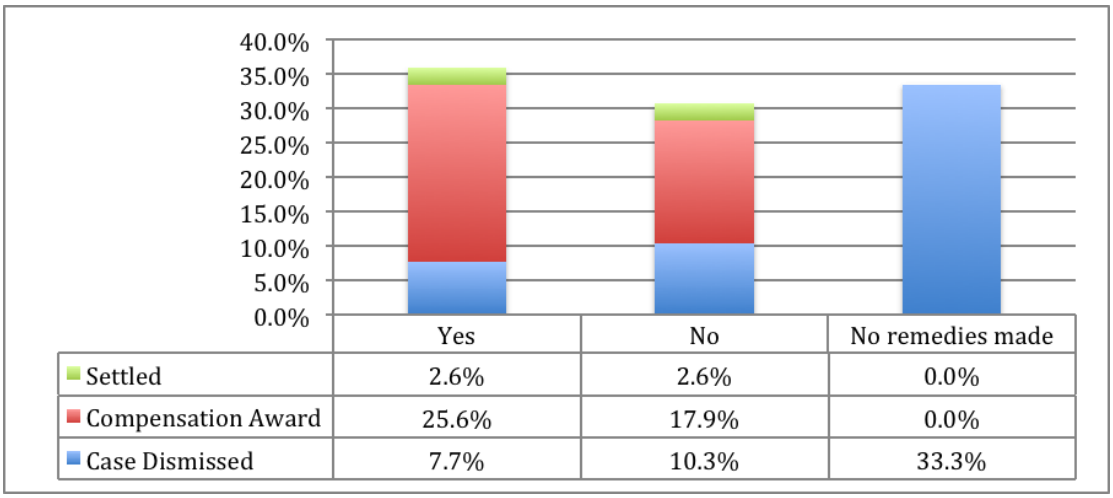
	Yes	No	N/A
Settled	0.0%	0.0%	5.1%
Compensation Award	30.8%	12.8%	0.0%
Case Dismissed	48.7%	2.6%	0.0%

Tribunal Decision * How would you score the decision by the Employment Tribunal Service? Cross tabulation



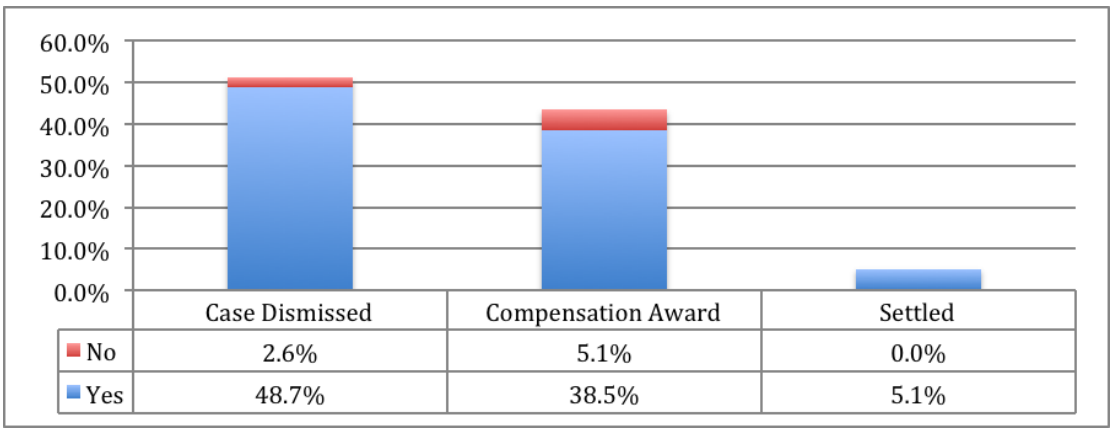
	Very Unfair	Fair	Very fair	N/A
Settled	0.0%	0.0%	0.0%	5.1%
Compensation Award	7.7%	7.7%	28.2%	0.0%
Case Dismissed	0.0%	35.9%	15.4%	0.0%

Tribunal Decision * Do you believe the remedies made by the tribunal were fair? Cross tabulation



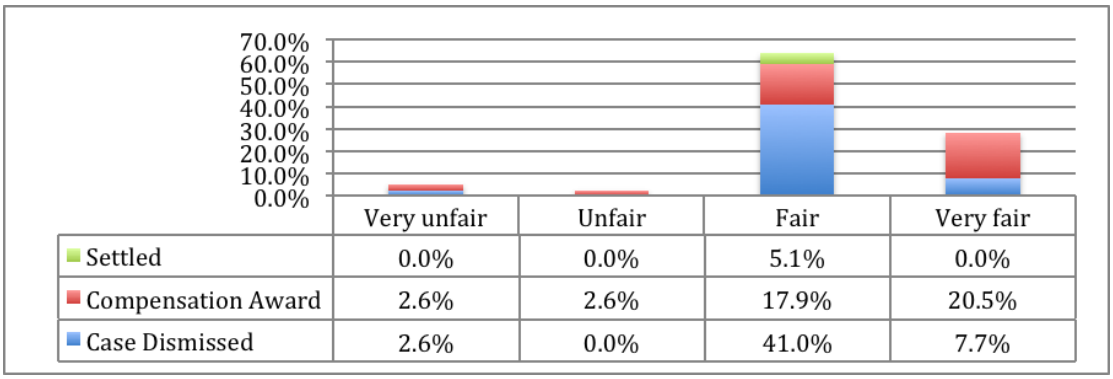
	Yes	No	No remedies made
Settled	2.6%	2.6%	0.0%
Compensation Award	25.6%	17.9%	0.0%
Case Dismissed	7.7%	10.3%	33.3%

Tribunal Decision * Do you feel that you were treated fairly during the tribunal process? Cross tabulation



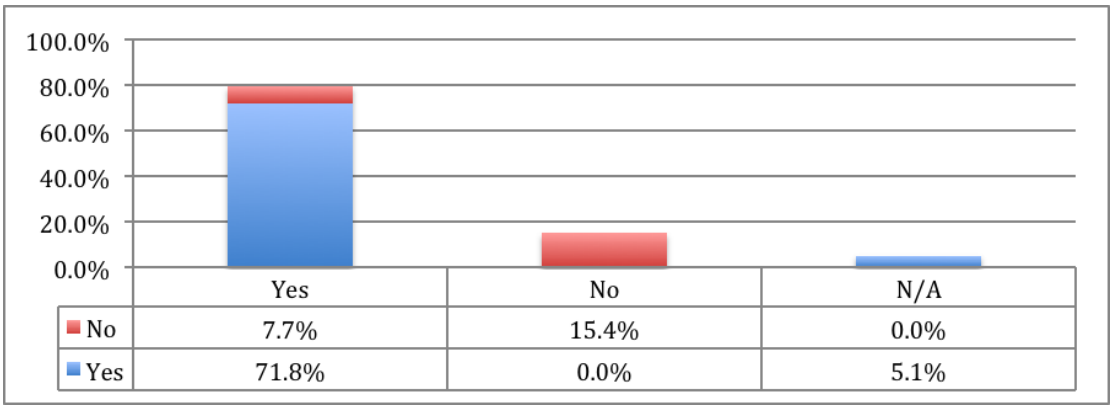
	Case Dismissed	Compensation Award	Settled
No	2.6%	5.1%	0.0%
Yes	48.7%	38.5%	5.1%

Tribunal Decision * How would you score your treatment by the Employment Tribunal Service? Cross tabulation



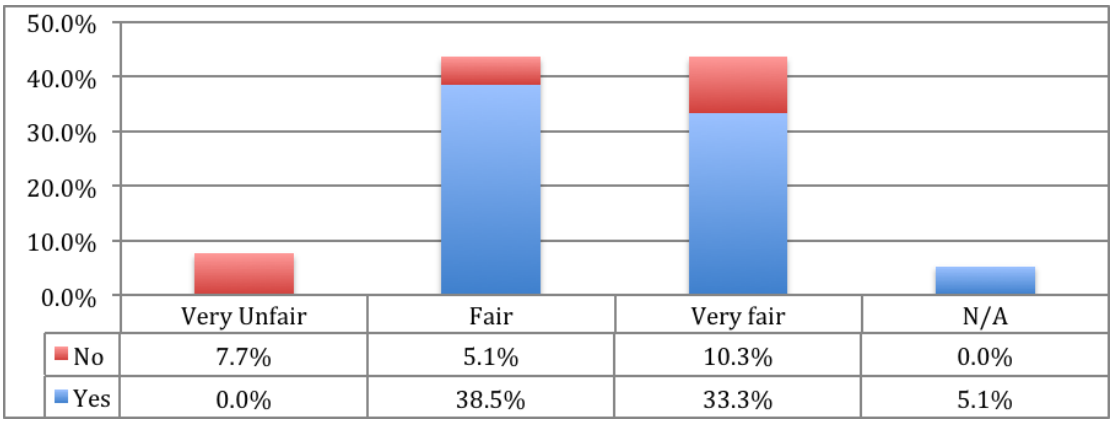
	Very unfair	Unfair	Fair	Very fair
Settled	0.0%	0.0%	5.1%	0.0%
Compensation Award	2.6%	2.6%	17.9%	20.5%
Case Dismissed	2.6%	0.0%	41.0%	7.7%

Do you believe the process followed by the tribunal was fair? * Do you believe the decision by the tribunal was correct? Cross tabulation



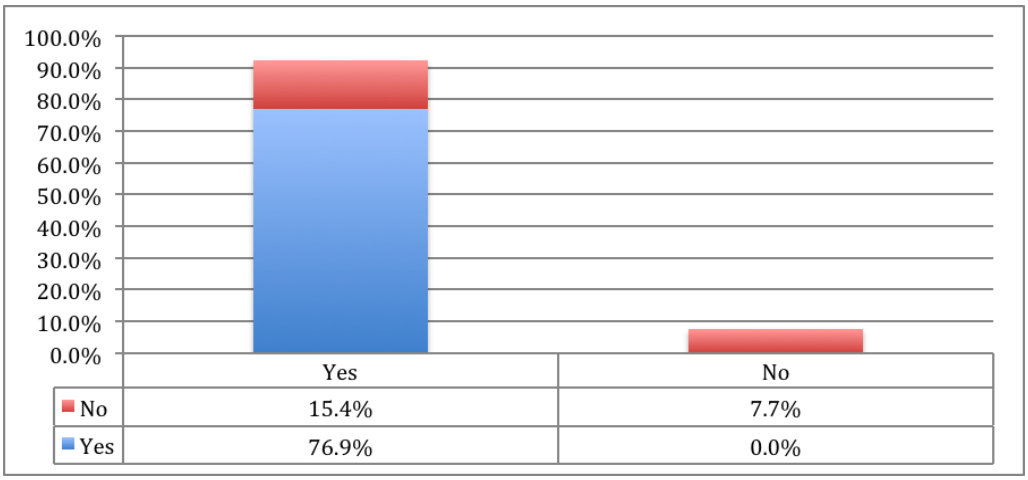
	Yes	No	N/A
No	7.7%	15.4%	0.0%
Yes	71.8%	0.0%	5.1%

Do you believe the process followed by the tribunal was fair? * How would you score the decision by the Employment Tribunal Service? Cross tabulation



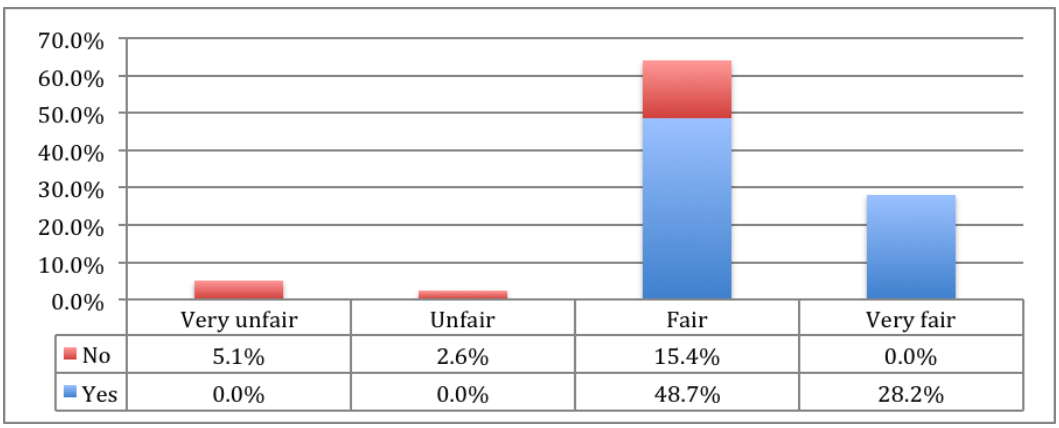
	Very Unfair	Fair	Very fair	N/A
No	7.7%	5.1%	10.3%	0.0%
Yes	0.0%	38.5%	33.3%	5.1%

Do you believe the process followed by the tribunal was fair? * Do you feel that you were treated fairly during the tribunal process? Cross tabulation



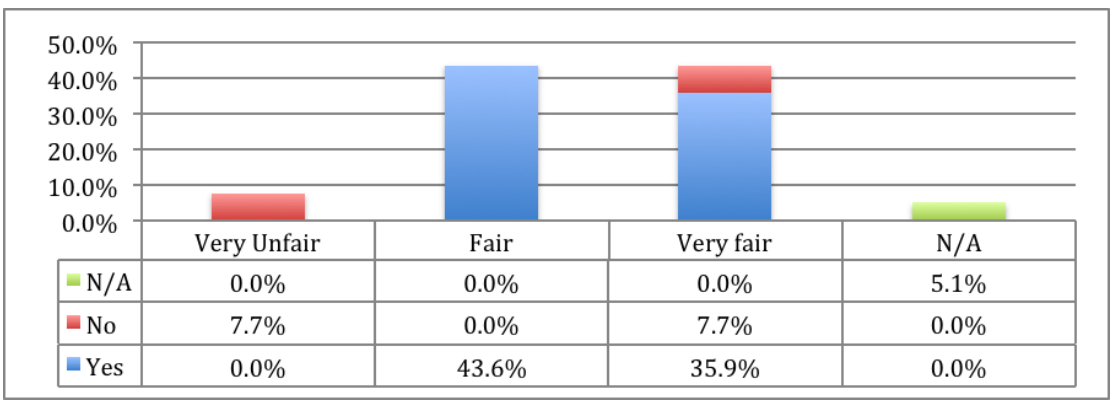
	Yes	No
No	15.4%	7.7%
Yes	76.9%	0.0%

Do you believe the process followed by the tribunal was fair? * How would you score your treatment by the Employment Tribunal Service? Cross tabulation



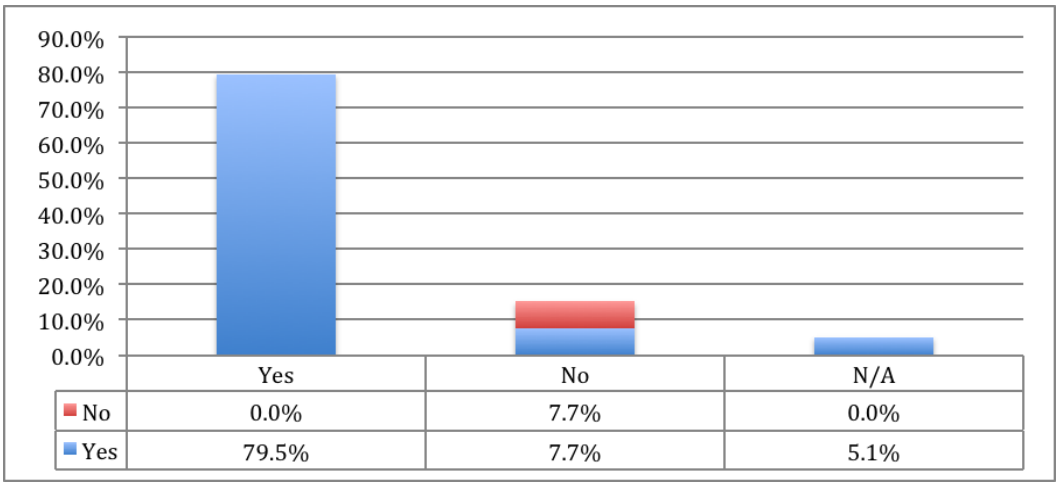
	Very unfair	Unfair	Fair	Very fair
No	5.1%	2.6%	15.4%	0.0%
Yes	0.0%	0.0%	48.7%	28.2%

Do you believe the decision by the tribunal was correct? * How would you score the decision by the Employment Tribunal Service? Cross tabulation



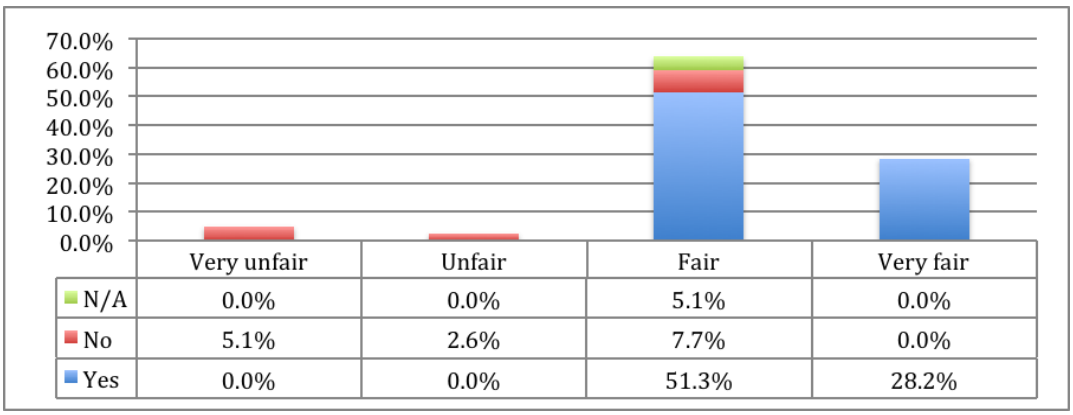
	Very Unfair	Fair	Very fair	N/A
N/A	0.0%	0.0%	0.0%	5.1%
No	7.7%	0.0%	7.7%	0.0%
Yes	0.0%	43.6%	35.9%	0.0%

Do you believe the decision by the tribunal was correct? * Do you feel that you were treated fairly during the tribunal process? Cross tabulation



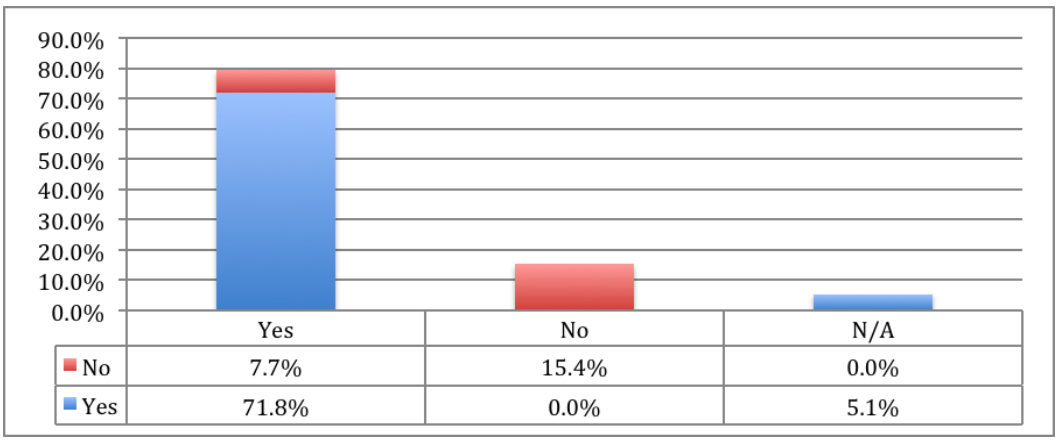
	Yes	No	N/A
No	0.0%	7.7%	0.0%
Yes	79.5%	7.7%	5.1%

Do you believe the decision by the tribunal was correct? * How would you score your treatment by the Employment Tribunal Service? Cross tabulation



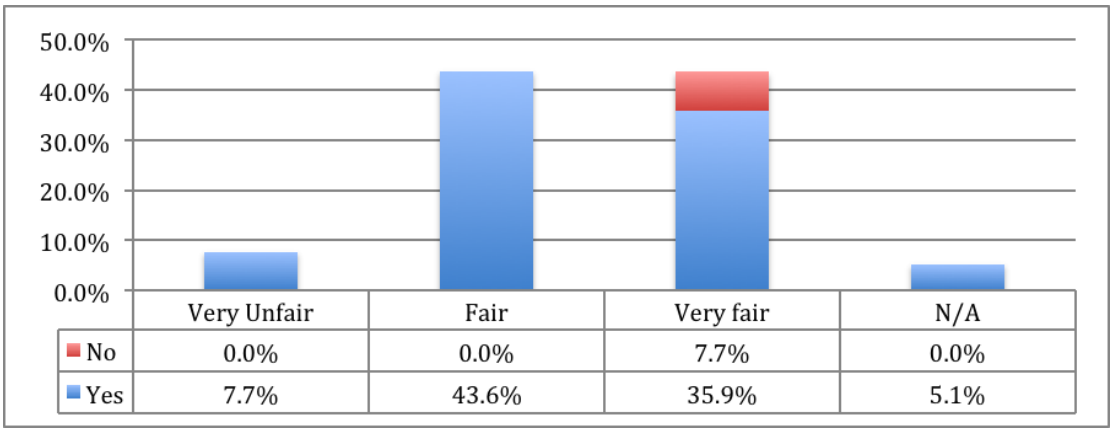
	Very unfair	Unfair	Fair	Very fair
N/A	0.0%	0.0%	5.1%	0.0%
No	5.1%	2.6%	7.7%	0.0%
Yes	0.0%	0.0%	51.3%	28.2%

Do you believe the decision by the tribunal was correct? * Do you believe the process followed by the tribunal was fair? Cross tabulation



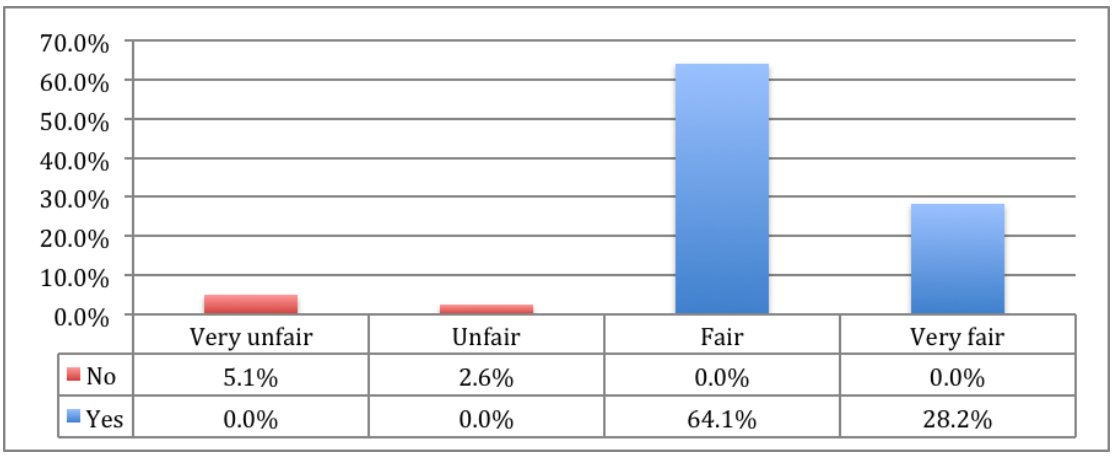
	Yes	No	N/A
No	7.7%	15.4%	0.0%
Yes	71.8%	0.0%	5.1%

Do you feel that you were treated fairly during the tribunal process? * How would you score the decision by the Employment Tribunal Service? Cross tabulation



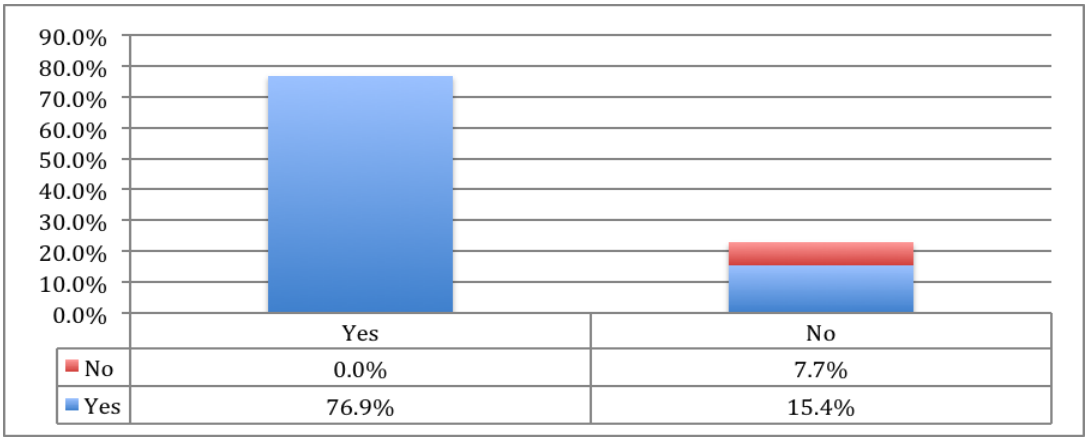
	Very Unfair	Fair	Very fair	N/A
No	0.0%	0.0%	7.7%	0.0%
Yes	7.7%	43.6%	35.9%	5.1%

Do you feel that you were treated fairly during the tribunal process? * How would you score your treatment by the Employment Tribunal Service? Cross tabulation



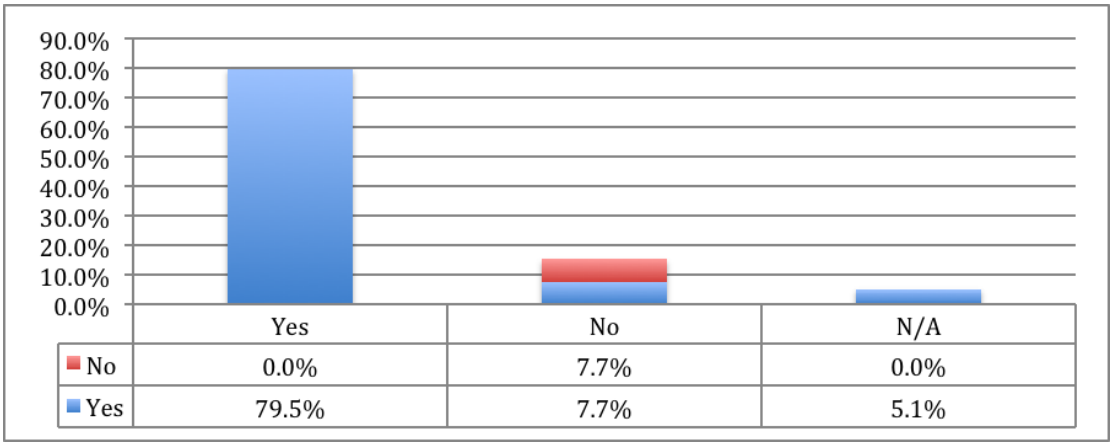
	Very unfair	Unfair	Fair	Very fair
No	5.1%	2.6%	0.0%	0.0%
Yes	0.0%	0.0%	64.1%	28.2%

Do you feel that you were treated fairly during the tribunal process? * Do you believe the process followed by the tribunal was fair? Cross tabulation



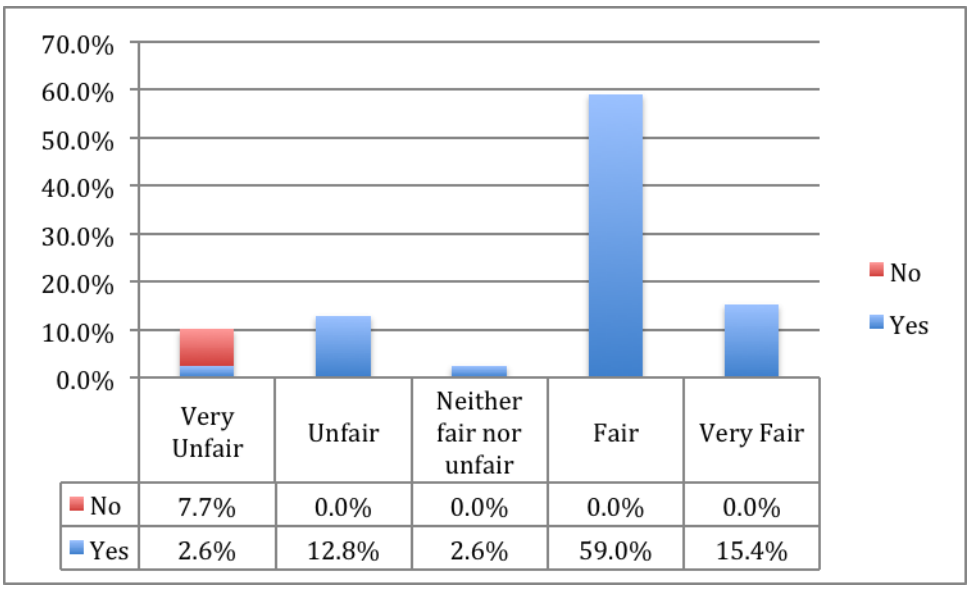
	Yes	No
No	0.0%	7.7%
Yes	76.9%	15.4%

Do you feel that you were treated fairly during the tribunal process? * Do you believe the decision by the tribunal was correct? Cross tabulation



	Yes	No	N/A
No	0.0%	7.7%	0.0%
Yes	79.5%	7.7%	5.1%

Do you feel that you were treated fairly during the tribunal process? * How would you score the process followed by the tribunal? Cross tabulation



	Very Unfair	Unfair	Neither fair nor unfair	Fair	Very Fair
No	7.7%	0.0%	0.0%	0.0%	0.0%
Yes	2.6%	12.8%	2.6%	59.0%	15.4%