EMPLOYMENT EQUALITY LAW IN IRELAND – CLAIMANTS, REPRESENTATION AND OUTCOMES

MICHELLE O'SULLIVAN AND JULIET MACMAHON

Michelle O'Sullivan

Lecturer in Industrial Relations

Department of Personnel and Employment Relations

Kemmy Business School

University of Limerick

Limerick

Ireland

☎+353-61-234660; Fax: +353-61-213188; Michelle.Osullivan@ul.ie

Juliet MacMahon

Lecturer in Human Resource Management & Industrial Relations

Department of Personnel and Employment Relations

Kemmy Business School

University of Limerick

Limerick

Ireland

☎+353-61-213149; Fax: +353-61-213188; Juliette.McMahon@ul.ie

EMPLOYMENT EQUALITY LEGISLATION IN IRELAND – CLAIMANTS, REPRESENTATION AND OUTCOMES[1]

Abstract

This paper seeks to identify, for the first time, trends in claimant use of the Irish Employment Equality Acts 1998-2008. Specifically, we examine types of claimant representation, the sectoral origin of claims and the outcomes of equality cases. Our findings are based on an analysis of 434 employment equality cases decided by the Equality Tribunal in the seven-year period 2001-2007 and interviews with key informants from equality bodies and trade unions. We find that there is a high failure rate of complainants' cases, that success rates vary across types of representation and that a disproportionate number of claimants are from the public sector.

[1] The authors would like to thank the anonymous reviewer for their helpful contribution.

Introduction

The decline in collective bargaining and the increase in the role of employment law in regulating workplace relations has been a trend noted in a number of countries[2]. Ireland too has experienced a decline in unionisation and collective bargaining and an increase in individual employment law. In the period 1970-2007, 40 employment laws or amended laws were introduced[3]. Weakening collective bargaining and increasing juridification means that the law provides less of an auxiliary function to the collective bargaining system, and more of a regulatory function by providing the substantive rules which govern terms and conditions of employment[4]. It could be argued that increased legislation has partly substituted for the traditional functions of trade unions and that employees are increasingly reliant on legislation and individualised voice procedures/mechanisms[5]. This does not mean that there is no place for unions; rather that more of union officials' time is being taken up representing individuals on legal issues[6]. There is limited research available on the role and success of trade unions and other actors as representatives of employees in employment law cases to third parties. It has been argued in the Irish context that trade unions have struggled to come to terms with employment law and that claimants

[2]T. Colling 'What Space for Unions on the Floor of Rights? Trade Unions and the Enforcement of Statutory Individual Employment Rights' (2006) 25 ILJ 140-160; K.G. DauSchmidt. and C.L. Brun *Individual Bargaining, Collective Bargaining and Protective Legislation: Determining the Terms and Conditions of Employment in the Modern American Employment Relationship* in JILPT Report no. 1. (Japan: Japan Institute for Labour Policy and Training, 2004); C. Barnard *Reconsidering the Mechanism to Regulate Working Conditions in Light of Diversified and Individualised Employees and Declining Labour Unions* JILPT Report No.1. (Japan: Japan Institute for Labour Policy and Training, 2004); S. Drinkwater and P. Inghram 'Have Industrial Relations in the UK Really Improved', (2005) 19 *Labour: Review of Labour Economics and Industrial Relations* 373-398; A. Pollert 'The Unorganised Worker: The Decline in Collectivism and New Hurdles to Individual Employment Rights' (2005) 34 ILJ 217-238.

[3] Derived from www.irishstatutebook.ie

[4] See O. Kahn-Freund 'Industrial Relations and the Law – Retrospect and Prospect' (1969) 7 BJIR 301-316.

[5] W. Brown, S. Deakin, D. Nash and S. Oxenbridge 'The Employment Contract: From Collective Procedures to Individual Rights' (2000) 38 BJIR 611-629.

[6] E. Heery 'Union Workers, Union Work: A Profile of Paid Unions Officer in the United Kingdom' (2006) 3 BJIR 445-471.

with solicitors as their representative have been more successful in cases to third parties. This paper provides an opportunity to examine the representation of claimants in the area of Irish equality law. We analyse 434 decisions of the Equality Tribunal under the Employment Equality Acts 1998-2008 between 2001 and 2007 and analyse who claimants are represented by and what success varying representatives have. In addition to examining representation issues, the study provides the first analysis of two other key areas of interest. We examine the sectoral origin of equality claims to investigate if certain sectors tend to have higher equality claims than others and we analyse the redress awards made by the Equality Tribunal and discuss whether they can be considered dissuasive. These issues are explored using the database of equality decisions and also with findings from interviews with key informants. We interviewed senior officials from three trade unions and the Irish Congress of Trade Unions, senior representatives of the Equality Tribunal and the equality promotion agency, the Equality Authority. We begin our analysis by reviewing the extant research on representation in employment law cases. We then outline the methodology in more detail before synopsising the Irish institutional environment and explain the key features of the Employment Equality Acts 1998-2008. This is followed by the results and discussion.

Representation in Employment Cases

Traditionally, trade unions were the first port of call for many employees with employment related difficulties[7]. The decline in unionisation has left a representation gap for mostly private-sector employees and they must look to more varied sources

[7] Though, as pointed out by L. Dickens 'Gender, Race and Employment Equality in Britain: inadequate strategies and the role of industrial relations actors' (1997) 28 IRJ 287, trade unions and collective bargaining regulation "have served often to reinforce rather than challenge inequalities".

for employment information and assistance. Abbott's[8] comments on the British context are also pertinent here: that developments such as growth in part-time employment, feminisation of the workforce and the emergence of a 'post modern' economy "are likely to result in worker representation becoming increasingly fragmented, with trade unions being only one of many industrial relations actors providing advice and representation to employees". Abbott's work on the Citizens Advice Bureaux in Britain highlights its increasingly important role in advising individuals[9]. Similarly, in Ireland, the Irish Citizens Information Service has had an increase in its employment advice provision. In 2005, it received 90,000 employment queries; up from 50,000 in 2001[10]. While the Irish Citizens Information Service can represent individuals in employment law cases, its role in this regard is limited due to resourcing restrictions and the fact that it views itself as primarily an information-provision body. Thus, in addition to trade unions, the most common type of representation in employment cases in Ireland is private legal representation.

The annual reports of State third parties reveal that solicitors are more likely to be representatives of claimants in certain forums than others. Private legal representation of employees has been in excess of 70 percent in unfair dismissals cases in the Employment Appeals Tribunal (EAT)[11] since 2000[12]. In Britain, there has been an increase in the use of professional advisers/representatives and particularly solicitors

[8] B. Abbott 'The new shop stewards: the Citizens Advice Bureaux' (1998) 20 *Employee Relations* 267.
[9] B. Abbott 'Determining the significance of the Citizens Advice Bureaux as an industrial relations actor' (2006) 28 *Employee Relations* 435-438.
[10] K. Holland 'Growing number not obtaining rights in workplace, finds report' (2006) Irish Times
[11] The EAT is a statutory body responsible for investigating claims under most individual employment laws such as wages, unfair dismissals, maternity etc.
[12] J. Wallace and K. Molyneaux *The Persistence of Legalism in the Employment Appeals Tribunal: Explaining the Obvious* (2007) Paper presented at the Annual Irish Academy of Management Conference Belfast 8.

and barristers in Employment Tribunal cases[13] but their presence is less than in the Irish equivalent, the EAT. Perhaps unsurprisingly, there is much less presence of solicitors in the Labour Court (primarily an industrial relations dispute resolution body) than in the EAT, even in individual rights-based claims heard by the Court. Employers used legal representation in the Labour Court in 19 percent of dismissal cases from 2000 to 2007 while employees had legal representation in 10 percent of dismissal cases[14]. In contrast, employees had a trade union representative in 42 percent of cases. Similarly, previous research on the Employment Equality Act 1977 found that trade unions represented almost a half of claimants in cases under the Act between 1978 and 2000 while only 8 percent of claimants had private legal representation[15].

A key but under researched issue which arises in studying representation is whether it has an effect on the outcome of a case. The Free Legal Advice Centres have commented that, given the absence of civil legal aid in Ireland, an unrepresented complainant in the Equality Tribunal is at a substantial disadvantage but this has not been tested to date[16]. There has been some research in recent years on the success particularly of legal representation. Research on unfair dismissals claims to the Irish EAT found that of those individuals who engaged legal representation, 60 percent were successful in their claim. The research also found that "those who did hire legal representation were more likely to receive compensation as a result of winning their

[13] P.L. Latreille, J.A. Latreille and K.G. Knight 'Making a difference? Legal representation in Employment Tribunal cases: evidence from a survey of representatives' (2005) 34 ILJ 310-312.
[14] J. Wallace *Comparison of the Treatment of Dismissals Cases by the EAT and the Labour Court* (2008) Paper presented at the Annual Irish Academy of Management Conference Dublin City University 12.
[15] M. Quinn 'Trade Union, Gender and Claims' (2004) 6 *Gender and Organization* 648-667.
[16] Department of Enterprise, Trade and Employment *Report of Review Group on the Functions of the Employment Rights Bodies (Volume 1)* (Dublin: Department of Enterprise, Trade and Employment, 2004) 33.

case (55.8% compared to 38.5%) and that this compensation was likely to be significantly higher…"[17]. Darcy and Garavan[18] conclude that "…it is clear that hiring legal expertise increases one's chances of success considerably". Similarly, in British Employment Tribunal cases, Latreille *et al.*[19] found that legal representation increased an applicant's chances of success and even more so in the case of employers. In addition, applicants with legal representation were likely to achieve higher compensation levels than those with other types of representation. Darcy and Garavan are critical of Irish trade unions ability to deal with employment law, commenting that

> "while employers and employer representative bodies … have been quick to come to terms with the law and the use of legal representation, trade unions have been slow to do so … The fact remains that trade unions have failed to promote legal services to their membership in the same way that employer bodies… have so successfully done" [20].

As Darcy and Garvan's research did not include equality law, this paper provides the first opportunity to examine how trade unions have fared as representatives in equality cases. The paper also analyses, in relation to equality cases, whether unrepresented claimants are at a disadvantage and whether the findings of Darcy and Garavan and Latreille *et al.* in regard to legal representation are replicated in equality.

Methodology

There are obvious methodological difficulties with concluding that a particular type of representation has an effect on a Tribunal decision given the complexities of cases and

[17] C. Darcy and T. Garavan *Unfair Dismissal - Insights into the Employee's Experience of the Employment Appeals Tribunal* (2006) Paper presented at the Annual Irish Academy of Management Annual Conference University College Cork 10.
[18] Ibid at p 11.
[19] P.L. Latreille et al, *op cit* (2005) 317.
[20] C. Darcy and T. Garavan, *op cit* (2006) 16.

legislation, the fact that claimants may change their representative and the fact that deciding bodies do not indicate whether representatives have an influence on the processing or outcome of a case. We can only use the limited available data i.e. Tribunal decisions, to examine whether successful cases tend to have a certain type of representative. No data is available which traces the representation of a claimant throughout the life of the equality issue. Our data is based on those representatives named by the Equality Tribunal has having represented claimants at the Tribunal hearing. The cases under examination were those investigated and decided on by the Equality Tribunal in the seven-year period 2001-2007, amounting to 434[21]. They do not include claims that were settled at mediation as mediated agreements are unpublished. We have deciphered the following data from the published decisions: the gender of the claimant, the economic sector in which they worked, the type of representation, the level of success they attained and the redress awarded in cases.

Following the analysis of Equality Tribunal decisions, we conducted semi-structured interviews with informed actors. As a key focus of this paper is trade unions' representation of claimants in equality cases, we interviewed trade union officials rather than private legal representation on their views of the equality legislation and on their experience of processing cases through the Equality Tribunal. We interviewed senior trade union officials from three trade unions - the Irish Bank Officials Association (IBOA), Mandate and the Communications Workers Union (CWU). The unions represent a cross section of public and private sector employees: the IBOA represents private sector banking employees, Mandate represents employees mostly in the retail and bar trades and the CWU represents employees in

[21] A small number of cases were referred under the Employment Equality Act 1977 and the Anti-Discrimination (Pay) Act 1974

state, semi-state and privately owned organisations in the postal, telecommunications and call centre sectors. In addition, the data revealed that Mandate was initially very active in taking equality cases against retail firms, representing claimants in over a third of decided equality cases between 2001 and 2003 – but after 2003, this activity dropped off. An additional aim of interviewing the Mandate union official was to ascertain the reasons for the change in activity levels. As the Irish Congress of Trade Unions is the umbrella body for unions in Ireland, we interviewed a senior representative of its Equality Section to give a broader union perspective on the equality legislation and equality issues. We also interviewed two representatives of the Equality Tribunal to illuminate further issues revealed by the results and to gain an insight into the processing of cases in the Tribunal. As the Equality Authority is the statutory body responsible for promoting the equality legislation and has statutory power to represent claimants, we interviewed a representative of the Legal Section of the Equality Authority. The next section outlines the key elements of the Employment Equality Acts 1998-2008 supplemented by a brief outline of the institutional context.

Employment Law Institutions and Employment Equality Legislation in Ireland

The Irish institutional landscape for resolving employment disputes has grown in a somewhat piecemeal and confusing fashion. Two bodies mostly deal with industrial relations disputes - the Labour Court and the Labour Relations Commission – though both can have individual rights-based disputes referred to them also. The Labour Relations Commission's main function is to provide a conciliation service while the Labour Court issues generally non-binding recommendations. Another two bodies are primarily responsible for hearing cases under individual employment law - the Rights

Commissioners[22] and the EAT. Most of the claims they hear are taken under unfair dismissals, payment of wages and terms of employment legislation. Neither the Rights Commissioners nor the EAT hear equality claims. Prior to the Employment Equality Act 1998, equality cases were heard by Equality Officers of the Labour Relations Commission but the 1998 Act brought significant changes to equality law and equality institutions. The Employment Equality Act 1998 came into force in October 1999[23] and was subsequently amended by the Equality Act 2004. These Acts repealed the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act 1977. These 1970s Acts prohibited discrimination in certain areas of employment on the grounds of sex and marital status. The Employment Equality Acts 1998-2008 are more far reaching, prohibiting discrimination on a wide range of areas of employment on nine grounds. They also provided the first definitions in Irish law of sexual harassment and indirect discrimination.

The Employment Equality Act 1998 Act created a new institution to hear equality cases, the Office of the Director of Equality Investigations, later renamed the Equality Tribunal[24] under the Equality Act 2004. The Equality Tribunal is the primary body for hearing equality cases though discriminatory dismissal cases can be processed, if a claimant wishes, under unfair dismissals legislation. However, the Employment Equality Acts 1998-2008 explicitly prohibit someone who has been dismissed from seeking redress under the equality acts if they have already referred the case under unfair dismissals legislation and either a Rights Commissioner has made a recommendation or a EAT hearing has begun. In addition to the Equality Tribunal,

[22] The Rights Commissioners operate under the auspices of the Labour Relations Commission but their functions are different and separate.
[23] See S. Mullally 'Mainstreaming equality in Ireland: a fair and inclusive accommodation?' (2006) 21 *Legal Studies* 99-115.
[24] The term Equality Tribunal will be used rather than Office of the Director of Equality Investigations.

claimants who wish to make a claim under the equality legislation on the gender ground have the option of taking the case directly to the Circuit Court.

As in Britain[25], enforcement of the equality legislation in Ireland primarily rests with the individual. With the exception of equal pay claims, claimants must submit cases to the Equality Tribunal within six months from when the discrimination occurred or when the last episode in a chain of discrimination occurred. The Tribunal may allow a claimant to submit a case within 12 months if there is reasonable cause for non-adherence to the six month limit. The Tribunal has the power to dismiss a complaint without a hearing at any stage if the Tribunal Director believes that the complaint has been made in bad faith or is frivolous, vexatious, misconceived or relates to a trivial matter. The Equality Tribunal has two mechanisms for dealing with claims of discrimination: mediation and investigation. An opt-out system exists in regard to mediation whereby if the Director considers that a case could be resolved by mediation and if neither party objects, it will be referred to a Mediation Officer. Successful mediation results in a private written agreement between the parties which is legally binding and is enforceable through the Circuit Court. If mediation is unsuccessful or either party withdraws from it, the case may proceed to investigation, once requested by the claimant. The claimant must make a statement/submission of their complaint and the Tribunal will request a submission from the employer in response. However, there is no obligation on an employer to provide a response or to provide one of a particular length. This may mean that an employer will know the nature of the claimant's case but the claimant may learn little of the employers' defence prior to a hearing. An Equality Officer will be assigned to the case and a

[25] L. Dickens 'The Road is Long: Thirty Years of Equality Legislation in Britain' (2007) 3 BJIR 463-494.

hearing will be arranged. Information disclosed at mediation cannot be disclosed during a subsequent investigation by the Equality Officer without both parties' consent and the Mediation Officer will not pass on any information obtained at mediation to an Equality Officer. Decisions of the Equality Officer may be appealed to the Labour Court within 42 days of the decision[26]. If there is no appeal of an Equality Officer's decision, it becomes legally binding and may be enforced through the Circuit Court.

At the end of 2008, the Equality Tribunal had a Head of Equality, a Head of Mediation, eight Employment Equality Officers, eleven Mediation Officers and an in-house legal advisor. Five of the Mediation Officers are also Employment Equality Officers. The officers are civil servants recruited through a civil service-wide competition. A legal qualification is not a requirement of the job but is desirable and most of the current officers do have a legal qualification (interviewee B, Equality Tribunal). Once recruited, officers are provided with on-the-job equality and mediation training. The Mediation Officers must spend a proportion of the year in training as this is a requirement for accreditation to the Mediators Institute of Ireland (interviewee B, Equality Tribunal).

The Employment Equality Acts 1998-2008 also provide for an agency, the Equality Authority, whose function is primarily equality promotion rather than equality enforcement[27]. The Equality Authority has mostly a persuasive role, promoting employment equality through the provision of information, providing consultancy to firms on equality and researching equality issues. Unlike for example in Britain,

[26] Under the Employment Equality Act 1998, the Labour Court could hear discriminatory dismissal cases in the first instance but this jurisdiction was removed in the Equality Act 2004.
[27] The Equality Authority was not a new body; its predecessor was the Employment Equality Agency.

where the Equality and Human Rights Commission has the power to undertake inquiries, the Equality Authority's only enforcement powers are the ability to initiate proceedings in relation to discriminatory advertisements and it can provide assistance to individuals, who believe that they have been discriminated against, to take proceedings under the equality legislation. Where such assistance is granted the claimants are represented by in-house Equality Authority solicitors or by a firm of solicitors acting on behalf of the Authority.

Mediation

The mediation service in the Equality Tribunal started in December 2000. In 2008, 68 percent of cases referred to mediation were resolved and approximately 90 percent of cases referred to mediation only had one mediation session, after which agreement was reached or the case was considered unresolvable by mediation (Equality Tribunal Annual Review 2008). The Tribunal notes that in regard to successful mediations, on average in 2008, it took less than 8 months from the date of referral to mediation to the date the agreement was signed (Equality Tribunal Annual Review 2008). While the focus of this paper is on equality decisions and not on mediation, interviewees did make some comments on their experience of using the mediation service. The IBOA official believed that the mediation was a useful service which allowed for a possibility of agreement (interview, IBOA). The Mandate official had similar views and commented that mediation can be a *wake-up call for some employers* which encourages them to resolve cases (interview, Mandate). A representative from the Equality Authority noted that mediation can be particularly useful for claimants who are still employed and therefore have an ongoing relationship with an employer. However mediation was not considered to be a particularly useful option where the

respondent had refused to engage or respond to efforts to resolve the dispute or where the person attending for the respondent did not have authority to make decisions (interview, Equality Authority).

Referral and Withdrawal of Cases

While the Equality Tribunal investigated and decided 434 cases between 2001 and 2007, 668[28] additional cases were closed because they were inadmissible, settled or withdrawn during the course of the investigation or were dismissed for non-pursuit[29]. The high number of withdrawn cases is not unique to the Equality Tribunal and is a common occurrence in the other employment law cases in the EAT and in equality cases in the British Employment Tribunals[30]. In an interview with the Equality Tribunal, it noted that the high number of withdrawals is a source of frustration because

> *They involve a huge workload for Equality Officers…unlike the courts, Equality Officers put a lot of work into cases before hearings, with questions prepared and holes in submissions identified…. They also contribute to the delay in hearing cases* (interviewee A, Equality Tribunal).

There are a number of possible reasons for the high number of withdrawals. First, it could be argued at least some cases are referred to the Tribunal as a negotiating mechanism, used to pressurise an employer into settling. This leverage is strengthened by the fact that Equality Tribunal *decisions are public in most instances so employers might want to settle because of this* (interviewee A, Equality Tribunal). Conversely, research in Britain has highlighted the effect of employer behaviour on persuading claimants to withdraw a case, for example by refusing to concede a claim and by

[28] This figure is for the period 2001 to 2006 as figures for 2007 were unavailable at time of writing.
[29] Equality Tribunal Annual Reports.
[30] EAT Annual Reports; L. Dickens *op cit* (2007) 479.

hiring an experienced legal representative[31]. A second possible reason for the withdrawals, according to a Tribunal representative, is that *people don't realise how long cases can take* (interviewee A, Equality Tribunal). Referral to decision typically takes approximately three years (interview, Equality Authority). Contributing to this lengthy process is the heavy workload of the Tribunal combined with a "significant turnover of staff"[32] (Equality Tribunal, 2007). Other contributory factors to the length of the process are the requirement for the parties in a case to provide written submissions, that the parties are given an opportunity to respond to submissions, the possibility that Equality Officers may undertake work inspections in equal pay cases[33] and the possibility that the Tribunal *may have to refer to counsel for advice on issues where there is an absence of precedence* (interviewee A, Equality Tribunal). According to an Equality Authority representative, the requirement for written submissions can be a factor in claimants not proceeding. While the representative understood that the lodging of submissions indicated claimant's commitment to pursuing a case, *this requirement can dissuade the more vulnerable complainants such as people with literacy problems, complainants whose English is not their first language or who have certain disabilities, from pursuing their case* (interview, Equality Authority). Regarding time delays, the Equality Authority representative noted the issue as a source of concern and commented on the challenges delays present in representing claimants, for example, ensuring that witnesses are still available by the time the case goes to investigation (interview, Equality Authority). The ICTU representative has similar concerns over time delays, commenting that an

[31] P.L Latreille et al., *op cit* (2005) 316.
[32] Staff turnover has been high in recent years as it is in the process of decentralising (interviewee A, Equality Tribunal). The Government programme of decentralisation was initiated with the aim of moving State bodies out of the capital, Dublin, to other parts of the country.
[33] In equal pay claims, an Equality Officer may have to conduct a work inspection in which he/she visits the workplace to examine whether the claimant and comparator are doing 'like work'.

issue for their affiliated unions is that the *Tribunal has never been able to hear cases in a timely manner* and as a result *the legislation has been damaged* (interview, ICTU). Officials of the IBOA, Mandate and CWU also highlighted their strong concern over the time delays in processing a case to investigation. Indeed, the Mandate official noted that the time delay is the *biggest barrier* to referring cases to the Tribunal and said that union officials may try to settle a case through negotiation with an employer or by referring the issue to another third party such as a Rights Commissioner rather than have to wait for a Tribunal hearing (interview, Mandate). In addition, the Mandate official thought that the delay in hearing cases also encourages some employers to seek an early settlement of an issue (interview, Mandate).

Gender and Grounds

Between 2001 and 2007, the number of completed cases involving female claimants was significantly higher than the number involving male claimants (Table 1). Despite the fact that the Employment Equality Acts 1998-2008 widened the scope of equality law beyond sex and marital status, it appears that of the completed cases, equality claims are still predominated by women. In addition, gender is the most cited ground in claims. During interviews, the Equality Authority representative said that *while people have the option of taking a case to the Circuit Court on the gender ground, most complainants generally do not do so due to the risk of costs* whereas there is no risk of cost in the Equality Tribunal (interview, Equality Authority). Age accounts for the next highest number of cited grounds while other 'growth areas' are disability and race, though they lag well behind gender. A number of the other grounds were cited with very little frequency (Table 2). One of these, religion, has a particularly strong exemption under the Employment Equality Acts 1998-2008. Under the legislation, a

religious, educational or medical institution under the control of a religious body shall not be taken to discriminate if it gives more favourable treatment on the religion ground or it takes action to prevent an employee/prospective employee from undermining its religious ethos. The ICTU representative regards this as *giving a licence to discriminate* and notes that teaching trade unions in particular have lobbied to change the exemption (interview, ICTU). The representative noted that there were recent indications from the Department of Justice, Equality and Law Reform that it would be willing to examine the religious exemption, in light of commissioned reports[34] into allegations of sexual abuse of children in religious institutions, but no progress has been made yet.

Table 1 Number of Male and Female Claimants, 2001-2007

	Male	**Female**	**Total**
2001	8 (20%)	33 (80%)	41
2002	19 (34%)	37 (66%)	56
2003	32 (54%)	27 (46%)	59
2004	30 (40%)	46 (60%)	76
2005	28 (45%)	34(55%)	62
2006	23 (38%)	38 (62%)	61
2007	35 (47%)	40 (53%)	75
Total	175 (41%)	255 (59%)	430 (100%)

Note: 3 cases were unknown and 1 case involved men and women
Source: Derived from Equality Tribunal decisions

Table 2 Number of Grounds Cited in Cases, 2001-2007

	Gender	Age	Disability	Race	Marital status	Family status	Religion	Sexual orientation	Traveller
2001	28	0	3	2	9	1	0	1	0
2002	36	13	6	1	10	8	1	1	0
2003	30	12	5	8	6	5	2	4	2
2004	32	22	10	12	6	5	4	3	0
2005	23	18	12	9	9	5	5	2	0
2006	28	19	13	9	4	6	4	0	0
2007	37	22	10	14	8	8	2	4	1

[34] Commission of Investigation (2009) *Report into the Catholic Archdiocese of Dublin*; Commission of Inquiry into Child Abuse (2009) Final Report

Total	214 (38%)	106 (19%)	59 (11%)	55 (10%)	52 (9%)	38 (7%)	18 (3%)	15 (3%)	3 (1%)

Note: The totals exceed the number of cases as many cases have multiple grounds
Source: Derived from Equality Tribunal decisions

Representation of Claimants

Four types of claimant representatives were identified from Equality Tribunal decisions:

(i) trade unions

(ii) private legal representation (solicitors and barristers)

(iii) Equality Authority legal representation (in-house solicitors or a firm of solicitors acting on behalf of the Authority)

(iv) 'other' representation such as a friend or consultant.

Officials from the IBOA, Mandate and CWU noted that their members are represented in the Tribunal by union officials and not by solicitors. Solicitors/barristers would only be used by the unions for legal opinion or as a representative if the equality case was referred to the Circuit Court (interview, Mandate, IBOA, CWU). Table 3 shows that the Equality Authority has represented a relatively small number of claimants in decided cases. The Employment Equality Acts provide that applicants may apply to the Equality Authority for assistance in taking proceedings. The CEO of the Authority considers each request for assistance and decides whether to grant it or not. A claimant who is dissatisfied with the decision of the CEO may seek a review of the decision by the Equality Authority's Board. The decision on whether to grant assistance by the CEO/Board is based on a list of criteria which include the following (information supplied directly by Equality Authority):

- That the matter raises an important matter of principle
- Where case law has not been developed

- The likelihood of success
- The likelihood the proceedings will have a beneficial impact for others/change in employers practices
- The capacity of the claimant to represent themselves/obtain other representation
- The severity of the matters alleged
- The resources of the Equality Authority
- The cooperation/behaviour/honesty of the claimant
- The respondent's response to the claim

The Equality Authority representative noted that the likelihood of success is an important criterion. However, there are cases where claimants are assisted by the Authority even though the chances of success are low such as when the Authority believes an issue needs to be addressed, where there are inconsistencies in the law or there has been a serious injustice which needs to be highlighted (interview, Equality Authority). With regard to the claimant's capacity to get other representation, the Authority representative commented that if they are a trade union member, then the Authority would encourage them to go back to the union. There is a wide diversity in the people who seek Authority assistance but it was commented that they are frequently people who might not have had a voice and many of whom would not be in a position to proceed with their claims without the assistance of the Equality Authority (interview, Equality Authority).

In the period 2001-2007, 36 percent of claimants were not represented and the proportion of claimants with no representation generally increased over the period (Table 3). An Equality Tribunal representative commented that the type of

representative made no difference to the outcome of a case but noted that Equality and Mediation Officers are trained to be conscious of an *imbalance of power* that may result from one party having a representative and another having none (interviewee B, Equality Tribunal). For example, an Equality Officer should ensure that a claimant without a representative understands legal arguments made by an employers' solicitor and Officers may *have to take extra care listening* to non-represented parties (interviewee A and B, Equality Tribunal). Parties *without representation may also need extra time to respond to written submissions* (interviewee A, Equality Tribunal).

Of the 279 cases in which the claimant was represented, trade unions were the most common form of representative (49%). The next most common type of representative was private legal representation (30%) followed by Equality Authority legal representation (18%). As the Equality Authority has always represented a small number of claimants, it appears that the 'competition' for representation is between trade unions and private legal representation. The proportion of claimants with trade union representation generally dropped over the period while there was a general growth in private legal representation (Table 3). The pattern of representation in the Equality Tribunal contrasts with that in the EAT where the proportion of claimants with solicitors/barristers as representatives has, for many years, far outstripped those with trade union representation[35].

Table 3 Number of Cases by Claimant Representation, 2001-2007

Year	No representation	Trade union	Private legal representation	Equality Authority legal representation	Other	Total
2001	6	18	4	14	0	42
2002	14	26	7	9	0	56

[35] See EAT Annual Reports

2003	20	20	12	6	2	60
2004	30	23	14	8	1	76
2005	25	23	9	4	1	62
2006	28	14	12	7	2	63
2007	32	14	25	3	1	75
Total	155	138	83	51	7	434

Source: Derived from Equality Tribunal decisions

Table 4 shows the success rates of various forms of claimant representation. We refrain from concluding that a certain type of representative is the cause of a claimants' success or otherwise as the data do not take into account other potentially important factors in claimant success such as the type and strength of the claimants' case, the nature of the employers' defence and the employers' representation. From the cursory examination of the outcomes of cases, the Equality Authority appears to the most 'successful' (Table 4). This might be expected since the Equality Authority is the statutory body responsible for promoting equality and is strategic in the type of cases it represents. Trade unions had the next highest success rate, with success rates generally increasing until 2006, followed by a sharp drop. Private legal representatives' success rates were erratic but their two most successful years were 2006 and 2007. Claimants with no representative at a hearing were more successful overall than private legal representatives. Of course, claimants with no representative may have sought advice from trade unions or legal advisors prior to a hearing.

Table 4 Success Rates of Claimant Representation (%)

Year	Private legal representation	Trade Union	Equality Authority legal representation	Other	No representation
2001	0	16.7	57.1	0	50
2002	0	19.2	77.8	0	28.6
2003	25	20	66.7	0	20
2004	21.4	43.5	65.5	0	30
2005	22.2	39.1	50	0	8
2006	58.3	71.4	28.6	50	39.3

2007	36	57.1	33.3	0	43.8
Total Success 2001-2007	29	36.2	56.9	14.2	30.3

Note: These figures include cases which were fully or partially successful
Source: Derived from Equality Tribunal decisions

Sectoral Origin of Cases

Of the 434 cases completed by the Tribunal, 47.7 percent were against private sector companies and 47 percent were against public sector organisations (Table 5). However, the public sector disproportionately accounted for a higher number of cases when the number employed is taken into consideration. The public sector accounted for approximately 22 percent of total employment in 2007[36] but accounted for 47 percent of equality cases decided between 2001 and 2007. Within the public sector, the largest proportion of cases was against State and semi-state bodies (Table 6). A higher number of public sector organisations than private sector companies had multiple cases against them, for example, University College Dublin (6), the State training development agency, FAS, (6), the State bus service, Bus Eireann/Dublin Bus (7), the State postal organisation, An Post (4) and the Revenue Commissioners (4). The high number of claims against State bodies was the centre of a dispute regarding Government budgetary cutbacks in November 2008. The Government cut the budget of the Equality Authority by 43 percent and this led to the resignation of its CEO and half of its Board[37]. The Labour Party Spokesman on Justice, Pat Rabbitte, claimed that the reason for the budget cut was because the Department of Justice did not like

[36] Central Statistics Office (CSO) *Quarterly National Household Survey: Union Membership Q 2 2007* (Cork: CSO, 2008).
[37] The ICTU returned its representative to the Board in January 2010.

the Equality Authority representing claimants in cases against Government bodies[38]. Subsequently, the Equality and Rights Alliance[39] made a submission to the European Parliament's petitions committee arguing that EU equality legislation has been breached as a result of the cuts because the Equality Authority could not effectively fulfil its designated tasks. The Parliament's petitions committee indicated that it will write to the Government about the cutbacks[40].

Within the private sector, the services sector was the greatest source of claims - accounting for 80 percent of all private sector claims – followed by manufacturing (Table 6). Three sub-sectors accounted for over half of services sector cases: retail, financial and business services, and hotels and catering. Even though these are sub-sectors with low unionisation rates, some caution should be taken with concluding that all cases from these sectors are from non-unionised employments. For example, while the unionisation rate in the retailing sector in 2007 was 17 percent[41], over half of the cases from retailing were against large unionised chains. Indeed 40 percent of retail cases were taken against one unionised company – Tesco. Mandate represented claimants in a significant number of equality claims against retail companies between 2001 and 2003 before dropping off. A Mandate official commented that the main reason for the drop in the number of decisions was the union's increased use of the Equality Tribunal's mediation service, which resolved many cases and thus excluded

[38] M. O'Regan 'Ahern denies he decided to 'kill off' Equality Authority' *Irish Times* (2008) available at [http://www.irishtimes.com/newspaper/ireland/2008/1114/1226408634195.html], accessed 19th November 2008.
[39] The request was made jointly by the Equality and Rights Alliance, the European Anti-Poverty Network Ireland and the European Network Against Racism Ireland. The Equality and Rights Alliance is an alliance of civil society groups, including the ICTU, to ensure the promotion of human rights, equality and social justice.
[40] A. Healy 'EU to Ask About Cuts to Equality Authority' *Irish Times* (2010) available at [http://www.irishtimes.com/newspaper/ireland/2010/0601/1224271588030.html], accessed 2nd June 2010.
[41] Central Statistics Office. *Quarterly National Household Survey: Union Membership*, Q2 2007.

the need for a Tribunal decision (interview, Mandate). Much of the remainder of cases in the services sector came from 'personal services' such as security and cleaning.

Table 5 Sectoral Origin of Cases, 2001-2007

Year	Public	Private	Voluntary	Unknown	Total
2001	17 (40.5%)	24 (57.1%)	1 (2.4%)	0	42 (100%)
2002	24 (42.9%)	27 (48.2%)	2 (3.6%)	3 (5.4%)	56 (100%)
2003	26 (43.3%)	30 (50%)	1 (1.7%)	3 (5%)	60 (100%)
2004	37 (48.7%)	35 (46.1%)	3 (3.9%)	1 (1.3%)	76 (100%)
2005	37 (59.7%)	21 (33.9%)	1 (1.6%)	3 (4.8%)	62 (100%)
2006	31 (49.2%)	30 (47.6%)	2 (3.2%)	0	63 (100%)
2007	32 (42.7%)	40 (53.3%)	3 (4%)	0	75 (100%)
Total	204 (47%)	207 (47.7%)	13 (3%)	10 (2.3%)	434 (100%)

Source: Derived from Equality Tribunal decisions

Table 6 Sectoral Origin of Completed Equality Tribunal Cases, 2001-2007

Sector/Industry	Number of cases (percentage in parentheses)
Public	**204 (47%)**
State/semi-state bodies/agencies	62 (14.3%)
Health boards/hospitals	37 (8.5%)
Government departments	32 (7.4%)
Primary/secondary schools	25 (5.7%)
Third level education	25 (5.7%)
City councils	23 (5.3%)
Private	**207 (47.7%)**
Manufacturing	40 (9.2%)
Services	167 (38.5%)
Retail	45 (10.4%)
Financial & business services	22 (5.1%)
Hotels & catering	20 (4.6%)
Transport and communications	10 (2.3%)
Security	8 (1.8%)
Printing/publishing	7 (1.6%)
Recruitment agency	6 (1.4%)
Distribution	6 (1.4%)
Private health	6 (1.4%)
Other services	26 (6%)
Unknown private	11 (2.5%)
Charity/professional body/voluntary	**13 (3%)**
Unknown	**10 (2.3%)**
Total	**434**

Source: Derived from Equality Tribunal decisions

Claimant Success

Out of the 434 cases completed by the Equality Tribunal, 65 percent of claimants lost their cases outright and there was partial failure in a further 11 percent of cases (Table 7). An extensive examination of the Tribunal decisions reveals that claimants partly succeeded/failed typically in the following scenarios: (i) where a claim is made on multiple grounds, an Equality Officer may find that discrimination occurred on one ground but not another (e.g. there was gender discrimination but not race discrimination) and (ii) where a claim is made for discrimination and victimisation, an Equality Officer may find that no discrimination occurred but there was victimisation[42].

The high failure rate of complainants' cases is significant particularly when compared to other employment law cases. For instance, in 2007, the claimant success rate in the Equality Tribunal was 35 percent while 54 percent of claimants were successful in direct claims heard by the EAT[43]. During interviews, the Equality Tribunal representatives commented on the failure rate. First, it was noted that the higher claimant success rate in the EAT may be a deceptive comparison in that many claimants win unfair dismissal cases in the EAT on procedural grounds but not on substantive issues so that they technically win but may get very low/no award (interviewee B, Equality Tribunal). In regard to failure rate of claimants in equality cases, a Tribunal representatives commented on *the burden of proof…claimants have to show a prima facie case of discrimination which the respondent must rebut*

[42] It is unlawful for an employer to penalise an employee for taking action around the enforcement of the Employment Equality Acts 1998 – 2008. Victimisation occurs where the dismissal or other adverse treatment of an employee is a reaction by the employer to, for example, a complaint of discrimination or proceedings by a complainant.
[43] EAT Annual Report 2007 (Dublin: EAT, 2008).

(interviewee A, Equality Tribunal). Regulations arising from the Employment Equality Act 1998 established the requirement for the claimant to establish a prima facie case of discrimination only in relation to gender discrimination cases[44]. However, this burden of proof on the claimant was in practice applied to other grounds. The Labour Court developed a test for the burden of proof in the *Southern Health Board v Mitchell*[45],

> "…a complainant must prove, on the balance of probabilities, the primary factors on which they rely in seeking to raise a presumption of unlawful discrimination. It is only if these primary facts are established to the satisfaction of the Court as being of sufficient significance to raise a presumption of discrimination, that the onus shifts to the respondent to prove that there was no infringement of the principle of equal treatment".

The practice of requiring a claimant to establish a prima facie case of discrimination on any of the grounds was subsequently regulated in the Equality Act 2004:

> "Where in any proceedings facts are established by or on behalf of a complainant from which it may be presumed that there has been discrimination in relation to him or her, it is for the respondent to prove the contrary" (Equality Act 2004).

The initial requirement for a claimant to show a *prima facie* case of discrimination contrasts with unfair dismissals cases in the EAT where a dismissal is automatically considered to be unfair until the employer proves otherwise. Another reason for the high failure rate in equality cases is, according to the Equality Tribunal, the inappropriate use of the equality legislation. A representative commented that

[44] The Employment Equality Act 1998 (Burden of Proof in Gender Discrimination Cases) Regulations, 1998, SI 337/2001.
[45] Southern Health Board v Mitchell [2001] ELR 201.

> *Equality Officers often find that a claimant may not have been treated fairly with regard to a condition of employment but that it didn't amount to discrimination and that the dispute should have gone [somewhere else] rather than the Tribunal* (interviewee A, Equality Tribunal).

Cases also often fail because statutory time limits have expired (interviewee, Equality Tribunal). According to the Equality Tribunal, there are three typical scenarios where people do not refer claims within the six month time limit. The first scenario is a harassment case, whereby it may take some time for someone to realise that they have been discriminated against or harassed. The second is discriminatory dismissal, where people can be delayed in referring a case because of the time spent of in *trying to get another job and back on their feet* (interviewee A, Equality Tribunal). A third scenario is where a claimant has used a company's internal grievance procedures and these have taken longer than six months to exhaust though this can be a legitimate reason to allow a time extension on a case (interviewee A, Equality Tribunal).

Table 8 shows that claimants from the private sector overall enjoyed higher success rates than public sector claimants. A possible reason for the lower success rates in public sector organisations is that state or semi-state organisations may have more sophisticated equality policies for addressing complaints. A Equality Tribunal representative commented that *the public sector usually have a code of practice and an investigatory mechanism* whereas *private sector employments, like hotel and catering, may have a code of practice but they are not known or used* (interviewee A, Equality Tribunal). The CWU representative noted that in state/semi-state organisations where it has membership, they tend to have good dignity and respect policies and have internal mechanisms like joint conciliation forums and mediation to deal with equality issues (interview, CWU).

Table 7 Complainants' Success Rates (percentage in parentheses), 2001-2007

Year	Succeeded Outright	Failed Outright	Partly succeeded/failed	Total
2001	12 (28.6%)	28 (66.7%)	2 (4.8%)	42 (100%)
2002	11 (19.6%)	40 (71.4%)	5 (8.9%)	56 (100%)
2003	13 (21.7%)	44 (73.3%)	3 (5%)	60 (100%)
2004	15 (19.7%)	48 (61.8%)	13 (17.1%)	76 (100%)
2005	6 (9.8%)	47 (77%)	9 (13%)	62 (100%)
2006	20 (29.5%)	32 (52.5%)	11 (18%)	63 (100%)
2007	26 (34.7%)	43 (57.3%)	6 (8%)	75 (100%)
Total	**103 (23.4%)**	**282 (65.4%)**	**49 (11.1%)**	**434 (100%)**

Source: Derived from Equality Tribunal decisions

Table 8 Success Rates of Claimants from Public/Private Sectors, 2001-2007

Year	Successful/partly successful as percentage of total private cases	Successful/partly successful as percentage of total public cases
2001	25	41.2
2002	25.9	29.2
2003	29.7	19.2
2004	31.4	37.8
2005	33.3	21.6
2006	56.7	41.9
2007	52.5	31.3
Total	37.2	31.4

Source: Derived from Equality Tribunal decisions

Redress

The Equality Tribunal has the power to issue a number of forms of redress including compensation, arrears in pay, and orders for particular courses of action. Dickens notes that the emphasis in Employment Tribunal equality decisions in Britain "has been on compensating the individual rather than requiring unfairly discriminating employers to change their behaviour"[46]. This is somewhat replicated in the Irish context where compensation and awards for loss of earnings were the most common

[46] L. Dickens *op cit* (2007) 480

forms of redress issued by the Equality Tribunal between 2001 and 2007 (130 cases). However, the Tribunal has also made orders for actions which do seek to change the employers' behaviour though it is difficult to assess how effective these are. The most common orders are for employers to introduce or review equality policies (30 cases), to improve selection and promotion procedures (26 cases) and to train employees in equality or interviewing (19 cases).

Awards are supposed to be proportionate, effective and dissuasive[47]. There are compensation ceilings in the equality legislation of two years salary for employees and €12,697 for non-employees. A representative from the Equality Authority questioned the dissuasiveness of the compensation ceilings particularly for low income earners, for example, *in the case of harassment/sexual harassment two employees, one high paid and one low paid, could be awarded vastly different amounts of compensation even though they may have experienced the same severity of harassment* (interview, Equality Authority). Similarly, the Mandate official commented that the level of awards is not a sufficient penalty to deter some employers from discriminating (interview, Mandate).

Determining average levels of compensation awarded by the Equality Tribunal is problematic given that more than one compensation amount may be awarded to multiple complainants in a case. In addition, the Equality Tribunal can make an award of compensation for the effects of discrimination and an award for loss of earnings[48]. The results in Table 9 are based on compensation awarded (not loss of earnings) to one individual in each case. Of those claims that were successful, the average amount

[47] See Vincent Kavanagh v Aviance UK Limited DEC-E2007-039

[48] An important consequence for a complainant of being awarded loss of earnings and compensation is that the former are taxable but the latter is not.

of compensation awarded could not be considered high. The average compensation in 2001 was £14,375 while the average between 2002 and 2007 was €11,689 (Table 9). The averages in some years are inflated by one or two cases with very high amounts of compensation. For example, there was an award of €127,362 made in one case in 2004. If this was removed from the analysis, then the average compensation in 2004 would fall to €9,609. Similarly, if one award of £85,000 was removed from 2001, the average for the year would drop by almost half to £7,954. A union official with Mandate commented on the *quite low awards* issued by the Tribunal particularly given the length of time an individual has to wait for a hearing and decision and the significant level of input by an individual into an equality case (interview, Mandate). While the average compensation awarded by the Equality Tribunal is much lower than the maximum allowed under the legislation, it is higher than that awarded by other forums under other pieces of employment law. For example, the average compensation awarded by the EAT in unfair dismissals cases was €8,273 in the period 2000-2006[49]. In an interview, an Equality Tribunal representative noted that there are certain types of cases that would normally attract higher compensation amounts. One is where victimisation is found to have occurred because *victimisation 'flies in the face' of the legislation and, other employees in the employment who might be discriminated against, may not take action because of the victimisation of their colleague* (interviewee A, Equality Tribunal). A second case is where it is found that the claimant has been subjected to ongoing harassment and a third is where discriminatory dismissal is found to have occurred (interviewee A, Equality Tribunal).

[49] J. Wallace *op cit.* (2008) 19.

Table 9 Compensation Awarded, 2001-2007

	2001	2002	2003	2004	2005	2006	2007	Total*
Total compensation	£172,500	€131,970	€145,000	€319,559	€121,000	€308,080	€388,816	€1,414,425
No of cases where compensation awarded	12	16	11	21	14	29	30	121
Average compensation	£14,375	€8,248	€13,182	€15,217	€8,643	€10,623	€12,961	€11,689

* The total column refers to the period 2002-2007; Irish Pounds (IR£) were used in 2001
Source: Derived from Equality Tribunal decisions

Discussion and Conclusion

The number of cases completed by the Equality Tribunal is relatively small given the size of the workforce and when compared with, for example, unfair dismissal claims[50]. We can only speculate on the possible reasons for this. The first possible reason is that companies are relatively 'discrimination free' and few employees have the need to refer a case under the employment equality legislation[51]. A second possible reason is that organisations are not discrimination free but issues or disputes as a result of discrimination are resolved at enterprise level. Thirdly, it could be argued people who experience discrimination do not take any course of action to correct it or take action short of a legal case. Indeed, research has found that 86 percent of people who reported experiencing discrimination while looking for work took no action while 48 percent of those employees who reported experiencing discrimination in the workplace took no action[52]. Fourthly, it could be argued that it takes time for a group of people to become aware of, and become accustomed to

[50] Though the number is much higher than the number of equality recommendations under the Employment Equality Act 1977 between 1978 and 2000. M. Quinn *op cit* (2004) 656.
[51] Seven percent of the population reported work-related discrimination according to H. Russell, E. Quinn, R.K. O'Riain and F. McGinnity *The Experience of Discrimination in Ireland* (Dublin: The Equality Authority/ESRI, 2008) 76.
[52] Ibid at p 65.

using, legislation. Indeed, we have shown that gender is the most frequently cited ground and this could be related to fact that claims based on sex have been allowed since 1974, providing potential claimants with a body of knowledge on the law[53].

The public sector accounted for a higher number of equality cases when the number employed in the public and private sectors is taken into account. While the available data do not provide reasons for the higher claiming behaviour of the public sector, we can surmise that the unique characteristics of the sector contribute to claiming: higher unionisation levels with union resources to take cases, greater security of employment and perhaps the resistance of public sector management to concede to claims at workplace level which could set precedence across the sector. Clearly, a disproportionately higher number of public sector employees have sought to address perceived workplace injustice through the equality legislation than private sector employees.

In terms of the representation of claimants, we find that over a third of claimants did not have representation. While the Free Legal Advice Centres commented that an unrepresented complainant is at a substantial disadvantage, we find that claimants with no representative won a greater percentage of their cases than trade unions or private legal representatives in a number of years. We noted Darcy and Garavan's argument that trade unions had been slow to come to terms with employment law. However, from the data available for this paper, we find that trade unions were the most common form of claimant representative, and that cases with union representation had overall higher success rates than private legal representation in the

[53] Alternatively, it may be that more women experience workplace discrimination than men. See Ibid at p 77.

period 2001-2007. Of course, trade unions ability to 'come to terms with the law' is not confined to their win rates in cases. Unions can be a mediating agent of law in the workplace, providing information and advice and negotiating improvements on the statutory minima[54]. Regardless of representation though, of particular significance is that the majority of complaints fail at the Equality Tribunal. We noted the requirement to establish a *prima facie case* of discrimination as being influential in this regard as well as the need to be careful in contrasting claimant success rates between the Equality Tribunal and the EAT.

The equality legislation has been effective in a number of respects. Many employers have equality policies and equality training as mechanisms to promote equality and, perhaps more so, to act as a defence in potential claims against them. The creation in 1998 of a body, the Equality Tribunal, dedicated to hearing equality issues was important as was the Tribunal's development of mediation in assisting claimants to resolve disputes in a less adversarial manner. However, there are operational challenges and we note the consensus amongst union interviewees that time delays in processing cases is a barrier to making claims. Certainly there are some unavoidable factors which contribute to Equality Tribunal delays which other third parties do not have to normally contend with, such as the legally complex nature of discrimination cases and the possibility of work inspections by Equality Officers. However, the high staff turnover of the Tribunal is an avoidable factor which has contributed to delays. The delays between referral and decision militate against the dissuasive function of equality law and can restrict potential claimants' capacity to address perceived

[54] L. Dickens and M. Hall 'The impact of employment legislation: reviewing the research' in L. Dickens, M. Hall and S. Wood (eds.) *Review of Research into the Impact of Employment Relations Legislation*. Employment Relations Research Series (2005, No. 45). London: Department of Trade and Industry, pp. 7–72; E. Heery *op cit* (2006) 453.

organisational injustice. In addition, the severity of the cuts to the Equality Authority's budget could have significant implications for its ability to represent claimants who, as noted, may not have a voice otherwise.

This paper has provided the first examination of employment equality cases in the Equality Tribunal and the findings raise issues which warrant further research such as why claimants withdraw their case, the type of representation used by employers at the Tribunal and the effect of employer behaviour and representation on cases. Also of interest in the current environment is whether the economic recession will have an effect on the numbers of equality cases and awards of the Tribunal and if the Equality Authority's role as a representative will diminish.