Queen Mary College,
University of London

Faculty of Laws

THE EFFECTIVENESS OF REPRESENTATION AT TRIBUNALS

Report to the Lord Chancellor

Hazel Genn
Reader in Socio-Legal Studies
and
Yvette Genn
Research Officer

Lord Chancellor's Department

Price £5.00

July 1989

THE EFFECTIVENESS OF REPRESENTATION AT TRIBUNALS

Report to the Lord Chancellor

Hazel Genn
Reader in Socio-Legal Studies
Queen Mary College
University of London

and

Yvette Genn
Research Officer
Queen Mary College
University of London

ACKNOWLEDGEMENTS

This research was commissioned by the Lord Chancellor's Department. Over the last two years we have received a great deal of support and encouragement from members of the Department, and we are grateful to those who, at various times, have been involved in the research. In particular, Brenda Griffith-Williams took an active role in negotiating access, which greatly eased the early stages of the research. More recently Alan Drummond, Michael Ellis and Mark Ormerod have been closely involved and we are grateful for their help and constructive comments.

This research could not have been conducted without the co-operation of a large number of people concerned with the administration of the tribunals studied. We are grateful to all those who granted us access to tribunal case files, who helped us in the process of data collection, and who, without exception, devoted time and trouble in assisting the research. We are especially grateful for the help of Judge John Byrt, Sir David West-Russell, David Neve, and Paul Pudlo, in granting access to the tribunals for which they are responsible.

We are, of course, grateful to all of the tribunal chairs, members, and adjudicators, who allowed us to observe their hearings, and who gave up their time to be interviewed.

Among those concerned with the administration of social security appeal tribunals, we are particularly grateful to the regional chairmen in the areas covered in the study: John Tinnion, Ian Harrison, Barry Stephens, John Martyn, and Ray Sim. We are also grateful to the administrative staff in the London, Leeds, Birmingham and Cardiff regional offices, especially Ted Smith, Valerie Hare, Ray Ruddy, Chris Wright, Sue Herd, Mr Powell, and the very many clerical staff in all of the offices who helped us to find files and coffee.

We received an enormous amount of help from Adjudicators and staff in the immigration appeal offices in London and we are grateful to Chief Adjudicator Mark Patey, Mrs Lloyd and all of the administrative staff at Thanet House. In Birmingham we were assisted by Richard Gilbert and John Bright, Jean Whittaker and Sandra Tandy. We are also grateful to Mr Parkes and Mrs Wonacott in Leeds.

In the London industrial tribunal offices, we were greatly assisted by Peter McCarthy, Ted Pleasance, Ann Toperoff and all the administrative and clerical staff at Woburn Place. In the Leeds office we were assisted by Andrew Firth and then by John Profitt, Lee Murphy, Sylvia Distance and all of the administrative staff. We are also grateful to David Powell, Jill Edwards and all of the administrative staff who contended with our prolonged presence in

Cardiff. In the Birmingham office, we were helped by Mr Smith, Mr Watkins and the administrative staff.

We recognise the extent to which we added to the burdens of the mental health review tribunal clerks in London, who accommodated us in their busy and overcrowded offices during a long period of data collection, and who made the necessary arrangements for us to attend tribunal hearings. We would especially like to mention Kathy Harte, Janet Innes, and John Toumey. We remember with sadness the help given to us by David Lear who tragically died during the course of the project. We are grateful to Derek Stott and Mrs Kodak in the Liverpool office, and to Mike Chapman and the administrative staff in Nottingham.

Peter Adeane and his colleagues at the Department of Health and Social Security facilitated the administration of a postal questionnaire to DSS claimants. We are grateful to them for their helpful comments and to the staff in local offices who distributed the questionnaires for us.

We were enthusiastically assisted by Nigel Broadbent, David Freedman, Ann Giles, Steven Gummer, Wendy Healey, Alex Jackson, Sarah Leigh, Andrea Mendelsohn, and Dennis Scully, all of whom were involved in data collection. We would particularly like to record our thanks to John Baldwin for helping us to locate such excellent research assistants and for making office space available to us in Birmingham.

Paul Fenn, Research Fellow at the Centre for Socio-Legal Studies, Oxford University, conducted the multiple regression analysis which appears in Chapter 3 of the Report, and devised the weighting procedures adopted in Chapter 2. We are grateful for his help and advice on the statistical analysis.

We received encouragement and advice from Charles Blake, Genevra Richardson, Michael Bryan and Robert Baldwin who acted as Consultants on the project. Among the many others who freely gave advice and assistance during the course of the project we are grateful to Oliver Thorold for his help and, not least, to Daniel Appleby for his advice, counselling and support.

Most importantly we are grateful to the many advice agencies, solicitors and barristers who gave their time, often under pressure, to have their views recorded.

Many appellants, applicants and sponsors gave very frank and often lengthy interviews and allowed us to observe their tribunal hearings, and we are most grateful to them all.

We are grateful to Professor Graham Zellick, Head of the Law Department at Queen Mary College, for his assistance in dealing with the College administration in the early stages of the research, and for his continuing support. We would also like to thank Jan Clarke

and all those in the Finance Department at Queen Mary College who efficiently and cheerfully dealt with financial matters.

Finally, we are indebted to Julie Spanton at Queen Mary College, for her willingness to help, no matter how tedious the job.

HGG
YNG
Queen Mary College
May 1989

CONTENTS

LIST OF TABLES

CHAPTER 2

CHAPTER 5

CHAPTER 1. INTRODUCTION

1. Background to the Research

The stimulus for this research project can be found in the continuing debate concerning the desirability of extending Legal Aid to tribunals. Although legal or lay representation is permitted before most tribunals, the ability of applicants and appellants to obtain representation is restricted, first, by the fact that Legal Aid is available only for a few specific tribunals and secondly, that alternative sources of free advice and representation are limited, and geographically unevenly located. The ability of applicants to obtain such free legal assistance as is available under the Green Form Scheme is also limited in part by ignorance of the scheme, which is reflected in the low take up rate for tribunal matters (cf Baldwin and Hill 1988).

In 1979 evidence about the need for representation at tribunals was put before the Royal Commission on Legal Services. In response to this evidence, the Commission concluded that the present position was "unsatisfactory" in relation to procedure at tribunals and in the availability of advice and assistance to tribunal applicants (Benson Report 1979). Amongst other things, the Commission recommended that a review should be undertaken of the procedures of all the main tribunals; that encouragement and resources should be given to lay agencies providing advice and representation; and that Legal Aid should be available in circumstances where legal representation is needed because of the difficulty of law or of fact.

In June 1986 the Lord Chancellor's Department Scrutiny of Legal Aid recommended that more co-ordinated provision for tribunal representation be made. The scrutiny envisaged a planned approach to advice and tribunal representation which would make "effective use" of the skills of lay advisers and solicitors. The Legal Aid Scrutiny was followed by a White Paper in March 1987 which stated that there would be no general extension of publicly funded tribunal representation, at least until research into the effectiveness of tribunal representation had been completed.

This Report is the result of research commissioned by the Lord Chancellor's Department into the effectiveness of representation at tribunals, following the Legal Aid Scrutiny.

2. Representation at Tribunals and Administrative Justice

Although specialist courts have existed in Britain for centuries, it was the growth of the Welfare State in the early twentieth century that led to the creation of many new procedures for adjudicating special issues. The National Insurance Act of 1911 established a British social insurance scheme and a series of adjudicating bodies. Tribunals were established as informal, specialist courts where adjudication in the ordinary courts was thought to be unnecessary (cf Wraith and Hutchesson 1973 for a detailed history of the development of tribunals). Tribunals now deal with a huge number of issues and subject areas. According to the Council on Tribunals, the number of cases dealt with by tribunals has for several years been 'some six times the number of contested civil cases disposed of at trial before the high court and county courts together." Tribunals hear over a quarter of a million cases annually, not including those that are withdrawn or settled before a tribunal hearing. (Council on Tribunals Annual Report 1985/6). Tribunals are supervised on a general basis by the Council on Tribunals, but there is no common procedure followed by these bodies, no general appeal process or appellate body. Some tribunal decisions are appealable to Ministers, and others to courts or other tribunals. Some tribunals have lay members, others have specialist qualifications (e.g. in medicine). Some tribunals act in a strictly judicial fashion, while others look more broadly at policy considerations.

Legal representation is allowed before the vast majority of British tribunals, but the Legal Aid system does not cover appearances before most tribunals, and accordingly private funding or free lay representation is required. The reasoning behind such restrictions on Legal Aid has been that over generous provision of legal representation might undermine the elements of speed and informality that are supposedly the principal advantages of tribunals over courts.

In the post-war years, there was a vast expansion in the number of tribunals and there was some unease about the arbitrary powers of some tribunals, and whether tribunals were an adjunct of the administration or part of the judicial system. In 1955 a Committee of Enquiry under the Chairmanship of Sir Oliver Franks was established to consider and to make recommendations on the workings of administrative tribunals. The Report of this Committee (Franks Report 1957) stated that tribunals were not appendages of Government departments, but should properly be regarded as "the machinery provided by Parliament for adjudication rather than as part of the machinery of administration."

The Committee derived three fundamental objectives for tribunals: 'openness, fairness and impartiality' (Para 41). Little help was offered, however, in explaining these terms. The Committee also described the advantages of tribunals over courts, which were said to

be their greater "cheapness, accessibility, freedom from technicality, expedition and expert knowledge." (Para. 38) The Report argued that one means of ensuring fairness would be to make intending applicants aware of their rights to appeal to tribunals. It was also recognised that some form of legal advice scheme would be necessary if people were to be in a position to take advantage of such rights.

The Franks Committee failed, however, to provide useful criteria for evaluating tribunal performance. What was offered by the Committee was not a means of judging the performance of tribunals, but a set of traditional court values, and an expectation that tribunals would both satisfy those values and offer all the advantages supposedly attaching to tribunals rather than courts. No guidance was offered on how this was to be accomplished.

Analyses of tribunals by public lawyers have addressed broad theoretical issues concerned with the functions of tribunals, their relationship to courts, the decision-making processes of tribunals and the applicability of the rules of natural justice to tribunal decisions (e.g. Farmer 1974, Fulbrook 1978). In addition to theoretical examinations of the work of tribunals, a number of empirical studies have investigated the functioning of different tribunals and evaluated their 'accessibility' and 'informality' from the perspective of applicants and appellants before tribunals. Such studies sponsored by government departments (e.g. Bell 1974 and 1975), by pressure groups and advice agencies (e.g. Lawrence 1980, Allbeson and Smith 1984, Frost and Howard 1977, Kay 1984) and by academics (e.g. Herman 1972, Adler and Bradley 1975, Dickens 1985, Blake and Gillespie 1979, Peay 1981 and 1988) have identified the extent to which certain tribunals fall short of the 'Franks' goals of accessibility and informality.

In his review of research into administrative justice, Rawlings (1986) argued that future research should take a broader approach to the assessment of administrative decision-making and adjudication. He regarded the work of Mashaw as an obvious starting point.

Mashaw defined administrative justice as: "those qualities of a decision process that provide arguments for the acceptability of its decisions" (Mashaw 1983). Using Mashaw's general approach, Sainsbury (1988) argued that in the context of DSS decision-making about social security benefits, the acceptability of decisions depends on the accuracy of the decisions and the fairness by which decisions are reached.

Applying these principles to administrative tribunals, it is possible to argue that justice (or acceptability) of tribunal decision-making may be judged in terms of the accuracy and fairness of those decisions. According to Sainsbury (1988), the accuracy of decisions depends on the collection of information and the application of

decision criteria, i.e. legal rules. Thus to be accurate, the decision-making process must be designed in such a way as to elicit the true facts of the case, and this means that the process of information collection must ensure that all that is relevant is, in practice, collected. Sainsbury also argues that the fairness of the decision-making process requires promptness of decision-making, impartiality, participation and accountability.

This formulation of the theoretical requirements of administrative justice provides a framework within which the role of representation at tribunals can be assessed empirically. In other words, it is possible to assess the extent to which the presence of representation contributes to the accuracy of tribunal decision-making, and the fairness of the process by which decisions are reached. It is believed that the concepts of accuracy and fairness constitute a more helpful set of criteria by which to judge the contribution, or effectiveness of representation in tribunals, than those offered by Franks. This analysis of the effectiveness of representation at tribunals, therefore, seeks to assess the contribution of representation to the accuracy of tribunal decisions and to the fairness of the process by which those decisions are reached.

3. The Study

The broad objectives of the research were to establish the effect of representation on the outcome of tribunal hearings, and to analyse the contribution of representation to both pre-hearing processes and hearings themselves. The underlying questions were as follows: are represented cases more likely to succeed?; and, if so, what is it about representation that causes cases to succeed, or what is it about tribunals that renders representation necessary or desirable in producing successful outcomes.

In order to address these questions, it was necessary to adopt a relatively broad perspective. Representation must be viewed as the last stage in a series of processes which begin with departmental refusal of a right, benefit or permission, or a dispute between citizens which might become the subject of a tribunal adjudication. It was therefore necessary to look not only at what occurred during tribunal hearings, but to trace the effect of advice throughout the various preliminary stages of bringing an appeal against decisions and, importantly, to consider the role of advice and representation in the negotiation and resolution of disputes before a tribunal hearing.

In seeking some answers as to why represented cases might be associated with successful outcomes to tribunal hearings, we

hypothesised several contributing factors, the significance of which might be tested empirically. These were:

1. That representatives select the most winnable cases to represent at tribunal hearings.

2. That represented applicants and appellants have better prepared cases.

3. That certain areas of law are so complex that only specialists or lawyers are capable of preparing and presenting tribunal cases.

4. That representation redresses the imbalance between the parties in adversarial hearings.

5. That representation itself, in terms of argument and advocacy, has an impact on tribunal proceedings which leads to a successful outcome for appellants and applicants.

Related issues investigated were the extent to which applicants to tribunals made use of available sources of advice, and their reasons for failing to obtain representation at hearings; whether lack of advice had an effect on the propensity to initiate appeals; and the relative effectiveness of legal and lay representation.

The approach of the study was broadly comparative involving investigation of the operation of four different types of tribunals: Social Security Appeals Tribunals (SSAT); Industrial Tribunals (IT); hearings before Immigration Adjudicators; and Mental Health Review Tribunals (MHRT).

The tribunals were selected in order to provide comparisons on the following matters:

i) Nature of dispute

The tribunals provided a comparison of disputes between citizen and citizen (Industrial Tribunals) and citizen and State (SSAT, Immigration, MHRT).

ii) Subject of dispute

The tribunals deal with claims relating to entitlement to welfare benefits, compensation for loss of employment etc; discharge from mental hospitals; and rights to enter or remain in the United Kingdom.

iii) Availability of Assistance for Legal Representation

Legal Aid is not available for appeals to SSATs or Industrial Tribunals. Legal Advice By Way Of

Representation is available for patients applying to Mental Health Review Tribunals. Representation is provided before Immigration Adjudicators and Appeals Tribunals by the Government-funded United Kingdom Immigrants Advisory Service.

In addition to the above characteristics, the selected tribunals also offered contrasts in the procedures adopted, in the proportion of applicants who are present at tribunal hearings, and the proportion of applicants who are represented at tribunal hearings. The tribunals also vary in their composition and in the provision for further appeals:

Social Security Appeals Tribunals (SSATs) are the result of the amalgamation of Supplementary Benefit Appeal Tribunals, National Insurance Local Tribunals which resulted from the Health and Social Services and Social Security Adjudication Act 1983. A tribunal consists of a lawyer chairman appointed by the Lord Chancellor sitting with two lay members appointed by the President of the Tribunals. These tribunals have their own system of appeals which lie to the Social Security Commissioners. There is an automatic right of appeal to an SSAT following an adverse decision about entitlement to benefits. A simple letter requesting an appeal is sufficient to begin the appeal process.

Immigration Adjudicators hear appeals against certain decisions of immigration officers, entry clearance officers and the Home Secretary taken under the immigration legislation 1971. Adjudicators sit alone, are legally-qualified and appointed by the Lord Chancellor. Appeals lie to a three member Immigration Appeal Tribunal.

Industrial Tribunals are three member tribunals with a lawyer chairman sitting with two representatives, of employers and employees respectively. Appeals lie to the Employment Appeal Tribunal. Applications to industrial tribunals concern a wide range of statutory employment rights as well as complaints of race or sex discrimination in employment.

Mental Health Review Tribunals consider the detention of patients in mental hospitals. The powers of the tribunals were extended by the Mental Health Act 1983. The tribunals are normally composed of a lawyer chairman, a doctor and a person who is neither a doctor nor a lawyer with relevant experience. Apart from judicial review, the only appeal is a request that the Tribunal states a special case on a point of law for consideration by the High Court.

In order to identify regional differences in outcome of tribunal hearings and patterns of advice and representation, the study was conducted on tribunals in four regional centres, except in MHRTs where tribunals in three regions were studied.

The findings of the research are based on data collected in three different ways. These were as follows:

a) Quantitative analysis of data collected from tribunal files

For each of the four tribunals, stratified random samples of tribunal case files were drawn in each region, and information relating to applicants' characteristics, type of case, presence of advice and representation, circumstances of the hearing and outcome of hearing were copied by hand from files. This information was then coded and analysed in order to provide quantitative data on patterns of advice and representation, and outcome of hearings. The breakdown of cases on which the quantitative analysis of representation and outcome of hearings was based is as follows:

SSATs 1115 cases drawn from London/Leeds/Cardiff/Birmingham
ITs 958 cases drawn from London/Leeds/Cardiff/Birmingham
Immig 1050 cases drawn from London/Leeds/Harmondsworth/ Birmingham
MHRTs 623 cases drawn from London/Liverpool/Nottingham

b) Observation of hearings

Hearings of tribunals were attended and observed in order to provide descriptive data on different approaches and procedures in the four tribunals in each region. The breakdown of hearings observed is as follows:

SSATs 289 observed hearings in London/Leeds/Birmingham Liverpool/Cardiff and N.Wales
ITs 101 observed hearings in London/Leeds/Cardiff/ Birmingham
Immig 103 observed hearings in London/Leeds/Birmingham

MHRT 15 observed hearings in London and South East region
(The number of MHRT hearings observed is low as a result of the difficulty of arranging observation, because they are not public hearings. In addition, Peay (1988) recently conducted a comprehensive study of MHRT hearings, including observations.)

c) Interviews

i) Tribunals

Interviews were conducted with 73 tribunal chairs and adjudicators using semi-structured interview schedules and/or tape recorders. In addition, we talked informally to Tribunal Presidents, Regional Chairmen, tribunal administrators and clerks. We also attended training seminars. The interviews with tribunals have been used to provide qualitative data relating to perceptions of their role, their

views regarding the need for representation, their approach to unrepresented appellants, and their opinions of representatives.

ii) Presenting Officers

Interviews were conducted with 26 Presenting Officers from the DSS and Home Office concerning their perceptions of their role and their opinions of representatives.

iii) Representatives

Interviews were conducted with 81 representatives using semi-structured interview schedules and/or tape recorders. Interviews were conducted with solicitors, barristers, CABx, law centres, welfare rights units, tribunal units, specialist advice agencies, trade unions, the Advisory, Conciliation and Arbitration Service (ACAS) and probation officers. In addition, discussions were held with representatives from pressure groups and professional organizations. These are: National Association of Citizens Advice Bureaux (NACAB), Greater London Organization of Citizens Advice Bureaux (GLOCAB), Legal Aid Practitioners Group, Legal Action Group (LAG), The Law Society, Law Centres Federation, United Kingdom Immigrants Advisory Service (UKIAS), Joint Council for the Welfare of Immigrations (JCWI), Free Representation Unit, Child Poverty Action Group.

Interviews provided information about the difficulties faced by appellants, the role of representatives in preparing and presenting cases at tribunal hearings, perceptions of the role of tribunals, and resource problems.

iv) Appellants and applicants

Interviews with appellants were conducted using questionnaires and/or tape recorders. The breakdown of interviews is as follows:

SSATs	190 interviews
ITs	113 interviews
Immigration	84 interviews

The difficulties of arranging interviews with patients in mental hospitals within the timescale of the project resulted in their exclusion. The decision to exclude patients in mental hospitals was also taken in the light of Peay's research which involved interviews with patients (Peay 1988).

Interviews with appellants and applicants provided information about their knowledge and expectations of the tribunal process, their reasons for not seeking or obtaining advice and representation, and

their experience of attending hearings both with and without representation.

v) Potential applicants

Approximately 1000 postal questionnaires were distributed between 5 regional DSS Offices (London, Leeds, Cardiff, Birmingham and Surrey) and were sent out to claimants together with nil decisions on claims. 168 questionnaires were returned, which represents a response rate of approximately 17%. In depth, tape-recorded interviews were conducted with 10 of those who returned their postal questionnaires. Questionnaires and interviews provided data on knowledge of sources of advice about appeals, and on claimants reasons for not appealing against nil decisions.

4. The Report

The Report is divided into three parts. In Part I Chapter 2 presents a description of the work of the four tribunals and an analysis of patterns of advice and representation in the four tribunals, based on information collected from tribunal case files. It also describes the reasons given by appellants and applicants for their failure to seek or obtain advice and representation. Chapter 3 presents a quantitative analysis of the effect of representation on the outcome of tribunal hearings.

Part II of the Report concerns the contribution of advice and representation to the preparation and presentation of tribunal cases. Chapter 4 discusses the effect of legal complexity on tribunal decision-making and the notion of informality in tribunal proceedings. Chapter 5 discusses the contribution of representation to pre-hearing processes, and the need for case preparation. Chapter 6 concerns the contribution of representation to case presentation and the ability of tribunals to compensate for lack of representation.

Part III of the Report presents information concerning appellants' and applicants' knowledge and expectations of tribunal processes; the difficulties faced in attempting to obtain representation; and their experiences of their tribunal hearing.

The Report concludes with a summary of the main findings, conclusion and discussion of policy implications.

PART I REPRESENTATION AND OUTCOMES

CHAPTER 2. PATTERNS OF WORK, ADVICE AND REPRESENTATION

This chapter describes in broad outline the type of cases heard by the four tribunals in the study, by whom the cases are brought, and the current patterns of advice and representation among those whose cases are dealt with by the four tribunals. For each tribunal in turn, information is presented regarding the proportions of applicants obtaining advice about their appeals, and the proportions of appellants or applicants who appear with representation, and the proportion who appear without representation. This descriptive information is followed by a detailed analysis of factors which are associated with advice-seeking, or with representation at tribunals. Those factors considered most likely to be related to the propensity to seek, or obtain advice and representation were the geographical location of appellants, appellants' own characteristics, or the subject matter of the appeal. Patterns of advice and representation in the four tribunals were therefore analysed in relation to each of these factors.

The information presented in this chapter is based primarily on data collected from tribunal case files. In each of the four tribunals, random samples of case files held in regional tribunal offices were drawn, and information about the appellants or applicants, type of case, advice, representation and outcome of hearings was extracted and copied by hand. This information was then classified and coded for analysis by computer. The random samples of tribunal cases were, where necessary, supplemented by random samples of represented cases, heard cases, or allowed cases where the actual numbers in those categories, randomly occurring, were too small to analyse. As a result of this necessary procedure the raw data were weighted to correct for the effects of oversampling. The percentages given in tables are therefore based on weighted data. Tests of statistical significance (Chi-Square) were carried out on all cross-classifications, and where statistical significance was reached this is indicated at the base of presented tables.

1. SOCIAL SECURITY APPEALS TRIBUNALS

Information was drawn from random samples of social security appeals tribunal files in four regions. Most of the information was taken from cases heard by tribunals during 1986 and the early part of 1987, i.e. before the major changes to the underlying Statute and to the regulations, which took place in April 1988. Roughly equal numbers of cases were drawn from London , Leeds and Cardiff (31%, 28% and 23% of the sample respectively) with a somewhat smaller sample drawn from Birmingham (18% of the total sample). Within each region, cases were randomly subsampled from a number of hearing centres in order to provide a mix of cases from central urban and outer or rural areas. Rural centres in Wales were more heavily sampled in order to provide

sufficient cases in rural districts. As a result of the random nature of the samples, the various proportions of claim types, claimants, rates of representation etc., reflect the work of the tribunals in the regional hearing centres. The total number of cases in the sample is 1115.

(a) Case Type

Of the social security appeal cases sampled in the four regions as a whole, a little under a half comprised single payment cases (47%). These payments have now been abolished, with a consequent reduction in the number of appeals coming before social security appeals tribunals. The information about advice, representation and success of single payments cases is nonetheless of value in considering social security appeals in general. The remainder comprised entitlement to non-contributory benefits (22%); entitlement to unemployment benefit (5%); overpayment of non-contributory and contributory benefits (6%); late claims (7%); disqualification from unemployment benefit (7%); and disqualification or reduction of other benefits (5%).

(b) Appellants

There were more men than women in the sample (58% as compared with 41%) and the majority of appellants were aged between 16 and 49 (79%). The age groups with the largest number of claimants were 20-24 (20% of the sample) and 30-39 (18% of the sample). The full age breakdown where age was known (75% of cases) is as follows:

AGE 16-19	11%
AGE 20-24	20%
AGE 25-29	12%
AGE 30-39	18%
AGE 40-49	16%
AGE 50-59	10%
AGE 60-64	5%
AGE 65-69	3%
AGE 70 and over	4%

A little over one-quarter of appellants in the sample were single (28%) and a little under one-quarter were married (24%).

The next largest group were single parent mothers who constituted about 10% of the sample. The full breakdown is as follows:

Single	35%
Married	29%
Divorced	8%
Separated	8%
Cohabiting	4%
Single parent mother	12%
Single parent father	* (less than 1%)
Widowed	4%

In about 3% of social security appeal tribunal files sampled, evidence on files indicated the appellant was suffering from some form of mental illness or was mentally handicapped. In a further 10% of cases there was evidence that the appellant was suffering from physical illness or disability.

Information about the number of dependant children in families was known in about 46% of cases. Of this subsample, the number of dependant children in appellants families was as follows:

No children	24%
1 child	31%
2 children	24%
3 children	10%
4 children	6%
5 children	2%
6 children or more	2%

(c) Advice about appeals

Any evidence present on tribunal files that appellants had sought advice about their appeal from an advice agency or solicitor was noted, whether or not claimants were eventually represented at their hearings. Such evidence would normally appear from appellants statements that someone would be coming to represent them, from their letter of appeal or from letters sent to the tribunal by advice agencies, solicitors or other representatives. Information about pre-hearing advice is particularly important in social security appeals tribunals. First, it is evidently related to the question of representation. Second, pre-hearing advice may prepare appellants to put their case at a hearing where they appear alone. Third, and importantly, pre-hearing advice may increase the likelihood that an appellant will attend his or her hearing, even if they are not represented, and this, as will be seen in Chapter 3, has an important effect on the outcome of the hearing.

From the information drawn from files it appears that about one-fifth of claimants (22%) made some attempt to obtain advice prior to their appeal hearing. For the remaining majority (78%) there was no

evidence on their files suggesting that they had sought or received advice from any source, although it is, of course, possible that some appellants obtained advice about their appeal without this being apparent from their files.

Among those appellants who clearly sought advice before their hearing 31% went to a Citizens Advice Bureau; 16% sought advice from solicitors; 5% from trade unions; 5% from tribunal units; 2% from law centres; and 7% from welfare rights centres. Some 10% of those social security appellants who obtained advice did so from social services departments, social workers or probation officers. The remaining 23% obtained advice from a variety of different agencies; for example, general advice centres, unemployment centres, pressure groups and church groups. It is clear, then, that advice about social security appeals is being provided by a wide range of lay advice agencies and institutions, as well as by solicitors, but that only a minority of appellants to social security appeals tribunals are presently seeking or receiving advice about their appeals. The important relationship between advice, representation and presence at social security appeals tribunals is discussed further in section (d)(iii) and in Chapter 3.

(c)(i) Regional variation in advice

There was some variation between regions in the extent to which advice was obtained by social security appellants about their appeals, and in the most common sources of advice. Appellants in the Birmingham region were the most likely to have obtained advice (32% obtaining advice) followed by those in the London region and Wales region where about one-fifth of appellants in each region obtained advice (22% and 21% respectively). The figures are somewhat lower in Leeds where 18% of appellants obtained advice about their appeal. There was also variation between the regions in the sources of the advice obtained by appellants as displayed in Table 2.1. This Table indicates that the generally greater degree of advice being obtained in the Birmingham region is provided by tribunal units and other general advice agencies. There was little regional variation in the use of solicitors or CABx, but appellants in Wales appear to have no access to agencies specialising specifically in welfare rights.

TABLE 2.1 TYPES OF REPRESENTATION USED BY SOCIAL SECURITY APPELLANTS WITHIN REGIONS

	LONDON %	LEEDS %	WALES %	BIRMINGHAM %	ALL REGIONS %
NO ADVICE	78	82	79	68	78
CAB	6	9	6	6	7
SOLICITOR	3	4	5	3	4
TRIBUNAL UNIT	1	*	*	5	1
LAW CENTRE	*	1	*	*	*
TRADE UNION	1	*	3	1	1
WELFARE RIGHTS CENT.	3	1	0	2	2
OTHER ADVICE AGENCY	5	1	6	13	5
SOC.SERV/PROBATION	3	2	2	3	2
TOTAL %	100%	100%	100%	100%	100%

TOTAL WEIGHTED CASES = 1115

SIGNIFICANT P<.00000 * Less than 1%

(c)(ii) Urban/rural variation in advice

The overall regional variations in the extent to which appellants obtain advice about their appeals, conceal greater differences at hearing centre-level. In each region studied, cases were sampled both from the large urban centres and from more rural hearing centres administered by the regional offices. Table 2.2 indicates the differences in levels of advice between urban centres and those located outside of the urban centres in each region. Although in the London region there was no apparent difference in levels of advice between the centre and other areas, in the three other regions significant differences were found. Outside of the London region, rates of advice were higher in central urban centres with appellants being most likely to have obtained advice in Central Birmingham (43%) and Cardiff (33%). The lowest rates of advice were in hearing centres in Yorkshire (11%).

TABLE 2.2 LEVELS OF ADVICE IN REGIONAL HEARING CENTRES

	LONDON		LEEDS		WALES		BIRMINGHAM	
	CENT %	OTHER %	CENT %	OTHER %	CENT %	OTHER %	CENT %	OTHER %
APPELLANTS ADVISED	22	22	22	11	33	20	43	29
NOT ADVISED	78	78	78	89	67	80	57	71
TOTAL%	100	100	100	100	100	100	100	100

TOTAL WEIGHTED CASES = 1115

SIGNIFICANT P<.00000

In addition to the centre differences in levels of advice, there were also differences in sources of advice. Table 2.3 indicates the patterns within regions and shows that CABx provide the most consistent source of advice. Advice from tribunal units and law centres is patchy, with very few people outside of central urban areas obtaining advice from these sources. Where advice agencies are scarce, solicitors in private practice are used more frequently (as in Yorkshire and Wales) and probably as a result of CAB referral practices (cf Baldwin and Hill 1988). This indicates the complementary nature of services and the fact that rural solicitors' practices are prepared to advise in welfare law cases where there are no lay specialist advice agencies.

TABLE 2.3 SOURCES OF ADVICE WITHIN REGIONAL HEARING CENTRES

	LONDON		LEEDS		WALES		BIRMINGHAM	
	CENT %	OTHER %	CENT %	OTHER %	CENT %	OTHER %	CENT %	OTHER %
CAB	28	27	57	33	23	27	11	23
SOLICITOR	4	16	21	33	38	17	11	10
TRIBUNAL UNIT	8	0	2	0	0	2	26	6
LAW CENTRE	4	0	4	0	8	0	3	0
TRADE UNION	4	6	0	8	8	13	3	3
WELFARE RIGHTS	16	16	4	0	0	0	0	10
OTHER AGENCY	28	18	6	8	23	31	37	39
SOC.SERV/PROBAT.	8	18	6	17	0	10	10	10
TOTAL %	100%	100%	100%	100%	100%	100%	100%	100%

WEIGHTED CASES = 249 (BASED ON 391 CASES WHERE ADVICE OBTAINED)

The geographical variation in the availability of advice about appeals is reflected in appellants' presence at tribunal hearings, rates of representation (see Table 2.8) and ultimately in the outcome of tribunal hearings (see Chapter 3).

(c)(iii) Advice about appeals and appellants characteristics

It was considered possible that advice-seeking would be related not simply to the availability of advice centres and solicitors, but also to the characteristics of claimants i.e. that certain types of people, or that people with certain types of cases would be more likely than others to seek advice.

Analysis of claimants characteristics in relation to advice- seeking showed only small differences. Men and women obtained advice in almost identical proportions (22% and 21% respectively). There was a slight tendency for men to seek advice from unions and solicitors more often than women. The differences, however, are small.

In so far as age is concerned, the rates of advice seeking are similar for most age groups, with the exception of those under 25 who appeared to be considerably less likely to obtain advice about their appeal. While about one-quarter of those 25 and over obtained some advice, only 14% of those under 25 did so. Advice from CABx and other lay agencies was obtained by people of all ages, but only those between 20 and 59 obtained advice from solicitors. Help from tribunal units and law centres was also concentrated between the ages of 20 and 59. This suggests that while CABx are approached by people across the age spectrum, the more specialist agencies tend to be approached by the same groups who go to solicitors. Elderly

appellants obtained advice almost exclusively from CABx, general advice centres and social workers, but younger appellants who obtained advice did so from a slightly wider range of agencies including, housing aid, the probation service and unemployment centres.

(c)(iv) Type of appeal and advice

Those appellants who appeared most likely to seek advice before their hearing were those whose appeals concerned overpayment of benefit and entitlement to supplementary benefit. Those appellants least likely to seek advice were those whose cases concerned disqualification from supplementary benefit. Those appellants whose appeal concerned overpayment of benefit and those whose appeal concerned disqualification from unemployment benefit were the most likely to seek advice from a solicitor (11% and 8% respectively in those categories sought advice from solicitors.) Although the proportion of social security appellants receiving advice from law centres and tribunal units is very small overall, law centres appeared to be giving advice across the board, while advice from tribunal units was concentrated on single payment cases, entitlement to supplementary benefit and unemployment benefit which may reflect the referral practices of other advice agencies (See Table 2.4 below).

TABLE 2.4 ADVICE TO SOCIAL SECURITY APPELLANTS IN RELATION TO TYPE OF APPEAL

APPEAL TYPE	NO ADVICE	CAB	SOLIC	UNION	OTHER AGENCY	SOC SERV/ PROBATION	TOTAL
OVERPAYMENT	63	16	11	*	9	*	100%
ENTITLEMENT SB	72	12	5	3	6	1	100%
SINGLE PAY'T	79	6	2	0	10	3	100%
DISQUAL. UB	82	3	8	4	4	0	100%
ENTIT. UB	83	3	*	3	8	2	100%
LATE CLAIM	87	3	2	1	4	2	100%
DISQUAL. SB	88	*	5	0	3	4	100%

TOTAL WEIGHTED CASES = 1115

SIGNIFICANT P<.00000

Although it is clear from quantitative data that advice-seeking is related to regional availability of advice, and to type of appeal, further information regarding appellants failure to seek or obtain advice was obtained from interviews with appellants attending tribunal hearings. This information is explored below in section 5 and in Part III.

(d) Representation

Analysis of representation at hearings indicates that a proportion of those who sought advice about appealing were ultimately unrepresented when their case was heard by the tribunal. Although about one-fifth of appellants obtained advice outside of family and friends, only 12% of appellants were represented at hearings by someone other than a friend or family member. In other words, over one-quarter of those who obtained advice about their appeal before the hearing nonetheless were unrepresented by those advice agencies at their hearing. More than one-quarter of all representation at social security appeals tribunals is being conducted by friends or relatives of the appellant (26% or 4% of all appellants). The various types of representation obtained by social security appellants and the proportions in which they appear at tribunals are presented in Table 2.5 below.

TABLE 2.5 REPRESENTATION OF APPELLANTS AT SOCIAL SECURITY APPEALS TRIBUNALS

REPRESENTATIVE TYPE	% OF REPRESENTED APPELLANTS	% OF ALL APPELLANTS
CAB	27	4
SOLICITOR	6	1
TRIBUNAL UNIT	6	1
LAW CENTRE	2	*
TRADE UNION	6	1
WELFARE RIGHTS	6	1
GENERAL ADVICE CENTRE	13	2
SOCIAL SERV/PROBATION	8	1
FAMILY/FRIENDS	26	4
UNREPRESENTED		84
TOTAL %	100%	100%
TOTAL WEIGHTED CASES = 1115		

* Less than 1%

Representation at social security appeals tribunals is being provided by a wide range of agencies and individuals to a minority of social security appellants. Table 2.5 shows, however, that while 16% of all appellants are represented at hearings, only 12% of appellants at social security appeals tribunals are represented by agencies or individuals with experience of representation or with any special expertise.

(d)(i) Regional variation in representation

It was noted in section (c) above that there was geographical variation in advice-seeking among social security appellants. Analysis of representation indicated similar and consistent variations between different geographical areas. Of the cases drawn from the London region some 14% were represented (11% by someone other than a friend or relative); in the Leeds region 15% of appellants were represented (12% other than by a friend or relative). In Birmingham 18% of appellants were represented (15% other than by a friend or relative) and in Wales the rate of representation was highest at 21%, although the percentage represented by someone other than a friend or relative was only 12%. Table 2.6 provides a breakdown of representation within regions and it is clear from this table that there are substantial differences between areas in the types of representation used by appellants. In Birmingham, which has a relatively high representation rate, almost three-quarters of representation is being conducted by advice agencies trades unions or lawyers, and only about one quarter is being conducted by family and friends, social workers or probation officers. In Wales, on the other hand, although the rate of representation as a whole is similar to Birmingham, only 56% of representation is being conducted by advice agencies and lawyers, while almost all of the remaining 44% of representation is conducted by family and friends. In London and Leeds about two-thirds of representation is being conducted by advice agencies or lawyers and about a further quarter being conducted by family and friends.

TABLE 2.6 TYPES OF REPRESENTATION USED BY SOCIAL SECURITY APPELLANTS WITHIN REGIONS

	LONDON %	LEEDS %	WALES %	BIRMINGHAM %	ALL REGIONS
CAB	18	47	22	21	27
SOLICITOR	1	8	6	11	6
TRIBUNAL UNIT	4	2	3	21	6
LAW CENTRE	4	2	2	1	2
TRADE UNIONS	10	*	8	3	6
WELFARE RIGHTS	12	4	2	7	6
GENERAL ADVICE CENT	14	11	14	14	13
SOC.SERV/PROBATION	14	11	2	3	8
FRIEND/RELATIVE	22	15	41	18	26
TOTAL %	100%	100%	100%	100%	100%

TOTAL WEIGHTED CASES = 185
(BASED ON 416 REPRESENTED CASES)

Analysis of representation in regional hearing centres shows that outside of urban areas representation is largely provided by Citizens Advice Bureaux and other generalist advice agencies. The activities of tribunal units, law centres and welfare rights centres are confined to urban areas. Although appellants in all areas obtained advice from solicitors about their appeals, it is clear that representation at hearings is being conducted by solicitors in only a small minority of cases. The relatively heavy use of solicitors in Yorkshire and Wales would suggest that CABx refer their more difficult cases on to solicitors where there are no specialist tribunal units. The tribunal files in those regions indicate that a small number of firms of solicitors specialise in welfare law and provide advice to social security appellants.

(d)(ii) Representation and type of appeal.

It was noted in section (c)(iv) above that the propensity to seek advice varied somewhat according to the type of appeal. Similar variation also exists in the extent to which representation is obtained for different types of appeal. Those types of cases which are most likely to be represented are overpayment cases, and cases concerning entitlement to supplementary benefit. Those cases which appear to be the least likely to be represented are cases concerning late claims and disqualification from unemployment or supplementary benefits (Table 2.7), which reflects patterns of advice described in section (c). A comparison of rates of advice and rates of representation by type of appeal indicates that those appellants who were most likely to seek advice about their appeal were also the most likely to be represented. The shortfall between advice and representation is greatest in disqualification from unemployment benefit cases, overpayment cases and entitlement to supplementary benefit cases. The shortfall is smallest for entitlement to unemployment benefit cases and disqualification from supplementary benefit cases.

TABLE 2.7 REPRESENTATION AT SOCIAL SECURITY APPEALS BY TYPE OF APPEAL

Type of Appeal	% Advised	% Represented at SSAT hearing	% Represented excluding fam/friends
SINGLE PAYMENT	21%	15%	11%
ENTITLEMENT TO SB	28%	22%	16%
ENTITLEMENT TO UB	17%	18%	13%
LATE CLAIM	13%	11%	6%
OVERPAYMENT	37%	33%	25%
DISQUALIFICATION UB	18%	7%	4%
DISQUALIFICATION SB	12%	6%	4%

WEIGHTED TOTAL CASES = 1115

(d)(iii) Advice and representation and presence at appeals

Social security appeals tribunals differ from the other three tribunals included in this study in the extent to which appellants are present at tribunal hearings. Among the cases sampled, some 46% of hearings proceeded with neither the appellant nor a representative present, although a DSS Presenting Officer attended the hearing, (and in some cases a Department of Employment presenting officer was also present). In a further 37% of cases the appellant appeared alone and in 16% of cases either the appellant was present with a representative or the representative appeared in lieu of the appellant. Since the presence or absence of the appellant has an important, independent effect on the outcome of appeals (as will be seen in Chapter 3) it is worth looking at any possible interaction between the availability of advice and representation and the propensity of appellants to attend their tribunal hearing.

When presence at tribunal hearings is compared with evidence of advice-seeking on the part of appellants, it appears that those appellants who do not seek, or do not obtain, advice about their appeals are less likely to attend their tribunal hearings. It is also clear that once advice has been obtained, appellants are more likely to attend tribunal hearings even though they may not be represented at the hearing. Over half of those appellants who failed to seek or obtain advice also failed to attend the hearing of their appeal (54%). Of those appellants who obtained advice from CABx, only 13% failed to attend their hearing. Among those who were advised by solicitors, just over one-quarter ultimately failed to

attend their hearing. Those appellants who were most likely to attend their tribunal hearing were those who had been advised by welfare rights centres, whether or not they were represented at their hearing (9% absent from hearing). Of those who obtained advice, those advised by CABx, trade unions and tribunal units were most likely to be represented at their hearing. Those advised by solicitors and generalist advice agencies were the least likely to be represented at their hearings. The analysis of the relationship between advice, presence and representation is summarised in Table 2.8.

TABLE 2.8 PRESENCE OF APPELLANTS AT TRIBUNAL HEARINGS IN RELATION TO ADVICE

ADVICE	NO ADVICE	CAB	SOLICITOR	TRIBUNAL UNIT	WELFARE RIGHTS	TRADE	OTHER UNION
	%	%	%	%	%	%	%
APPELLANT NOT PRESENT	54	13	27	24	9	12	30
APPELLANT PRESENT ALONE	41	14	39	13	36	16	22
APPELLANT AND/OR REP.PRESENT	5	73	34	63	55	72	48
TOTAL %	100%		100%	100%		100%	

TOTAL WEIGHTED CASES = 1115

SIGNIFICANT P<.00000

The relationship between advice and presence at tribunals is important because those appellants who receive advice are more likely to attend and, as will be seen in Chapter 3, are also more likely to succeed with their appeals when they attend. The question that arises is whether the relationship between advice and presence is explained by the fact that appellants who do not take their appeal seriously, neither seek advice nor attend their hearing. Research conducted elsewhere suggests that those who appeal to social security tribunals fail to seek advice and fail to attend hearings for a variety of reasons. For example, because they misunderstand the papers sent to them by the tribunal, because they are sick, because they think that the appeal has already been heard and decided against them (cf Bell 1975; Farrally 1988; Frost and Howard 1977).

Questionnaires and interviews conducted with 'potential' applicants suggests that failure to seek advice about appealing is less likely to result from 'flippant' appeals than other factors. Many have low expectations of succeeding with an appeal, and perceive the process of appealing to be stressful. Some have mobility problems which makes it difficult to get to advice agencies. Evidence from questionnaires suggests that although potential appellants take the refusal of benefit very seriously, a sense of resignation about their position, a disbelief that they can succeed with an appeal, together with ignorance about the availability of advice and the practical difficulties of obtaining advice all contribute to the low-level of advice-seeking about appeals.

Further information about appellants' failure to seek or obtain advice about their appeals, or failure to obtain representation, was obtained from interviews conducted with unrepresented appellants at social security appeals hearings. The results of these interviews are summarised and discussed in section 5 below.

Summary of findings relating to advice and representation in social security appeals tribunals

Only a minority of those who appeal to social security appeals tribunals obtain any advice about their appeal before the hearing. Advice about appeals is currently being provided by a very wide range of sources, but the most common, and the most geographically widespread, is the service provided by Citizens Advice Bureaux. The factors most consistently associated both with the likelihood that advice will be obtained and from whom advice is obtained, are the geographical location of appellants and type of appeal. The proportion of appellants obtaining advice outside of central urban centres is generally lower than that of appellants living in large urban centres. There are few specialist advice centres outside of city centres, and solicitors are more likely to provide advice where there are no specialist advice agencies. Rural practices therefore appear to be playing a role in filling the advice gap, but they rarely represent appellants at hearings. Younger appellants were less likely than others to obtain advice and appellants whose claims concerned overpayment of benefit and entitlement to supplementary benefit were more likely than other appellants to obtain advice.

A majority, but by no means all, of those appellants who obtained advice were ultimately represented at their tribunal hearing. Although representation is being provided by a wide range of agencies and individuals, the most common representatives at social security appeals tribunals are friends and relatives of the appellant or advisers from Citizens Advice Bureaux. Solicitors, tribunal units, law centres, and trades unions all provide representation in a significant minority of cases. Only 12% of appellants at social security appeals hearings are represented by individuals with

experience of representation or expertise. This finding must be evaluated in the light of tribunals' and representatives' views on the desirability or necessity of representation discussed in detail in Part II, Chapters 4 to 6.

The ability of appellants to obtain advice about appeals substantially increases the chance that appellants will attend their hearing. This is important since, at present, almost half the hearings at social security appeals tribunals are proceeding without the appellant or a representative being present.

2. HEARINGS BEFORE IMMIGRATION ADJUDICATORS

Information about appeals heard before immigration adjudicators was taken from case files located centrally in the administrative headquarters of the immigration adjudicators in London. A random sample of cases heard during 1986 and the early part of 1987 was drawn from four regions: London, Harmondsworth, Birmingham and Leeds. Since there were very few immigration appeals in Wales, Harmondsworth was substituted. A further random sample of allowed cases was taken to increase the numbers of allowed cases for analysis, and the data have been weighted to adjust for the oversampling of allowed cases. The distribution of cases between the regional centres in the sample is roughly representative of the caseloads of the selected regions and is as follows: London 46%; Birmingham 20%; Harmondsworth 18%; and Leeds 15%. The total number of cases in the sample is 1050.

(a) Case type

The distribution of case type in the sample drawn is representative of the volume of cases being heard in the four centres. The subjects of appeals in the sample fall into the following broad Home Office categories:

TABLE 2.9 CATEGORIES OF IMMIGRATION APPEALS IN SAMPLE

	% IN SAMPLE
01 EXCLUDED AT PORT HEARD AT PORT	1
02 EXCLUDED AT PORT EXTERNAL APPEAL	11
04 REFUSAL OF ENTRY CLEARANCE TEMPORARY PURPOSE	16
05 REFUSAL ENTRY CLEARANCE BUSINESSMEN	1
06 REFUSAL ENTRY CLEARANCE WIVES AND DEPENDENTS	17
07 REFUSAL ENTRY CLEARANCE FEMALE FIANCEES	1
08 REFUSAL ENTRY CLEARANCE HUSBANDS	6
09 REFUSAL ENTRY CLEARANCE MALE FIANCES	12
10 VARIATION OF LANDING CONDITIONS	2
11 REFUSAL TO VARY LEAVE TO ENTER	24
12 DECISION TO MAKE A DEPORTATION ORDER	7
13 REFUSAL TO REVOKE DEPORTATION ORDER	1
14 REMOVAL DIRECTIONS	1
15 DESTINATION ONLY APPEAL	1
TOTAL %	100%

On the basis of information extracted from case files, the requests which formed the subject of appeals within the broad Home Office categories, were broken down into more detailed categories in order to make analysis more sensitive to differences in case type. This was particularly necessary, for example, in political asylum cases, because they are difficult cases to win on an appeal before an adjudicator, but are subsumed within the same Home Office category as appellants requesting extensions of visas etc (Category 11 Refusal to vary leave to enter), which have a better likelihood of success. The resulting classification of appeal types was as follows:

TABLE 2.10 APPEAL TYPE BEFORE IMMIGRATION ADJUDICATORS

	% IN SAMPLE
Entry to marry or as spouse	19
Entry as dependant wife/children	12
Entry as other dependant relative	3
Entry as a visitor	22
Entry as a student	5
Leave to remain as a visitor	4
Leave to remain as a student	9
Leave to settle	5
Leave to remain to work	4
Political asylum	5
Against deportation	7
Leave to remain for other purpose	1
Entry for other purpose	3
TOTAL %	100%
WEIGHTED TOTAL N =	1050

Those cases where the appellant would normally be appealing from outside the country (i.e. those cases requesting entry) comprised just under two-thirds of appeals (64%).

The Respondent in the appeals sampled (i.e. the source of the decision against which the appellant was appealing) were as follows: Secretary of State 36%; Entry Clearance Officer 33%; Visa Officer 19%; and Immigration Officer 12%. The Secretary of State is the respondent where applications have been made by appellants already in this country. Entry Clearance Officers and Visa Officers are respondents where decisions have been made abroad. Immigration officers are respondents where an appellant has been refused entry on arrival in this country.

Since there are regional variations in the type of appeals heard before immigration adjudicators, case type was analysed by region. The analysis, presented in Table 2.11 indicates a much higher proportion of appeals concerning entry to marry in both Birmingham and Leeds than in the other two regions. Appeals concerning leave to remain to study tend to be concentrated in London and all political asylum appeals are heard in London.

TABLE 2.11 REGIONAL VARIATION IN SUBJECT OF APPEALS

	LONDON %	BIRMINGHAM %	HARM'WTH %	LEEDS %
Entry to marry	8	42	11	32
Entry dep wife/ children	9	14	16	15
Entry depend other rel	2	3	5	3
Entry visitor	18	22	28	26
Entry student	5	2	7	3
Leave to remain as visitor	5	3	5	2
Leave to remain as student	15	1	6	4
Leave to settle	7	4	6	1
Leave to work	5	2	4	6
Political asylum	11	1	0	1
Deportation	11	3	7	1
Other	4	4	4	5
TOTAL%	100%	100%	100%	100%

WEIGHTED TOTAL CASES=1050

(b) Appellants' characteristics

The sample drawn from concluded files contained appellants who were nationals of 75 different countries. The largest groups of appellants were from the Indian sub-continent and comprised just under half of the total sample (Bangladesh 12%, Pakistan 15%, India 15%, Sri Lanka 6% and Nepal 0.2%). The next largest category of appellants were those from African countries. This category comprised 21% of the total sample. The remaining categories were as follows: Middle East 11%; Far East/S.E. Asia 5%; Europe 5%; Central America and West Indies 3%; South America 2%; North America and Canada 1%; Australia and New Zealand 1%.

There was considerable variation in the subject of appeals by appellants of different nationalities. For example, the overwhelming majority of appeals relating to entry to marry were by appellants from the Indian subcontinent (95%) as were cases regarding the entry of dependant relatives (87%). Political asylum appeals came predominantly from African and Middle Eastern nationals (41% and 35% respectively) and appeals against deportation were predominantly from nationals of Africa (41%) Indian subcontinent (22%) and the Middle East (18%).

The sample was composed of more men than women (69% and 31% respectively) and the majority of immigration appellants were aged

between 21 and 39 (70%) although there were appellants in all age categories (10% under 21 and 4% over 60).

Roughly equal proportions of appellants were single and married (37% and 32% respectively) and a substantial minority were engaged (13%), this category reflecting the high rate of 'entry to marry' cases.

Although the vast majority of appeals concerned only one person about 10% of appeals concerned three or more people.

(c) Advice about appeals.

Evidence from files about advice taken by appellants indicated that about 80% of appellants had sought some advice about their appeal. In the remaining 20% of cases there was no evidence on files of any advice having been sought or obtained, although it is possible that some had been taken which did not result in any communication to the tribunal or any suggestion that the appellant would be represented at the hearing. Sources of advice for appellants before immigration adjudicators were more limited than for social security appeals. Just over one-half of those seeking advice did so from the United Kingdom Immigration Advisory Service (UKIAS) (51%); solicitors advised in one-third of cases; advisory centres specialising in immigration matters advised in 3% of cases; law centres in 5% of cases; Joint Council for the Welfare of Immigrants (JCWI) 2%; and general advice centres advised in 4% of cases. The overwhelming majority of advice on immigration matters is therefore being provided by UKIAS and solicitors in private practice.

(c)(i) Regional variation in advice

There were some clear regional differences in advice-seeking. Appellants in the London area were the most likely to have sought advice about their appeal and appellants in the Leeds area were the least likely to have sought advice. Appellants in Leeds and Birmingham were less likely than those in the other two areas to have obtained advice from UKIAS, but the use of solicitors and other advice agencies was generally similar in the four regions. The breakdown of advice by region is given in Table 2.12.

TABLE 2.12 IMMIGRATION APPELLANTS :REGIONAL VARIATION IN ADVICE

	London %	Birm'm %	Harm'wth %	Leeds %	TOTAL %
NO ADVICE	13	21	21	37	20
UKIAS	45	38	46	26	41
SOLICITOR	27	31	23	27	27
LAW CENTRE	4	3	3	5	4
ADVICE CENTRE	5	6	8	4	6
JCWI	4	0	0	0	2
OTHER ADVICE	1	*	0	0	1
TOTAL %	100%	100%	100%	100%	100%
WEIGHTED TOTAL =	1050 CASES				

SIGNIFICANT p<.00001

The regional differences in the frequency with which advice about appeals is obtained require closer scrutiny as a result of regional differences in hearing rates. In total, just over two-thirds of sampled cases were heard before immigration adjudicators (69%) and just under one-third were decided by adjudicators on the papers without a full hearing, either at the appellants request, or because no appellant or representative appeared at the hearing (31%). However, in Leeds, where appellants were **least** likely to obtain advice about their hearing, 46% of appeals were decided on the papers as compared with 31% in Birmingham, 28% in Harmondsworth, and 26% in London.

When requests for hearings are analysed by advice within regions (Table 2.13) the relationship between advice and hearings becomes clear. While 79% of those appellants who received advice about their appeals requested a full hearing, only 31% of those without advice requested a full hearing. In Leeds, not only is a low level of advice being obtained, but in addition, those without advice in Leeds are even less likely than appellants in the other regions to request a full hearing (12% as compared with 45% in London).

In other words, the regional differences in obtaining advice are directly related to regional differences in rates of heard cases. This has implications for regional differences in outcome of hearings since, as will be seen in Chapter 3, cases decided on the papers have very low rates of success. It also raises other questions. For example, where an immigration appellant appears unrepresented at a hearing, the adjudicator will often adjourn the case in order for the appellant to obtain representation (see Part III). There is, apparently, no such screening procedure in relation to cases heard on the papers, where lack of advice in preparation of papers for the adjudicators decision, apparently passes without comment. This presumably reflects an implicit assumption that the contribution of appellants' advisers is limited to what happens at hearings. As will

be seen from Part II, however, the contribution of advisers to the pre-hearing preparation and construction of winnable appeals is probably as important as their advocacy skills at a hearing.

TABLE 2.13 RELATIONSHIP BETWEEN ADVICE AND HEARINGS BEFORE ADJUDICATORS: REGIONAL VARIATION

	LONDON	BIRMINGHAM	HARM'WORTH	LEEDS	ALL REGIONS
	% HEARD	% HEARD	% HEARD	% HEARD	% HEARD
APPELLANT ADVISED	78	79	80	79	79
APPELLANT NOT ADVISED	45	27	44	12	31

TOTAL WEIGHTED CASES = 1050

(c)(ii) Appellants characteristics and advice

There was little difference between the sexes in the extent to which advice was obtained about immigration appeals, nor in the source of advice, although there was a slight tendency for men to obtain advice from UKIAS more often than women and a slight tendency for women to obtain advice more often than men from solicitors. The differences were not, however, significant.

Younger and middle aged appellants were slightly more likely to obtain advice about their appeal than those over 60, but again the difference was not significant.

There were clear differences between appellants of different nationalities in their advice-seeking behaviour. For example, those appellants who appeared to be the least likely to have obtained any advice about their appeal were those from Australia and New Zealand (43% failing to obtain advice) South America (27%) Europe (27%) Africa (28%) and the Middle East (26%). The failure to obtain advice is, in some cases, related to the type of appeal. Tribunal case files indicate, for example, a typical tendency for appellants from the Antipodes to submit appeals to extend visits or to enable them to work and to request hearings on the papers without apparently seeking advice (see chapter 3). Those appellants who were most likely to obtain advice about their appeals were those from the Indian sub-continent.

(c)(iii) Subject of appeal and advice

Analysis of advice in relation to subject of appeal indicated substantial differences. For example, those appellants least likely to have obtained advice about their appeal were those appealing against refusal to enter the country as a visitor (35% of appellants failed to obtain advice) or as a student (28% failing to obtain advice) and those requesting leave to remain to work (28% failing to obtain advice). Appellants most likely to obtain advice were those requesting political asylum (92% obtaining advice) and those requesting entry to marry (91% obtaining advice). Those appellants most likely to seek advice from solicitors were those appealing against deportation (42%); those requesting entry to settle (48%) to marry (41%) and entry as dependant wives (39%). Appellants least likely to obtain advice from solicitors were those requesting entry as visitors or students (about 7% in each category) and those requesting political asylum (10%). Those appellants most frequently seeking advice from UKIAS were those requesting political asylum (62%), entry to study (54%) and entry as a visitor (51%).

It is also worth noting here significant differences between case type in the frequency with which appeals are requested to be decided on the papers. Appellants who had been refused "entry" or "entry clearance" as a visitor were the least likely to obtain advice about their appeals and they were also the most likely to have their cases decided on the papers (about 53% of entry as a visitor or leave to remain as a visitor cases decided on the papers). This is presumably because those appellants are all abroad. Those appellants requesting entry to work were also more likely than others to have their cases decided on the papers (45%). Those appellants **least** likely to have their cases decided on papers were those appellants requesting entry to marry (12%), those requesting entry as dependant relatives (16%) and deportation cases (17% decided on the papers).

(d) Representation at hearings.

Of the total cases sampled 69% went to a full hearing the remainder being decided on the papers without a hearing. The vast majority of appellants whose cases were decided at hearing were represented (about 90% of cases represented by someone other than a friend or relative).

(d)(i) Regional variation in representation

Despite the high representation rates overall, there are, however, regional variations in rates of representation and in the identity of representatives. The analysis of representation for the whole sample and by region is presented below in Table 2.14. The table is based on cases that went to a hearing and excludes those decided on the papers.

TABLE 2.14 REPRESENTATION BEFORE IMMIGRATION ADJUDICATORS

	London %	Birm %	Harm %	Leeds %	All %
No representation	8	1	13	13	8
UKIAS	54	51	52	36	50
Barrister	18	17	17	13	17
Solicitor	5	19	7	27	11
Advice centre	3	6	8	4	4
Law Centre	4	5	2	7	5
JCWI	4	0	0	0	2
Relative/friend	3	1	1	0	2
TOTAL	100%	100%	100%	100%	100%

TOTAL WEIGHTED CASES = 725 (BASED ON 764 CASES)

Table 2:14 indicates that among those who appear before immigration adjudicators, about 8% appear unrepresented, over half are represented by UKIAS, more than one-quarter are represented by a lawyer (17% by a barrister), a little over 10% are represented by advice centres or law centres, and a small minority are represented by friends and relatives (2%).

There are, however, some regional differences in patterns of representation and the Table indicates that appellants in Harmondsworth and Leeds are considerably more likely than appellants in the other two regions to appear unrepresented at full hearings. The table also shows that those appellants in Leeds who appear represented are more likely than appellants in other areas to retain the services of a solicitor and less likely to use UKIAS or advice centres. Appellants in Birmingham are by far the least likely to appear unrepresented before immigration adjudicators and tend to make heavy use of both lawyers and UKIAS. This pattern is consistent with that found in Social Security Appeals Tribunals.

(d)(ii) Representation and appellants characteristics

There was little difference between men and women in representation rates, although women were slightly more likely than men to appear before the tribunal unrepresented (7% of women as opposed to 5% of men appeared unrepresented). There was little difference between men and women in the use of UKIAS but women were more likely than men to use counsel (22% of represented women used a barrister as compared with 16% of men). There was no consistent pattern of use of representation among different age groups.

There were, however, some differences between nationalities in both the extent to which appellants were represented at their hearings before adjudicators and the type of representation obtained. Those appellants who were most frequently represented were from the Indian sub-continent (95% represented), South East Asia and China (93% represented) and West Indies/Central America (93% represented). Those appellants least likely to be represented were those from South America (73% represented) and Europe (83% represented).

Those appellants most likely to be represented by a barrister were those from South East Asia (27%) and the Indian sub-continent (21%). UKIAS provided representation most often for appellants from South America (69%), Africa (62%) West Indies/Central America (64%) the Middle East (58%) and Europe (56%).

(d)(iii) Representation and subject of appeal

When representation at hearings is analysed in relation to the subject of appeal, it can be seen that there are substantial differences both in the extent to which appellants appear with a representative and in the type of representation used. From Table 2.15 it can be seen that those appellants least likely to be represented at hearings are those requesting entry as a dependant relative (other than wife and or children), those requesting entry as a visitor and those requesting leave to remain in the country to study. Those appellants most likely to be represented are those requesting entry to marry, those requesting political asylum and those requesting entry as dependant wives and or children. Counsel represent most frequently in cases concerning entry as dependant relatives, and leave to remain to work. Those requesting political asylum, entry as visitors and entry as students are the appellants most likely to be represented by UKIAS.

TABLE 2.15 REPRESENTATION BEFORE IMMIGRATION ADJUDICATORS IN RELATION TO SUBJECT OF APPEAL

	NO REP	UKIAS	SOLIC	BARR	LAW CENTRE	JCWI	OTHER AGENCY	REL/ FRIEND	TOTAL
ENTRY MARRY	3	39	21	22	6	3	6	*	100%
ENTRY DEP WIFE/CHILD	4	42	17	27	7	1	2	0	100%
ENTRY OTHER DEPENDANT	14	35	10	32	0	5	5	0	100%
ENTRY VISITOR	18	67	3	3	4	1	2	2	100%
ENTRY STUDENT	10	65	6	10	4	2	0	2	100%
LEAVE REMAIN AS VISITOR	6	58	12	12	0	0	6	6	100%
LEAVE REMAIN AS STUDENT	11	58	10	13	5	0	0	3	100%
LEAVE SETTLE	6	42	12	25	3	7	5	0	100%
LEAVE WORK	13	21	13	31	3	3	3	13	100%
POLIT. ASYLUM	3	79	6	6	0	0	6	0	100%
DEPORTATION	11	43	13	18	0	3	3	8	100%

TOTAL WEIGHTED CASES = 1050

SIGNIFICANT P<.00000

Summary of findings relating to advice and representation in hearings before immigration adjudicators

The majority of immigration appellants obtained advice about their appeal before their hearing. In common with social security appellants, however, the propensity to obtain advice varied between regions and between different types of case. Sources of advice were more limited than in social security cases with UKIAS and solicitors in private practice providing advice most often. In common with social security appeals, the absence of advice was associated with requests that appeals be decided on the papers, which has an important effect on outcome. In the vast majority of immigration hearings, representation is provided by UKIAS, solicitors and barristers and there is variation between regions, case type and nationalities in the extent to which immigration appellants obtain representation, and the type of representation obtained.

3. INDUSTRIAL TRIBUNALS

Information was extracted from industrial tribunal case files concluded during 1986 and the early part of 1987 in four regional offices: London, Birmingham, Leeds and Cardiff. As a result of the high proportion of cases that were concluded on the basis of an out of court settlement in each of the areas, extra random samples of heard cases were drawn in order to provide sufficient heard cases for analysis. The samples have been weighted to take into account the oversampling of heard cases. The total number of sampled industrial tribunal cases was 928 of which 550 were heard cases. The distribution of sampled cases between the four regional centres was as follows: London 34%; Birmingham 20%; Leeds 17%; Cardiff 30%.

(a) Type of application

The majority of cases sampled were unfair dismissal cases (74%) with a further handful being unfair dismissal/redundancy payment cases (4%). Redundancy payment cases comprised 11% of the sample, and the remainder were roughly evenly split between employment contract cases(3%), sex discrimination cases (2%), race discrimination cases (2%), equal pay (1%) and trade union cases (2%).

Most applicants were seeking compensation from the tribunal (70%) and a minority of applicants were claiming compensation and re-instatement or re-engagement (9%). Some 20% of applicants were seeking re-instatement or re-engagement only.

Where the information was clear enough to be categorised (89% of cases) the grounds for dismissal or defence of applications, as revealed by respondents' notices of appearance was, noted. This information is presented in Table 2.16 which shows that the unfair dismissal cases coming most frequently before the tribunals concern misconduct and redundancy.

TABLE 2.16 RESPONDENTS' GROUNDS FOR DEFENCE OF APPLICATION TO INDUSTRIAL TRIBUNAL

Dismissal for misconduct	33%	
Dismissal for performance	6%	
Dismissal for sickness/capability	6%	
No dismissal resignation/voluntary redundancy	15%	
Redundant	22%	
No qualified/entitled to claim		6%
No dispute as to claim	1%	
Other reason/unclear	11%	
TOTAL %	100%	
WEIGHTED TOTAL CASES	928	

(b) Applicants' characteristics

There were considerably more men than women in the sample (68% 32% respectively). A little under one-half of the applicants were aged between 30 and 49 (48%). A further 22% were between the ages of 20 and 29, and 18% between the ages of 50 and 59. Four per cent of applicants were aged 60 or more.

Analysis of occupational group and social class indicated that applicants to industrial tribunals were most frequently skilled-manual workers (28%), managers in small industrial and commercial establishments (13%), junior non-manual workers such as shop assistants, sales representatives etc. (13%), semi-skilled manual workers (11%), foremen and supervisors in skilled-manual occupations (8%), personal service workers such as cooks, barmen, etc. (7%) and unskilled manual workers (5%). About 4% of applicants were ancillary workers such as nurses, 3% of applicants were managers in large establishments, and a further 3% were professional workers.

Analysis of length of employment indicated that about 18% of applicants had been employed with the respondent for less than two years, a further 15% had been employed for between 2 and 3 years. Just under one-quarter of applicants had been employed for between 3 and 5 years; another 18% had been employed with the respondent for 6 to 9 years and just under another quarter (23%) had been employed for 10 or more years with the respondent.

(c) Advice to applicants

Evidence from files indicated that about 70% of applicants had sought or received advice about their application to the industrial tribunal. Advice was obtained from a relatively wide range of people and agencies, but those who sought advice went most frequently to solicitors (52%) and trade unions (26%). Advice was also sought from CABx and welfare rights agencies (12%), and law centres (6%). The remaining 4% of applicants went to professional organizations (1%), or to work colleagues, friends and relatives for advice about their tribunal application (2%).

(c)(i) Regional variation in advice

There were broad variations between regions in the extent to which applicants obtained advice about their industrial tribunal application. Applicants in the London region appeared to obtain advice less frequently than those in other regions, with 40% of files in London containing no evidence of pre-hearing advice. In Birmingham 30% of applicants failed to obtain advice as compared with 33% in Leeds. Applicants in Cardiff appeared to have been the most successful in obtaining advice with only 21% of files showing no evidence of advice. The regional pattern of advice in industrial tribunals at first sight appears to be rather different from the pattern observed in social security and immigration appeals, where appellants in the Birmingham region tended to be more likely than others to obtain advice about appeals, and where appellants in the London region had relatively high rates of advice and representation. Examination of Table 2.17 indicates that the difference between applicants in London and the other regions in obtaining advice is largely accounted for by the lower level of advice being provided in the London region by trade unions. This is probably a result of the higher level of non-unionised service-workers in the London region.

There were other differences in the type of advice most frequently obtained in the four regions and Table 2.17 shows that in Cardiff, applicants seek advice from solicitors more often than they do in the other three regions. It also indicates that advice is sought more frequently from trades unions in Leeds and Cardiff than in London or Birmingham.

TABLE 2.17 ADVICE TO INDUSTRIAL TRIBUNAL APPLICANTS BY REGION

	LONDON %	BIRM %	LEEDS %	CARDIFF %	TOTAL %
No advice	40	30	33	21	31
Solicitor	29	38	24	48	36
Law Centre	7	8	3	1	5
CABx/other	11	6	15	3	8
Trade Union	12	16	21	26	18
Prof.organisn.	*	1	1	1	1
Family/friends	*	2	2	1	1
TOTAL	100%	100%	100%	100%	100%
WEIGHTED TOTAL					N = 928

*less than 1% SIGNIFICANT P<.00000

(c)(ii) Applicants' characteristics and advice

In common with social security and immigration appellants, the proportions of men and women seeking advice about their industrial tribunal applications were almost identical. Men were slightly more likely than women to obtain advice from solicitors and trade unions, while women were more likely to go to law centres. The differences were not, however, significant.

Young employees were slightly less likely than those in other age groups to seek advice about their appeal, but again the differences were small and not significant.

Advice-seeking in relation to occupational group indicated that those occupational groups most likely to obtain advice were managers in large or small establishments (66% and 80% respectively), professionals (68%), ancillary workers such as nurses etc (81%), supervisors in skilled non-manual occupations (76%) and semi-skilled workers (73%). Those occupational groups least likely to obtain advice about their tribunal application were junior non-manual workers such as shop assistants, sales representatives, secretaries etc. (49% obtaining advice) foremen in manual occupations (59%) and unskilled workers (60%).

Table 2.18, which presents a breakdown of advice by social class (a summarised categorization of socio-economic group) shows class differences in the types of advice sought by applicants. While CABx seem to provide advice across social classes, law centres are generally advising those in the lowest social classes. Trades Union advice is concentrated among skilled non-manual and manual workers.

Predictably, those in the highest social classes seek advice most often from solicitors.

TABLE 2.18 ADVICE TO APPLICANTS IN RELATION TO SOCIAL CLASS

	SOCIAL CLASS OF APPLICANT					
	I (Prof)	II (Intermed)	III(N) (Skilled Non-Man)	III(M) (Skilled Manual)	IV (Semi-sk. Manual)	V (Unsk. Man)
	%	%	%	%	%	%
NO ADVICE	32	23	39	35	29	41
SOLICITOR	59	42	19	29	18	17
LAW CENTRE	0	0	3	2	12	18
CAB/OTHER AGENCY	9	15	9	13	23	18
TRADE UNION	0	9	29	20	14	6
PROFESS ORG	0	4	0	0	0	0
FAMILY/FRIENDS	0	6	0	1	3	0
TOTAL %	100%	100%	100%	100%	100%	100%
% OF SAMPLE	3%	19%	16%	40%	17%	5%

SIGNIFICANT $p<.00000$

(c)(iii) Nature of application and advice

The frequency with which applicants sought advice was analysed in relation to the nature of their application and the grounds upon which respondents were defending the tribunal application. In so far as broad type of application is concerned, those applicants most likely to have obtained pre-hearing advice were those claiming equal pay, sex discrimination and dismissal for trade union activities. These types of cases, however, comprise a very small proportion of industrial tribunal applications as a whole. The applicants least likely to obtain advice were those claiming race discrimination, redundancy payments (where the employer had gone into liquidation or closed down), and those requiring written statements of the terms of their employment (under S.1 EP(C)A 1978). The full results of this analysis are presented in Table 2.19 below.

TABLE 2.19 ADVICE TO APPLICANT IN RELATION TO TYPE OF APPLICATION

	UDL	UDL/ RPT	RPT	EMP	SXD	RRD	EPA	U58	IPY	TOTAL
	%	%	%	%	%	%	%	%	%	%
NO ADVICE	28	26	47	46	21	69	14	25	44	31
SOLICITOR	40	44	19	24	43	3	19	11	20	36
LAW CENTRE	4	4	6	11	16	3	14	0	6	4
CAB/AGENCY	8	21	6	12	0	8	0	0	5	8
T. UNION	18	4	21	6	16	13	53	53	24	19
PROF ORG	1	0	0	0	4	3	0	11	0	1
TOTAL %	100	100	100	100	100	100	100	100	100	100
% of all cases	74%	4%	11%	3%	2%	2%	2%	2%	1%	100%

WEIGHTED TOTAL CASES = 928

SIGNIFICANT P<.00008

Analysis of advice to applicants, in relation to the grounds upon which claims were being defended by respondents, also showed some small differences. Those applicants most likely to obtain advice were those who had allegedly been dismissed on grounds of sickness or capability (76% obtaining advice); where the respondent claimed that the applicant had resigned or taken voluntary redundancy, which includes constructive dismissal cases (75% obtaining advice); where the respondent claimed that the applicant was redundant (74% obtaining advice) or where there had been allegations of misconduct (73%). Those applicants who appeared to be least likely to obtain advice were those who had been dismissed on the grounds of poor performance (65% obtaining advice) and where the respondent asserted that the applicant was not entitled to bring an appeal (30%) or where the respondent did not dispute the appeal (60% obtaining advice). A full breakdown of applicants' advice in relation to respondents grounds for defence of claims is presented in Table 2.20.

TABLE 2.20 ADVICE TO APPLICANT IN RELATION TO RESPONDENTS' GROUNDS FOR DEFENCE

	CONDUCT %	PERFORM ANCE %	SICKNESS CAPAB. %	RESIGNED VOL.RED. %	REDUND %	NOT ENT TO CLAIM %	NO DISP. %	OTHER %
NO ADVICE	27	35	24	25	26	61	70	41
SOLICITOR	43	43	40	34	32	24	10	25
LAW CENTRE	4	4	0	6	5	2	20	4
CAB/AGENCY	10	11	15	9	7	3	0	5
T. UNION	15	1	18	23	26	8	0	23
PROF. ORG.	*	3	0	2	1	1	0	1
FAM/FRIEND	*	3	4	*	2	1	0	1
TOTAL %	100	100	100	100	100	100	100	100
% of total cases	33%	6%	6%	15%	22%	6%	1%	11%

WEIGHTED TOTAL CASES = 928

SIGNIFICANT P<.00001

(c)(iv) Respondents and advice

The pattern of advice seeking among respondent employers is naturally rather different from that of applicants. Respondents in industrial tribunal cases comprise a wide range of types of employers. Some are large organizations having in-house legal departments or in-house specialists in employment matters. Others are relatively small without legal departments or specialists in employment matters. Many employers faced with an industrial tribunal application appeared, in the first instance, to deal with the application through internal representatives and only later to seek advice from outside lawyers. Some went directly to solicitors. Others used personnel officers to deal with pre-hearing matters and to represent at the tribunal as well.

In so far as pre-hearing advice was concerned about 70% of employers appeared to take advice either from outside the company or from internal specialists. Amongst those employers who took advice, 60% sought advice from outside solicitors in the first instance. Management consultants or employment consultants advised in 3% of cases; employers associations advised in 11% of cases. Other sources of advice external to the company came from accountants, and CABx. Advice was provided by in-house legal departments in 10% of cases, by personnel and industrial relations officers in 10% of cases, and by other company representatives in 3% of cases.

Between the parties to industrial tribunals, then, the proportions seeking pre-hearing advice of some sort is roughly similar. The sources of advice for applicants and respondents are, however, rather different. While 70% of advice to employers was from lawyers, either outside practitioners or in-house, only 41% of applicants seeking advice did so from lawyers (i.e. solicitors or law centres). This difference in the source of advice available to the parties to industrial tribunals becomes more pronounced at the hearing stage where representation is required, and this problem is discussed in the next section.

(d) Representation at industrial tribunal hearings

Analysis of representation at industrial tribunals is complicated by several factors. First, industrial tribunal applications are characterised by a very high level of settlement of cases before hearing. This is largely due to the activities of the Advisory, Conciliation and Arbitration Service (ACAS), who are sent copies of all application documentation and who are under a statutory duty to attempt to conciliate at the request of either party, or where the officer considers that he could act with a reasonable prospect of success. Some consideration will be given in this chapter to the relationship between advice, representation and settlement of tribunal applications, and a fuller discussion of representation and settlement of applications appears in Chapter 3, together with a more detailed analysis of the role of ACAS in settlements.

In some of the settled cases in the sample, it was difficult, on the basis of information contained in tribunal case files, to identify whether the settlement reached between the parties was negotiated through representatives or by the parties themselves. This means that the advice and representation rates for settled cases may be a slight underestimate.

The second problem is that the analysis of representation at industrial tribunals is complicated by the need to consider not simply representation of applicants, but different configurations of representation between applicants and respondents.

In order to simplify the analysis, rates of advice and representation of applicants will be considered first in relation to all cases, whether or not the case went to a hearing, then in relation to respondent representation where cases proceeded to a tribunal hearing. In the analysis of representation of respondents, legal advice and representation includes outside lawyers and in-house lawyers; outside employment consultants and professional associations have been categorised together with in-house industrial relations specialists and other in-house specialists. Where respondents are defined as having had no advice or representation, this category comprises applications which were defended by ordinary line managers

or employers themselves, who may or may not have had experience of appearing at industrial tribunal hearings.

(d)(i) Representation of applicants

In all, some 38% of applicants were represented either at a hearing or during settlement negotiations. Even allowing for the possibility that some settlements have wrongly been classified as being concluded without representation or advice (as a result of the information not having been apparent from tribunal case files), the shortfall between the proportion of applicants obtaining advice, and the proportion being represented, is relatively high. While 70% of applicants obtained advice about their appeal, just under half of those applicants who obtained advice settled their claim or went to a hearing without representation. If we consider only those applicants whose cases went to an industrial tribunal hearing, just over two-thirds of applicants (68%) had obtained pre-hearing advice about their application, and somewhat more than one-half (58%) were actually represented at their hearing by someone other than a friend or relative.

Although just under one-half of applications were settled before a tribunal hearing and a further 15% were withdrawn by the applicant without any settlement being reached, patterns of advice between applicants and respondents seem to have relatively little influence on applicants' decisions as to whether to withdraw, settle, or go on to a full industrial tribunal hearing. Withdrawal rates were similar in situations where only one of the parties was advised and where neither party was advised. Applicants seemed to be less likely to withdraw their applications where both parties were advised. Where only the respondent was advised, applicants were less likely to settle their claim and more likely either to withdraw or to go on to a hearing. This suggests that where applicants receive advice about their tribunal applications, the chance that they will settle their claim, rather than withdraw or go on to a hearing is increased (see Table 2.21).

TABLE 2.21 ADVICE TO THE PARTIES IN RELATION TO WITHDRAWAL AND SETTLEMENT OF INDUSTRIAL TRIBUNAL APPLICATIONS

	APPLICANT ONLY ADVISED %	RESPONDENT ONLY ADVISED %	BOTH ADVISED %	NEITHER ADVISED %	TOTAL %
APPEAL WITHDRAWN	18	19	12	19	15
APPEAL SETTLED	51	40	50	47	48
APPEAL HEARD	32	41	38	34	37
TOTAL%	100	100	100	100	100
% OF TOTAL SAMPLE	17%	18%	52%	13%	100%

TOTAL WEIGHTED CASES = 928

(d)(ii) Regional variation in representation

Regional patterns of representation among cases that went to a tribunal hearing do not display any great differences in rates of representation. The rate of representation between regions is roughly similar, although applicants in the London region are somewhat less frequently represented at their hearings than applicants in the other three regions. This is a consequence of the low level of advice obtained in the region (see above section (c)(i)). There are, however, rather greater differences between regions in the frequency with which certain types of representatives appear for applicants. For example, applicants in London were more likely to be represented by a barrister or a law centre than applicants in other regions. Applicants in Leeds and Cardiff were considerably more likely than applicants in the other two regions to be represented by a trade union official. Applicants in Birmingham were the most likely to be represented by a CAB or other lay advice agency. The results in Table 2.22 demonstrate to some extent the effect of geographical location on obtaining advice and representation. Trade union representation, however, alters the situation of unionised employees who can obtain free advice from their union rather than having to pay for solicitors or having to depend on free advice from law centres or lay advice agencies. The levels of private legal representation by solicitors and barristers appears to be roughly the same in all of the four regions. In London, the low level of union representation appears to lead to

greater number of applicants appearing unrepresented than in other regions and to greater use of law centres or the Free Representation Unit (FRU).

TABLE 2.22 REPRESENTATION AT INDUSTRIAL TRIBUNAL HEARINGS: REGIONAL VARIATION

	LONDON %	BIRM %	LEEDS %	CARDIFF %	TOTAL %
NO REP	41	35	35	32	36
SOLICITOR	7	13	20	25	16
BARRISTER	21	8	5	8	12
TRADE UNION	11	11	20	24	16
LAW CENTRE/FRU	10	5	3	0	5
CAB/OTHER AGENCY	5	16	9	3	7
FAMILY/FRIENDS	3	11	7	6	6
OTHER	2	0	2	2	1
TOTAL%	100%	100%	100%	100%	100%

WEIGHTED TOTAL = 339 HEARD CASES (BASED ON 550 UNWEIGHTED CASES)

SIGNIFICANT P<.00000

(d)(iii) Representation and applicants characteristics

There was little difference between men and women or between age groups in either the extent to which applicants were represented or in the type of representation obtained. There were, however, differences in representation between occupational groups similar to those found in relation to advice. In general, the occupational groups most likely to seek advice were also the most likely to obtain representation if their case went to a tribunal hearing. There were, however, some important differences. For example, while 80% of managers in small establishments obtained pre-hearing advice about their tribunal application, only 59% of applicants in that occupational group were represented at their hearing as compared with 78% of managers in large establishments. Similarly, although 81% of ancillary workers (such as nurses and teachers) obtained advice about their applications, only 59% of applicants in that occupational group whose application was heard at a tribunal were represented. A breakdown of representation at hearings by summary social classes is presented in Table 2.23. Once again, the effect of trade union representation influences the pattern of representation among the classes.

Table 2.23 shows that the highest rate of representation is among unskilled manual workers where 30% are represented by unions and a further 25% are represented by solicitors or barristers. Those applicants who were least likely to be represented at their hearing

were those in social class II, white collar workers who are less likely to be unionised and less likely than professional to have the resources to pay for private legal representation.

TABLE 2.23 APPLICANTS' REPRESENTATION AT INDUSTRIAL TRIBUNAL HEARINGS IN RELATION TO SOCIAL CLASS

	I (Prof)	II (Intermed)	III(N) (Skilled Non-Man)	III(M) (Skilled Manual)	IV (Semi-sk. Manual)	V (Unsk. Man)
	%	%	%	%	%	%
NOT REPRESENTED	31	47	37	37	31	26
SOLICITOR	31	16	12	17	5	18
BARRISTER	37	11	14	12	16	7
TRADE UNION	0	12	7	19	15	5
LAW CENTRE	0	0	14	6	12	30
CAB	0	7	7	8	10	0
OTHER	0	2	0	0	4	5
FAMILY/FRIENDS	0	5	9	2	8	8
TOTAL %	100%	100%	100%	100%	100%	100%

(d)(iv) Representation by type of appeal

Among cases heard at tribunals, those applicants most likely to be represented were those whose applications concerned trade union activities (where every case was represented), equal pay claims (83% represented) and sex discrimination claims (66% represented). These types of applications, however, constituted a very small proportion of all cases heard (6%).The applicants **least** likely to be represented were those whose cases concerned race discrimination (41% represented) and redundancy payments (50% represented).

Among applicants claiming unfair dismissal, those most likely to be represented were applicants whose cases concerned allegations of misconduct or sickness/capability. Applications concerning misconduct and those concerning performance were the most likely to be represented by barristers. The analysis of representation in relation to respondents' grounds for defending claims is presented in Table 2.24.

TABLE 2.24 TYPE OF REPRESENTATION BY RESPONDENTS' GROUNDS FOR DEFENCE OF APPLICATION

	CONDUCT	PERFORM ANCE	SICKNESS CAPAB.	RESIGNED VOL.RED.	REDUND	NOT ENT TO CLAIM	OTHER
	%	%	%	%	%	%	%
NOT REPRESENTED	29	42	33	42	40	51	39
SOLICITOR	20	21	14	16	6	2	22
BARRISTER	16	21	8	8	9	8	9
TRADE UNION	18	5	18	11	24	8	16
LAW CENTRE	4	5	3	8	2	5	6
CAB	9	5	18	5	6	10	0
OTHER	*	0	3	0	1	4	7
FAMILY/FRIEND	3	0	2	10	12	12	0
TOTAL %	100%	100%	100%	100%	100%	100%	100%

WEIGHTED TOTAL 339 (BASED ON 550 CASES)

(d)(v) The relationship between pre-hearing advice and representation

A comparison of pre-hearing advice and applicants' representation at hearings indicates that those who sought advice from solicitors and CABx were the most likely to attend their tribunal hearing without representation. Of those applicants who obtained pre-hearing advice from a solicitor, just over two-thirds were represented by a solicitor or barrister, and just under one-quarter either had no representation or were represented by a relative or friend. Among those who obtained early advice from a CAB or other advice agency, 58% were represented at their hearing by a CAB and one-quarter were either unrepresented or were represented by a friend or relative. Among those applicants who obtained advice from law centres, just under one-quarter were eventually represented by a lawyer in private practice, a little under one-third were represented by the law centre and 13% were ultimately represented by a relative or friend. Those applicants who sought advice from their trade union were the most likely to be represented at their hearing. Among those applicants who did not obtain early pre-hearing advice, information from tribunal files indicated that a proportion succeeded in obtaining some representation before their hearing. Although 85% in this group were either unrepresented or represented by a friend or relative a small proportion obtained the services of lawyers in private practice, law centres, CABx and unions to represent them at their hearing.

TABLE 2.25 REPRESENTATION AT INDUSTRIAL TRIBUNAL HEARINGS IN RELATION TO ADVICE BEFORE HEARINGS

	APPLICANT REPRESENTED AT HEARING BY							
	LAWYER	UNION	LAW CENTRE	CAB	OTHER	FAM/ FRIEND	NO REP	TOTAL%
PRE-HEARING ADVICE BY								
SOLICITOR %	67	3	2	2	2	2	21	100%
LAW CENTRE %	22	0	62	3	0	13	0	100%
CAB/AGENCY %	6	0	6	58	0	2	27	100%
T. UNION %	5	80	1	3	1	0	9	100%
PROF. ORG. %	16	0	0	0	61	23	0	100%
NO EVIDENCE OF ADVICE %	5	2	4	4	0	12	73	100%

TOTAL WEIGHTED CASES = 339 (BASED ON 550 HEARD CASES)

(READ PERCENTAGES ACROSS THE TABLE)

Evidence relating to the causes of the shortfall between advice and representation, where advice was taken from CABx and solicitors was obtained from interviews with unrepresented applicants at hearings. This issue is discussed further below in section 5 and the indications are that the cost of legal representation and lack of manpower to represent within CABx are the chief causes of the shortfall.

(d)(vi) Patterns of representation between applicants and respondents

Respondents' representation at industrial tribunals hearings was somewhat different from that of applicants. First, just over one-quarter of respondents had neither legal representation nor specialist representation which is lower than for applicants, where 42% were unrepresented (excluding relatives and friends). Respondents were represented by a lawyer in just under half of their hearings (48%) as compared with one-third of applicants (33% including law centres). The parties were represented by barristers in roughly similar proportions (15% of respondents and 12% of applicants). The range of representatives appearing for respondents is presented below in Table 2.26.

TABLE 2.26 RESPONDENTS' REPRESENTATION AT INDUSTRIAL TRIBUNAL HEARINGS

	% OF TOTAL
NO REPRESENTATION	27
SOLICITOR	27
BARRISTER	15
IN-HOUSE LAWYER	6
PERSONNEL MANAGER	7
OUTSIDE CONSULTANT	3
EMPLOYERS' ASSOCIATION	8
OTHER COMPANY REP	6
OTHER	1
TOTAL	100%

WEIGHTED TOTAL 339 (BASED ON 550 CASES)

The pattern of representation between the parties at tribunal hearings is rather different from the pattern of pre-hearing advice and representation discussed above. The totals at the base of Table 2.21 above indicated that pre-hearing advice was obtained by the applicant only, or by the respondent only, with similar frequency, and that both parties were advised before hearings in a little over half of all cases. Table 2.27 below, however, shows that where applications reach a tribunal hearing, the applicant is the only represented party in less than 10% of cases, whereas the respondent is the only represented party in over one-quarter of hearings. This strongly suggests that although respondents may not take advice at an early stage following an application to an industrial tribunal, when it becomes clear that the application is going to be heard, respondents are likely to obtain representation. The same is not however true of applicants.

Among those cases that are heard at industrial tribunals respondents are represented by a lawyer or specialist representative in about three-quarters of hearings (74%). Applicants are represented in somewhat over half of their hearings (57%). Both parties were represented in just under one-half of hearings (48%) and neither party was represented in 16% of hearings.

TABLE 2.27 REPRESENTATION OF PARTIES AT INDUSTRIAL TRIBUNAL HEARINGS

	APPLICANT ONLY ADVISED/ REPRESENTED	RESPONDENT ONLY ADVISED/ REPRESENTED	BOTH ADVISED/ REPRESENTED	NEITHER ADVISED/ REPRESENTED	TOTAL
BEFORE HEARING	17%	18%	52%	13%	100%
AT THE HEARING	9%	26%	48%	16%	100%

TOTAL WEIGHTED SAMPLE 928 (550 HEARD CASES)

[The figures for hearings exclude representation by relatives and friends. If they were included, the percentages for hearings along the bottom line would be as follows: 10% 20% 54% 15%]

Further refinement of the analysis reveals that **in 12% of all hearings, unrepresented applicants face legally represented respondents. In only 5% of all hearings does an unrepresented respondent face a legally represented applicant.**

Table 2.28 compares applicants' representation with respondents' representation at hearings in order to indicate the most common configurations of representation between the parties. From Table 2.28 it can be seen that in 61% of cases where applicants are legally represented, respondents are also legally represented. Where applicants are represented by unions, law centres or CABx, respondents are slightly less likely to be legally represented. In about one-third of cases where the applicant attends his or her hearing without representation, the respondent is legally represented.

Respondents are least likely to be represented by lawyers or employment specialists where applicants either represent themselves or are represented by a relative or friend. There are two plausible interpretations of this finding. First, that where an applicant obtains representation, respondents are more likely themselves to obtain representation. Alternatively, that where a respondent is represented by a lawyer or non-legal specialist, applicants are more likely to feel the need to obtain representation themselves if they are able to obtain free representation or if they can afford to pay for representation.

TABLE 2.28 APPLICANTS' REPRESENTATION IN RELATION TO RESPONDENTS' REPRESENTATION AT INDUSTRIAL TRIBUNAL HEARINGS

	APPLICANT REPRESENTED AT HEARING BY						
RESPONDENT REPRESENTED BY	LAWYER %	UNION %	LAW CENTRE %	CAB %	FAM/ FRIEND %	NO REP %	TOTAL %
LAWYER	61	55	56	50	45	34	48
NON-LAWYER	23	30	19	36	36	23	25
NO REPRESENTED	16	14	25	14	18	43	27
TOTAL %	100%	100%	100%	100%	100%	100%	100%
% OF SAMPLE	28%	16%	5%	7%	6%	36%	

Summary of findings in relation to advice and representation at industrial tribunals

The majority of both applicants and respondents to industrial tribunals sought advice about the tribunal application prior to the hearing. Advice to applicants in industrial tribunals appears to be related to the geographical location of applicants, their occupational group and social class and to the nature of their application to the tribunal. When applicants obtain advice they are more likely to settle their claims and less likely to withdraw than when they are not advised. Applicants seek advice most often from solicitors and law centres, but advice about industrial tribunal applications is being provided by a relatively wide range of agencies. Those that are unionised obtain advice about their applications from their trade union. Respondents seek legal advice more often than applicants, either from outside solicitors in private practice or from in-house lawyers.

In so far as representation at hearings is concerned, fewer applicants are represented at hearings than respondents. Where pre-hearing advice has been taken from solicitors or CABx, applicants are less likely to be represented at their hearing than when pre-hearing advice has been taken from Law Centres or unions. This suggests that lack of representation may have less to do with the process of sifting out weak cases, and more to do with lack of resources on the part of applicants. Although the rates at which applicants and respondents obtain pre-hearing advice are similar, it is clear that when the application results in a tribunal hearing, respondents tend to obtain representation. The same is not true for applicants.

The most common pattern of representation at hearings is for both sides to be represented. However, in about one-quarter of all hearings the respondent is the only represented party.
In 12% of all hearings, unrepresented applicants face legally represented respondents. In only 5% of all hearings does an unrepresented respondent face a legally represented applicant.

4. MENTAL HEALTH REVIEW TRIBUNALS

Information about mental health review tribunals was extracted from random samples of case files in three regional centres. Most of the case files related to cases heard during 1986 and the early part of 1987. As a result of the high number of cases in which patients are made informal or discharged following an application for a mental health review tribunal hearing, cases which went to a hearing were oversampled. The relatively low rate of representation of patients in the London region, extra represented cases were randomly sampled in London to provide sufficient represented cases for analysis. The total sample drawn was 623 cases, of which 534 resulted in a review tribunal hearing and the data have been weighted to correct for the oversampling of heard and represented cases. The regional breakdown of cases in the sample is as follows: London 63%, Liverpool 20% and Nottingham 16%.

(a) Case type

Most of the applications for mental health review tribunals were from patients detained under S.2. of the Mental Health Act 1983 (patients compulsorily detained for assessment for a period not exceeding 28 days) (33%); from those patients detained under S.3. of the Mental Health Act 1983 (patients detained for up to six months with a possibility of extension) (41%); patients detained under S.37 (committal of a convicted person to hospital) (4%); and those detained under S.37/41 (committal of a convicted person to hospital with an order restricting release) (13%). A small minority of applications were in respect of patients conditionally discharged who were applying in order to have the conditions of their release discharged (2% of cases). The remainder of applications comprised individual patients detained under a relatively wide variety of sections.

Some 15% of cases sampled were from patients detained in special hospitals. This figure is not representative of the proportions of special hospital cases since they were slightly over sampled.

Just under three-quarters of applications for review were made by patients themselves (72%); applications were made by hospitals in 15% of cases; a further 10% were automatic references under the Mental Health Act 1983, the remainder being made by the patient's family on behalf of the patient.

Of the sample of applications for review in the London region only, figures were noted of the rates at which applicants for review resulted in patients being discharged etc., so that a review tribunal was not ultimately held. Of the applications for a review tribunal randomly sampled in the London region, 11% of patients were discharged from hospital before the date of the tribunal hearing (see also Chapter 5), 9% were made informal before the date of the hearing, and in 5% of cases the patient withdrew the application for review before the date of the hearing. In a handful of cases the patient was regraded before the hearing, or the section under appeal was allowed to lapse or the hospital cancelled the application for review. These cases are excluded from the following analysis which is based only on those cases that proceeded to a mental health review tribunal hearing.

(b) Patients and their condition

The sample of patients drawn from tribunal files contained more men than women, the percentages being 64% and 36% respectively. The age of the patient was known in 98% of cases and the age distribution of patients, where known, is given below:

16-19	2%
20-29	25%
30-39	29%
40-49	19%
50-59	12%
60-69	6%
70+	4%

In so far as marital status is concerned, one-half of patients, whose applications for review resulted in a hearing, were single (53%); some 12% of patients were married; 3% were separated; 8% of patients had been divorced; and 4% were widowed. There was also a small number of single parents (2%) and cohabitees (1%).

Where information concerning previous admissions to hospital was available in tribunal files the information was noted in order to be taken into account in the analysis of the outcome of review tribunal hearings. This information indicated that about 14% of patients whose cases were reviewed by the tribunal had not previously been admitted to hospital; a further 11% had been admitted once or twice recently; 7% had been admitted frequently in recent years; 15% had periodically been admitted over a number of years; and 13% had been admitted to hospital on many occasions throughout their lives. About 23% of patients had been detained for one very long period, for example, following conviction for an offence.

One quarter of patients whose applications resulted in a tribunal hearing had some sort of criminal record, the most common convictions being for grievous or actual bodily harm (30%); sexual offences (16%); manslaughter (12%); murder (11%); and arson (10%).

The assessment of patients' behaviour and current diagnosis was often difficult to discern from the information contained in tribunal case files. As far as behaviour was concerned the most frequent categorizations were aggressive/violent behaviour which was said to have been displayed by about 40% of patients whose cases were reviewed by tribunals; delusionary behaviour was noted by doctors in 28% of cases; and suicidal behaviour was noted in 9% of cases reviewed by tribunals. There was, however, a very wide range of different types of behaviour.

In so far as diagnosis was concerned, the most common diagnoses were varieties of schizophrenia (about 45% of cases); manic depression (about 9%); and various forms of psychopathy (8%).

(b)(i) Recommendations of Responsible Medical Officers

In so far as it was possible, information about the Responsible Medical Officer's decision in relation to the patient's application for review was noted, since these decisions form the basis of argument at review tribunal hearings. It was possible to determine these recommendations in just over 90% of cases.

In the vast majority of cases the RMO's opinion was that the patient was not suitable for discharge, or that the patient should remain in hospital to complete rehabilitation (77%). In 1% of cases the RMO stated that the patient was suitable for discharge; in 7% of cases the RMO recommended that the patient be transferred; in 2% of cases the RMO recommended that the patient be conditionally discharged; in another 2% of cases the recommendation was that the conditions to which the patient was subject should be removed; in a further 1% of cases the RMO recommended that the patient be sent home. Overall, the RMO recommended that there should be no change in the patients status or situation in 78% of cases. In 14% of cases the RMO recommended a change that would represent an improvement in the patient's situation. In the remaining 8% of cases the RMO's recommendation was not clear from the tribunal case files.

The reasons for the RMO's recommendation could be determined from case files in two-thirds of review tribunal cases. Although there was a wide variety of reasons given by RMOs for their decisions, the most common reasons given were that the patient lacked insight into his or her condition (given in 15% of cases); that the patient would not take medication voluntarily (given in 11% of cases) or that there was a continuing need for treatment (given in a further 11% of cases); that the patient was a danger to others (given in 10% of cases); that there had been insufficient improvement in the patient's condition and that more time in hospital was necessary (10%); that

nursing and supervision were necessary (9%); that the patient was a danger to him/herself and others (5%); and that the patient was a danger to him/herself (given in 4% of cases).

Reports from independent psychiatrists were present in 12% of case files. In 53% of cases the independent psychiatrist agreed with the RMO's recommendation. In just under one-third of cases the independent psychiatrist disagreed with the RMO's recommendation (32%) and in 16% of cases the independent psychiatrist's opinion was not available on the case file. The opinions given by independent psychiatrists were as follows: insufficient justification for detention (42%); patient requires treatment but in a different environment (19%); recommendation of trial leave (13%); the patient is no longer a danger to others (10%); the patient is not currently displaying symptoms (10%). In 6% of cases where the independent psychiatrist's opinion was known the opinion was that the patient was appropriately placed.

There is a relationship between the presence of independent psychiatric reports and representation, and this will be discussed further in Chapter 3 where it will be seen that the presence of an independent psychiatric report has a significant impact on the outcome of mental health review tribunal hearings.

(c) Advice and representation

Unlike the other tribunals studied, in mental health review tribunal cases there was virtually no shortfall between patients obtaining advice about their appeal and representation at their hearing. The only differences in rates between advice and representation that arose during data analysis resulted from the fact that in about 4% of tribunal hearings it was impossible to determine from the case files whether or not the patient had been represented at the tribunal hearing. Hearing sheets were occasionally missing from files and in those situations, unless a representative had written letters to the tribunal, there might be no other information about representation (this was particularly troublesome in the London region as is demonstrated by Table 2.29). Notes of evidence, which might reveal the presence of a representative, are not generally kept on mental health review tribunal files and the recording of decisions and reasons for decisions are very brief.

In a little under two-thirds of cases that were heard by mental health review tribunals, patients appeared to have been in receipt of some advice before their tribunal hearing (64%). Among those cases where evidence of advice existed, in 96% of cases the advice had been given by solicitors; 2% from law centres; and 1% from specialist advice units. In a tiny minority of cases advice was obtained from MIND (.1%) and in a similar minority there was some evidence that advice had been obtained, but its source was unclear.

In so far as representation was concerned, some 35% of patients were not represented at their hearing and in 4% of cases it was not known whether or not patients were represented. Among represented cases 94% were represented by solicitors, 4% were represented by barristers, 1% by specialist representation units, and 1% by law centres.

(c)(i) Representation and patients' characteristics

There were no significant differences between men and women or between age groups in the extent to which patients obtained representation for their tribunal hearings.

Those patients who had a history of numerous admissions to hospital over the years were the least likely to obtain representation. Patients who had not previously been admitted to hospital under the Mental Health Act 1983 and those who had been detained for one very long period (usually since committing an offence), were the most likely to obtain representation. The differences were not, however, statistically significant.
Patients detained in Broadmoor were much less likely to be represented at their hearing than patients in other special hospitals or patients detained in ordinary hospitals. Overall 36% of patients detained in district hospitals were unrepresented; of the patients sampled who were detained in Broadmoor, 66% were unrepresented; among the patients sampled in Park Lane 12% were unrepresented; among the patients sampled in Rampton 15% were unrepresented; and of the relatively few patients sampled in Moss Side, none were unrepresented. The differences in rates of representation were statistically significant.

(c)(ii) Regional variations in representation

There was considerable regional variation in representation. Table 2.29 indicates that representation was highest in the Liverpool region and lowest in the London region. The high rates of representation in Liverpool are the result of the regional tribunal office's proactive policy on representation. Discussions with administrative staff in the office revealed that the office takes responsibility for securing representation for appellants, and whenever appellants fail to name a representative, the office attempts to arrange representation on their behalf.

There were also regional differences in the type of representation obtained by patients. Patients in the London region were more likely to be represented by barristers than in the other two regions, and the only specialist unit providing representation in the sample was located in the London region.

TABLE 2.29 REPRESENTATION AT MENTAL HEALTH REVIEW TRIBUNALS: REGIONAL VARIATION

	LONDON %	LIVERPOOL %	NOTTINGHAM %	TOTAL %	
TYPE OF REPRESENTATION					
NO REPRESENTATIVE	47	21	29	35	
SOLICITOR	40	76	66		57
BARRISTER	5	1	0	2	
SPECIALIST UNIT	1	0	0	*	
LAW CENTRE	*	1	2	1	
MIND	*	0	0	*	
NOT KNOWN	7	0	4	4	
TOTAL %	100%	100%	100%	100%	

WEIGHTED TOTAL CASES = 534

SIGNIFICANT P<.00000

(c)(iii) Representation and case type

There was virtually no difference in rates of representation by section under appeal, with the exception of patients detained under S37/41 who were considerably more likely than other patients to be represented. A breakdown of representation by Section in presented in Table 2.30.

TABLE 2.30 REPRESENTATION AT MENTAL HEALTH REVIEW TRIBUNALS BY SECTION UNDER REVIEW

	SECTION 2 %	SECTION 3 %	SECTION 37 %	SECTION 37/41 %	OTHER %	TOTAL %
TYPE OF REPRESENTATION						
NO REPRESENTATION	37	36	35	27	32	35
SOLICITOR	54	55	60	69	51	57
BARRISTER	3	2	0	1	7	2
OTHER	1	3	2	1	0	2
NOT KNOWN	5	4	2	1	9	4
TOTAL%	100%	100%	100%	100%	100%	100%

TOTAL WEIGHTED CASES = 534

There was also a relationship between representation and the source of the application for review. Where patients had themselves requested a review tribunal hearing 28% were ultimately unrepresented at their hearing. Where the application was submitted by the hospital managers, patients were unrepresented in 47% of cases. Where the review was an automatic reference by the Secretary of State, 53% of patients were unrepresented.

Summary of findings relating to advice and representation at Mental Health Review Tribunals

Despite the availability of Advice By Way Of Representation (ABWOR) for patients detained under the provisions of the Mental Health Act 1983, a significant minority of patients (35%) appear at mental health review tribunals without representation. In common with the other tribunals, the most significant determinants of representation are geographical location and type of appeal. The significance of geographical location holds true for special hospitals as well as other hospitals. There were also, however, certain characteristics of patients related to the likelihood that representation would be obtained, the most important of these being the number of previous admissions to hospital under MHA 1983.

Representation at mental health review tribunals is provided by a much narrower range of representatives than in the other tribunals. Most representation is conducted by solicitors and barristers in private practice, although law centres, specialist units and MIND also represent patients in a small minority of hearings.

5. REASONS FOR LACK OF REPRESENTATION AT TRIBUNALS

In three of the four tribunals studied, appellants attending tribunal hearings were interviewed about their appeals and about the issue of representation. Information from these interviews forms the basis Part III of the Report, but in this section some of the information given by unrepresented appellants regarding their reasons for lack of representation is presented. Since most immigration appellants interviewed at hearings were represented, the experiences of appellants at social security appeals tribunals and applicants to industrial tribunals are most frequently quoted.

Evidence from appellants suggests that failure to seek advice or obtain representation often stems from ignorance about the nature of appeals. In some instances appellants display a degree of over-confidence, leading them to feel that advice and representation is

unnecessary. In other cases, ignorance is manifested in bewilderment about the whole process, and a lack of understanding of any need for assistance in the preparation or presentation of the appeal. The issue of appellants' comprehension of the appeals process is discussed in full in Part III together with graphic examples of the confusion which often exists.

In other cases, appellants recognised or felt a need for advice, but either did not know where to go, or having sought advice found that they either could not afford to pay for representation, or representation could not be provided by the agency from which advice had been sought.

Among the 190 appellants to social security tribunals who were interviewed, some 77 unrepresented appellants gave information about the reasons for their lack of representation. Just under two-thirds (61%) had either obtained some advice from an advice agency or lawyer or attempted, but failed, to obtain advice. The relatively large number of unrepresented appellants interviewed who said that they had obtained advice about their appeal supports the evidence presented in section 1(d)(iii) that obtaining advice prior to a hearing increases the likelihood that an appellant will attend his or her hearing.

The remaining 39% of unrepresented social security appellants interviewed had made no attempt to seek advice. The reasons given by appellants at social security appeals tribunals for appearing unrepresented, are summarised in Table 2.31.

TABLE 2.31 REASONS GIVEN FOR LACK OF REPRESENTATION BY APPELLANTS AT SOCIAL SECURITY APPEAL TRIBUNALS

Agency short of staff/no one available to represent	30%
Could put case best by myself	25%
Thought could manage alone	15%
Didn't know I could have a representative	6%
Not enough time or too difficult to get representation	5%
Told case no good/agency wouldn't help	4%
Couldn't afford to pay solicitor	3%
Couldn't get help	4%
Representative hasn't come	3%
Didn't occur to me to get representation	3%
The appeal is a waste of time	3%
Total	100%
N = 69	

Table 2.31 shows that the most common reason for appearing unrepresented, after having obtained advice from an advice agency, was the agency's lack of resources. The problem of resources was

confirmed by representatives of advice agencies who were interviewed during the course of the research. For example:

> 'We could spend all day doing appeals. You can make a case for representing almost every case, but that has resource implications, and it's hard. The answer is we haven't the time to represent all of the cases we would like to.' [CAB]

> 'We are demand-led and we can never meet the demands of the public and cases are more and more complex and they need more time, which we haven't got. Advisers just burn themselves out.' [CAB]

> 'A lot of people are not coming now because they say what's the point of coming when you get turned away. We have to limit numbers. If you walk past at 9.30 a.m. there is already 50 people outside. We open the doors at 10.00 a.m. and by 10.05 a.m. we are full. We can't cope with any more.' [CAB]

> 'The problem is not having positions to fill. We just have no money.' [CAB]

The problem of the lack of resources of advice agencies is mentioned throughout the Report, but discussed again in full in Part III.

One or two appellants interviewed were unaware of the possibility of being represented at their hearing, even though they had sought advice from a CAB. A substantial minority of appellants believed that they could put their own case better than a representative might, although interviews conducted after hearings indicated that in many cases this view was subsequently reversed (see Part III for a detailed discussion of this issue).

Interviews were conducted with 113 applicants at industrial tribunal hearings. Of these, 31 unrepresented applicants who were interviewed about their experiences of obtaining pre-hearing advice and representation gave their reasons for appearing unrepresented. Almost all applicants interviewed had obtained advice about their appeals, mostly from solicitors, and by far the most common reason for appearing without representation, was that the applicant could not afford to pay for a representative (17 of 31 who gave reasons). For example:

> "I couldn't get Legal Aid and the solicitor said it would cost about £1000."

> "I could not afford it. I was told it would cost a lot if the case lost and I had already spent £200 on advice to date."

"I could not afford £200 for a day's appearance. I hadn't considered the CAB. I didn't know they could represent me in this."

"The solicitor would only advise. He said it would cost £250 for representation. I couldn't afford it."

In three cases applicants had obtained advice from their union, but the union had refused to assist them. Other reasons given were that the applicant thought it would be an open and shut case, or that their representative had failed to attend the hearing. In one case, the applicant had obtained advice from a CAB but was unaware that she could have been represented at her hearing. Some applicants who had obtained advice had felt that they did not need representation. For example:

"I didn't bother. I have got no reason for representation. The grounds are fairly concrete."

Among appellants before immigration adjudicators who were interviewed almost all were represented at their hearing. Among the handful that were not, hearings were often adjourned for the appellants to get advice and representation, leading to some confusion and frustration. For example:

"They never said anything when we got a letter that it's going to be a court hearing. They just sent a letter telling us about the hearing. They never said anything about legal advice or anything."

"We didn't know that we needed a representative. We thought it was straightforward and that we would just come here and they would ask us about our circumstances."

This apparent lack of knowledge about advice, despite the fact that the right to be represented by UKIAS is printed on tribunal documentation, indicates the extent to which appellants may fail to comprehend the information contained in documents sent out both by Departments and tribunals.

In general, then, interviews confirmed that failure to seek representation resulted from lack of knowledge about where to go for advice, from general bewilderment, or from the feeling that representation was unnecessary. Lack of representation, among those who had sought representation, generally derived from lack of resources: either those of the applicant in industrial tribunals, or those of the applicant and of the advice agencies in social security appeals.

SUMMARY

It is evident from case files that in all tribunals, except social security, a majority of appellants and applicants feel a need to obtain advice about their cases, or are made aware by someone else, of a need for advice about appealing to a tribunal. Advice is most often obtained by appellants to immigration adjudicators, applicants to industrial tribunals, and patients applying for mental health review tribunals. In social security cases, industrial tribunal cases and immigration cases, advice is being provided by a relatively wide range of individuals and agencies. Legal advice is more frequently obtained by those appealing to immigration adjudicators and applicants to industrial tribunals than those appealing to social security appeals tribunals. In mental health review tribunals advice and representation is almost exclusively provided by solicitors and barristers.

In all of the four tribunals studied there were significant regional variations in the extent and source of advice and representation. This was equally true of the two tribunals in which free representation is available. Outside of urban centres the availability of specialist lay advice is virtually non-existent. CABx are geographically widely spread and provide generalist advice in all areas. In the absence of specialist advice agencies, solicitors provide advice about social security appeals.

The likelihood that advice and representation would be obtained was also related, in all four tribunals, to the type of case under appeal or review. Thus where cases are more serious or more difficult to pursue, appellants are more likely to obtain advice and representation.

The provision of advice has an important effect on the manner in which cases are ultimately decided. In social security appeals tribunals those appellants who had obtained advice were more likely to attend their tribunal hearing. In immigration appeals, those appellants who had obtained advice were more likely to have their cases determined on the basis of a hearing, rather than on the papers. In industrial tribunals, applicants who obtained advice were less likely to withdraw their applications than those who had not been advised, and more likely to settle their application.

Obtaining advice is the first step to obtaining representation at tribunal hearings. Although a majority of those obtaining advice were represented at their hearing, in many cases appellants and applicants who had obtained advice nonetheless were unrepresented at their hearing. Interviews with appellants and applicants who attended their hearings indicate that a small proportion of those who attend their hearings unrepresented do so either from choice or from

ignorance of the availability of advice. Among the majority who had sought advice and attempted to obtain representation, the failure to obtain representation was most often the result of lack of resources on their own part, or on the part of advice agencies.

CHAPTER 3. THE OUTCOME OF TRIBUNAL HEARINGS

This chapter concerns the effect of advice, representation and other factors on the outcome of hearings in the four tribunals studied. The chief purpose of the chapter is to identify the extent to which representation at tribunal hearings, or any other factor, increases the likelihood that appellants will succeed with their cases before tribunals. Although this chapter concentrates on the extent to which those coming before tribunals succeed with their cases, it is not suggested that success should be the only criterion by which the value of advice and representation should be judged; nor is it implied that success is necessarily the right outcome of hearings. Tribunal hearings provide an opportunity for administrative and other decisions to be scrutinised, to be corrected where necessary, or to be confirmed where the original decision, according to the law and facts, was correct. It can be argued that the theoretical value of representation to this process is to ensure that tribunals arrive at the best possible decision (or most accurate decision) in the circumstances of each case, and that where the best possible decision is to dismiss the case, to make that outcome more palatable to the appellant or applicant. In other words, where appellants ought to win, representation may ensure, or make it more likely that appellants will win. Where appellants ought to lose, representation may make the process of losing both more fair in fact, and also appear more fair or acceptable to those who lose.

In Part III we discuss the extent to which advice and representation makes the process of 'losing' more comprehensible and ultimately acceptable to appellants. In this chapter, we analyse quantitatively the contribution of representation to the process of 'winning.'

The analysis of outcome of tribunal hearings has been conducted in two stages. First, information extracted from tribunal case files relating to the type of appeal, the characteristics of the appellant, advice, representation, nature of hearing, presence of appellant at hearing, witnesses etc., were compared with the outcome of hearings in order to discover what types of people, types of cases, and types of representation were most likely to succeed at their hearings. A statistical test (Chi-square) was then applied in order to assess the probability that the correlations observed had arisen by chance.

However, since we believed that several factors might influence success, simple comparisons alone do not tell the whole story, because the factors which influence success may also be related to each other. This means, for example, that if represented cases appear to succeed more often than unrepresented cases, this may be because representatives take on cases that, for other reasons, would win in any case, i.e. because they are stronger cases. One way round this problem is to adopt a statistical technique known as multiple regression analysis. This is a means by which the effect of one factor on another can be quantified while holding all other factors constant. The technique estimates the effects of all the explanatory

factors jointly, taking into account their interdependence. In this particular context, this means that the independent effect of representation on 'success' can be estimated, taking into account the possibility that representatives will select out the most 'winnable' cases, or that strong cases are more likely to look for representation, or alternatively that representatives will refuse to represent a clearly hopeless case.

The estimated effects, or 'coefficients', of factors such as representation on the likelihood of success, can be either positive or negative, and their size reveals something about the extent of the relationship. How confident we are that the relationship is really there in the population (as opposed to being an artefact of the random sample) depends on the variance or spread of the estimates. In other words, a small effect with a large spread is unconvincing, as it is quite possible that there is no real effect in the population from which we have sampled. In what follows, therefore, we have estimated the size of the effect of various factors, including representation, on the likelihood of success at tribunals, and reported those effects in which we have at least 90% confidence. (It should also be noted at this point that the technique used here is a particular kind of multiple regression analysis, known as probit regression analysis, which is typically used when we are attempting to explain a probabalistic extent. In this case, what is being explained is really the underlying probability of winning a tribunal case, although what is observed is simply the actual outcome in terms of success or failure.) A fuller technical account of this technique is given in Appendix A, along with a full presentation of the results. The results of the multiple regression analysis conducted on each tribunal are presented at the end of each section. In addition, results of multiple regression analysis on the determinants of representation and advice are also presented.

1. THE OUTCOME OF SOCIAL SECURITY APPEALS TRIBUNAL HEARINGS

In total, of the 1115 social security appeals cases sampled, 30% were allowed or allowed in part at the hearing and 70% were dismissed at the hearing. Analysis of factors associated with outcome indicated that advice and representation, type of case, presence of appellant at the hearing, region and centre, marital status, tribunal chairman, and presence of witnesses for the appellant were all associated with the outcome of hearings.

(a) Appellants' characteristics and outcome of hearings

There were few significant differences in success in relation to appellants characteristics. So for example, men and women succeeded with their appeals in similar proportions, those with children seemed

to be slightly more likely to win than those without; appellants with mental or physical disabilities seemed somewhat more likely to succeed with their appeals; and single parents were more likely to succeed with their appeals than others. Those over 50 appeared to be less likely to succeed with their appeals. As will be seen in section 1(d)(ii), however, most of these differences disappear when controlling for other factors, but the elderly and single parents remain, respectively, less likely and more likely to succeed.

(b) Type of case and outcome of hearing

There were significant differences in success rates between different types of appeal (shown in Table 3.1). Those appeals most likely to be allowed or allowed in part were overpayment cases (which were identified in Chapter 2 as having relatively high representation rates), and disqualification from unemployment benefit, where the outcome of a tribunal hearing was frequently a reduction in the period of disqualification. Although these appeals did not have a particularly high representation rate, there was a tendency, revealed in tribunal case files and noted in observation of hearings, for tribunals to reduce the period of disqualification from benefit even where dismissal for misconduct was accepted by the tribunal. Those appellants least likely to succeed with their appeals were those who had been disqualified from supplementary benefit or had their benefit reduced, and appellants who had made late claims for benefit. Appellants who were appealing against disqualification or reduction of supplementary benefit had low levels of advice, low levels of representation and low levels of attendance at tribunal hearings (see Chapter 2, Table 2.5).

TABLE 3.1 OUTCOME OF SOCIAL SECURITY TRIBUNAL HEARING BY TYPE OF CASE

	DISMISSED %	ALLOWED %	ALL CASES %
Overpayment	52	49	6
Disqualification UB	52	48	8
Entitlement to UB	69	31	5
Single Payments	69	31	47
Entitlement to SB	74	26	22
Delay in claiming	71	19	7
Disqualification SB	91	9	5
TOTAL %	70	30	100%

TOTAL WEIGHTED CASES = 1115

SIGNIFICANT P<.00000

(c) Advice and representation and outcome of hearings.

Analysis of outcome of hearings in relation to advice and representation indicated a relationship between both pre-hearing advice and outcome, and representation at hearings and outcome.

In cases where appellants had not obtained advice before their hearing, appeals were allowed in just over one-quarter of cases (26%). Where appellants had obtained advice before their hearing, appeals were allowed in about 46% of cases.

The association becomes more marked when outcome of hearings is analysed in relation to representation and presence of appellants at hearings (see Table 3.2). Where appellants were not present at hearings, appeals were allowed in 14% of cases. Where appellants were present at hearings, but unrepresented, they succeeded in 44% of cases. Among those appellants who were represented at their hearings, appeals were allowed in almost half the cases (47%). Where appellants were represented by someone other than a relative or friend, appeals were allowed in 53% of cases. These results are in line with previous research on the subject. The views of tribunals presented in Chapter 6 on the need or desirability of representation at tribunals, and their perceptions of their ability to compensate for lack of representation, should be evaluated in the light of these findings.

TABLE 3.2 OUTCOME OF SOCIAL SECURITY APPEAL TRIBUNAL HEARINGS BY PRESENCE OF APPELLANT OR REPRESENTATIVE

	% DISMISSED	% ALLOWED	% OF TOTAL	SAMPLE
Appellant not present	88	12	100%	44%
Appellant present alone	58	42	100%	29%
Appellant present with friend	53	47	100%	7%
Appellant present with representative	47	53	100%	11%

TOTAL WEIGHTED CASES = 1115

SIGNIFICANT P<.00000

(c)(i) Pre-hearing advice and outcome

It was noted in Chapter 2 that appellants who had received advice about their hearing were significantly more likely to attend their hearings than those appellants who had failed to obtain advice. Table 3.2 demonstrates that when appellants attend their hearing their chance of succeeding with their appeal is greatly increased. One result of pre-hearing advice, therefore, is to increase

appellants chances of succeeding by increasing the likelihood that they will attend their hearing. In order to assess whether unrepresented appellants attending their hearings succeeded more often when they had obtained pre-hearing advice, rates of success were analysed among those appellants who were present but unrepresented.

Among those appellants who attended their hearings without representation, evidence from files suggested that about 13% had received advice about their appeal from an advice agency or solicitor (although this may be an underestimate). Among those cases where there was no evidence of advice having been obtained, the success rates of appellants attending alone was 41%. The success rate among those appellants who attended their hearings alone, but who had clearly received advice about their appeal beforehand, was 56%.

If the levels of pre-hearing advice among those appellants who attended alone have been underestimated (because the information about advice was not evident from tribunal files) the result would be that the effect of pre-hearing advice on outcome has been underestimated i.e. that the influence of advice on success is actually greater than has been suggested here and that the success rate of those not advised is artificially high.

These results indicate that unrepresented appellants who had obtained pre-hearing advice were more likely to attend their hearings and more likely than other unrepresented appellants to win their appeal at the hearing. There are two explanations for this. First, that pre-hearing advice operates to sift out of the appeals system cases which have a poor chance of success. Second, that the advice appellants obtain about their cases, and the assistance they obtain in preparing themselves to present their cases, increase the chances of succeeding at a hearing. Evidence from interviews with representatives, appellants and tribunals bearing on both of these propositions is discussed in Chapter 5.

(c)(ii) Types of representation and outcome

In addition to the differences in success rate between represented and unrepresented appellants, there were also differences in rates of success between different types of representation on the cases that each took to tribunals.

Table 3.3 shows that those representatives who succeeded with appeals most often were law centres and specialist welfare rights agencies, who succeeded in about two-thirds of the cases that they represented. Solicitors and trades unions succeeded with somewhat over half of the cases that they represented (56% and 54% respectively). CABx and tribunal units succeeded slightly less often in the cases that they represented (52% and 47%

respectively). Where appellants were represented by social workers or probation officers they succeeded in about half their cases (51%). However, where appellants were represented by generalist advice agencies they succeeded somewhat less often on the cases represented by those agencies than when appellants were represented by relatives or friends (35% and 41% respectively succeeding).

The results of Table 3.3 strongly suggest that although representation increases the chances that appellants will win their appeal, the type of representation obtained is very important. The representation provided by generalist sources of advice has a less pronounced effect on outcome overall than that of specialists. Representatives from welfare rights centres who specialise in welfare law and law centres, who are lawyers and who specialise in welfare law, succeed most often with the cases that they represent at social security appeals tribunals. Very few solicitors in private practice represent at social security appeals, and although they tend to have a relatively good success rate, it is lower on the cases that they represent than that for law centres or welfare rights units. The success rate of solicitors does, however, appear to be better than that for trade unions or CABx. Representation by trade unions and CABx improves appellants' success rates, but not to the extent of other more specialised representative.

As will be seen in the section (d), the differences in success observed here between different types of representative remain when other factors, such as case type and type of appellant, are held constant.

These results are supported by observations conducted at tribunal hearings and by evidence from interviews with tribunal chairmen and members. Tribunal chairmen consistently argue that although representation at tribunals can be helpful, the quality of representation is crucial, and that it varies enormously. The danger of inexpert representation, as will be seen in Chapter 6, is that tribunals tend to 'sit back' when an appellant is represented, expecting the representative to make the case, rather than attempting to elicit necessary information for themselves.

TABLE 3.3 SOCIAL SECURITY APPEALS TRIBUNALS
OUTCOME OF HEARING BY TYPE OF REPRESENTATIVE

	% DISMISSED	% ALLOWED	TOTAL	% OF SAMPLE
WELFARE RIGHTS CENTRE	33	67	100%	1
LAW CENTRE	34	66	100%	*
SOLICITOR	44	56	100%	1
TRADE UNION	46	54	100%	1
CAB	48	52	100%	4
SOC.SERV/PROBATION	49	51	100%	1
TRIBUNAL UNIT	53	47	100%	1
APPELLANT UNREPRESENTED	56	44	100%	37
FAMILY/FRIENDS	59	41	100%	4
OTHER ADVICE CENTRE	65	35	100%	2
APPELLANT ABSENT	86	14	100%	47
				100%

TOTAL WEIGHTED CASES = 1115 HEARD CASES

SIGNIFICANT P<.00001

(c)(iii) Witnesses and outcome of hearings

Another consequence of advice and representation is the appearance of witnesses at hearings to give evidence on behalf of the appellant. Although few appellants brought witnesses to their hearings, in the cases where they did success rates were significantly higher. In appeals where no witnesses were present the success rate was 28% overall as compared with 64% where a spouse or partner acted as a witness, 68% where a parent acted as a witness, 35% where a friend gave evidence and 85% where some other person gave evidence on the appellant's behalf. This factor was included in the multi-variate analysis and was found to be significant holding other factors constant.

(c)(iv) Regional variations in outcome of hearings

In Chapter 2 analysis of advice and representation rates revealed considerable regional variation. An analysis of success rates of appeals between regions also shows some variation.

Looking broadly at success rates in the four regions studied, the highest rates of success were in the London region and Leeds region, where appeals were allowed in 34% of cases in each region. The success rate in the Birmingham region was 25% overall; and in Wales it was 23% over the whole region. The relatively small regional differences in success, however conceal much greater differences in success at hearing centre level

within regions, and these differences are displayed in Table 3.4 Although there are substantial differences in the success rates between different hearing centres, no clear geographical pattern emerges that would explain the difference. In the London region and the Wales region, the rate at which appeals are allowed in the centres is about 20% higher than in the outer parts of the regions. In Leeds and Birmingham the differences are both smaller and reversed.

TABLE 3.4 SOCIAL SECURITY APPEALS TRIBUNALS:
REGIONAL AND CENTRE VARIATION IN OUTCOME

	LONDON REGION			LEEDS REGION			WALES REGION			BIRM REGION		
	CENT %	OTH %	ALL %	CENT %	OTH %	ALL %	CENT %	OTH %	ALL %	CENT %	OTH %	ALL %
APPEAL OUTCOME												
ALLOWED	49	27	34	33	39	34	41	21	23	15	29	25
DISMISSED	51	73	66	67	61	66	59	79	77	85	71	75
TOTAL %	100	100	100	100	100	100	100	100	100	100	100	100

WEIGHTED TOTAL = 1115 CASES

SIGNIFICANT P<.00000

In Chapter 2 some regional and centre variation was shown to exist in the extent to which appellants obtained advice about their appeals, and the extent to which appellants were represented at their hearings.

In order to determine whether differences in presence, absence and representation accounted for the differences in rates at which appeals were allowed, success was analysed by hearing centres in relation to these factors.

In the four regions studied, the frequency with which appeals are heard in the absence of the appellant are roughly similar, ranging from 41% in Wales to 47% in the Leeds region, 49% in Birmingham, to 50% in the London region The rates at which appellants attend their hearings unrepresented is also similar, ranging from 33% in Birmingham to 39% in Wales. The rates at which appellants are represented in the four regions, however, differ, somewhat with one-fifth of appellants in Wales being represented, 17% in Birmingham, 15% in Leeds and 14% in the London region.

Table 3.5 indicates that some of the source of the relatively low success rates in Wales and the Birmingham region derive from differences in the rates at which appeals are allowed in the absence of the appellant. In the London region, cases are allowed in the absence of the appellant or any representative twice as often as in Wales. Similar differences occur when the appellant is present but unrepresented and when the appellant is represented, although the extent of the difference is smaller where appellants are represented. In each type of situation, however, the likelihood of an appeal being allowed is lower in Wales and Birmingham than in the other two regions.

TABLE 3.5 REGIONAL VARIATIONS IN OUTCOME BY PRESENCE OF APPELLANT OR REPRESENTATIVE

	LONDON % ALLOWED	LEEDS % ALLOWED	WALES % ALLOWED	BIRM'HAM % ALLOWED
APPELLANT ABSENT	17	15	9	11
APPELLANT PRESENT UNREPRESENTED	52	49	31	38
APPELLANT REPRESENTED	51	56	40	39

TOTAL WEIGHTED CASES = 1115

When regions are divided between central urban areas and the outer areas of the regions, the patterns of success change again. In London and Wales rates of success are higher in central hearing centres than outer hearing centres. In Leeds and Birmingham the tendency is reversed. The only pattern which emerges from Table 3.6 is that in each region there are consistent differences in success rates between central and outlying areas. Second, that where such differences exist, or where there is a local culture either towards allowing appeals or against allowing appeals, that this tends to have an effect, whether or not the appellant is there and whether or not a representative is there, although the effect of the difference is generally reduced when a representative is present. In other words, one of the effects of representation is to reduce the impact of other factors which lead to geographical differences in outcome. Much of the difference remains when case type and appellant characteristics are held constant (see section (d)(iv).

TABLE 3.6 REGIONAL SUCCESS RATES AT SOCIAL SECURITY APPEALS TRIBUNALS IN RELATION TO PRESENCE AND REPRESENTATION AT HEARINGS

	LONDON REGION		LEEDS REGION		WALES REGION		BIRM'M REGION	
	CENT	OTHER	CENT	OTHER	CENT	OTHER	CENT	OTHER
	%	%	%	%	%	%	%	%
	ALLOWED		ALLOWED		ALLOWED		ALLOWED	
APPELLANT ABSENT	27	12	12	24	37	6	9	12
APPELLANT ALONE	68	42	50	48	40	30	15	47
APPELLANT REPRESENTED	62	45	56	57	49	35	26	45
TOTAL % ALLOWED IN CENTRE	49%	27%	33%	39%	41%	21%	15%	29%

TOTAL WEIGHTED CASES = 1115

The consistent, and often large, difference in success rates between regional hearing centres revealed in Table 3.6 raises the question of what accounts for the remainder of regional differences after presence of appellant and representation are taken into account.

Since there were no significant regional differences in the types of appeal being heard, the identity of tribunal chairmen was analysed in relation to outcome of appeal in order to see whether this factor might account for some of the enduring regional differences in success rate. A simple comparison of tribunal chairmen in relation to outcome of hearings indicated statistically significant differences in success rate. Although the number of cases within the sample heard by many chairmen was too small for reliable analysis, the success rates of those chairmen with the largest number of cases heard within the sample, were scrutinised. The results indicate very large differences in success rate. Among the 20 chairmen with the largest number of cases within the sample, the success rates were as follows:

TABLE 3.7 SUCCESS RATES IN RELATION TO TRIBUNAL CHAIRMEN

	% ALLOWED OF CASES HEARD IN SAMPLE
CH125	74%
CH107	67%
CH114	66%
CH102	68%
CH216	60%
CH123	46%
CH136	44%
CH223	42%
CH104	36%
CH122	35%
CH336	30%
CH317	30%
CH217	30%
CH218	25%
CH126	17%
CH208	13%
CH343	10%
CH339	9%
CH332	5%

% OF CASES ALLOWED CASES IN SAMPLE AS A WHOLE = 30%

Table 3.7 indicates that relative success rates between chairmen deciding roughly the same number of cases in the sample range from 5% to 74%. It is also clear that the differences are not random, but that those chairmen with the highest success rates tend to hear cases in those regions with high success rates and vice versa. Since chairmen with the lowest success rates tend to be concentrated in those areas with low advice and representation rates, one possible explanation is that where representation of appellants is rare, chairmen do not get into the habit of rigorous examination of cases, and in the absence of representation, their decisions are only likely to be appealed if they allow the appeal, when the DSS might appeal. The recording of decisions and reasons for decisions may also be more lax. Great variation in the quality of written decisions was found when data were being extracted from tribunal case files.

These factors may lead to cases being dismissed. It is arguable that high levels of advice and representation generally raise standards or lead to a more rigorous approach to hearings even when representatives are not present. This point is discussed further in Chapter 6.

On the basis of these findings, identity of tribunal chairman was included in the multi-variate analysis, and, as will be seen in the

next section, identity of chairman emerges as a significant factor influencing outcome, when other factors are held constant.

(d) Multiple Regression Analysis

The analysis was based on a sample of 1115 social security appeal tribunal hearings. The average success rate (with success defined as cases allowed in full or in part) was 30%, based on weighted data, and 16% of all appellants were represented. Independent variables were constructed to reflect the type of representation, if present, the characteristics of the appellant; the type of case; and the circumstances of the hearing, all of which might be expected to affect the outcome of the hearing. A full description of these variables is given in Appendix A. The findings of the analysis are as follows:

(d)(i) Type of representation

Representatives were divided into five groups: CAB, solicitors, trade unions, other formal representatives (including law centres, tribunal units, and Welfare Rights Centres), and family and friends. The effect on success of all types of representation was estimated to be positive. The small numbers of representatives in each category, however, meant that they were generally not statistically significant (i.e. they could not be accepted with more than 90% confidence). The exception to this was the 'other formal representative' category which significantly increased the chance of success from 30% to 48% approximately, after controlling for all other factors.

(d)(ii) Characteristics of the appellant

Appellants who were aged over 50 were significantly less likely than others to win an appeal, whereas single parents were more likely to win, after controlling for all other factors. In each case the effect on the chance of success would be 10% in either direction, based on an initial success rate of 30%. The appellant's sex made no difference to the chance of success.

(d)(iii) Type of case

There were substantial differences between certain categories of claim, with unemployment benefit disqualifications most likely to win, and supplementary benefit disqualifications, least likely to win. The difference in success likelihood between these two categories would be in the region of 40%; i.e. a 10% chance of winning a supplementary benefit disqualification appeal compared with a 50% chance of winning an unemployment benefit disqualification appeal. Overpayment cases also had a somewhat greater likelihood of succeeding, holding other factors constant.

(d)(iv) Circumstances of the hearing

If the appellant is present at the hearing, and if he brings witnesses, his chance of success is very much improved, after controlling for other factors. Moreover, there appears to be a significant variation in the likelihood of success depending upon where the tribunal is held, and by whom it is chaired. Cases heard in 'central' tribunal centres are more likely to succeed, improving the chance of success from, say, 30% to around 40%. Moreover, the identity of the chairman was found to be strongly significant in some cases; the most marked result indicates that the identity of the chairman can cause a reduction in the chance of success for a case which might on average have a 30% chance of winning, to around 5%, after controlling for case type and other factors. Other results suggest the identity of the chairman can produce a higher chance of success - up to over 50% with one particular chairman. It should be emphasised that this range of probability, from 5% to 55% is the possible range controlling for case type and other factors by means of multiple regression analysis.

(d)(v) Determinants of Representation and advice

The main determinant of representation in social security cases was whether or not advice had been received from the representative in question. After controlling for advice, representation was more likely for appellants aged over 50, and for those whose cases were heard in 'central urban' hearing centres. Those appellants who were most likely to obtain advice were those whose cases concerned overpayment of benefit and entitlement to supplementary benefit. Appellants in central urban centres were also more likely to get advice, increasing from around 20% to over 30% chance of getting advice, after controlling for case type.

SUMMARY OF MAIN FINDINGS ON OUTCOME OF HEARINGS AT SOCIAL SECURITY APPEALS TRIBUNALS

1. Elderly appellants were less likely to succeed with appeals. Single parents were more likely to succeed with appeal.

2. Overpayment cases and disqualification from unemployment benefit cases were the most likely to succeed. Disqualification from supplementary benefit cases were the least likely to succeed.

3. Appeals decided in the absence of the appellant were the least likely to succeed.

4. Unrepresented appellants who attended their hearings were more likely to succeed if they had received some advice about their appeal.

5. All types of representation increased the likelihood of success. The overall success rate in social security appeals was 30%. Where the appellant was not present it was 12%. Where the appellant was present but unrepresented the success rate was 42%. Where the appellant was represented by someone other than a friend or relative it was 53%. Specialist advice and representation units had the most significant effect on success rates.

6. The presence of witnesses for the appellant increased the likelihood of success.

7. There were regional differences in success rate and large differences in success rates within regions between central urban hearing centres and outlying hearing centre.

8. There were significant differences in the rates at which appellants succeeded before different chairmen. Those chairmen who had the lowest success rates tended to sit at hearing centres with low representation rates.

9. A multiple regression analysis indicated that the identity of the chairman could reduce the chance of winning from 30% to 5%. It could also increase it to a maximum of 55%.

10. The multiple regression analysis indicated that holding constant factors such as characteristics of appellant, type of case, geographical location, type of chairman, etc., represented appellants are more likely to succeed with their appeals than unrepresented appellants. Specialist representation increases the probability that appellants will succeed with their appeal from about 30% to 48%.

11. The multiple regression analysis indicated that the main determinant of representation is advice, which is itself related to geographical location, and type of case. Those who live in urban areas are more likely, irrespective of case type and other factors, to obtain advice and representation at their hearing.

2. THE OUTCOME OF HEARINGS BEFORE IMMIGRATION ADJUDICATORS

Among the 1050 cases read in the four regions the overall outcome of appeals was as follows:

Dismissed	77%
Allowed	21%
Allowed in part	.8%
Withdrawn	.5%

The success rate of appeals varied dramatically between those cases that went to a full hearing and those that were decided on the papers. Of those that went to a full hearing 30% were allowed in full or in part, and of those that were decided on the papers 2% were allowed. The substantial difference in success rates between full hearings and those on papers may have an effect on other relationships. For example, regional variations in rates of cases decided on papers will inevitably influence relative success rates between regions and adjudicators, as would, for example, regional variations in types of case.

Taking all cases together, success rates within the regions were as follows:

TABLE 3.8 REGIONAL VARIATION IN RATES OF ALLOWED CASES

	% of cases allowed	
London	23%	
Birmingham	22%	
Harmondsworth	15%	
Leeds	23%	
All regions	21%	(TOTAL WEIGHTED CASES= 1050)

There was regional variation in the rates at which cases went to full hearing. While there was a small difference between London, Birmingham and Harmondsworth, Leeds appeared to have a substantially lower rate of cases decided on the basis of a full hearing. Whereas in London and Harmondsworth almost three-quarters of appeals were decided on the basis of a full hearing, in Leeds only a little over one-half (54%) went to a full hearing. The figures are as follows:

TABLE 3.9 REGIONAL VARIATION IN FULL HEARING RATES

	% of cases decided on full hearing
London	73%
Birmingham	69%
Harmondsworth	72%
Leeds	54%
All regions	69%

TOTAL WEIGHTED CASES = 1050

There were also differences in the extent to which different types of case went to a full hearing. For example, the types of appeal most often decided on the papers were entry as visitor cases and leave to remain as visitor cases (55% and 58% respectively decided on the papers). Other types of case with a higher than average likelihood of being decided on the papers were leave to work cases (47% on papers) entry as a student (43% on papers). Somewhat surprisingly, since they are generally regarded as difficult cases to bring, almost a third (31%) of political asylum cases were decided on the papers.

(a) Outcome of heard cases

When the results of cases decided on a full hearing are considered alone we find that relative success rates between regions are dramatically influenced. Table 3.10 below indicates that Leeds has the highest rate of cases allowed at hearings (41%) while Harmondsworth has the lowest (21%). London and Birmingham are roughly equal with just under one-third of cases being allowed.

TABLE 3.10 OUTCOME OF FULL HEARINGS WITHIN REGIONS

	LONDON %	BIRM'HAM %	HARM'WTH %	LEEDS %	TOTAL %
DISMISSED	69	69	79	56	70
ALLOWED	29	28	20	41	28
ALLOWED IN PART	2	2	0	3	1
WITHDRAWN	1	1	0	0	1
TOTAL	100	100	100	100	100

TOTAL WEIGHTED HEARD CASES =728 (BASED ON 770 UNWEIGHTED CASES)

Among those cases that were dismissed, adjudicators made recommendations in 5% of cases. The recommendations were that a new applications should be made because on the evidence presented the appellant' situation had changed (1%); that an extension to remain in the country should be granted so that the appellants could finish studies or sort out his affairs (1%); that the Secretary of State should use discretion outside of the rules because new evidence had been presented (1%); that leave should be granted in order to complete medical treatment (.2%);that the Home Office should revoke a deportation order as soon as possible (.2%); for the Secretary of State to delay taking action until the outcome of an application to college was known (.2%).

(b) Appellant's characteristics and outcome of hearings

Analysis of outcome in relation to appellants characteristics revealed few startling results. There was no difference in success rate between the sexes overall and little difference between age groups, although the age group with the highest success rate was 16-20 and the age group with the lowest success rate was 65+. Marital status was related to success with single people having the lowest success rates and engaged people having the highest success rate. This latter finding is a result of the fact that requests for entry to marry, where the primary purpose of the engagement is thought to be settlement in the United Kingdom, tend to have a higher than average success rate (see below Table 3.11)

The presence or absence of an interpreter was not significantly related to outcome, nor was nationality significantly related to outcome.

A further factor associated with outcome of hearing was whether, from the information on files, the appellant had a history of immigration difficulties or requests. Where there was no such history, appeals were allowed in 40% of cases. Where the appellant did have an immigration history appeals were allowed in 23% of cases. The difference in success rates is statistically significant and therefore immigration history was included in the multiple regression analysis (see section (f) below).

(c) Type of appeal and outcome of hearings

There was variation between different kinds of cases in the rate at which appeals were allowed. Although, representatives in interviews suggested that the hardest cases to win are those where the applicant is abroad, it is evident that within fairly broad categories, those cases appear on the face of it the most likely to succeed at the end of the day before adjudicators. The highest success rate was amongst primary purpose cases where over one third of cases were allowed. The next most likely cases to succeed were those concerning the entry of dependant wives and/or children, entry to study and entry to visit. The cases with the least likelihood of succeeding before adjudicators were political asylum cases, appeals against deportation and cases where visitors wished to extend their stay. The breakdown of success rates by different case types is given in Table 3.11.

TABLE 3.11 OUTCOME OF HEARINGS BY TYPE OF APPEAL

	% Allowed or in part	% OF APPEAL TYPE IN SAMPLE
Entry to marry	41	24
Entry dependant wife/children	39	15
Entry dependant other rel	19	3
Entry as visitor	39	15
Entry as student	36	4
Leave to remain as visitor	16	3
Leave to remain as student	23	10
Leave to settle	11	5
Leave to remain to work	10	4
Political asylum	8	5
Deportation	10	8
Other leave to remain	22	1
Other entry	42	2
		100%
TOTAL % ALLOWED ALL HEARD CASES	30%	

SIGNIFICANT P<.00001

Since type of appeal was evidently associated with outcome of hearing, this was included in the multiple regression analysis (see below section (f)) and was found to affect outcome holding other factors constant.

(d) Representation and outcome of hearing

Although in the vast majority of appeals heard before immigration adjudicators the appellant is represented, there were sufficient unrepresented cases to analysis the relationship between outcome of hearings and representation. A significant relationship was found. Those appellants who appeared unrepresented were considerably less likely to succeed with their appeal than those who were represented, unless appellants were represented by a friend or relation in which case they were less likely to succeed than those appearing completely unrepresented. The other differences in outcome between different types of representatives as shown in Table 3.12 are relatively small. UKIAS, solicitors and barristers succeed with the cases that they represent at virtually identical rates. Although the numbers are very small, it also appears that JCWI and specialist advice agencies have a high success rate. The evidence indicates that despite the fact that UKIAS is Government-funded, and has limited resources, and despite the fact that many UKIAS representatives are not legally-qualified, appellants are as well served by this service as by private practice lawyers. Differences between types of representatives are analysed in the multiple regression analysis (below section (f)) in relation to type of case and other factors relating to outcome.

TABLE 3.12 REPRESENTATION AND OUTCOME OF HEARINGS

TYPE OF REPRESENTATION	% ALLOWED OR IN PART	% OF REPRESENTATIVE TYPE IN SAMPLE
No representative	16%	8
UKIAS	31%	49
Barrister	32%	18
Solicitor	37%	12
Specialist advice centre	40%	2
Other advice centre	26%	1
Law centre	24%	4
JCWI	41%	2
Relative/friend	9%	2
		100%
TOTAL % ALLOWED ALL CASES	30%	

TOTAL WEIGHTED HEARD CASES = 728 (BASED ON 770 UNWEIGHTED CASES)

(e) Adjudicators and outcome of hearings

There were also significant variations between rates of success before different adjudicators. Although the numbers of cases adjudicated for some adjudicators are too small for reliable analysis, the range of success for those with the most numerous cases was between 3% and 51% when both decisions on the papers and decisions following hearings are considered. The range of success in heard cases among those adjudicators with the most numerous cases in the sample, was between 8% and 62%. However, since there is variation in the type of cases heard in the regions (e.g. political asylum cases are all heard in London), and selection of cases before certain adjudicators, it would be misleading to present the results of a simple analysis of success rate by individual adjudicator. Nonetheless, there were statistically significant differences in success rates between adjudicators, and the identity of adjudicator was therefore included in the multiple regression analysis so that these differences could be analysed when controlling other factors influencing success such as appeal type. The result of that analysis, discussed below in section (f), indicates however, that there are significant differences in rates of success before different adjudicators, when other factors are held constant.

(f) Multiple regression analysis

The analysis was restricted to cases in which a hearing took place, implying a total unweighted sample of 770 cases. Successful cases were defined as those which were allowed in full or in part, and the

average success rate was 28.4% (based on the weighted sample). Categorical variables were constructed to reflect the type of representation, if present, the characteristics of the appellant, the type of case, and the circumstances of the hearing, all of which might be expected to affect the outcome. A full description of these variables is given in Appendix A. The findings in brief are as follows:

(f)(i) Type of representation

A high proportion of cases were represented before immigration adjudicators, and for the purpose of this analysis these were divided into UKIAS, solicitors and others. In addition, the presence of Counsel was included to examine whether this affected outcome. The results show that all forms of representation appear to have a positive effect on success, with UKIAS having the largest effect, followed by solicitors and other representatives in that order. If, for example, an appellant without any form of representation had a chance of success equal to 20% (given the type of case and so on), then a UKIAS representative would increase this to approximately 38%, a solicitor to 35% and another type of representative to 30%. The addition of Counsel's representation shows no statistically significant increase in the chance of success.

(f)(ii) Characteristics of the appellant

Appellants who are aged less than 20 appear to have a higher chance of success than other age groups, while those who are single appear to have a lower chance of success. Also, evidence of a history of immigration difficulties significantly reduces the chance of success from, say, 20% to around 13%. There is some evidence that nationality may affect success: applicants from Europe or the West Indies have the highest chanoe of success. Those from North America or Australasia, holding all other factors constant, have the lowest chances of success.

(f)(iii) Type of case

The type of case was aggregated for the purposes of the multiple regression analysis into 5 groups: entry to marry, entry as dependant relatives; entry for other purposes; leave to remain; and asylum/deportation. Appeals in the last category were clearly much less likely to succeed than the others, with a reduction in the chance of success from 20% to 5%. Amongst the other categories there was tentative evidence to suggest a small relative increase in the success rate for 'other entry' category, and a small relative decrease for the 'leave to remain' category.

(f)(iv) Circumstances of the hearing

The number of witnesses called by the appellant is a significant factor improving the chance of success, with each successive witness adding about 3% to the chance of success. Moreover, the results suggest that the identity of the adjudicator may sometimes be a factor influencing the likelihood of success. Out of those adjudicators who heard more than 30 cases each in the sample, 5 were found to have significantly different success rates than the average: one in favour of the appellant, four against. Consequently, the effective chance of success for a typical appellant, depending solely on the choice of adjudicator, lies somewhere between 5% and 50%, after controlling for other factors.

(f)(v) Determinants of representation and advice

The main determinant of representation in immigration cases that went to a full hearing was whether or not advice had been received from the representative in question. Those who had obtained advice from UKIAS, for example, were virtually certain to be represented by them subsequently. Few other factors were significant, although UKIAS representatives tended to represent entry to marry cases much less frequently relative to other cases, than solicitors.

In so far as the determinants of advice were concerned, the only factor which was statistically significant was age: appellants under 20 were more likely to get advice. Since the multiple regression was conducted on heard cases only, the effect of geographical location, observed in Chapter 2, could not be tested since, those who failed to obtain advice were significantly less likely to have their cases decided on the basis of a full hearing.

SUMMARY OF MAIN FINDINGS ON OUTCOME OF HEARINGS BEFORE IMMIGRATION ADJUDICATORS

1. Overall 22% of cases were allowed or allowed in part. Of those that went to a full hearing 30% were allowed or allowed in part. Where cases were decided on the papers 2% were allowed. There was regional variation in the rates at which appeals resulted in a full hearing. Leeds had the lowest rate of full appeals. This is related to the low advice rate identified in Chapter 2.

2. There were regional variations in success rate. Harmondsworth had the lowest success rate. Leeds the highest. There are, however, regional difference in type of appeal which might account for this.

3. Personal characteristics of appellants appeared to have little effect on success, although younger appellants were more likely

to succeed and those with a previous immigration history were less likely to succeed with their appeals.

4. Political asylum, deportation cases, and visitors' extension cases were the least likely cases to succeed.

5. Unrepresented appellants were less likely to succeed with their appeals than represented appellants. All representatives, except friends and relatives, increased the likelihood of success.

6. A multiple regression analysis indicated that, holding other factors constant, the likelihood of success varied before certain adjudicators. The identity of the adjudicator could reduce the probability of success to 5% or increase it to 50% after controlling for other factors.

7. The multiple-regression analysis indicated that, holding all other factors constant, UKIAS has the highest rate of success among representatives, followed by solicitors and then other representative. Over the sample as a whole, representation by Counsel did not increase the likelihood of success more than representation by a solicitor or UKIAS. Representation by UKIAS would increase the probability of success from say 20% to approximately 38% after controlling for other factors.

3. THE OUTCOME OF HEARINGS AT INDUSTRIAL TRIBUNALS

Analysing the effect of advice and representation on the outcome of industrial tribunal hearings is fraught with difficulty. The first problem is that industrial tribunal applications have a very high pre-hearing settlement rate. The second problem is that in order to make a comprehensive assessment of the effect of representation on applicants' tribunal hearings, it is necessary to consider applicants' representation in relation to respondents' representation. In consequence of these difficulties, the question of pre-hearing settlement will be considered first, and then the analysis of applicants' representation and outcome, and patterns of representation between the parties on outcome, will be based only on those applications that proceeded to a full tribunal hearing.

(a) Pre-Hearing Settlements

It was noted in Chapter 2, that whenever a tribunal application is received by the industrial tribunal, copies of the documentation are sent to ACAS who have a statutory duty to attempt to effect

settlements in all cases where it proves possible. The efforts of ACAS undoubtedly contribute to the rate of settlement, which in this sample as a whole was about 47%. Although these settlements represent the "outcome" of a tribunal application, they usually occur before the hearing, and only in minority of cases do they occur after the hearing has commenced (about 9% in this sample). Settlement of applications are therefore not usually the result of a tribunal hearing, but the outcome of a tribunal application. The importance of advice and representation, however, is not limited to what occurs at hearings, but must inevitably influence the negotiations leading to a settlement and it would therefore be wrong to ignore this fact in considering the effect of advice and representation in relation to industrial tribunal applications.

Although in most settled cases, applicants will withdraw their tribunal application in consideration of some payment, it is impossible to say whether or not this represents a "success" for the applicant or not. In some circumstances, payment of £100 and a reference might represent a very good settlement of an applicant's industrial tribunal application. In others, payment of £5000 and no reference may represent a very poor settlement of an applicant's claim. In the two situations advice and representation, or lack of it, may well have contributed to the applicant's decision whether to settle or press on with his claim. It was not possible, within the terms of reference or the time scale of this study, to conduct a special study of pre-hearing settlements. It requires different techniques and different data sources than those used in this study. An experimental exercise was carried out on a sample of tribunal case files where the applicant's claim had been settled before a hearing. A solicitor who specialises in employment law was asked to assess, on the basis of the information contained in tribunal files, how far the settlement achieved constituted a realistic settlement. There was not, however, sufficient evidence on most files to make this exercise reliable.

Evidence from studies of out of court settlements in other areas of civil litigation (e.g. Harris et al 1984, Genn 1988) suggest that both the existence of representation, and the quality of representation is crucial in maintaining an even power balance between parties negotiating out of court settlements; and that an even power balance is more likely to lead to fair or realistic settlements of applicants (or plaintiff's) claims.

The role of ACAS while important to rates of settlement of industrial tribunal claims is nevertheless somewhat constrained. Interviews at the Office of ACAS indicated that the objectives of conciliation officers are generally limited to the achievement of a settlement between the parties:

> '[The role of conciliation officers'] is to offer themselves as a person in between to transmit the views

between the parties. To help them clarify the facts and issues and implications. It is so that they themselves will come to an agreement which is their agreement and not the conciliation officer's agreement. He is merely a go-between to act as a conduit between the parties.'[ACAS]

Although conciliation officers would see it as part of their role to suggest that an unrepresented party sought advice in what was considered to be a difficult case, they do not, in general, make judgments about the nature of the settlement, unless it appears to be an illegal settlement.

'We have had case law where the higher courts have said that it is not the duty of the conciliation officer to consider equity in an agreement.'[ACAS]

Representatives from ACAS were asked whether they thought that unrepresented applicants were disadvantaged in the conciliation process. The feeling amongst those interviewed was that in a 'very simple issue ' the applicant would probably not be particularly disadvantaged, but there was agreement that the question was difficult to answer:

'It's a difficult proposition to explore. We have looked at these points in the past...Our statutory duty is to help people settle. We tend to interpret that as so long as they are settling on a lawful basis and we are clear that they are aware of the issues they should be considering, then if they come to a settlement that's fine and we have done our job. Certainly we have helped to reduce public expenditure in the tribunal system itself and the principal justification for the individual conciliation process is that tribunal hearings are immensely more expensive than conciliation. But if you say well here are all these settlements, could the applicant or the respondent actually have done better if the parties had been genuinely expertly advised? Could they have put their various points of view and come up with a better solution? Well we can't really answer that.'[ACAS]

Some clues to the dynamics of the pre-hearing settlement process of industrial tribunal applications could be obtained from tribunal case files. For example, the likelihood of an applicant settling his or her application appeared to increase when advice had been obtained, and the likelihood of applicants abandoning their applications decreased (see Table 3.13).

TABLE 3.13 SETTLEMENT RATES IN RELATION TO ADVICE TO APPLICANTS

	% SETTLED	% WITHDRAWN	% HEARD	TOTAL %	% IN SAMPLE
NO ADVICE	42	19	39	100%	31
SOLICITOR	49	14	37	100%	36
LAW CENTRE	67	4	29	100%	5
TRADE UNION	43	18	38	100%	18
CAB	54	10	35	100%	8
PROFESS. ORG	57	0	43	100%	1
TOTAL WEIGHTED CASES = 928					100%

There were also differences between various types of application in the extent to which they settled. Those applications most likely to settle were equal pay cases (56% settled) sex discrimination cases (55% settled) where advice was most likely to have been obtained (see chapter 2 Table 2.18). Among unfair dismissal cases, those concerning sickness/capability and redundancy, where advice was most likely to have been obtained, were also the cases with the highest pre-hearing settlement rates (Table 3.14). Applications concerning dismissal on the grounds of performance were also more likely than others to settle, although rates of advice for applicants in this category were not especially high (see Table 2.19).

TABLE 3.14 RESPONDENTS' GROUNDS FOR DEFENCE OF APPLICATION IN RELATION TO RATES OF SETTLEMENT

	CONDUCT %	PERFORMANCE %	SICK/CAPAB. %	RESIGNED VOL.RED. %	REDUND %	NOT ENT TO CLAIM %	NO DISP. %	OTHER %
APPEAL WITHDRAWN	14	13	9	8	13	27	40	27
APPEAL SETTLED	42	53	60	47	52	40	40	46
APPEAL HEARD	44	34	31	45	35	33	20	27
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%
WEIGHTED TOTAL = 928 CASES								

Where the information was available on tribunal case files, the terms of pre-hearing settlements was noted (in about 86% of settlements).

The vast majority of settlements were concluded on the basis of compensation being paid (62%). In 10% of cases the settlement terms were that compensation was paid and a reference was provided. In 16% of cases compensation was paid on an ex gratia basis and in a further 4% compensation was paid on an ex gratia basis and a reference was given. In about 1% of known cases the settlement was concluded on the basis of simply a reference being given.

Information about the amounts accepted by applicants in settlement of their applications was noted where this was available on tribunal case files. A comparison was carried out of average settlements concluded before hearings, with awards made at hearings or settlements achieved after hearings had commenced, in relation to advice, representation, and social class. The results of the comparison are presented below in Table 3.15. These comparisons indicate that in general the average amount of compensation obtained by applicants after a hearing are larger than the average amount of compensation agreed in settlements before a hearing. The differences, however, are not very great.

TABLE 3.15 AVERAGE COMPENSATION AGREED BEFORE HEARINGS COMPARED WITH AVERAGE AWARDS OR SETTLEMENTS AFTER HEARINGS

	PRE-HEARING SETTLEMENT AVERAGE (MEAN) IN £	TRIBUNAL AWARD/ SETTLEMENT AFTER HEARING AVERAGE (MEAN) IN £
ALL CASES	661	691
ADVICE		
NO ADVICE	354	449
SOLICITOR	844	1084
TRADE UNION	390	561
LAW CENTRE	486	657
CAB/OTHER	522	330
REPRESENTATION		
NO REP	657	784
SOLICITOR	600	728
UNION	249	451
LAW CENTRE	NONE	534
BARRISTER	186	893
FRIEND/REL	UNRELIABLE	295
SOCIAL CLASS		
CLASS I	1500	2798
CLASS II	939	908
CLASS III(N)	351	713
CLASS III(M)	469	597
CLASS IV	199	794
CLASS V	483	241

(b) Outcome of Industrial Tribunal Hearings

Among the cases that went to a tribunal hearing, applicants succeeded in 34% of hearings, and cases were dismissed in 54% of hearings. In 9% of hearings the application was settled after the hearing had commenced and in 2% of cases the application was withdrawn after the hearing had commenced. There were no significant regional variations in success rate, although in Birmingham cases were more likely to be settled after the hearing had commenced than in the other three regions (16% of cases as compared with 6% in Leeds, 7% in Cardiff and 9% in London).

(c) Applicants' characteristics and outcome of hearing

In so far as applicants' characteristics are concerned, women appeared to succeed with their applications more often than men (43% as compared with 30%) but the difference was not statistically significant. There were no significant differences in success rate among applicants in different age groups nor were there significant differences between occupational groups or classes in success rate, although applicants in social class II were more likely to succeed than those in the other social classes.

(d) Type of case and outcome of hearing

Those cases most likely to succeed were redundancy payment cases where two-thirds of applicants succeeded at the hearing. This is not surprising since in these types of applications the respondent typically does not defend the application, and in many cases fails to appear at the hearing. Those equal pay cases that went to a full hearing also had a high success rate (67%) but the numbers of such cases within the sample were very small. The cases least likely to succeed were race discrimination cases (13% succeeding) where again the numbers in the sample were very small. Among unfair dismissal cases those most likely to succeed were cases where employees had been dismissed on the grounds of redundancy (46% succeeding) and those dismissed on the grounds of poor performance (38% succeeding). Those unfair dismissal cases least likely to succeed were those in which the respondent claimed that the applicant had resigned or taken voluntary redundancy (which includes constructive dismissal cases) of which 68% were dismissed and a further 3% were withdrawn after the hearing had commenced. In cases where the applicant had been dismissed on grounds of conduct 22% succeeded at the hearing, and a further 13% settled after the hearing had commenced.

(e) Representation and outcome of hearing

The problem of settlement once again presents difficulties in analysing outcome of industrial tribunal applications in relation to representation. Some 9% of hearings resulted in a settlement being agreed between the parties after the hearing had commenced. Although in these situations the applicant is likely to leave the tribunal with something, settlements cannot properly be categorised together with allowed cases since they may, or may not, constitute a success for the applicant. Settlements are therefore categorised separately.

From Table 3.16 it can be seen that, on a crude analysis of success rates, cases are most often dismissed where the applicant is represented by a CAB or other generalist advice agency and where the applicant is represented by a friend or relative, or is unrepresented. Applications to the tribunal are least likely to be dismissed where the applicant is represented by a barrister,

solicitor or law centre. These findings strongly suggest that legal representation provides applicants with an advantage over other types of representation and that non-legal, non-specialist representation in industrial tribunals provides applicants with no obvious advantage in terms of the likelihood of success in general.

Different types of representation were included in the multiple regression analysis and, as will be discussed in section (h), the relationships displayed in Table 3.16 remain after controlling for case type and respondent representation.

TABLE 3.16 OUTCOME OF INDUSTRIAL TRIBUNALS IN RELATION TO APPLICANTS' REPRESENTATION

	% DISMISSED/ WITHDRAWN	% ALLOWED	% SETTLED	TOTAL	% IN SAMPLE
NOT REPRESENTED	62	33	5	100%	36%
SOLICITOR	49	38	13	100%	16%
BARRISTER	47	30	22	100%	12%
LAW CENTRE	51	39	10	100%	5%
TRADE UNION	56	38	6	100%	16%
CAB/OTHER AGENCY	67	27	5	100%	7%
FRIEND/REL	67	29	4	100%	

TOTAL WEIGHTED HEARD CASES = 339 (BASED ON 550 CASES)

These crude relationships between representation and outcome, however, change somewhat, when applicants' representation is analysed in relation to respondents representation.

Table 3.17 presents a breakdown of outcome of hearing in relation to applicants' and respondents' representation at the hearing. The Table shows that in virtually every situation applicants are more likely to lose than respondents. **Applicants lose most often when they appear without representation against a legally represented respondent.** This is an important finding since, as will be seen in Chapter 6, the perception of industrial tribunal chairs is that they bend over backwards to assist unrepresented applicants who are opposed by legally-represented respondents. Table 3.17 indicates clearly that, despite their perceptions, and despite their efforts, applicants succeed very rarely in these situations. Conversely, applicants win most often when they are represented by a non-lawyer (union or CAB) and the employer is unrepresented. Legal representation is of advantage to either party, but is of greater advantage to respondents than to applicants. Table 3.18 in section (h) below, refines this analysis using multiple regression and shows clearly the variation in the probability that an applicant will

succeed with an application depending on the pattern of representation between the parties, and holding constant type of case etc.

TABLE 3.17 OUTCOME OF TRIBUNAL HEARINGS IN RELATION TO APPLICANTS' AND RESPONDENTS' REPRESENTATION

	DISMISSED	ALLOWED	SETTLED	TOTAL	% IN SAMPLE
A LAWYER v R LAWYER	54	28	19	100%	20%
A LAWYER v R NON-LAWYER	50	34	16	100%	6%
A LAWYER v R NO REP	34	60	7	100%	6%
A NON-LAWYER v R LAWYER	64	28	8	100%	12%
A NON-LAWYER v R NON-LAWYER	66	30	4	100%	7%
A NON-LAWYER v R NO REP	35	63	2	100%	3%
A NO REP v R LAWYER	79	15	5	100%	15%
A NO REP v R NON-LAWYER	67	31	2	100%	10%
A NO REP v R NO REP	47	46	7	100%	15%

TOTAL WEIGHTED HEARD CASES = 339 (BASED ON 550 CASES)

It should also be borne in mind that a proportion of cases in which the respondent is not represented are redundancy payment cases where the employer has gone into liquidation. In these cases, there is rarely any defence of the case, and an applicant's success is considerably less significant than when there is a case to be argued from the respondent's point of view.

(e)(i) Pre-hearing advice and outcome

An analysis of pre hearing advice and outcome among those applicants who appeared unrepresented at their tribunal hearing indicated that, in contrast with social security appeals, pre-hearing advice in industrial tribunals confers no advantage on unrepresented applicants. The applications of unrepresented applicants who had no advice before their hearing were dismissed in 60% of cases, as compared with 69% of cases where unrepresented applicants had been advised by lawyers and about 80% of cases where unrepresented applicants had obtained advice from advice agencies. This suggests that in industrial tribunals obtaining pre-hearing advice does not result in applicants being better equipped to present and succeed with their application on the day.

(f) Witnesses

About 70% of applicants at tribunal hearings brought no witnesses as compared with one-third of respondents. About one-fifth of both applicants and respondents brought one witness. 11% of applicants brought more than one witness as compared with 44% of respondents. Analysis of outcome of hearing in relation to the number of witnesses brought by applicants indicated that the likelihood of winning increased with the number of witnesses. Of those applicants who brought no witnesses or one witness, cases were dismissed or withdrawn in 59% of cases. Where applicants brought more than one witness cases were dismissed in 36% of cases. This finding is discussed among the findings of the multiple regression analysis.

(g) Tribunal Chairmen

The spread of cases in the sample among tribunal chairmen was too great to allow reliable analysis of differences. The evidence available suggests, however, that although there are differences in the rates at which applications are dismissed between different tribunal chairmen, the range of difference is much narrower than among immigration adjudicators or social security appeals tribunal chairmen. Among the 7 chairmen with the largest number of cases in the sample, dismissals ranged from between 51% to 72%. This finding is explored further in the multiple regression analysis.

(h) Multiple Regression Analysis

The analysis was based on a sample of 550 industrial tribunal appeal hearings. Success was defined as an outcome in which the case is allowed, or is determined in favour of the applicant with compensation agreed subsequently. Some 33.7% of hearings were successful for the applicant, using appropriately weighted data to take account of the sample stratification. Of those cases which went to a hearing, the applicant was represented in 64.3% of cases, and the respondent was represented in 73.7% of cases. Other independent variables were defined to reflect the type of representation, if present, the characteristics of the applicant, the type of case; and the circumstances of the hearing, all of which might be expected to affect the outcome. A full description of these variables in given in Appendix A. The findings in brief are as follows:

(i) Representation

The effect of representation in industrial tribunals is more complex than in other tribunals, given the explicitly adversarial nature of the hearing, in which both parties may be represented. Moreover, the nature of the representation can vary considerably, with possible implications for the outcome. Consequently, variables were defined which distinguished between cases in which the applicant alone was represented (by either legal or non-legal representation); and those

where the respondent alone was similarly represented. Further variables were defined to take account of the various combinations which arise when both parties were represented (see Appendix A).

The results showed an interesting pattern which can be summarized in the following table, in which it is assumed that the underlying success rate for an applicant when neither party is represented is 30%. The table gives the implied probability of success for each different combination of representation, after controlling for all other factors.

TABLE 3.18 PROBABILITY OF SUCCESS FOR APPLICANT AT INDUSTRIAL TRIBUNAL HEARINGS IN RELATION TO OWN AND RESPONDENT'S REPRESENTATION BASED ON MULTIPLE REGRESSION ANALYSIS

REPRESENTATION	PROBABILITY OF SUCCESS FOR APPLICANT
APPLICANT: LAWYER)_ RESPONDENT: NONE)	48%
APPLICANT: NONE)_ RESPONDENT: LAWYER)	10%
APPLICANT: NON-LAWYER)_ RESPONDENT: NONE)	44%
APPLICANT: NONE)_ RESPONDENT: NON-LAWYER)	16%
APPLICANT: LAWYER)_ RESPONDENT: LAWYER)	16%
APPLICANT: NON-LAWYER)_ RESPONDENT: NON-LAWYER)	15%
APPLICANT: LAWYER)_ RESPONDENT: NON-LAWYER)	29%
APPLICANT: NON-LAWYER)_ RESPONDENT: LAWYER)	18%
APPLICANT: NONE)_ RESPONDENT: NONE)	30%

It appears that the applicant can only improve his chances of success through representation when the respondent is not represented himself. When both parties are represented, the respondent typically improves his chance significantly, apart from when the applicant is represented by a lawyer and the respondent by a non-lawyer, in which case the result is virtually the same as if neither party had been

represented. Again it should be borne in mind that these results are valid after controlling for all other observable factors which might influence the outcome. When the effect of barristers was estimated, in addition to legal representation, there was a small effect in the expected direction: i.e. a representation by a barrister improved each party's chance of success by around 5%, but the results were not statistically significant.

(ii) Characteristics of the applicant

Variables were included for the applicant's sex, age, and length of service, but none proved to be statistically significant in explaining success.

(iii) Type of case

There were some differences in the chance of success which related to the type of case (i.e. the respondents claim). Among those applicants who were claiming unfair dismissal, those cases involving the applicant's alleged misconduct or voluntary leaving were less likely to be successful than those involving redundancy or poor performance, holding other factors constant.

(iv) Circumstances of the hearing

If the applicant was present at the hearing, his chance of success was greatly improved; similarly the more witnesses brought to the hearing by the applicant, the higher his chance of success. The respondent's attendance at the hearing reduced the applicant's chance of success, but the respondent's witnesses had no significant effect on the outcome, holding other factors constant. As far as the chairman's identity is concerned, this appeared to be of less importance than in the social security or immigration tribunals. Only one of the chairman who had a sufficient number of cases to test reliably, showed any significant variation from the norm. However, that particular chairman would have reduced the chance of success for a typical applicant from 30% to 10% after controlling for other factors.

(v) Determinants of representation

Once again, the principal determinants of both applicants' and respondents' representation was their advice. In addition, applicants were more likely to get representation, given advice, the longer their length of service, and if their case was heard in Leeds. The same was true for respondents chances of representation. Applicants were most likely to get advice the longer their length of service, and if their case was heard in Cardiff. Respondents were more likely to get advice in Birmingham and Cardiff, in that order, than in the other two regions.

SUMMARY OF MAIN FINDINGS RELATING TO OUTCOME OF INDUSTRIAL TRIBUNAL HEARINGS

1. Almost half of the applications to industrial tribunals were settled before a hearing. Applications were more likely to be settled where the applicant had obtained advice about his application.

2. The average amount of compensation received by applicants was, in general, higher if it was an award or settlement agreed after a hearing had commenced, than if it was agreed before a hearing.

3 Of the cases that resulted in a tribunal hearing, the applicants succeeded in 34% of cases. In 9% of cases a settlement was agreed after the hearing had commenced and a further 2% of applicants withdrew their applications after the hearing had commenced.

4. There was evidence that, as in social security appeals and immigration hearings, the identity of the tribunal chairman had an independent effect on the outcome of appeals.

5. The presence of witnesses for the applicant increased the likelihood that the applicant would succeed.

6. As far as representation is concerned, applicants can only improve their chances of success through representation when the respondent is not represented. Where the applicant is legally-represented and the respondent is not represented the probability of the applicant succeeding is increased from 30% to 48%. Where the applicant has no representation and the respondent is legally represented the applicants probability of success is reduced to 10%. Where the applicant is represented by a non-lawyer, and the respondent is represented by a lawyer the probability of the applicant succeeding is 18%. The views of tribunals concerning the necessity or desirability of representation, and their perceptions of their ability to compensate for lack of representation presented in Chapter 6, should be evaluated in the light of these findings.

4. MENTAL HEALTH REVIEW TRIBUNALS

The outcome of mental health review tribunals is somewhat more complicated to analyse than the outcome in the other three tribunals. Patients applying for a review hearing may be seeking different outcomes. It is not simply a question of whether to discharge or not to discharge. Since the 1983 Mental Health Act the tribunal may discharge a patient who is not subject to a restriction order, or

they may recommend that he is transferred to another hospital, or given leave of absence as a trial for discharge. They may also reclassify the form of mental disorder from which he is suffering. The powers of tribunals to deal with patients subject to a restriction order have been expanded to include the power to discharge a restricted patient following the ruling by the European Court of Human Rights in X v United Kingdom in 1981. (cf Gostin et al 1984; Peay 1988). The tribunals also have powers, in the case of restricted patients, to recommend transfer, leave of absence and the removal of a restriction order. They also have the power to vary the conditions imposed on a conditionally discharged patient. Where patients have been transferred to hospitals from prison, the tribunal's role is limited to an advisory function only.

'Success' in MHRTs therefore may constitute discharge, or may simply constitute the recommendation of a transfer by the MHRT. The broad outcome of MHRT hearings are summarised in Table 3.19 below.

TABLE 3.19 OUTCOME OF MENTAL HEALTH REVIEW TRIBUNAL HEARINGS

NO DISCHARGE OR TRANSFER	75%
CONDITIONS REMAIN	1%
CONDITIONAL DISCHARGE	3%
ABSOLUTE DISCHARGE	14%
RECOMMEND TRANSFER/LEAVE	5%
CONDITIONS CHANGED	1%
TOTAL %	100%

TOTAL WEIGHTED CASES = 534 HEARD CASES

There were some regional differences in outcome. Hospitals in the London administrative region appeared to have a slightly lower discharge rate than hospitals in the Liverpool or Nottingham region with 83% of hearings resulting in no discharge or change in conditions as compared with 78% in Liverpool, and 79% in Nottingham.

There were significant differences in outcome between those in ordinary hospitals and those in special hospitals; and between different special hospitals. Among patients in district hospitals, in just over three-quarters of cases tribunal hearings resulted in no change and no recommendation in the patients position. In Broadmoor the rate was 90%; in Park Lane it was 75%; in Moss Side it was 56%; and in Rampton the rate was 67%.
These differences may well be related to differences in rates of representation (see below section (d)).

(a) Type of case and outcome of hearing

The outcome of hearings analysed in relation to the Section under appeal indicate significant differences. The results for those Sections where there were sufficient cases to analyse outcome reliably, are displayed in Table 3.20. The Table shows that patients detained under Section 2 are most likely to be discharged at a review hearing. Those patients who have been conditionally discharged and are requesting an absolute discharge of conditions also have a high rate of success. Those patients whose review hearings are least likely to result in any change in their position are those detained under Section 3 MHA 1983.

TABLE 3.20 OUTCOME OF MENTAL HEALTH REVIEW TRIBUNAL HEARINGS IN RELATION TO SECTION UNDER APPEAL

	SECTION 2 %	SECTION 3 %	SECTION 37 %	SECTION 37/41 %	DISCHARGE CONDITIONS %
NO DISCHARGE TRANSFER/	76	87	72	63	9
CONDITIONAL DISCHARGE	N/A	N/A	9	10	N/A
ABSOLUTE DISCHARGE	24	11	12	2	47
TRANSFER RECOMMENDED	0	1	7	24	N/A
CONDITIONS CHANGED	N/A	N/A	N/A	N/A	10
CONDITIONS REMAIN	N/A	N/A	N/A	N/A	34
TOTAL %	100%	100%	100%	100%	100%

BASED ON 497 WEIGHTED CASES

The source of the application for review was also associated with the outcome of a review tribunal hearing. Where the patient had applied in person, or a representative had applied on the patient's behalf, the outcome of the hearing was either no discharge, transfer or recommendation for a change in the patients position in 72% of cases. Where the application for review was made by the hospital the comparable figure was 91%; and where there was an automatic reference by the Secretary of State (which occurs every three years if a patient fails to apply for a review) the comparable figure was 79%.

(b) Patient's characteristics and outcome of hearing

There was no evidence of a relationship between outcome of appeal and the age or sex of patients. Those displaying delusionary behaviour appeared to succeed at hearings less often than other patients. There was, however, a significant relationship between criminal record and outcome of hearing. Those patients with a criminal record were less likely to be discharged or to obtain any other favourable change in their situation as a result of the hearing. The extent to which a criminal record affects the probability of success, holding other factors constant is estimated below in section (f)(ii).

(c) Responsible Medical Officer's recommendation and outcome

The recommendation of the Responsible Medical Officer was significantly related to the outcome of review hearings. In just over three-quarters of all cases the recommendation of the RMO was that the patient should not be discharged or that there should be no other change in the patients position. When the RMO's recommendation is compared with the result of hearings we find a very close relationship between the two. Where the RMO recommends no change, the tribunal fails to follow the recommendation in 17% of cases. Where the RMO recommends a beneficial change in the patient's position, the tribunal discharge or make a recommendation in 70% of cases and fail to do so in 29% of cases. These findings are consistent with those of Peay (1988) who found that where tribunals fail to follow the recommendations of an RMO, it is most often in order to make a more cautious decision than that recommended by the RMO.

TABLE 3.21 OUTCOME OF HEARING IN RELATION TO RECOMMENDATION OF RESPONSIBLE MEDICAL OFFICER

	RMO RECOMMENDATION		
RESULT	NO CHANGE %	CHANGE IN POSITION %	NOT KNOWN %
NO CHANGE	83	29	91
CHANGE	17	70	9
TOTAL %	100%	100%	100%

TOTAL WEIGHTED CASES = 534

SIGNIFICANT P<.0001

(d) Representation and outcome of hearing

Of those cases that were heard, some 65% of patients were represented at their hearings. Analysis of outcome in relation to representation shows that patients were more likely to succeed in obtaining discharge or recommendation for transfer at the hearing if they were represented. Those patients represented by barristers and specialist units were the most likely to be discharged absolutely or conditionally. The results are presented in Table 3.22.

TABLE 3.22 OUTCOME OF MENTAL HEALTH REVIEW TRIBUNAL HEARINGS IN RELATION TO REPRESENTATION

	NOT REPRESENTED %	SOLICITOR %	BARRISTER %	OTHER %
NO DISCHARGE/ TRANSFER/ DISCH. CONDS.	85	72	62	62
CONDITIONAL DISCHARGE	2	2	6	0
ABSOLUTE DISCHARGE	10	17	27	37
TRANSFER/ LEAVE OF ABSENCE RECOMMENDED	3	7	0	12
CONDITIONS CHANGED	0	1	6	0
TOTAL %	100%	100%	100%	100%

BASED ON 534 WEIGHTED CASES

SIGNIFICANT P<.00000

(e) Independent psychiatric reports and outcome of hearing

In many cases, representatives obtained an independent psychiatric report on patients in preparation for the review hearing. In 14% of cases a report from an independent psychiatrist was available on tribunal case files, or there was evidence that a report had been obtained. The presence of an independent psychiatric report was significantly related to the outcome of review hearings. Where the report disagreed with the recommendation of the RMO, or where a report had been obtained, but the independent psychiatrists opinion could not be found on the tribunal case file, patients were more likely to obtain a favourable change in their conditions.

TABLE 3.23 OUTCOME OF HEARING IN RELATION TO INDEPENDENT PSYCHIATRIC REPORT

	NO REPORT %	PSYCHIATRIST AGREES RMO %	PSYCHIATRIST DISAGREES RMO %	OPINION NOT KNOWN %
NO DISCHARGE/ TRANSFER/ DISCH. CONDS.	78	71	55	70
CONDITIONAL/ ABSOLUTE DISCHARGE	17	14	12	20
TRANSFER/ OTHER RECOMMENDATION	4	15	34	10
TOTAL %	100%	100%	100%	100%

TOTAL WEIGHTED CASES = 534

SIGNIFICANT P<.00000

(f) Multiple Regression Analysis

The analysis was based on 534 unweighted cases for which a hearing took place. Of these cases, analysis of the weighted sample reveals an estimate of the underlying average success rate of 23.4%. Among the sample of heard cases 65% of patients were represented at their hearing. Variables were defined in groups to reflect the type of representation, if present; the characteristics of the patient, the type of case, and the circumstances of the hearing, all of which might be expected to affect the outcome of the hearing. A full description of these variables is given in Appendix A. The findings in brief are as follows:

(f)(i) Representation

The estimated coefficient associated with the presence of a representative was positive and statistically significant with more than 95% confidence. The size of the effect suggests that an individual whose chance of success was, say, 20% without a representative, would have it improved to approximately 35% with a representative, after controlling for other factors such as type of case, RMO's recommendation etc.

(f)(ii) Characteristics of the patient

The patient's sex, age or marital status made no significant difference to the outcome. Nor did evidence of any previous history

of admissions to hospital. However, an appellant with some kind of criminal record, or displaying aggressive or delusionary behaviour, had a significantly lower chance of success. A criminal record by itself will reduce the chance of success from 20% to 10%.

(f)(iii) Type of case

If the appeal is brought automatically, or by the hospital, the patient's chance of success is significantly reduced. Moreover, Section 2 and Section 3 cases are less likely to win than other types of case. For example, a patient who otherwise had a 20% chance of success, reduced to around 6%. It must be borne in mind, however, that whereas in Section 2 and Section 3 cases 'success' would normally involve discharge from the section, in other cases 'success' might merely constitute a recommendation by the tribunal to the Secretary of State that the patient be transferred.

(f)(iv) Circumstances of the hearing

The main effect here is that associated with the recommendation of the Responsible Medical Officer. If he opposes the application, then the applicant's chance of success is considerably reduced; given a 20% chance of success with the RMO's approval, an applicant similar in all other respects, but without the RMO's approval would have a chance of success which was less than 10%. However, there is some indication that this effect will be substantially mitigated if the applicant can demonstrate that an independent psychiatrist disagrees with the RMO's opinion. The identity of the judicial member could not be included in the analysis of outcome at mental health review tribunals, since the spread of cases was too great.

(f)(v) Determinants of representation

The main determinant of representation was advice. If the RMO opposed the application, it was more likely to be represented, and if the hospital or Secretary of State applied for a tribunal review on behalf of the patient, the case was less likely to be represented.

Not surprisingly, patients were much less likely to be advised if the application for review was made on the patient's behalf (i.e. automatic reference or by the hospital). Also, patients detained under Section 2 of the MHA 1983 were less likely to obtain advice than patients detained under other Sections. Patients in the Liverpool region were far more likely to obtain advice about their review. Holding all other factors constant, the chance of a patient obtaining advice increased from around 65% for patients in other regions to 80% in Liverpool.

SUMMARY OF MAIN FINDINGS RELATING TO OUTCOME OF MENTAL HEALTH REVIEW TRIBUNAL HEARINGS

1. Those patients detained under Section 2 of the Mental Health Act 1983 were the most likely to be discharged following a hearing. Restricted patients were those most likely to obtain some change in their situation, but this was most often limited to a recommendation for transfer.

2. Patients detained in special hospitals were less likely than patients detained in district hospitals to obtain a favourable outcome at their review hearing.

3. Patients with a criminal record were less likely to obtain a favourable outcome to their hearing, irrespective of the Section under which they were detained.

4. The recommendation of the Responsible Medical Officer significantly affects the probability that a patient will receive a favourable decision at a hearing.

5. A report from an independent psychiatrist which disagrees with the recommendation of the RMO can substantially mitigate the effect of the RMO's recommendation, holding constant other factors.

6. The probability of a patient obtaining a favourable outcome at a review hearing is significantly increased where the patient is represented, holding constant factors such as the Section under which the patient is detained and the recommendation of the RMO.

GENERAL SUMMARY AND CONCLUSION:
THE EFFECT OF REPRESENTATION ON OUTCOME OF HEARINGS

1. The information presented in this chapter has demonstrated conclusively that, the presence of a representative significantly increases the probability that social security appellants, appellants before immigration adjudicators, industrial tribunal applicants and patients detained in mental hospitals will succeed with their cases at a tribunal hearing. This finding holds true when other measurable factors related to outcome are held constant.

2. In social security appeals the presence of a representative will increase the probability of success from 30% to 48%. In hearings before immigration adjudicators the presence of a representative will increase the probability of success from 20% to 38%. In mental health review tribunal hearings the presence of a representative will increase the probability of success from 20% to 35%. In industrial

tribunal hearings, where the representation of both sides must be taken into account, the presence of a legal representative will increase the applicant's chance of success where the respondent is not represented from 30% to 48%. Where the respondent is legally-represented and the applicant is unrepresented, the applicant's probability of success is reduced to 10%. These relative increases in the probability of success have been calculated after taking into account all other observable influences on outcome.

3. The type of representation obtained by appellants and applicants has an effect on the probability of success. In social security appeals specialist representatives, such as welfare rights centres, tribunal units and law centres have the greatest effect on the probability of success. In immigration hearings, those represented by UKIAS, solicitors and barristers have a greater probability of success than those represented by other advice agencies. In industrial tribunals, legal representation is of the greatest benefit to both applicants and respondents; and representation by a barrister results in the highest probability of success for either an applicant or a respondent.

4. Other factors independently associated with success were the type of case, number of witnesses, and in social security appeals, geographical location. In social security appeals, immigration hearings and industrial tribunals the identity of the chair or adjudicator was found to have a significant and independent effect which could either increase or reduce the probability of success.

Representation evidently increases the probability of a favourable outcome to a tribunal hearing. Assuming that, in the vast majority of cases, the favourable decision reached by the tribunal is correct in the light of the law and facts of the case, then representation can be said to be increasing the accuracy of tribunal decision-making processes.

If the objectives of tribunals are not simply to provide a quick cheap and accessible forum for the resolution of disputes, but include accurate and fair decision-making, the evidence of this chapter suggests that representation may be both desirable and necessary.

The ways in which representation contributes to the accuracy of decision-making, through preparation and presentation of tribunal cases, is the subject-matter of Part II of this report.

PART II ADVICE REPRESENTATION AND DECISION-MAKING

Chapters 2 and 3 have demonstrated clearly that in all four tribunals, representation increases the likelihood that appellants or applicants will succeed with their cases, and that specialist representation, tends to exert the greatest influence on the outcome of hearings.

The purpose of Part II of this report is to attempt to explain why representation appears to make such a difference to the outcome of hearings. Is it the result of the legal framework within which tribunals must reach their decisions? The need for case preparation? Is it the result of procedural matters or the power balance between parties? Are special skills required which unrepresented appellants and applicants do not possess? These are some of the questions addressed in the following chapters. The answers provide a basis upon which the arguments for, and against, representation at tribunals can be re-assessed.

The information in the following chapters is based primarily on extensive interviews conducted with tribunals, Presenting Officers, and representatives of all kinds, and on observation of tribunal hearings. The perceptions of those who represent and those who adjudicate tribunal cases assist in explaining why represented appellants are more likely to succeed at hearings. The experiences of representatives and tribunals also provide a better understanding of the ways in which unrepresented appellants and applicants may be disadvantaged in the preparation of cases and at hearings, despite the efforts of advisers to prepare them for their hearings, and despite the best exertions of tribunal chairs and adjudicators to compensate for lack of representation. It is also possible, through the perceptions of those involved in the process, to consider the contribution that representation can make to the quality of tribunal decision-making and the fairness of tribunal hearings.

The views of tribunals and representatives concerning many aspects of tribunal work were influenced by a common perception of increasing complexity of rules, regulations, statute and case law. Chapter 4 explores these perceptions, in order to establish the context within which the need for advice and representation tends to be evaluated by those involved in adjudicating and representing tribunal cases.

Chapter 5 deals with pre-hearing case preparation and the perceived need for thorough investigation of cases and collection of evidence prior to the date of the hearing. The chapter also presents information on the extent to which early advice can contribute to the quality of first-line decision-making; filter out of the tribunal system unmeritorious cases, and effect pre-hearing settlements by means of direct negotiations with Departments or employers. The

chapter ends with an analysis of the impact of representation on the delay between the lodging of an appeal or application and the date of the hearing.

Chapter 6 is concerned with differences in procedure between the four tribunals and the impact of representation on tribunal procedure. The chapter presents the perceptions of tribunals and representatives regarding the role of tribunals when appellants and applicants are unrepresented; the requirements of good case presentation; the ability of unrepresented appellants and applicants to advocate their cases; the value, if any, of 'legal' skills; and the contribution of skilled advocacy to the quality of tribunal decision-making. The opinions of tribunals and representatives on the desirability of extending Legal Aid to tribunals were also sought and are summarised.

CHAPTER 4 LEGAL COMPLEXITY, CONSISTENCY AND THE PROBLEM OF INFORMALITY

The following two chapters present the experiences and views of tribunals and representatives about the ways in which representation can contribute to better preparation and presentation of tribunal cases. Many of the views expressed during interviews on these matters, were prefaced with complaints about technicality and complexity of the legal framework within which the tribunals operated, and this appeared to be one of the most important influences on beliefs about the need, or desirability, of representation at tribunals. The widespread perception of complexity and technicality which emerged during interviews constitutes a direct challenge to conventional wisdom about the advantages of tribunals over ordinary courts. The view that tribunals should be kept 'simple' is largely informed by somewhat corrupted versions of the recommendations of the Franks Report on Tribunals and Inquiries which took place in the 1950s (Franks Report 1957), and some of the reluctance to encourage representation at tribunals is a result this view. It is therefore worth looking again at the Franks Report in the light of the perceptions of tribunals and representatives.

1. A Re-Assessment of the Franks Objectives for Tribunals

When the Franks Committee reviewed the operation and functions of administrative tribunals they posited a number of characteristic attributes of tribunals which distinguished them from ordinary courts. These were: cheapness, accessibility, freedom from technicality, expedition and expert knowledge (Franks Report 1957, p.9). The Committee went on to formulate a series of objectives for tribunals, based on court-like values. These were: openness, fairness and impartiality (p.10). Since the publication of the Franks Report a great deal has been written about tribunals, and much of it has been critical of the failure of many tribunals to fulfil these objectives. Such criticism may, however, be less of a reflection on the performance of tribunals, than on the inadequacies of the Franks' 'criteria' for evaluating tribunal performance.

The Franks Report displays at least two important shortcomings. First, the failure adequately to distinguish between different kinds of tribunals, or to provide criteria for judging tribunal performance that could be adapted across various spectra; for example, inquisitorial/adversarial hearings; discretionary/ regulatory decision-making; policy-making/ adjudicative functions. The second shortcoming of the Franks Report was the failure to acknowledge (or perhaps to realise) that, at a fundamental level, there is a conflict between the requirements of openness, fairness and impartiality on the one hand, and the desire for cheapness, expedition, informality, and freedom from technicality, on the other. In omitting to consider how all of these objectives might be achieved in practice, the

Report, like a bad parent, established conflicting standards of behaviour and left those who might aspire to the standards to resolve any conflicts for themselves.

It is clear from observing hearings and talking to participants in the four tribunals studied, that tribunals are more informal, and procedurally more flexible, than courts. This is most evident in the simplicity with which cases can be commenced, the lack of grandeur in the physical environment of hearings, and the relaxation of procedural rules in hearings. These attributes are viewed by tribunals and representatives as positive advantages that should be protected.

It is also clear from observation of hearings and interviews with tribunals and representatives, however, that the benefit of greater informality in these respects for appellants or applicants, and for the tribunals who must adjudicate, tends to be overestimated by many who write about tribunals and by some of the participants in tribunal proceedings. Informality has also been wrongly assumed to extend to all aspects of tribunal processes.

In its simplest terms, 'informality' may mean that hearings are conducted across a table, and procedural flexibility may allow an appellant to choose whether he puts his case first and whether he may introduce hearsay. Neither of these welcome characteristics, however, negates the necessity of the appellant bringing his case within the regulations or the statute, and proving his factual situation with evidence; nor does the concept of informality relieve tribunals from the obligation to make reasoned and consistent decisions. The following quotation from an employment law solicitor illustrates the limits of 'informality':

> 'Industrial tribunals are much more informal than courts and that is good. Industrial tribunals could be a model for how county courts ought to run. They are accessible, and the rules of evidence and procedure are very flexible. In fact they make it up as they go along. But the law is very hard. It is very difficult to understand and interpret. We are now up to three volumes of Harvey. So people say that there is too much law, but why shouldn't there be so much law? You would expect thick volumes on criminal law and you expect thick volumes on family law. Why shouldn't there be thick volumes relating to the way in which most adults spend most of their waking lives - in other words the world of work?' [SOLICITOR]

Few among those interviewed denied that bringing cases before tribunals, and deciding tribunal cases, was now a relatively 'technical' business. Some thought that it had always been so. Many chairmen and adjudicators, however, who had taken Franks' various exhortations to their hearts, felt unhappy about the situation and

were inclined to apportion blame. They could rarely suggest any solution to the problem, and this may be because, done properly, the job of tribunal adjudication is technical.

The task of social security appeals tribunals and immigration adjudicators is to scrutinise administrative decisions, and check that they have been made in accordance with regulations. Industrial tribunals are required to adjudicate between employers and employees on questions governed by statute and case law. Mental health review tribunal decisions are intended to be give effect to statutory provisions, although in practice they regard their role to be rather wider than this (see Peay 1988). Social security appeals tribunals, industrial tribunals and immigration hearings all have appellate tiers whose decisions affect future determinations, and the decisions of all tribunals are, of course, subject to judicial review.

When describing their adjudicative function and their method of reaching decisions, the process adopted and described by chairmen and adjudicators, was virtually identical in social security, immigration and industrial tribunal hearings; viz., the collection of full information; establishment of relevant facts which can be proved; correct identification and interpretation of legal rules; consideration of relevant case law; and application of facts to law which should, in theory, lead to accurate decisions. In short, a traditional legal model. Whether or not tribunals, in practice, always follow this model, the technicality of this process presents problems not only for tribunals, but also for appellants and applicants since it is they who must provide the tribunal with much of the material necessary to this process. The problems for appellants in this respect were summed up by a representative from a tribunal representation unit:

> 'Appellants need a good understanding of the rules if they are going to argue that the rules have been wrongly applied, and they have got to get into the technicalities and the legalistic bits in order to persuade the tribunal to overturn the decision.' [REPRESENTATION UNIT]

The concept of freedom from technicality sits somewhat uneasily with this model of the tribunal decision-making process. The Franks Committee did not articulate how 'freedom from technicality' was to be manifested in practice, and provided no guidance as to whether, and in what circumstances, accuracy and consistency in decision-making could be sacrificed in its achievement.

Freedom from technicality may simply be a quality of unchecked discretionary decision-making which implies the freedom to make inconsistent decisions. Where scope for the exercise of discretion on the part of tribunals has been largely removed, and where the demands of justice require consistency in decision-making, it is arguable that the concepts of informality and freedom from technicality are limited to such matters as the atmosphere of proceedings and tribunal

documentation. They should not be used as a basis for denying the contribution that representation might make to tribunal decision-making processes.
What tends to be pejoratively termed as 'legalism' may not, after all, be an unwanted side-effect of the involvement of representatives in tribunal hearings, but rather, at the very core of the tribunal process.

> 'I think the truth and reality is that the notion with which tribunals were set up, about being an accessible forum of justice for the ordinary person, has now been overtaken by history and they are adjudicating such complex and legalised areas that it is actually hopeless to think that people are going to get a fair deal, or feel that that they are getting a fair deal, or feel easy with the deal they get, if they go on their own - even to a Social Security Appeal Tribunal and that is the most accessible forum. '
> [Legal Action Group Representative]

Almost all of the representatives interviewed felt strongly that the traditional view of tribunals as 'informal' fora in which appellants and applicants could bring cases without assistance, was either no longer true, or had never been true. Their opinions were based largely on perceptions of the complexity of the law, but also on beliefs about the power balance between parties. For example:

> 'I don't think that you can have informal tribunals. They are courts. They are perceived as courts by everybody else, apart from some lawyers who distinguish between the court system and the administrative tribunal system. It isn't informal. How could it ever be like that? You have got to make decisions based on a set of rules. Then you are going to have the interpretation of the rules. Then the rules are always going to be subject to getting it wrong in law and judicial review. How can you have an informal tribunal system?'
> [SOLICITOR]

> 'There is this imbalance of power. Somebody is asking for something and other people may or may not be able to grant it and that is never an informal position. It is not even open to negotiation. That is another fallacy about tribunals. By saying that it is an informal tribunal it makes it sound as if you can go in there and talk your way into something, and that isn't true at all, because the law is not

negotiable. The law is what is behind and what should be behind tribunal decisions and I think probably a lot of unrepresented appellants come up against that. They think "Well I've got the gift of the gab. I can go in there and persuade them." But the rules are the rules and they are stuck with them.' [GLOCAB]

'It is only the trappings of tribunals that are informal. When you get down to the law it is just as formal, and industrial tribunals probably more so, than any other court. Applicants are gravely disadvantaged if they are unrepresented. It wouldn't make a criminal court informal if we didn't wear a wig and gown.'
[BARRISTER]

'In immigration appeals and industrial tribunals the reason why you are better off with a lawyer is because for all its professed informality, it is an essentially legal situation. Appeal tribunals are, after all, part of the British legal system.'
[BARRISTER]

'There is nothing informal about losing your job, going before a mental health tribunal, knowing your rights as far as your social security benefit is concerned. There is nothing informal about that. That is the living, dying, breathing way of things.'
[LEGAL AID SOLICITOR]

2. Complexity in Social Security Appeals Tribunals

Although the procedure in social security appeals is the most informal of the four tribunals studied, the majority of representatives, and at least two-thirds of the chairs and members interviewed, thought that the regulations were very technical. This was perceived to present problems for appellants, and also for representatives who did not specialise in welfare law. For example:

'The process is very complex. I have problems understanding it all, so I don't know how the appellants manage, and I am legally trained.' [CHAIR]

'Social security law is very underrated, but it is very finicky and these are people that need help more than any.' [CHAIR]

'I don't think that most people understand social security

law at all. It is a fiendishly complex area. A lot of private practice solicitors who don't practise welfare rights have only the sketchiest idea of what it's all about. There is the whole question of precedent. Commissioner's decisions that your average claimant doesn't know exist. They can be totally flummoxed by an argument between the tribunal and say the DHSS presenting officer about the relevance of a particular Commissioner's decision, which in all likelihood they have never heard of, never read, and wouldn't understand if they did read.' [TRIBUNAL UNIT]

Statements about complexity of the regulations were inextricably linked with the issue of advice and representation. Many of the chairs and members interviewed perceived that social security regulations were complex and felt that this inevitably meant that appellants needed, or would benefit, from representation. Observation of appellants' evident confusion about the significance of regulations to their cases at all, let alone the content of the regulations, proves the truth of this view (see Chapter 7).

'People need to be represented obviously because you are dealing with rules and regulations, and a person who is a lawyer or is somebody who deals in that field will be able to know what is required, what evidence is required before the tribunal and will be able to present the facts and the evidence that is essential to his or her case. Consider a person who doesn't know anything about statute law - and we are dealing with statute law . It takes a long time for someone who is not associated with the tribunals or who isn't a lawyer to understand what the regulations mean, what the words mean and what are the conditions under one regulation or another.' [CHAIR]

'Why shouldn't an appellant need representation in a tribunal any more than in a court of law? The machinery and the written material is prepared by the Department and it's the material which we work on. The relevant provisions are all trotted out there, but it may be that they have left something out. We can't be classed as experts by any means. Even a qualified chairman, if he is a part-time chairman, comes here maybe twice a month or only once a month for a few hours and then he goes away for the next four weeks and forgets all about his insurance law. He has other things to occupy his mind. My experience is that people are better off if they are here and more so better off if they have a representative. Generally speaking, that must be so.' [CHAIR]

'The whole tribunal system would benefit from professional representation. These regulations are extremely complicated. Single payments for miscellaneous furniture for example. You have got to pick your way through all sorts of things. It is a very complicated area of law. [CHAIR]

Some chairmen stated that although complexity rendered representation desirable, it did not always make it necessary, and that the number of cases that involved legal technicalities were in the minority. For example:

'You do need representation, but not for all cases. There is a proportion that are swung on good arguments and interpretation of the law and it's that 1 in 10 that you have got to help.' [CHAIR]

It is notable that in social security appeals and industrial tribunals, chairs were more likely than in the other two tribunals to say that representation might be desirable, but was not necessary. This ambivalence, which was often productive of gross inconsistencies in views, almost certainly results in part from a feeling that to assert a need for representation constitutes an admission of failure. Indeed some chairs stated that in so many words (see Chapter 6 for further discussion of this issue).

In only one or two cases, usually in areas where representation of appellants was a rare event, did social security chairmen argue that representation of any kind was generally unnecessary and largely undesirable. Where it ocurred, this view appeared to derive from the assumption that the job of the tribunal was, in fact, straightforward, and that representatives complicated matters. For example:

'Most of our cases are not represented. It is no disadvantage to be unrepresented. In fact 99% of the time they are better on their own because we are not then cluttered up with law and regulations. If representatives are there they just waffle on. Solicitors make the worst representatives because they come to a hearing thinking it's a court and try to baffle everyone with the law and regulations and, of course, the members don't know any law.' [CHAIR]

'There is no question that people do better if they turn up. It is not necessarily true that a representative will do a better job, or that those coming with a representative will have a better chance. Often representatives just protract matters and those who advise people to appeal anyway are wasting an awful lot of time and money.'[CHAIR]

These issues and other issues relating to the need for, or desirability of representation are discussed further in the next two chapters.

3. Complexity in Immigration Hearings

Complaints about the complexity of the law in immigration matters were made forcefully by representatives and adjudicators. There has, indeed, been an enormous growth in reported cases and in applications for judicial review of immigration decisions (cf Sunkin 1987), and the perception of those interviewed was that the law was often impossible to untangle for adjudicators and representatives, let alone unrepresented appellants.

Representatives believed that unrepresented appellants at immigration hearings would stand no chance whatsoever of succeeding with an appeal. The relative informality of proceedings at hearings was of no consequence when it came to establishing an entitlement under the immigration rules. They regarded the technicality involved in immigration matters as a direct and inevitable result of the nature of the regulations. For example:

'It's not lawyers that have made things legalistic, it is the Rules and regulations - the law itself that is making it ever more difficult. Appellants on their own are really not viable. They have language and literacy problems. Lawyers cut through the crap . It is after all a legal forum. Tribunals are part of the legal system and necessarily require a legal approach. Tribunals are not 'informal'. Immigration appeals may be quite relaxed, but the issues are complex and you can't really leave it to appellants to get on with it on their own. They would stand no chance at all. They would answer most questions with "I don't know".' [BARRISTER]

'A lot of the rules are terribly technical. When one thinks of the issues, the legislation about whether somebody ought to stay here as an overseas student would be fairly simple to draft in a clear and fair way, but they are incredibly complicated.' [UKIAS]

'There is now a complete body of law on immigration and it is not just law at adjudicator and tribunal level. For a

variety of reasons immigration law has become one of the largest areas of judicial review, and that is partly to do with the inadequacies of the appeal system. So the short answer in my view is that a person without representation is at a complete disadvantage.' [SOLICITOR]

Adjudicators were no less convinced than representatives of the difficulties facing unrepresented appellants. They were inclined, however, to attribute the increasing technicality of the law to the exertions of lawyers attempting to push at the limits of the regulations in order to succeed on behalf of their clients. For example:

'It is all getting very complex now. It is the High Court that is doing it. There is a stack of case law which a representative has to be familiar with.' [ADJUDICATOR]

'We have to apply the stated law to the facts, and the stated law includes not just the statute, but of course the case law and occasionally, when you have fresh legislation, the adjudicator will have to reach a decision without the benefit of case law and in those instances it is probable that it will go not just to the Tribunal, but the House of Lords, and even Strasbourg. It is sometimes difficult to reconcile the different decisions of the Tribunal and the superior courts. When you have an advocate appearing before the adjudicator, it is his duty to draw the attention of the adjudicator to both favourable and unfavourable decisions. But of course, if you have twenty decisions on the same point, all of which are slightly different, it does make the job of the adjudicator rather more difficult.' [ADJUDICATOR]

'There are so many precedents and anyone who didn't know the ins and outs of the law would think "Ah I can go along to an adjudicator and I can put my case." But unless you know all the pitfalls you are liable to fall flat on your face.' [ADJUDICATOR]

Those adjudicators who had been sitting for some time, suggested that their role had changed over the years. Their perception was that their discretion had been curtailed. For example:

'It used to be possible to treat hearings as informal, with little law. Just a question of fact. Now you must appreciate that the Rules involve consideration of issues that are anything but simple. They involve considerations of intention. A large body of law has been formulated on what the Rules mean, but you get lawyers twisting

words round and it has become a lovely fruitful source of litigation...There has been a proliferation of case reports. 6000 unpublished tribunal decisions which equal precedents.' [ADJUDICATOR]

'When these appeals were set up, it was all perceived as quick and easy and the appellant could represent themselves. In fact the idea was to have us behave like 'Night Courts'. A bang of the gavel - appeal allowed. But it is nothing like that. It is far more complex and technical.'
[ADJUDICATOR]

'It has become rather more formal. I think what was really envisaged was that it would just be a fairly informal hearing before an adjudicator. The Home Office would put their side and the appellant would put his side. I think it was envisaged that there would be far less adherence to normal court procedures at all. It is an unusual procedure anyway. The rules of evidence go out of the window. It is all hearsay evidence. It has become far more legalistic than anyone could ever have expected and that is the truth of the matter.'
[ADJUDICATOR]

The views of adjudicators and representatives on the need for representation at immigration hearings were directly influenced by their perceptions of this increasing technicality in the law. These issues are discussed further in the next two chapters.

4. Complexity in Industrial Tribunals

There was less agreement between representatives and tribunal chairs in industrial tribunals about the degree of complexity of the law and the causes of complexity. Representatives were almost unanimous in their belief that the law relating to employment matters was complicated, and that the explicitly adversarial procedures in industrial tribunals made it difficult for applicants to succeed with cases without representation. For example:

'You need lawyers in industrial tribunals. Certainly on constructive dismissal which is a hell of a thing. It is an area extremely rich in case law and you can't expect Mr and Mrs Average to do that and I don't think that a lot of people even understand the mechanics of what's being done to them. It's no use saying that everything has been done to simplify the system. It hasn't. This solid bank of case law has built up. It has become so technical.

Too involved. Too inflexible. It's a very inflexible system in industrial tribunals. The other tribunals have more interest in finding out the truth. This is the only tribunal where personalities are at stake.' [SOLICITOR]

'Industrial tribunals can be very difficult legally. I think they are just so legalistic that you've got to have somebody who knows about employment law there. There is no such thing as a straightforward industrial tribunal in my experience.' [ADVICE AGENCY]

'Tribunals are made more difficult by the way that they profess to be informal on the one hand, and yet embark on a highly skilled forensic process when you get in there. It is no easier than advocating a case at the Crown Court. The Act itself puts a great deal of emphasis on whether or not the dismissal is going to be reasonable in all the circumstances and you have no way of knowing quite what view an individual tribunal is going to take of the particular facts. The whole thing is just a complete pitfall.' [LAW CENTRE]

'There is so much law in employment cases that the chance of the applicant really understanding off the top of their head how their particular facts and circumstances fit into the overall framework of employment law, whatever style of tribunal you have, the chance of that is fairly slim, so you are always going to need representation.' [REPRESENTATION UNIT]

The vast majority of industrial tribunal chairs agreed that the law had become technical over the years. Many believed that neither unrepresented applicants, nor indeed, many of their representatives, were capable of understanding the finer points of the law and presenting a coherent case to the tribunal. For example:

'Industrial tribunal law generally is very specialised and the average High Street solicitor simply doesn't have the time with all the other jobs that he is doing to take on board the specialised field. If he does and if he is good, then of course you do very well having him represent you. So it depends on the standard of representation.' [CHAIR]

'Industrial law is so complex now. Joe Bloggs is not going to distinguish between whether we think he nicked something or whether we are looking

at the employer acting reasonably. People just don't appreciate those distinctions. The law has become silted up. We have unhappily got ourselves into a situation of high technicality.'[CHAIR]

'When the industrial tribunals were set up it was hoped that it would be on a not too formal basis. But over the years we have seen the growth in legislation and precedent. This can put the applicant at a disadvantage without a representative.' [CHAIR]

A common view among industrial tribunal chairs was that the increasing technicality in the law was in some way unnecessary and the consequence of too many lawyers being involved in industrial tribunal applications. For example:

'The law has got much more technical over the years. I would like to avoid increased legalism and technicality. After all, as a tribunal we decide jury points. It is all a question of whether something was fair or reasonable. In all fairness there is no law. You could get three blokes from the street to decide on that, like a court jury decision. ' [CHAIR]

There was, however, enormous inconsistency in the views of industrial tribunal chairs about the need for representation and the consequences of such representation. As will be discussed further in the next chapter, industrial tribunal chairs, within the space of minutes, would complain about the legalism that resulted from legal representation, agree that applicants often benefited from representation and then suggest that legal representation assisted tribunals in quickly identifying and dealing with relevant issues. For example:

'The more intervention by Counsel, the more legalistic it becomes, because they quite properly feel obliged to refer us to authorities which we would otherwise not refer ourselves to on the whole. We would be more inclined, I think, to take a fairly simple view on listening to the facts and relating those facts to such authorities as we use and know about.' [INDUSTRIAL TRIBUNAL CHAIR]

Some of the conflicts in the views of industrial tribunal chairs about the need for representation results from the philosophy, to which they are subject, that tribunals ought to be informal fora where ordinary people put their cases, and where those who have difficulty in doing this will be assisted by the tribunal. This philosophy places chairs who perceive the complexity of the law and

the limits of their ability to overcome this for applicants in a difficult position.

The differences in perception between tribunals and representatives about the nature of the law in industrial tribunals and the need for representation are explored in more detail in the following two chapters.

5. Complexity in Mental Health Review Tribunal Hearings

Of the four tribunals studied, the legal provisions of the Mental Health Act 1983, which are the concern of mental health review tribunal decisions, are probably regarded as the least technical. Judicial members and medical members on the whole, made few references to legal technicality. Some, however, stated clearly that patients' claims to liberty had to be based on statutory provision and that the establishment of those claims required the assistance of representation:

> 'We are involved with a Statute that is long and involved and it does make legal representation all the more desirable.'
> [MHRT JUDICIAL MEMBER]

> 'Some tribunals are concerned with money. We are concerned with a person's liberty and that is the essential point. A good representative, I think, does make a difference to the outcome.'
> [MHRT JUDICIAL MEMBER]

For the majority of tribunal members interviewed, the complexity of their decision-making was felt to derive from the difficulties they perceived in, on the one hand, making decisions which are in accordance with the law, and on the other, making the best possible decision on the basis of their view of the needs of patients, or on their view of the risk to society posed by patients (cf Peay 1988 for a detailed examination of these issues). Indeed the provisions of the Statute were often regarded as being of secondary importance, and criticism of representatives was in some cases based on the view that their arguments before tribunals were exclusively about the law. For example:

> 'We are sufficiently familiar with the Act not to need a representative to tell us about it, but they may advise us of specific points.'
> [MHRT JUDICIAL MEMBER]

> 'There is little complexity or technicality in Mental Health Review Tribunals. We rarely

> get points of law taken against us. We rarely get proceedings snarled up because a representative is dealing with technicalities.' [MHRT JUDICIAL MEMBER]

Representatives were aware of a tendency of tribunals to be impatient with submissions that stressed the legality of the patient's detention over other questions. For example:

> 'I think there is a real confusion right at the core of tribunal representation. There is the legal framework, the legal structure and the idea of due process, and on the other hand there is the doctor's role which is so important. The doctors do not understand the legal model and they don't really give it much credence. Funnily enough, the lawyers in the tribunal don't really understand the legal model in terms of proper presentation. They are two irreconcilable areas. Their ideas and ours are as far apart as they shall ever be.' [SOLICITOR]

The differing perceptions of mental health review tribunal members and those who represent patients are discussed further in Chapter 6.

SUMMARY

The views of tribunals and representatives on most matters relating to the need for representation in the preparation and conduct of tribunal cases, were conditioned by their perception of growing, or continuing complexity of law and the technicality of their decision-making process. The conflict between the view that tribunals should be informal and free from technicality, and the requirement for accurate and consistent decisions, poses problems for those who adjudicate tribunal cases and who are attempting to reach their decisions in accordance with complicated regulations, statutes and case law.

Tribunals feel, or are led to feel, that they should be able to do without representation in this process, but many regard the need for representation as an inevitable consequence of legal complexity. Some blame representation for the increased technicality of their job. Others see the process of arriving at accurate, reasoned decisions that will survive appellate scrutiny, as an inherently technical business.

Representatives feel that, from the point of view of appellants and applicants, informal procedural arrangements do not impinge on the technicality of establishing and proving a case in law, and that the veneer of informality presents a trap for those who attempt to proceed with their cases without advice or representation.

The Franks criteria describe certain characteristics of tribunals that are desirable and should be protected. They prove, however, to be inaccurate when applied to the adjudicative function of tribunals, and therefore unhelpful in attempting to evaluate tribunal decision-making processes. They also provide a false basis for denying the difficulties facing appellants and applicants in proving the merits of their cases, and the contribution that representation may make to tribunal decision-making.

CHAPTER 5. PRE-HEARING ADVICE AND CASE CONSTRUCTION

Representation at a tribunal hearing in terms of advocating the case for an appellant or applicant is by no means the only contribution that representation makes to the tribunal system, nor is it a self-contained activity. It is the culmination of a series of preparatory stages in the redress of grievances or challenging of decisions, which begin with early advice.

Advice to appellants and applicants serves a number of purposes:

1. to avoid incorrectly adverse first-line administrative decisions;

2. to filter out of the tribunal system appeals or applications with little or no chance of success;

3. to attempt to settle claims without the need for a tribunal hearing;

4. to assist appellants and applicants in the construction of their cases and collection of the evidence necessary to prove the case, whether or not they are going to be represented.

This chapter considers each of these functions of advice and representation in turn and finally analyses the impact of advice and representation on the delay between the lodging of appeals and the hearing of appeals.

Interviews with representatives, presenting officers, tribunal chairmen and members provided information bearing on these issues. Information from postal questionnaires sent to social security claimants at the same time as they were sent adverse decisions from the DSS, and follow up interviews with some of those who returned their questionnaires, are also presented in section 1.

1. Avoiding an adverse decision

Many people applying for benefits, making requests to the Home Office, and those having difficulties at work, proceed in these matters without advice or assistance. While the scope for avoiding a dismissal or redundancy at work may be more limited than that for avoiding a negative decision on an application to a Government Department, it is clear that early advice might assist employees faced with disciplinary proceedings at work, or prevent employees from resigning in situations where they wrongly believe that they have been constructively dismissed.

However, in the social security and immigration fields, the potential benefits of early advice about applications to the relevant

Departments appear to be great. Most applications for benefit are made in writing, and many immigration applications are made only in writing. Decisions about social security benefit, and some immigration decisions, may be reached without the applicant having been seen by anyone associated with the decision-making process. One result of this is that administrative decisions may be based on inadequate or incomplete information (cf Sainsbury 1988 for an excellent study of social security claims adjudication). It is evident that decisions can only be as good as the information available on which to base the decision, but many applicants have difficulty in filling in forms. Applicants do not always understand why certain questions are being asked of them. They are nervous of writing something that will prejudice their case, but have no appreciation of what information will assist their case. In addition, poor literacy and language difficulties lead to problems in understanding the wording on forms, and an inability to complete the forms adequately in writing.

Interviews with social security claimants who had received adverse decisions provided many examples of these problems:

> 'Its so impersonal, there's not even an initial on it, or where it came from. The other thing I find very disturbing is that I think I can say I'm a little bit above the average educationally, but I find it very difficult to fill in their forms and I find the more honest you are with these people the worse off you are. We won't appeal against this decision because you are appealing to a faceless person.'

One important function of early advice, therefore, is to improve the quality of initial applications made by those claiming benefit or making requests of other departments, and thus reduce the possibility of an adverse decision which is incorrect.
Representatives were aware of the need for pre-application advice and the problems caused by claimants' lack of comprehension of application forms. For example:

> 'I have always thought that the best impact you can have very often with these tribunals is to have an input before it actually gets to a hearing and even before you have been refused what you want, because representatives can only do so much to undo problems. There are situations where if people come in for advice early we can avoid problems.' [LAW CENTRE]

> 'We get a lot of people who come in here who want us to help them with just filling in the claim form. The claim form itself baffles them. It's not a question of being stupid, it's just a question perhaps of what that person is used to. That person would probably be far quicker

at mental arithmetic than me when playing darts, but when it comes to a claim form, he or she is completely thrown by it because there is so much of it. It's just a question of having confidence that you can do it. Of course some people would never be able to do it because they have language difficulties or they are not very literate, so those people will always struggle.' [WELFARE RIGHTS UNIT]

'In immigration applications, it's best to have a representative before the person is refused, to help them write the application so that cases don't have to go to appeal. People have got to produce evidence that is going to satisfy the rules and if that fails they have to appeal. Often people haven't stressed the right things. They make loose statements which are misinterpreted or they have embarked on a course of conduct which is foolish.' [LAW CENTRE]

The problems of inadequate information in social security decision-making were recognised by Presenting Officers who have to put forward the Department's position at appeal hearings. Those interviewed were often perplexed by the story that emerged at the hearing. They were also occasionally frustrated, being unable to understand why claimants did not give full information in the first place. Many Presenting Officers complained that their job had become more difficult since the reduction in home visits to claimants. They felt that the saving in resources at that stage led to expensive and unnecessary tribunal hearings at a later stage. Typical examples of Presenting Officers' experiences were as follows:

'Very often the story that comes out at the hearing is totally different from what was written down... The problem is that you don't have all the evidence. That's why our office never dissuades a claimant from appealing. The number of appeals that you get after visits are minimal. You've seen the family, talked to them. Seen the conditions. You can make the decision with all of the information. Not everyone is good at putting things down on paper. The decisions are not changed because we were wrong, but because there is something that we didn't know. We are not there to save the Government money. We are not judged on our 'savings'. We are just there to see that the money is paid out properly.' [Presenting Officer North Wales]

'The sooner you get the facts the better. People often don't give proper information..If you knew the full facts at the beginning it would be much easier.' [Presenting Officer Cardiff]

'There is often more information on the appeal letter than we get ourselves. We keep writing to people, but we don't get the information. People don't understand the relevance of the questions. They don't know why we are asking so they don't give the information. The decision we make on the information we have is usually right, but we don't have all the information.' [Presenting Officer Leeds]

'The tribunal is drawing out fresh information from the appellant which the DHSS know nothing about and then override the decision. If we had known it could have saved them coming to appeal.' [Presenting Officer London]

Tribunals are also aware of the extent to which early advice might avoid cases coming before tribunals. Certainly, among chairmen at SSATs, the most common view was that hearings generally turned on new evidence. For example:

'I don't think that people can grasp that there is advice out there for them. Sometimes you find that when they come in they produce additional evidence which makes a lot of difference ot the case when it's heard. ' [SSAT MEMBER]

'The cases generally are won or lost in this tribunal on additional evidence. The Department don't often get it wrong. So often, when someone comes along with additional evidence, it puts an entirely different complexion on the case.' [SSAT CHAIR]

'With these cases, if people took advice first, they would sort it out without having to come to the tribunal.' [SSAT CHAIR]

One advantage of advice, therefore, would be to avoid unnecessarily adverse decisions and thus contribute to the accuracy of first-line decision-making. Assistance with making initial requests might ensure that the information required by the Department to make an accurate decision, was available at the time the decision was made. The significance of this for the appeals system as a whole is that better informed initial decisions might reduce the number of cases resulting in appeals. At the moment, in social security appeals, at least, it is difficult to avoid regarding much of the work of the tribunal as an expensive information-gathering exercise that might properly have been accomplished at an earlier stage.

Better quality initial decisions are, however, of chief significance to claimants, since the appeal system provides only a partial corrective to poor decision-making. This is because only a tiny proportion of claimants who receive adverse decisions appeal to the tribunal.

1.(a) Experiences of potential applicants

Approximately 1000 questionnaires were included with adverse decisions sent out by DSS offices in five regions (London, Leeds, Birmingham, Cardiff and Surrey). Some 168 questionnaires were returned representing a response rate of approximately 17%. Since the response rate was so low, it is not suggested that the information presented is conclusive, but intended to be illustrative of the difficulties faced by claimants; their reasons for not appealing and their knowledge of sources of advice.

Postal questionnaires returned by claimants who had received adverse decisions indicated a very low level of assistance in the completion of DSS forms, a low level of knowledge about where to go for advice and a general reluctance to consider review or appeal.

Of the 168 questionnaires returned only 37 respondents said that they had had any assistance in completing their application form for the DSS. Of the 37 who had obtained some help, 7 obtained help from their DSS office; 2 from a CAB; and 25 obtained help from friends or relations.

The overwhelming majority of respondents (85%) said that they would not appeal to a tribunal. The reasons for not intending to appeal were most frequently that the claimant did not believe the decision could be changed. Many assumed that the decision must be correct. Others assumed that whether it was correct or not, it would be impossible to get the decision changed. There were many expressions of powerlessness to affect departmental decisions. Others said that appealing would be too time consuming, involve too much red tape, or be too distressing. In only a small minority of cases did claimants appear to be genuinely satisfied that the DSS decision was correct and notably, the only two claimants to have received assistance from a CAB in completing their initial application for benefit, fell within this category.

Some typical examples of reasons for not challenging DSS decisions are given below:

<u>General confusion</u>

'They have made a decision and they leave it at that. I don't understand. It takes too long. They don't explain properly. They use words that nobody understands.'

'Because they should know how much to give you. That is their job. What is an independent tribunal? I have never heard of this.'

'I can't win and I haven't a clue where to go.'

Powerlessness/conspiracy

'Seems pointless. The Government are looking at ways of strangling the poor unemployed people they've cut the benefits so much. Once you've failed, always failed. I expect the same answer [from a tribunal] as the first time. Why waste time. The DHSS will win every time.'
'I would only get the same answer.'

'Because I don't think it will alter anything.'

'Because they will give the same answer as the DHSS. They seem to work together and get the same result.'

'They are hell bent on trying not to give any help and the delay between letters is by far too long. They have said No already.. What's the use. They think everyone's a state scrounger. You can't beat the system, so I would not bother.'

'Because I have sent about 20 forms and I still have not had any money and no real information at any one time to explain why. Appealing won't get you anywhere.'

'Because its a waste of time. They are not interested in anything you say even when you are telling the truth. You would think it was their pocket the money was coming from.'

'We don't stand a chance according to the DHSS. You can't beat the system.'

'No point. I'm too proud to beg. They will probably say the same as the DHSS, so there is no point in applying. They all work together.'

'Because they said no once, they will say no again. It is a waste of time and effort.'

Stress/trouble

'I have found trying to approach any member of staff in this direction impossible...The stress and emotional strain which accompany's the appeal would just be impossible to face.'

'To appear before a tribunal would be far too stressful in my state of health.'

'I have given up. I am too depressed to face it.'

'Because this would be too much of a hassle in my present state of health (angina).'

'Because it isn't worth all the hassle, and at the present time I am still recovering from the loss of my husband. I have just lost my husband after nursing him for 4 years. I need time to recover from the loss.'

'Being 80 years old and ill I cannot pursue such matters.'

'I could not face the hassle of tribunal. I already eat less and only heat one room. Could not bear moving if that was suggested.'

Decision must be right

'Because I think the DHSS are qualified people and their decision is final.'

'A decision has been made by authority via the adjudicator who considers I need only £44 per week to live on. I am too old to appeal.'

'The Government will not allow me any more. The rules are adamant.'

'Because the law has cut allowances that we used to enjoy. It seems pointless to pursue an argument with a Government that has no regard for pensioners or others. Perhaps they should issue us with cyanide pills.'

'Because it's the law and I stand no chance at all although I am disgusted with the decision. The reply will only be the same as I have received.'

'Because my income is equivalent to the Law's assessment as to how much I am allowed to live on. I will not bother to obtain the impossible from the bureaucratic hierarchy who couldn't care less for those in need.'

Satisfied with decision

'I am satisfied that the decision is correct.' [Completed application form with help from CAB.]

'Because DHSS stated I am over the limit.' [CAB helped complete application form]

'Because I know Social is right by not giving me maternity allowance.'

'Because there was nothing wrong with their decision. There is nothing to appeal about.'

'I think that they have been very fair. There is nothing to appeal against.'

Waste of time

'It would take too long to try and win over a point of view and it just wouldn't be worth it. It's pointless.'

'Because they only believe what they want to believe. It probably wouldn't be any good anyway.'

'A biased decision does deter me to try again. I cannot afford the time it does take.'

'It takes too long to pass along various departments and to be honest it is a waste of time.'

Evidence from tape-recorded interviews with some of the claimants who returned questionnaires reinforces the conclusion drawn from the questionnaires, that claimants rarely obtain advice at an early stage and when they receive an adverse decision often tend to do nothing more about it. This inaction frequently stems from lack of knowledge and a sense of helplessness. For example:

> 'We really don't know. It's our first time to be in this situation. That's what so difficult. You just don't know what to do. We don't know how the system works.'

> 'I was wondering if there was anybody who could help me because with this illness and everything, I wondered if there was anybody who could advise me at all. I thought once they made their mind up nothing would change it. I thought when it said there was an independent tribunal that it was just another branch of the DHSS and that they would just stick up for each other. So there was no point. But if there is somebody totally independent, then they won't mind what you say. Do you know who they are?'

Although DSS forms advising claimants of an adverse decision mention the fact that advice can be obtained from a Citizens Advice Bureau, this information does not appear, at present, to be of much assistance to claimants. The recent decision by the Department of Social Security to include the names and addresses of local CABx and advice agencies with appeal papers, is likely to prove helpful to those who actually submit a letter of appeal. It does not, however, reach those who, without the benefit of advice, are deterred from

taking further action to get an adverse decision checked by the DSS or a tribunal.

2. Filtering Out

A correct adverse decision by a Department, or a reasonable dismissal by an employer, frequently leads to a sense of grievance on the part of the claimant or employee. It is not surprising that most people have difficulty comprehending the grounds upon which such decisions have been reached. People claim benefits or make immigration requests because they feel a need, and often do not appreciate that the question of entitlement depends on the provisions of regulations, rather than their sense of need. They appeal because there is nothing else that they can do. The result is that a proportion of those who wish to appeal have little hope of success. Advice following an adverse decision before the appeal process is put into motion, can often explain more fully why the request has been refused and avoid people initiating fruitless appeals. Advice agencies, law centres and solicitors regard this as part of their job:

> 'Of course there are a number of appeals that go to SSAT's that are complete no-hopers, where people have just said "I haven't got enough money" and there is nothing that can be done about that, and representation can be useful in weeding those out. Getting the case withdrawn if it really is a no-hoper.' [GLOCAB]

> 'A great many people who have been badly treated think that they have been unfairly dismissed. People really just cannot perceive what it means to be statutorily unfairly dismissed rather than simply badly treated.' [LAW CENTRE]

> 'One of the common problems is that people want to appeal against the set amount, so a lot of people lodge appeals at local offices saying 'This isn't enough for me'. And then they might come to a rep and the rep says 'Well the DHSS aren't just making haphazard decisions. What you are entitled to is actually set down.' A lot of those appeals are just lost because there was no chance of success and should never have been lodged as an appeal.' [LAW CENTRE]

Although advice agencies viewed the filtering-out of unwinnable cases as part of their job, some were not particularly happy about having to do it. For example:

> 'Tribunals are really a legitimation of an administrative policy, so your role is really as a pawn, which is why you sometimes feel in immigration and social security that you

are doing the Government's job for them. You are telling someone to leave the country or not to apply for or claim a benefit. You are the soft police. To some extent you are a buffer between the State and the individual for the cases that you don't take. You have to say "It's not whether I would award it to you, but if we go to that hearing they will refuse you and there is nothing I can do to help you. So you might as well forget it."' [LAW CENTRE]

On the whole, advisers do not advocate hopeless cases, but unrepresented appellants and applicants do. Where pre-hearing advice is easily available, it is possible to prevent aggrieved people from pursuing hopeless cases, thus reducing some pressure on tribunals, and reducing some of the frustration that unsuccessful appellants naturally feel. It also provides the possibility of exploring other avenues that might be open to potential appellants to overcome their difficulties.

3. Pre-Hearing Settlement

Pre-hearing advice can also lead to settlement of claims without the need for an appeal hearing. Indeed, many representatives stated that they regarded the need to attend a tribunal hearing as a form of failure, reflecting the time and effort that is often put into resolving disputes before a hearing.

3.(a) Industrial tribunals

This is particularly true in industrial tribunals, where the entire ethos of the system is to effect pre-hearing settlements either through ACAS or through representatives. It was seen in Chapter 2 that the presence of advice and representation tended to increase the likelihood that industrial tribunal applications would be settled, and the views of representatives confirms these findings. For example:

'If lawyers were brought in at an earlier stage [in industrial tribunal applications] there would be a lot more of these cases being settled.'[SOLICITOR]

'Sometimes cases will be sorted out well before the hearing so the actual number of cases which have to result in a tribunal hearing are going to be a small percentage of the number of inquiries we get in employment and immigration.' [LAW CENTRE]

'In industrial tribunals a great deal depends on whether

the other side are themselves legally represented. If they are not they tend to be down right intransigent. They just dig in their heels and they won't consider settling. Even in the strongest cases you can't predict how it is going to go. So you file your application and you make your approaches to the other side and if they are amenable to settling, then you try to do it. I always try to settle, if only because even the strongest case can fall at the last hurdle.' [LAW CENTRE]

'Representation [in industrial tribunals] produces settlements. Many many cases are settled on the way to a tribunal because the representative gets a settlement. It increases the chances of a settlement if we start pressing for discovery and particulars, and doing the things we can do. That presses defendants into settlements. Once they cotton on to the fact that we are going to delve and dig and find out things that they didn't think they would have to reveal, they will settle.' [TRADE UNION SOLICITOR]

'I much prefer to have a deal. Once we have an offer we've got nothing to lose and often the individuals we represent prefer to settle quickly.'
[TRADE UNION REPRESENTATIVE]

3.(b) Social security and immigration appeals

There is also scope for negotiation and settlement before hearings in social security and immigration cases. Representatives advising in both of these fields regard an important part of their job to be the avoidance of tribunal hearings. The emphasis on pre-hearing settlement derives from two main sources. First, that it is simply more efficient to achieve a satisfactory outcome by means of direct negotiation between the representative and the Department. It produces quicker resolution and saves appellants the stress of going through a hearing. Second, because lay agencies and UKIAS have limited resources, achieving settlements in a proportion of cases is necessary in order to make the best use of available resources. All representatives, whether lay or legal, were reluctant to spend the time required for a hearing if there was any possibility of resolving the case by means of negotiation.

'In social security we always ask for a review in the first instance, and then if that fails we appeal. But we find that if the argument is clearly set out then they are more amenable to reviewing.'
[LAW CENTRE]

'We hope to get at a case before it gets to a tribunal at all and to advocate it with the local DHSS and try to get the decision reviewed rather than have to go to an appeal.' [GLOCAB]

'In the past we haven't done as much representation at appeals because we have been able to negotiate with the DHSS pre-tribunal, so a lot of the work has been done from the Law Centre with the appeals officer once it has got to the appeals officer stage and they have actually reviewed a lot of their decisions prior to reaching the tribunal because they have appreciated the strength of the argument as it has been put forward and realised it is pointless going through an appeal. So we have had a lot of success in that way.' [LAW CENTRE]

'Many cases should never get to the appeal stage. About 30% of my time is spent on representations to the Home Office. I think the Home office listens to the representations, depending on the quality of the representation that is put to them. There are difficulties about getting cases resolved without getting into court. Far more things ought to be settled at an earlier stage than they are, but the Home Office presenting officer only gets hold of the file about two weeks before the hearing, so you don't have so much chance of sorting out the issues. If I can see that from their point of view some of their points are silly, then I will ring them up and say Well you are not really going to argue that.' [UKIAS]

'I have to regard it as a failure if I put in an application and it is refused and I have to appeal. I pride myself on succeeding with applications. Most of my work is not at appeal level. I try as much as possible to keep out of doing appeals if there is any other way. Obviously appealing is a last resort.' [SOLICITOR]

Advice and representation can, therefore, make an important contribution to the resolution of grievances without the need for a full tribunal hearing by means of direct negotiations with decision-makers and employers. Although not all potential appeals are capable of being resolved in this way, where there is scope for settlement, however, advice and representation increases the likelihood that this avenue will be explored.

3.(c) Mental Health Review Tribunals

Although there is no scope for 'settling' or negotiating a resolution in the case of patients detained under the provisions of the Mental Health Act 1983, Chapter 2 indicated that simply requesting a review tribunal hearing can result in patients being discharged from hospital (cf Peay 1988). This is recognised as one of the functions of representatives. For example:

> 'Representation makes a difference in the whole process leading up to the tribunal. The fact that there is another professional asking questions can embarrass them into doing something. This is a perfectly legitimate part of a lawyers function. We are all familiar with cases where the patient is discharged prior to the hearing. It is impossible to say if that person would have been discharged if they hadn't applied. It may be to do with the function of the tribunal or the representative, but it definitely puts pressure on.' [SOLICITOR]

4. Case Preparation

All representatives and all tribunal chairmen who were interviewed acknowledged the importance of case preparation in the appeal process. There is nothing surprising or unusual about this since, in order to succeed with an appeal, the appellant or applicant must establish, by means of evidence, that his case falls within the provisions of the relevant regulations or the meaning of the statute. The task of social security appeal tribunals, immigration adjudicators, and industrial tribunals, is not to substitute their own decision or discretion for that of administrators or employers. It is to check that the original decision was made in accordance with regulations or, in employment matters, in accordance with the statute. Mental health review tribunals must ensure that cases are evaluated on the basis of the Statute. Those who appear before tribunals must ensure that their case fits the rules.

(4)(a) Approach of representatives

Representatives and advisers realise that case preparation is fundamental to the success of appeals. Their approach begins with a careful examination of the facts of the appellant's situation, and then, within the context of the regulations or the statute, the marshalling of such evidence as is necessary to convince a tribunal of the truth of those facts. In social security appeals this might involve provision of medical certificates, evidence of attempts to find work, or availability of work in the area, availability of rented accommodation, etc. In immigration cases, evidence may be required of resources, or of family connections. Even in mental health review tribunals, where so much turns on the opinion of the

Responsible Medical Officer, the provision of an independent psychiatric report to substantiate the patient's claims about his condition may prove crucial to the success of the hearing. In industrial tribunals, evidence of the circumstances surrounding a dismissal is vital, although it is often controlled by the employer and may be hard to obtain.

In addition to documentary evidence, representatives or advisers can also arrange for witnesses to provide verbal evidence at an appeal hearing. In Chapter 3 it was found that, in each of the four tribunals, the presence of witnesses for the appellant or applicant improved the likelihood of success.

In all tribunals, then, case preparation and collection of evidence is the first task of a representative and this is often a time-consuming and difficult process:

> 'When we train our CAB workers to represent we advocat every thorough preparation of the case which involves interviewing the client and making sure that you understand what they are trying to say. We will obviously look at the appeal papers; we will look at the law. Before lodging an appeal we have got to decide whether there are any legal merits in the case, and then we will look for any extra evidence that we can find. For example, medical evidence that might support the case. We teach that having your case well-prepared is actually more important at the end of the day than being a good advocate.' [GLOCAB]

> 'A lot of immigration cases are going to be decided on how well prepared they are. You need a representative right from the very beginning and you certainly need them at every stage prior to and during the hearing.' [LAW CENTRE]

> 'Half the problem with knowing whether an appeal can be won or lost is to actually sit down and talk to that person, go through all the facts...and you may find that there is some very tiny, crucial piece of information which that person hasn't told the DHSS, and that can make the difference between winning and losing, and sometimes it's just a question of sitting down and talking to that person, trying to find out as much as you can.' [WELFARE RIGHTS CENTRE]

> 'Representatives win because we spend more time with clients, not because we are all Perry Mason.' [CAB]

Expert case construction requires a thorough knowledge of the law or regulations and the ability to sift the factual information given by the appellant in order to isolate those facts that will establish the appellants entitlement or case. This often requires patience and sensitivity to the problems of anxious, and often inarticulate, and possibly illiterate appellants:

> 'You've got to be able to listen, to be patient and it can be very-time consuming to try and get the information you need. By the time they get to this stage a lot of people are very het-up and aggravated, so it all pours out how they are fed up with this, and messed around here. You have got to try and extract the information you need from their aggravation however shouting, angry or on-edge they are about it. That is the single most important quality, because the regulations are there and once you have got the information you can try and fit it in with the regulations. It's very rare that you can come up with some master plan, some fancy submission. Every now and then we come up with something, but basically it is bread and butter.' [WELFARE RIGHTS UNIT]

> 'In immigration cases you are desperately trying to fit your case within the Rules. You don't change the facts, but you spend your time trying to present the facts in the way which is going to be most favourable to the person for qualifying under the Immigration Rules. You are stressing certain aspects.' [LAW CENTRE]

> 'In order to win a case you have to have all your legal principles and your interpretation and meaning of words. Even though it is true that the Immigration Rules are meant to be treated slightly less strictly than Statutory Instruments, in practice the degree of latitude is very, very small. By and large you have to treat them exactly the same way as a Statutory Instrument. I can't see how anybody can adequately prepare a case unless they have got some sort of representation.' [SOLICITOR]

In industrial tribunals, case preparation also involves case strategy. Industrial tribunal cases are explicitly adversarial, and the conduct of cases often involves tactical pre-hearing activities designed to outwit, or at least obtain an advantage over the opposition. From the applicant's point of view, obtaining evidence before the hearing is necessary to the construction of his case. From the respondent's point of view, concealing evidence, or making it difficult to obtain, inhibits the ability of the applicant to mount a strong case. The job of applicants' representatives is to

wrest necessary evidence from the respondent, which may require use of interlocutory procedures.

> 'In Industrial tribunals tactics are important and interlocutories are important. Legal representation to advise on tactics and to give representation in interlocutories is, in my experience, vital. For example, if you put in a very full submission on a pre-hearing assessment, and the applicant gets an adverse finding against him, in my experience he generally withdraws. My experience of PHA's is that it is a very efficient way of knocking out cases where the applicant is not represented.' [SOLICITOR FOR RESPONDENT IN INDUSTRIAL TRIBUNAL CASE]

> 'Appellants need to do more than just put the facts of their case. Tactics are important. Most Presenting Officers don't know what they can do, such as going for adjournments to get instructions. If it was simply a question of presenting the case, I would do a submission for appellants every time. The point is to undermine the DSS evidence.' [CAB]

The view of representatives is that all of this work is crucial if an appellant or applicant with a potentially winnable case is to be in the best position to succeed with that case. Those without representation, it is believed, are enormously disadvantaged in this respect because they cannot, without advice, know what they must prove, nor what items of evidence might constitute sufficient proof to overturn a decision.

(4)(b) Experience of tribunals

Tribunal chairs and immigration adjudicators appreciate the need for adequate case preparation, and expert marshalling of facts. It is not sufficient for an appellant to assert his need or desire for a decision to be revised, since the scope of tribunals for exercising discretion is minimal. Tribunals must be able to give reasons for their decisions that will survive scrutiny at a higher level. As a result, tribunals view the groundwork done by representatives in researching the law, isolating relevant facts and obtaining necessary evidence, as an important contribution. It saves the tribunal the trouble of having to ferret out the necessary information, and avoids the problem of having to adjourn so that appellants can obtain evidence to prove facts.

> 'Eloquence doesn't count as much as well-marshalled facts. The point is to have as much information as possible.' [IMMIGRATION ADJUDICATOR]

'Different cases demand different things. In this tribunal we are very much concerned with fact. Cases are won or lost on fact and so really a representative can help us most by marshalling the facts and seeing that we get proved the facts that we need.' [SSAT CHAIR]

'It is the preparation of the appeal which is the most important thing. The representative has the opportunity which no one else has to marshall the facts: to elicit from his client all the facts of the case. Then the representative has to decide for himself what is relevant to the issues and what is not, and the manner in which to present the case.'
[IMMIGRATION ADJUDICATOR]

'The best representatives are those who have got the time to see the patient and often get another medical report. They visit the family and are able to present as full a picture as possible.'
[MHRT JUDICIAL MEMBER]

'I think the homework is very important, because if they are appealing against carpets and say the floorboards are terrible, we will say to the rep "Can you substantiate this?". Some reps might say "Well we haven't been, we are only taking it on the appellant's say so"; and if no visiting officer has been either then it is very difficult. Whereas some reps will go and measure up and also find out what the costs are in the area and come very well prepared. So representation is very much all about preparation."
[SSAT MEMBER]

'The importance of representation is to set the case within its legal context with a view to submissions on the law and that is what patients and social workers don't always perceive.'
[MHRT JUDICIAL MEMBER]

The work of representatives may have also have an influence on the accuracy of decisions where there is case law relevant to the points at issue which can be drawn to the attention of the tribunal. This point is discussed further in the next chapter.

(4)(c) Unrepresented appellants

Since tribunals and representatives held firm views about the need for adequate case preparation if appellants were to maximise their chances of succeeding with an appeal, they were asked whether they believed that appellants could accomplish these tasks without the benefit of advice or representation.

Experience of representatives

Representatives, not surprisingly, felt that, without guidance, the majority of appellants would have not the slightest idea of how to go about constructing and providing evidence of a convincing case. The most significant barrier to effective case preparation among unrepresented applicants was felt to be lack of understanding that in order to succeed with an appeal, they must bring themselves within the regulations, or identify legal entitlement to be compensated. Appellants do not understand that what is relevant about their case, is determined by law, and that assertions require proof. There are two problems here. First, knowing what is relevant information and secondly, obtaining evidence that actually proves the relevant facts.

'The most obvious problem in employment law is that no lay person who has been dismissed has the first idea about it. People simply do not know what their legal rights in general are, let alone how to hone it down into a fairly expert and highly focussed case which is going to help them succeed at an industrial tribunal. They don't know anything about the rules of procedure. They don't know what they may do before the hearing by way of interlocutory applications. They don't know anything about further and better particulars in discovery, forcing the other side to admit facts. They just don't know. There is a blanket ignorance. Most people have a general suspicion that so long as they have been there for two years they are O.K. But that is really about as far as it has gone.' [LAW CENTRE]

'What lay people don't know or understand are the regulations which actually govern what is going on. If they did read them they would never begin to be able to understand them. If you've got a client who is not particularly literate - let's face it something like 30% of this country is not particularly literate, and certainly 60% couldn't even begin to grasp the points in the regulations, they are thrown back effectively on the chairman of the tribunal's goodwill.'[SOLICITOR]

'How many lay people get discovery of documents before the hearing? It's essential because often it is on those documents that you will discover what the employer has really done and what his thought processes really were.' [TRADE UNION SOLICITOR]

'Often industrial tribunal cases stand or fall by the

quality of evidence given in person and the employee is frequently at a disadvantage because the witnesses to the circumstances of the employee's dismissal are his colleagues and they simply won't want to give evidence against their employer. So things are pretty well stacked in favour of the employer.' [SOLICITOR]

'The bottom line is that they don't know how to fight back using the same tools as the DSS or the employer' [CAB]

Some representatives, and indeed some tribunals argued that the emphasis on informality of tribunals represented a trap for appellants. For example:

'Some people I think feel that this is just a matter where they are going to tell their story and that's all that's necessary. They think their story is good enough and all they have to do is come and tell the tribunal the story..but without the expert knowledge of the law, it is unwise. [IMMIGRATION ADJUDICATOR]

'You are led all the way through the literature to believe that this industrial tribunal is going to be such an informal procedure and that so long as you can communicate that's fine, no problem. It is only when you get there on the day that you realise that your employer has got his solicitors all there. He has got the manager. He has got X Y and Z, and you probably never even considered witnesses. That is one of the crucial differences that a representative can make at an industrial tribunal.' [LAW CENTRE]

There are dangers for unrepresented appellants who attempt to obtain evidence in support of their appeal. They are unable, in the way that a representative might be, to vet the evidence. Representatives stated that even where the type of evidence needed was clear, it was often difficult to obtain. This was just as true of social security cases as, say, industrial tribunal or immigration cases. For example:

'If it's a medical matter it's very hard, quite often to get doctors to supply the information you need and in some cases I might have to send someone back twice to his doctor to say: "Look I am sorry. The wording on this just doesn't help the case. You've got to ask them again." You have to explain to them why it is important, why the case will succeed or

fail on this particular point. We have got to explain to them the importance of it and make sure that they work on it and get it.'
[WELFARE RIGHTS CENTRE]

The need for the right kind of evidence to be obtained and for the evidence to be vetted by representatives, was clearly illustrated in one case in which a married woman was appealing to a social security appeal tribunal against the refusal of a single payment to replace clothing as a result of rapid weight gain. She had asked her doctor to write a letter in support of her appeal. The doctor evidently agreed, and then wrote directly to the tribunal in the following terms.:

"To whom it may concern

Re: [name of patient]

This patient has requested a note from me to enable her to claim allowance for her clothes.

If she ate less sweet food, then she would save money and have no need to buy larger clothes.

Yours faithfully."

[Doctor's signature]

The letter undoubtedly contributed to the failure of the appellant's appeal, although she did not know what it contained.

Experience of tribunals

Tribunal chairs and adjudicators, whatever their view of the value of representation in general, felt that those who had not had the advantage of assistance before the hearing, or representation at the hearing, were less able to prepare a good case and produce the necessary evidence. They perceived the difficulty that appellants had in understanding the need to bring their case within the regulations or Statute. For example:

'People often have a generalised sense of injustice in the breakdown of relationships. They find it hard to appreciate that we are not concerned with a generalised sense of injustice. When applicants are unrepresented we get a lot of irrelevant information. It may be important to the applicant

but it is not important to us. We are in the business of applying the facts to the law.' [INDUSTRIAL TRIBUNAL CHAIR]

This lack of comprehension of the significance of the rules or 'the law' pervades the process of appealing and is discussed in detail in Part III. For tribunals, one of the results of appellants being unrepresented is that the tribunal must work that much harder at anticipating relevant information and, in the limited time available, drawing it out from appellants. Typical experiences were as follows:

'Representation is absolutely necessary. Representatives have the time to sit with a claimant and sort out the facts from the story. It is true that it is paramount to have the appellant here, but I still think that they should come with a representative. Even though I have the job of asking questions, I don't have the time to bring out all the necessary details. A representative can isolate the details and come straight to the point, and prove the necessary facts. Many are very good indeed.' [SSAT CHAIR]

'In all our cases the appellant is always the person claiming and the Home Office is always the Respondent, so the case has always got to be proved...If they are represented, whoever is representing them ought at least to have a framework under the evidence they are giving. When they are not represented, either they give a lot of evidence which is quite irrelevant or they don't produce the most relevant evidence to us...I had one case where the appellant hadn't realised that he had to produce 'exceptional circumstances'... he wasn't even going to give that evidence originally, because nobody had told him, and he was by himself, that this was the sort of evidence that was needed.' [IMMIGRATION ADJUDICATOR]

'It is easier for the tribunal where the applicant is represented. If you have people who know what the issues are, you can keep to them. You can determine the case on the issues presented. Applicants complain about their lack of knowledge of case law that is quoted, but if they had a lawyer they could be expected to know about this.' [INDUSTRIAL TRIBUNAL CHAIR]

There were, of course, other tribunal chairmen and members who felt that lack of representation in terms of case preparation and presentation posed a problem in only a minority of cases. For example:

'Representation is not necessary for people to have just hearings. What I would like to see is availability of the right kind of representation for a particular type of case. If you get representation in every case a lot of it can be very low quality which simply wastes everybody's time. If you have got a simple matter of fact than we can generally winkle it out of them. If it's a case that needs a lot of preparation then representation can be vital and the type of representation you can get depends very much on where you are.'[SSAT CHAIR]

Tribunals also perceive the need for the right kind of evidence to be presented to the tribunal. This problem appeared to be most acute in social security appeals, where tribunals often felt that although they might be minded to allow an appeal, they lacked evidence of the facts that would justify their decision. We observed many hearings with unrepresented appellants that were adjourned so that the appellant might obtain the evidence required by the tribunal. This is an inefficient process, but equally importantly, evidence from reading case files indicated that in many instances, such an adjournment constituted the effective end of the appeal. Unrepresented appellants often simply never return with the requested evidence.

'You are dealing with rules and regulations and a person who is a lawyer or somebody who deals in that field will be able to know what is required; what evidence is required before the tribunal. It takes a long time for someone who isn't associated with the tribunals or who isn't a lawyer to understand what the regulations mean, what the words mean and what are the conditions under one regulation or another. For example, doctors don't know anything about the regulations so they write letters in support of claims that say 'This person is my patient and he suffers from this. Would you help him or her.' Well that's not good enough. You can't blame the doctor, but the evidence comes before us and it doesn't help the claimant at all. Therefore it is essential that you have somebody who knows. It doesn't necessarily have to be a lawyer, but it helps if it were.' [SSAT CHAIR]

Although tribunal chairs and immigration adjudicators agreed that representation tended to lead to better case preparation, they differed in their estimation of their ability to overcome poor preparation, and in their views about the effect of poor case preparation on tribunal decision-making. These issues are considered further in Chapter 6.

5. Advice, representation and pre-hearing delays

Among the criteria by which the performance of tribunals might be judged, and the effect of representation on tribunal performance, is the criterion of timeliness. The Franks Committee considered speed to be one of the advantages of tribunals over courts, and it has been subsequently argued that speed in decision-making may be regarded as fundamental to the 'fairness' of administrative processes (e.g. Mashaw 1983; Sainsbury 1988; Nonet 1969). Administrators of tribunals and the Council on Tribunals also take the question of speed in dealing with appeals seriously. There may be, however, a conflict between the demand for high-quality or accurate decision-making and the desirability of speed in decision-making. If speed is achieved at the sacrifice of accuracy, this may not be in the interests of appellants, although it may assist the throughput of the tribunal system.

The substance of this chapter has indicated that both tribunals and representatives regard preparation and collection of evidence as fundamental in the establishment of 'winnable' cases. Analysis of information from case files, indicates, however, that the period between lodging an appeal and the date of hearing, tends to be longer where advice and representation have been obtained by appellants, although the period of extra delay varies between different representatives.

In order to examine this question in a little more detail, the average (mean) number of days was calculated between the date that an appeal was lodged with the tribunal and the date of the hearing (hereafter referred to as "average delay") using information extracted from tribunal case files. Comparisons of average delay were then conducted for each tribunal between regions, types of case, presence of advice, presence of representation, and outcome of tribunal hearing. The results are presented below in Tables 5.1, 5.2, 5.3, and 5.4. The tables show that in each tribunal, appeals reach a hearing more quickly if the appellant has not been advised or is not represented. Those cases that are allowed take longer than those that are dismissed.

Among the four tribunals the longest delay between lodging an appeal and the hearing occurs in immigration hearings before adjudicators, where the average delay was 339 days. The average delay in social security appeals was 120 days. In mental health review tribunals the average delay was 114 days (although this is distorted by Section 2 cases which have to be heard very quickly). The shortest delay was in industrial tribunals, where the average delay between the date that the originating application was received, and the date of the hearing or a settlement, was 107 days.

Table 5.1 shows that in social security appeals the average delay between letter of appeal and date of hearing is greatest in Birmingham, and greatest for those whose appeals concern overpayment

of benefit. Both of these findings are partly the result of the fact that the average delay in represented cases is higher than in unrepresented cases. There is a relatively high rate of representation in Birmingham and overpayment cases are more often represented than other types of appeal.

The contribution of representation to average delay is greatest where representation is conducted by Tribunal Units, social workers or probation officers, and most notably, by solicitors. All advice agencies that we spoke to had limited representation resources and felt under pressure. Tribunal files provide ample evidence of the effect of scarce resources, with numerous letters requesting postponements of hearings because representatives were unable to attend on the appointed day. Where solicitors were involved in social security appeals there were also many requests for postponement of hearings. It is likely that in busy practices, social security appeals may come low in the list of priorities.

Evidence from tribunal case files, however, also indicates that delay is caused by the need to amass evidence. The thickness of represented appellants' case files as compared with those of unrepresented appellants is testimony to the efforts of representatives on their clients' behalves. This is presumably also reflected in the fact that it takes longer to win a social security appeal hearing than to lose.

It appears, however, that even without the increase in average delay caused by the presence of representatives, social security appeals during the period under study (1986/7) were taking a minimum of three months to be heard.

TABLE 5.1 AVERAGE DELAYS IN SOCIAL SECURITY APPEALS TRIBUNALS

AVERAGE DELAY FOR ALL CASES = 120 DAYS (N=1115 WEIGHTED CASES)

AVERAGE DELAY BY REGION IN DAYS

LONDON	116
LEEDS	117
WALES	100
BIRMINGHAM	180

AVERAGE DELAY BY ADVICE IN DAYS

NO ADVICE	108
WELFARE RIGHTS	121
TRADE UNION	134
LAW CENTRE	145
OTHER AGENCY	152
SOC.WORKER/PROBATION	162
CAB	166
TRIBUNAL UNIT	179
SOLICITOR	218

AVERAGE DELAY BY REPRESENTATION IN DAYS

NO REPRESENTATION	115
FAMILY/FRIEND	121
OTHER AGENCY	139
LAW CENTRE	142
TRADE UNION	143
WELFARE RIGHTS	146
CAB	146
TRIBUNAL UNIT	153
SOC.WORKER/PROBATION	198
SOLICITOR	233

AVERAGE DELAY BY TYPE OF APPEAL IN DAYS

DISQUALIFICATION SB	96
SINGLE PAYMENT	108
ENTITLEMENT SB	122
DISQUALIFICATION UB	128
ENTITLEMENT UB	130
LATE CLAIM	132
OVERPAYMENT	193

AVERAGE DELAY BY OUTCOME OF APPEAL IN DAYS

APPEAL DISMISSED	116
APPEAL ALLOWED	131

The average delay in immigration cases is much greater than that for the other three tribunals. Somewhat surprisingly, there is almost no difference in the average delay between those cases that go to a full hearing and those that are decided on the papers. With the exception of political asylum cases, those with the longest average delay are appeals where the appellant is abroad. It should also be borne in mind that in many appeals from abroad, there are enormous delays between the date of the initial request and the refusal of the request by an entry clearance officer or visa officer. This is not the result of delaying tactics by those wishing to enter this country, but the result of investigatory processes abroad. For many appellants in this country, however, delay in obtaining a hearing date may not be unwelcome, and indeed, many representatives deliberately seek adjournments to prolong proceedings.

As in social security appeals, it appears to take longer to win at an immigration hearing before an adjudicator, than to lose.

TABLE 5.2 AVERAGE DELAYS IN IMMIGRATION HEARINGS

AVERAGE DELAY FOR ALL CASES = 339 DAYS (N=1050 WEIGHTED CASES)

AVERAGE DELAY BY REGION IN DAYS

HARMONDSWORTH	270
LONDON	351
BIRMINGHAM	362
LEEDS	373

AVERAGE DELAY BY TYPE OF HEARING IN DAYS

HEARING ON THE PAPERS	336
FULL HEARING	340

AVERAGE DELAY BY REPRESENTATION IN DAYS

JCWI	287
NO REPRESENTATIVE	301
SOLICITOR/BARRISTER	341
UKIAS	346
ADVICE AGENCY	349
LAW CENTRE	412

AVERAGE DELAY BY TYPE OF APPEAL

LEAVE TO REMAIN TO WORK	195
LEAVE TO REMAIN STUDENT	236
LEAVE TO REMAIN VISITOR	247
DEPORTATION	252
LEAVE TO SETTLE	293
OTHER LEAVE TO REMAIN	303
ENTRY AS VISITOR	340
OTHER ENTRY	360
ENTRY AS STUDENT	363
ENTRY TO MARRY	377
ENTRY AS DEPENDENT REL	414
POLITICAL ASYLUM	441
ENTRY DEPENDANT WIFE/ CHILDREN	446

AVERAGE DELAY BY OUTCOME OF APPEAL IN DAYS

APPEAL DISMISSED	334
APPEAL ALLOWED	352

Industrial tribunal hearings involve the least delay between the date of application to the tribunal and the date of hearing or settlement. Cases in Leeds are heard more quickly than elsewhere, reflecting the

policy adopted by the Regional Chairman at the time of pushing cases quickly on to a hearing.

It is interesting to note that applications which settle before a hearing do not appear to save the applicant very much time. As with social security appeals, and immigration hearings, the average delay is longer in those cases where the applicant succeeds with his appeal.

In industrial tribunals, in contrast with social security appeals tribunals, legal representation of applicants barely increases average delay, even where Counsel is instructed, while representation by advice agencies increases average delay by as much as one month.

TABLE 5.3 AVERAGE DELAYS IN INDUSTRIAL TRIBUNAL HEARINGS

AVERAGE DELAY FOR ALL CASES = 107 DAYS (N=928 WEIGHTED CASES)

AVERAGE DELAY BY REGION IN DAYS

LEEDS	95
BIRMINGHAM	102
LONDON	103
CARDIFF	118

AVERAGE DELAY BY ADVICE TO APPLICANT IN DAYS

NONE	96
SOLICITOR	97
CAB	105
LAW CENTRE	124
TRADE UNION	134

AVERAGE DELAY BY APPLICANTS REPRESENTATION IN DAYS

LAW CENTRE	90
NO REPRESENTATION	99
SOLICITOR	101
BARRISTER	106
TRADE UNION	118
CAB/OTHER AGENCY	135

AVERAGE DELAY BY RESPONDENT'S REPRESENTATION

NON-LEGAL REPRESENTATION	91
NONE	104
SOLICITOR	109
BARRISTER	120

AVERAGE DELAY BY TYPE OF APPLICATION IN DAYS

SICKNESS/CAPABILITY	92
RESIGNED/ VOLUNTARY REDUND.	96
MISCONDUCT	102
REDUNDANT	120
PERFORMANCE	121

AVERAGE DELAY BY OUTCOME OF APPLICATION IN DAYS

SETTLED BEFORE HEARING	93
DISMISSED	99
SETTLED AFTER HEARING	108
ALLOWED	119

Average delays in mental health review tribunals are more difficult to interpret than in the other three tribunals. Since detention in hospital under Section 2 of the Mental Health Act 1983 is for 28 days only, applications for a review tribunal hearing must be dealt with quickly if the right to a review hearing is to be of any value to the patient. Table 5.4 shows that the average delay for Section 2 cases is 16 days. The large number of Section 2 cases in the sample will, however, have reduced considerably the average delay in the sample as a whole. There are large differences in average delay between cases under other Sections. The average delay for patients detained under Section 3 of MHA 1983 is 120 days as compared with 188 days for those detained under Section 37 and 214 days for restricted patients.

In common with other tribunals, representation tends to increase the average delay, but the figures are again distorted by Section 2 cases which reduce the average.

TABLE 5.4 AVERAGE DELAY IN MENTAL HEALTH REVIEW TRIBUNAL HEARINGS

AVERAGE DELAY FOR ALL CASES = 114 DAYS (N=616 WEIGHTED CASES)

AVERAGE DELAY BY REGION IN DAYS

LONDON	92
LIVERPOOL	112
NOTTINGHAM	161

AVERAGE DELAY BY REPRESENTATION IN DAYS

NO REPRESENTATION	101
BARRISTER	122
SOLICITOR	124

AVERAGE DELAY BY SOURCE OF APPEAL IN DAYS

PATIENT	102
HOSPITAL	125
AUTOMATIC REFERENCE	165

AVERAGE DELAY BY SECTION UNDER APPEAL IN DAYS

SECTION 2	16
SECTION 3	120
SECTION 37	188
SECTION 37/41	214
DISCHARGE OF CONDITIONS	224

AVERAGE DELAY BY OUTCOME OF TRIBUNAL HEARING IN DAYS

ABSOLUTE DISCHARGE	83
NO DISCHARGE/TRANSFER	107
TRANSFER RECOMMENDED	200
CONDITIONAL DISCHARGE	225

The speed with which cases are scheduled to be heard are determined both by administrative processing and by the readiness of parties for the hearing. The benchmark for average delay is therefore established by those cases in which the appellant or applicant had no advice or representation. Using these cases as the benchmark, it is clear that average delay in unrepresented cases is 99 days in industrial tribunals, 108 days in social security appeals tribunals, 101 days in mental health review tribunals and 301 days in immigration hearings. In social security appeals, representation increases delay by about a minimum of one month, and up to as much as four months where solicitors are involved. In immigration cases, representation appears to increase delay from between 6 weeks up to about 4 months, although it can also decrease average delay. In

A 'INQUISITORIAL' HEARINGS.

1. SOCIAL SECURITY APPEALS TRIBUNALS

Social security appeal tribunal hearings are held in a wide variety of physical locations, with tribunal and appellants seated on opposite sides of large tables on the same level. Evidence is not given on oath and appellants may be offered the opportunity to choose whether they are to put their case first. Chairs adopt a flexible approach to procedure, frequently, but not invariably, commencing proceedings with an introduction which explains the nature of the tribunal and its independence from the DSS. In observations most chairs were seen to introduce the members of the tribunal and often attempted to put the appellant at ease. The scrupulousness with which this function was performed depended on the particular chair and also on whether the appellant was represented. On the whole, introductions were more brief where an appellant was represented.

SSAT hearings are described by tribunals as 'inquisitorial'. Nonetheless, a DSS Presenting Officer is almost always present to put the Department's case. The prevailing philosophy of social security appeal tribunals is that the DSS Presenting Officer is present in the capacity of 'friend of the court' (amicus curiae). They are there to assist the tribunal in coming to their decision, and although they are generally given the opportunity to question the appellant, they are not expected to conduct anything approaching a 'cross-examination' of the appellant.

(a) The 'Inquisitorial' quality of SSAT hearings

(i) Views of SSAT Chairmen

There was considerable consistency in the views of SSAT chairs about their function and the task of the tribunal. This is almost certainly the result of the training schemes that have been introduced under OPSSAT. During observation of social security appeal hearings the vast majority of chairs were found to be courteous, sensitive and at pains to be helpful to appellants, reflecting, presumably, the 'enabling' role that has been stressed under the new regime and the belief expressed by all chairs that hearings were fundamentally 'inquisitorial'. In this context, the term inquisitorial seems to mean that chairs feel they have the freedom to investigate cases and elicit the information they think they need in order to get to the truth of the situation, rather than to choose between competing arguments.

> 'You can hear people reasonably quickly without being unkind to them, because very often with this particular jurisdiction you know what issues you've got to decide. In general when somebody comes in I hear the Adjudication Officer, then I ask the applicant what he or she would like to say. Once they have said what they want to say you

can ask them questions and get the answers to a particular question that governs the outcome. Once you have done that, you have done what is necessary to adjudicate properly. I think in many cases they do just as well without representation, but in other cases representation is vital.' [CHAIR]

'Here you have really got the inquisitorial function and, within limits, it is your duty to get to the bottom of it. Now you can't go on a fishing expedition if somebody has come along with something absolutely useless. But if you know that they haven't collected the case properly and that if they went away there would be something to think about, well then you send those off to the CAB and say 'Look, get your case prepared properly and come back another day.' Whereas if you were in an adversarial tribunal, you have got to get it right first time.[CHAIR]

'SSATs are less serious than other tribunals. Here we have an investigatory approach. We get to the bone of it and ask questions. You need to get the facts out of appellants. Some chairman just let them tell their story, but I want to get the facts out. I can't see the point of just letting them waffle on. Some of them couldn't give a speech anyway. My job is to help them get the facts out in order for us to make a decision. [CHAIR]

(a)(ii) Views of DSS Presenting Officers

None of the Presenting Officers interviewed claimed to regard social security appeal hearings as 'adversarial' or as a contest. The most common view expressed was that they were present at hearings to assist the tribunal, not to defend Departmental decisions. Every DSS Presenting Officer stated that they did not mind if the decision was changed by the tribunal, and this was generally a result of the feeling that in the vast majority of cases tribunals allow appeals not because the original decision was wrong on the information available, but because some new evidence or information was revealed at the hearing (see Chapter 5). The views of Presenting officers in these respects were consistent with those of tribunal chairs and members.

'I care, because you are always aware that someone on your section has made a decision like your own and it is not a decision you take lightly. We are aware of the effects of our decisions. We know that there is

no money being paid. If every decision is overturned at the Tribunal I am happy for the claimant because something will have come out that we didn't know about. The decisions are not changed because we were wrong, but because there is something we didn't know.' [DSS Presenting Officer]

'Decisions are always subjective. It's a matter of opinion. There's one here this morning where he took one view, but I would have decided it differently. I'll listen to what they say, and I won't argue.' [DSS Presenting Officer]

'We are not here to defend the decision. It is not a win or lose situation.' [DSS Presenting Officer]

'I don't view the tribunal as a question of winning and losing.' [DSS Presenting Officer]

Despite the views expressed in interviews, during observation of hearings many Presenting Officers were seen to argue their cases forcefully and to display pleasure when their decision was ultimately confirmed. It is also true that in a number of hearings Presenting Officers were seen to concede cases, with little persuasion by the tribunal, following evidence given by appellants.

Observations also revealed great variety in performance by Presenting Officers. The majority appeared reasonably experienced and confident in their presentations. Some were evidently inexperienced, presented their case from prepared statements and found difficulty in dealing with questions from the tribunal.

Some inexperienced Presenting Officers stated that they felt themselves to be at a disadvantage in hearings when the appellant was represented.

'I had one bad experience. It was an overpayment case. The chap had already been convicted in a Crown Court and the judge had recommended that he be made to repay the money. At the tribunal he was represented by this woman barrister. She just talked me off my feet. No law or anything. She was just very clever. In the end the tribunal decided that he didn't have to pay back the money. I walked home dazed. The training I had was inadequate. It was just role playing and simulation exercises. It didn't deal with real situations.' [Presenting Officer]

'It is very difficult for us. We only have a one week training course which is rather inadequate. We are not legally trained and we are up against a legally trained Chairman and representatives who are qualified.

> When you see a rep. you usually know that you have had it. Presenting Officers have a very difficult time. We are not used to speaking in public and are just as intimidated by the set up as the appellants.' [Presenting Officers]

> 'Solicitors are often really hard and when you come up against them you know you have lost, because we are not legally trained.' [Presenting Officer]

> 'Where the appellant is legally represented the Chairman and the lawyer are on the same wavelength and it is not your wavelength.' [Presenting Officer]

These quotations indicate that Presenting Officers perceive a difference in their own position when appellants are well-represented.

Representation may also have an effect on relations between the tribunal and Presenting Officer. On the whole, relations with tribunals were correct, and relatively formal. Tribunal clerks were generally at pains to avoid any suggestion of communication between the tribunal and Presenting Officer in the absence of the appellant. However, in some tribunals that were visited, in rural areas where representation is infrequent and often of a low quality, the relationship between Presenting Officers and tribunals appeared undesirably intimate.

(a)(iii) Views of Representatives

Many advisers experienced in representation at SSATs simply denied the description of social security appeal hearings as being 'inquisitorial'. This view was often based on the perception that tribunals did not have the time to delve in sufficient detail into appellants' cases. Many believed that the presence of a DSS Presenting Officer at all hearings (and sometimes a Department of Employment Presenting Officer) was inconsistent with the concept of inquisitorial proceedings, and made them, by definition, an unequal contest.

> 'I don't think it's true that SSAT's are properly inquisitorial. I think most of the cases that I have seen as a member and those I have observed where someone wasn't represented, it was still very much a case of 'Well what would you like to say to us?' There was quite an expectation that the claimant has made an appeal and the claimant will present their case and when it becomes obvious that they can't, then the Chair will intervene and try to elicit information from them. But I don't think that there is enough time. That is a very time

consuming process. So although they are called inquisitorial, I don't think that they work very well on that level.' [GLOCAB]

'The social security blurb says that it is a very informal procedure, but when you get there the DHSS version is always going to be put forward by a Presenting Officer. It is the P.Os every day duty to put forward cases; and to lead people into believing that it is going to be so informal that you can just go there without having a representative is wrong. Even if you start from the idea that the tribunal is going to adopt an inquisitorial role, they can't do that if there in an inequality between the two parties. One person is always represented. Why does the other side need a representative at all if the facts are all there in writing? We know that the reality of it is that they are there to cross-examine. They are there to emphasise or de-emphasise the case according to what suits their particular departmental policy. So it is not true to say that it is an informal, inquisitorial process.'[LAW CENTRE]

'You have a problem of inequality between the parties wherever you have poor people up against rich people, or poor people up against the State because the State effectively has unlimited resources. If you are actually concerned about the quality of the justice-making process, you can never get an absolutely equal balance between the parties, but one thing representation does is to help balance the parties when it comes to the tribunal.' [LAG]

The majority of representatives felt that tribunals were not capable of performing a genuinely 'inquisitorial' function. There were however some representatives who were prepared to concede that, of the four tribunals, the procedures at social security appeals were the least intimidating for appellants, and that unrepresented appellants were likely to have a better chance of succeeding with their appeal than at the other tribunals. This perception is borne out by the data in Chapter 3 on outcome of tribunal hearings, which showed that some 42% of unrepresented appellants succeeded at social security appeal tribunal hearings, as compared with 16% of unrepresented appellants in immigration cases, 38% of applicants in industrial tribunals, and 15% of patients at mental health review tribunal hearings.

(b) The role of the tribunal and need for representation

Despite consistency among social security appeal tribunal chairs about the inquisitorial nature of proceedings, tribunals were divided in their views on the need for representation within this inquisitorial system. Some believed firmly, that so long as an appellant was present at an appeal hearing the tribunal would be able to elicit the information necessary to come to a correct decision on the case. Others felt that in almost every situation, a representative was helpful to both the appellant and to the tribunal.

(b)(i) Compensating for lack of representation

All social security appeals tribunal chairmen and members interviewed felt under an obligation to assist unrepresented appellants, and felt that the procedures of the tribunal permitted them to do so. The majority of those interviewed believed that in most cases, if not all cases, they would be able to elicit the information necessary to reach a proper decision. The vast majority of social security tribunal chairs and members interviewed believed that the most important thing was to have the appellant present, and that if this ocurred the tribunal could do what was necessary. The statistics in Chapter 3 indicate that the perceptions of tribunals are correct to the extent that those appellants who attend their hearings are much more likely to succeed than those who fail to attend. The statistics also show, however, that chairs, on the whole, appear to underestimate the advantage that representation may provide. For example:

> 'It's not necessary to have a representative, because, providing the appellant can speak English, a half-way decent tribunal will get the facts out. But appellants should definitely come to their hearings.' [CHAIR]

> 'I think that if they are there without a representative then the tribunal really has to help the appellant more. Tribunals are very helpful to people who are obviously lost. They fall over themselves to really help them.' [CHAIR]

> 'The tribunal unit is very good. Many rights workers are not much good on the law and get offended if you don't address questions to them. I am in favour of representation, but quite honestly they are not always that helpful to the tribunal and you would do just as well to ask the appellant directly. A stupid appellant would always be helped by someone speaking for them.' [CHAIR]

'What you want is the appellant to turn up so that we can talk to them. I think it is important for the appellant to come here and get a chance to air their views, even when its hopeless and I think that that is part of our job - to be here for that. I think we try and make them feel as much at home as possible and try to get to the point quickly. We do our best for people who come on their own, especially if they are not articulate.'[CHAIR]

'I think there are a lot of cases where the tribunals themselves can ferret these answers out with the appellant if you can see that they are not going to be on the ball. Not that you are backing them against the DHSS, but you can put feelers out.' [SSAT CHAIR]

A significant minority of tribunal chairs, however, believed that there were limitations on their ability to extract all of the necessary information from unrepresented appellants. For example:

'It is not inherently impossible for claimants to come on their own, but to be honest the type of people coming here are among the most disadvantaged and they are inhibited by the whole process. Representation is important to be fair to the claimant, to hear everything they've got to say and a rep. can do that. Of course it is different here to any other court of law, because it is not adversarial it is inquisitorial. It's true that we can ask questions and get information out of appellants, but that is not going to be anything like what the representative could find out.' [CHAIR]

'Representation always makes the lot of the tribunal easier and if it is professional representation, all the better. Representation always makes a difference.' [CHAIR]

'So far as representation is concerned one can say that it will make a difference to the outcome because experience has taught us that it very often does. We have had some very good reps here, CABx, trade union people, and they quite often can carry the day in cases such as industrial and occupational diseases and things like that.' [CHAIR]

Observations of social security appeal tribunal hearings in the four regions indicated that the level of questioning and time spent on questioning unrepresented appellants varied greatly. In some tribunals, even in the absence of the appellant, the chair would painstakingly go through the Adjudicating Officer's submission, checking that the arguments and calculations were correct. At other hearings, where the appellant was actually present, the chair would simply ask the appellant what he or she would like to say, and then,

without reference to any materials or delving for further information would proceed to dismiss the case. This occurred in situations where there were clearly arguments that could have been made on the appellant's behalf. The tendency among appellants in social security tribunals is simply to respond to the questions put to them and rarely to offer additional information. They are frequently nervous and reticent. Even those unrepresented appellants who had been confident and articulate in the waiting room, became tentative and had difficulty in expressing themselves clearly once in the hearing room. They often seemed to lose faith in their case because they interpreted questioning as evidence of hostility to their situation, even though questions were not usually expressed in hostile terms.

In other hearings which were observed, the facts of the appellant's case were complicated and in the absence of a representative, the tribunal and appellant were clearly at cross-purposes. We observed hearings where the tribunal were evidently confused about the point that the appellant was trying to make. As a result of not wishing to appear overbearing, or continue closely to question the appellant, the tribunal would simply let the point go. This does not assist an appellant if the point at issue is fundamental to his case.

In some situations observed, the tribunal appeared to be unclear as to whether or not the instant case fell within the regulations. In the absence of a representative, the tribunal, if it needs help, can only ask the Presenting Officer to guide them on the issue. Where the Presenting Officer could provide no information that would assist the appellant the case would go by default. We observed several situations where the tribunal asked the Presenting Officer whether he knew of any Commissioners decision that would bear on the point at issue. In each case the Presenting Officer said that he did not. In conditions of uncertainty a representative with a confident argument would be persuasive.

(b)(ii) Representatives views on the role of tribunals

Representatives were virtually unanimous in their belief that it was rarely possible for tribunals to elicit all the information necessary to arrive at an accurate decision, in the time available to them and with the difficulties that appellants often have in expressing themselves in unfamiliar surroundings. Many believed that to expect tribunals to be able to perform this function was to put them in a difficult position, and that, in any case, winning appeals was not always simply a matter of presenting the facts, but often involved arguments on the regulations. For example:

> 'To say that the tribunal can help an unrepresented appellant assumes that the appellant has got all the information necessary. However dedicated a chairperson might be, the fact is that, even though he or she might have gone through the papers briefly the night before, on the day someone comes in and sits down, and if they are

unrepresented the tribunal have only got five minutes to read through the papers again, to refresh their mind. And in that time they have got to think of all the right questions to ask that person to actually enable them to reach the right decision, if they think it's possible, and to represent the case. I don't think that's possible. It's placing an awful lot of burden and expectation on the Chairman to be the representative and the adjudicator as well.' [WELFARE RIGHTS CENTRE]

'A lot of tribunal members think that all they need is the facts. They say they bend over backwards to get the facts out of an unrepresented appellant. In fact I think that a tribunal needs to hear argument on the law as well. It's very rare that all they have to decide is the facts. I am sure that you need it now. It's too entrenched in law and it probably always was on the national insurance side.' [REPRESENTATION UNIT]

'Unrepresented people go in and then they just give all of this information, some of which might be highly relevant, there may be a shred there, and whether or not it is picked up in amongst all the other rubbish depends on how much the tribunal wants to do the job of the advocate for that person and find out where their case may lie, and then try and help them to bring that out.' [LAW CENTRE]

The requirement that chairs be responsible for eliciting all of the necessary information from appellants, for correctly applying the law and adjudicating the case, involves the performance a several different roles. This may prove difficult if the performance of these various roles is approached conscientiously.

Even if chairs succeed in obtaining the information they think they require, there may still be scope for creative argument on the application of regulations. To expect chairs to make those arguments on behalf of appellants may be asking too much, and in any case, it may not be appropriate that they should. If chairs are required to be impartial adjudicators, would not the raising of an ingenious argument for the appellant conflict with their impartiality? Might they not be concerned that the Presenting Officer will think that they are going too far? These issues are important because the only decisions concerning unrepresented appellants that are likely to be scrutinised at a higher level are those that are favourable to the appellant. This fact must act as a constraint on the effort a tribunal is likely to make in order to allow an appeal.

(c) The contribution of representation to social security hearings

(i) Views of tribunals

Very few tribunal chairs or members suggested that 'good' representation was unhelpful. The overwhelming majority felt that a good representative assisted the tribunal by isolating the important facts from his client's situation and presenting them clearly to the tribunal. Many did not think that this process would necessarily lead to a successful outcome for the appellant, but that it made the tribunal's task easier, and they would feel satisfied that all of the relevant issues had been raised and considered. For example:

> '[The job of a representative is] sifting out the grains from the chaff and then producing the evidence, the essential evidence that can assist us. If they know what is required under the regulations they will be able to furnish specific evidence in order to assist the claimant under the particular regulation. They are able to put the case across better. The representatives also need to be very precise and clear in their presentation. There are some who go round and round in circles, but when you have got somebody who knows what is required of him and he knows about the rules and regulations, it goes a long way to help.' [CHAIR]

> 'Representation is always best. It serves the claimant best and it serves the Tribunal best. If the question were asked "Is representation absolutely necessary?", then the answer is "No". But it is absolutely desirable.' [SSAT CHAIR]

> 'If the person hasn't got anyone to represent them, first, you may have difficulty in following what is going on and, secondly, when it comes to the law a rep. can help to substantiate the case and to assist us in reaching a decision.' [CHAIR]

> 'Most CABx and Law Centres do adequate jobs, good enough and I'm always happy to see them. Some Chairmen don't like them. I don't understand that. They can only help the tribunal and the claimants and that is what we are here to do.' [CHAIR]

Representation also affects the nature of hearings in social security appeals tribunals, and reduces the burden on chairman, because they feel that their investigative obligations are reduced. Most chairmen stated that when a representative was present they could sit back and simply allow the representative to put the case. For example:

'When an appellant is represented we can sit back. The representative has had the time to interview the appellant and you assume that they are going to present the case. We take more of a jury-type role.' [CHAIR]

Observation of hearings revealed that when a representative is present the tenor of hearings is altered. The manner of the chair is more formal and businesslike. The chair is more likely to 'get on with the business' of the hearing quickly. Representatives are asked to put the appellants case and get to the main points at issue. On the whole, hearings did not appear to be protracted when a representative was present, and it was easier for chairs to control proceedings without appearing to be unfair.

This change in the approach of chairs when the appellant is represented, however, involves dangers for those appellants who are inadequately represented. Many chairmen felt that it was not their job to help out a bad representative. For example:

'I think the role of the tribunal as investigators does go into the background a bit. That side of it would be done by the representative. We would only ask very few questions. If the rep was doing a bad job I think that we would let them get on with it. [SSAT CHAIR]

'I think appellants are better off on their own than with a poor representative.' [SSAT CHAIR]

Poor representation does lead to difficulties. Chairs become irritated. They are more remote when a representative is present and feel and he or she ought to be doing a better job on their client's behalf. Some chairs said that they would step in to assist a badly represented appellant, but most felt that the representative's job was to 'get it right'. We observed a number of cases in which representatives actually confused the issues under consideration, and although they may not have 'lost' the case for the appellant, they certainly could not have assisted them to win. Despite this, appellants are generally happy to be supported and protected, even by ineffective representatives (see Part III).

(c)(ii) Views of representatives on their role

Representatives characterised their roles as those of advocates, enablers and translators. Their experience is that most appellants are unable to present their cases in the best possible way because they are nervous, inarticulate or simply unable to understand what is happening and the significance of the questions being put to them. Appellants do not understand that they have to bring their cases

within the regulations. Paradoxically, those who have read the material sent to them by the tribunal believe that the 'independence' of the tribunal means, in practice, that the tribunal is completely free to make whatever decision seems appropriate. Thus the emphasis on 'independence' and 'informality' can create unrealistic expectations and this is often reinforced by the introduction to the proceedings offered by tribunal chairs. Unrepresented appellants may simply not realise, and therefore be unprepared, for the fact that, no matter how informal the setting or relaxed the procedure in social security appeals tribunals, if they are to succeed with their appeal they must persuade the tribunal that the DSS decision was wrong.

Observation of hearings revealed that appellants often have difficulty in telling a linear story and also have difficulty in remaining objective about their case. If they become upset or angry they are likely to lose the sympathy of the tribunal. Thus, despite the fact that the surroundings are informal, and despite the fact that many chairmen are at some pains to put unrepresented appellants at ease, they are frequently at a disadvantage. The contribution of representatives is to overcome these disadvantages:

> 'I think that they are legalistic hearings on the whole and the claimant, even if they were themselves an advice worker, would benefit from representation, because it is much easier to put somebody else's case than it is to put your own. It is often very difficult for unrepresented appellants to put their case clearly, objectively and straightforwardly to the tribunal.' [CAB]

This perception is shared by appellants themselves, as will be seen in Part III.

Representatives in social security appeals tribunals also believed that although case preparation and the collection of evidence was the most important factor in the success of cases, a certain amount of advocacy at hearings was also required or desirable:

> 'The essence of advocacy is being clear both in terms of ordering your information so that you present it in a logical way, and also using language in a style that the people you are talking to can understand. There is an indefinable element to advocacy which is charming the pants off them, making them want to find in your favour. It is no good ranting at a tribunal, which is something that claimants quite often do because they don't realise that it isn't going to work.' [GLOCAB]

> 'I think you are there to act as an enabler. You are enabling that person to have their case put

> as well as it possibly can be put, in the circumstances. Perhaps because you know the tricks of the trade, or because you know the rules, or you know the best way to say something. Really you are doing something which they perhaps would do, had they the necessary confidence, knowledge or articulateness.'
> [WELFARE RIGHTS]

Representatives thought that part of their role was simply to act as a translator for appellants. Representatives did not expect to win all of the cases that they brought before tribunals, and, in the event of failure, they felt that their presence would help appellants to understand what was happening to them and why their appeal had failed. Representatives felt that this made the process of losing somewhat more acceptable, and interviews with appellants indicated that this view is correct (see Chapter 7).

> 'The representative can help appellants by explaining things so that the person doesn't go in blind and sit there thinking "Why am I listening to this mumbo jumbo? What does this mean? Why have they decided that I am not going to have the money?" That is one thing that a representative can do before and after the hearing. We will go through the case and explain why the case failed and on what point. At least they then understand why. I should say that that is a really important function. Actually translating what has been going on.'
> [WELFARE RIGHTS]

(d) The value of legal skills and the desirability of Legal Aid

(d)(i) Views of tribunals

Tribunals were divided in their views about what type of representation was best; whether the skills required to advocate cases in social security tribunals were necessarily 'legal'; and whether the extension of Legal Aid to social security appeals tribunals was either necessary or desirable.

Most chairs believed that lay representatives were at least as good as solicitors, and many believed that, as representation was being practised at the moment, lay representatives provided a higher standard of representation because they specialised in the field and knew the law.

Tribunals, predictably, tended to have had different experiences of representation. All tribunals agreed that it was difficult to generalise. Most chairs had 'atrocity' anecdotes, illustrative of what they considered to be the most appalling blunders or behaviour

on the part of representatives. The only consensus about who made the best representatives seemed to be that it depended on the individual, rather than on the organization or the profession.

In general, chairs and members thought that CABx did an adequate job and that some were very good. All chairs said that some CABx representatives were rather bad. The following quotations are illustrative of the range of views expressed about CABx:

> 'CABx are helpful because they take the main significant points out of the appellants statement and save the tribunal from having to draw salient points from the waffle. Solicitors don't come that often. They don't know anything about it.' [CHAIR]

> 'The CABx are very good. They are the tops. In this tribunal they are the best. They specialise in it.' [CHAIR]

> 'Representation is helpful to appellants and the CABx are the best. Lawyers are not really necessary. It is not very often that you get points of law.'[CHAIR]

> 'The best representatives are well-trained advice workers, not solicitors unless they are well-trained in welfare law. The problem is that the CABx lack resources. That means there is no advertising of CABx where they actually exist. The local CAB here is right next door to the tribunal, but you would never know it was there. No sign. No indication.' [CHAIR]

> 'The standard of representation by some CABx is absolutely abysmal. It often confuses rather than clarifies the issues. There are, however, one or two CAB reps who are absolutely first class. They know the law and the procedure and they have the necessary advocacy skills. Solicitors do not regularly represent in these cases and therefore they don't become familiar with the law. Representation always makes a difference.' [CHAIR]

Most chairs in SSATs felt that trade union representatives were knowledgeable and helpful on issues concerning working conditions. For example:

> 'Trade Union representatives can be enormously helpful on the national insurance side because he knows what it is like to do manual work. Those things are so helpful. The knowledge of industrial conditions. A solicitor would know the law, but he is dependant for that type of thing on what an expert tells him. The trade union rep knows these regulations. He knows what he is talking about. He

doesn't have to be terribly good at law or terribly good at cross-examining.' [CHAIR]

Those chairs who sat in areas where representation was conducted by specialist welfare rights units, tribunal units, Law Centres, or the Free Representation Unit, tended on the whole, to have a high opinion of the standard of representation provided by those organizations, although as the comments below indicate, tribunals had different experiences:

'The welfare rights people and law centres do the job well. The client has come to their organization and they have seen it right through.' [CHAIR]

'You don't need to be a lawyer to read the regulations. The welfare rights people get down to the nitty gritty. They don't push things that won't stand a chance.' [CHAIR]

'FRU reps are very good and often although they protract the proceedings it is usually with good reason. Rights workers are often good and not as formal as FRU. CABx are usually the best, although it depends who you get.' [CHAIR]

'FRU is very good, but not big enough.' [CHAIR]

'FRU is good, but often they can't see the wood for the trees.' [CHAIR]

'The welfare rights people and Law Centres do the job better than FRU I think really.'[CHAIR]

'FRU don't always help you. You could get the facts just as well by good questioning of the appellant.' [CHAIR]

Many tribunal chairs and members interviewed had a relatively low opinion of the standard of representation being provided by solicitors. Their view was that solicitors tended to be unfamiliar with welfare law and had difficulty in adapting their style of advocacy to the tribunal forum. Nonetheless, there were a number of chairs who felt that on difficult points of law, solicitors were the representatives most able to understand the law and argue the case. The following views are typical:

'Most solicitors and barristers know little or nothing about welfare law.' [CHAIR]

'You don't have to be a lawyer, but if you are a lawyer it helps.' [CHAIR]

'One can think of cases where the solicitor would be more able to argue points of law. The CABx are usually good on the facts appertaining to the appellant, and they are good on regulations as well. Particularly, say on Income Support. But there are points of law which come up quite frequently and obviously a solicitor is better able to argue them.' [CHAIR]

'Representation is always best. It serves the claimant best and it serves the tribunal best. Lawyers are not necessary although they may be desirable. CABx are both necessary and desirable. Lawyers are best not because you need their specialist skills, but because of their ability in presentation and in guiding the tribunal. The point is that they are too expensive.' [CHAIR]

The views of tribunal chairs and members on the value of legal representation as opposed to lay representation was the chief influence on their opinion of the desirability of extending Legal Aid to tribunals. On balance, most chairs and members did not think that an extension of Legal Aid was necessary or even desirable. Those who felt that financial provision should be made in order to increase the availability of representation, believed that resources should be directed towards lay agencies. Typical responses of the various bands of opinion are as follows:

'On the whole I think that extending Legal Aid would be absolutely disastrous. It isn't really solicitors work here. Solicitors are not very good at this kind of thing. Because it isn't really solicitors work you tend to get the less skilled members of the solicitors office who really are as much hindrance as help. Some solicitors send their articled clerks along to learn. Well we let them learn. We are kind to them. But they don't help us very much. Unskilled representation can be quite disastrous.' [CHAIR]

This quotation is representative of a band of opinion which holds that solicitors make poor representatives because they do not specialise in welfare law and are therefore of little assistance to the tribunal. It does not take account of the fact that in some areas solicitors do develop specialist skills in welfare law as a matter of necessity, because there are no other specialist advisers or representatives available in those geographical areas. This is evidenced by the relatively high level of advice and representation being provided by solicitors in parts of Wales and Yorkshire, which was noted in Chapter 2.

Other chairs, although they were in the minority, believed that extending Legal Aid to cover social security appeals was both necessary and desirable, although the preferred solution was that it

should be limited to certain kinds of cases, and that tribunals should decide which cases would be appropriate for Legal Aid.

> 'Years ago we suggested that if Legal Aid was made available in national insurance tribunals that the application should come before a chairman who would decide whether Legal Aid was a good thing or not, whether there was a legal point which required argument and we weren't being in any way clever when we suggested this. We were simply lifting the precedent out of what they were doing in the magistrates court at the time. Well that argument had a lot of support, but that was as far as it ever got.' [CHAIR]

> 'I don't think that the Government is in favour of putting money in there and it might be appropriate for some cases, but not for the great majority that we see. Some CAB people are very good. There is no doubt that representation does improve your chances.' [CHAIR]

> 'I think in certain cases Legal Aid would be helpful. Some cases are so straightforward that you don't need a lawyer. My suggestion would be to give more funds to the Law Centres and the CABs and to make more CAB offices available because they do a better job. They know the practical side of the problem. They come into daily contact with the claimants. If they had the funds they could train more people. I know of a CAB where every time I pass by it is shut and there is a queue. ' [CHAIR]

The opposition of some chairs to the notion of extending Legal Aid to cover social security appeal tribunals, was based on the belief that solicitors would slow down proceedings. Some thought that it would slow down the pre-hearing stage, while others thought that it would protract hearings.

Among social security tribunals, in common with other tribunals, chairs and members have two views about the impact of representation on the length of hearings. Most of those who were interviewed held both views at the same time and tended to swing between the opposing views during the course of interviews. The first view, held by almost all of those interviewed was that with a representative it is possible to get to the point more quickly. The representative can work his way through the appellants story and focus on the key issues. This has the effect of speeding-up hearings. The second view is that representatives drag out proceedings, by producing technical arguments on the regulations and generally complicating matters. The following quotations are typical of these two opposing views which are often held simultaneously:

'Having solicitors would cut down the time it takes for hearing cases. The last case I had any rep would have dealt with that in the first 5 minutes. My experience of solicitors at tribunals is that they usually speed things up. If you had more solicitors coming to SSATs, the pre-hearing time might increase but hearings would be quicker. I believe professional representation would cut down the number of cases and the time involved in the actual hearings. In certain areas of cases I also think that they would be more likely to win. The advantage is that they can bring to the tribunal's attention something that the tribunal had overlooked. They can focus the tribunals mind on a specific point.' [CHAIR]

'We spend a lot of time that wouldn't need to be spent if someone came along to help the appellant.' [CHAIR]

'I'm surprised at colleagues who say that lawyers are the best at presenting and arguing cases. They go on too long.' [CHAIR]

'If there were more solicitors at SSAT hearings it would tend to make the thing a bit more rigorous and thorough and certainly we would have to completely revise the system of sittings. We would have to know beforehand what time to allocate to a particular case because we would know that it was going to be argued. It would slow up the process. [CHAIR]

Observation of tribunal hearings revealed that where appellants are unrepresented, hearings can be both very quick and very slow. The speed depends largely on the approach of the tribunal. If the tribunal chair is determined to get to the bottom of the matter, and has questions to ask, he may spend a great deal of time painstakingly going through the facts and the regulations. However, in some hearing centres visited, notably those with low rates of allowed cases, chairmen often had no materials, other than the tribunal papers, to assist them in reaching their decision, and the only person with copies of regulations was the Presenting Officer. Appellants would enter, repeat their story and the tribunal would kindly, but firmly, repeat that the appellant was either not entitled to the money claimed, or required to pay back the money being claimed by the Department if it was an overpayment case. The low success rate for appeals in these areas is entirely explicable. The chairs did not appear to be in habit of rigorously examining all of the issues. They were not being unkind. They had simply fallen into a pattern of not reversing DSS decisions.

(d)(ii) Views of representatives

Among the representatives interviewed, neither lay representatives nor lawyers, believed that lawyers had a monopoly on the skills required for representation in social security appeals tribunals. Most believed that the skills required were knowledge of the regulations and an ability to prepare and present a coherent case, supported by evidence. All of these things were regarded as skills that were learnable by lay advocates. Familiarity with the area was more important than legal qualifications:

> 'You don't need lawyers at SSATs. because I think a trained advice worker can get to grips with the law involved. It's not like having to understand all law. It's a relatively straightforward job for somebody who is used to grappling with welfare law. The style of advocacy that many lawyers adopt is very un-user-friendly from the point of view of the appellant. There is an element of class in it..that whole style of using long words, using legal terms, using latin. All of that is very off-putting for people. In SSATs it is also inappropriate for the tribunal, because only the chair is legally-qualified, and I suspect that sometimes the arguments go over the heads of the lay members as well.' [GLOCAB]

> 'You don't need to be a lawyer to represent. You need access to information, knowledge of the regulations and of the situation i.e. what is going to happen when you get into the tribunal.' [LAW CENTRE]

> 'Legally-trained representatives are useless. They don't do this sort of work because there is no money in it. You don't need legal representation. You just need someone who knows what the regulations, who has common sense and who listens to the client. It is what the client says that is most important, because there are often disputes of evidence and perhaps when they applied in the first place they did not get down all of the information.' [WELFARE RIGHTS ORGANIZATION]

> 'I don't think that every case needs a lawyer. There are obviously cases that don't and I can see cases where the local advice bureaux would be important, but it's a case of horses for courses.' [SOLICITOR]

Among representatives, the majority believed that an extension of Legal Aid to cover tribunals was desirable, but that an injection of funds to lay agencies was equally important in order to provide a high level of representation at tribunals. Despite the belief that legal skills were not necessary in order to represent most social security appellants, the uneven geographical distribution of advice agencies meant that in many areas, solicitors were the only source of

specialist advice and that Legal Aid would make representation more readily available in those areas:

> 'It would need a huge injection of funds for us to be able to expand. Extending Legal Aid would be the best way of making tribunals more available to a greater number of people throughout the country, because Law Centres are not uniformly distributed. A great many areas are not within 150 miles of a Law Centre. More funds are not really going to solve the problem.' [LAW CENTRE]

> 'In an ideal world every claimant would be represented, or at least have the choice of being represented if they wanted to be. Unless both the private profession and advice agencies are doing representation, I can't see any possibility of that being available. The way to achieve it is to give them Legal Aid and to give us some money. I don't think that Legal Aid is the only solution, but extending Legal Aid for tribunals must be a good idea, especially in those areas where there are only lawyers around.' [GLOCAB]

Some however are unconvinced of the benefit of a blanket extension of Legal Aid to social security appeals tribunals. For example:

> 'I don't think that extending Legal Aid to social security cases would be right except for the Social Security Commissioners. You might want to argue that you could apply in some way to get Legal Aid for a suitable case where the point at issue was either extremely complicated, subject to a matter of fact or a point of law.' [LAG REPRESENTATIVE]

Whatever their views on the need for an extension of Legal Aid, all of those representatives interviewed believed that increased representation at social security tribunals was both desirable and necessary, and that without extra resources it was impossible to provide the representation service that appellants needed. These views were based on either one, or a combination of the following factors which have been discussed in this and the previous two chapters: the complexity of the regulations; the imbalance of knowledge and experience between the appellant and the DSS Presenting Officer at hearings; the inability of appellants adequately to prepare cases and obtain evidence; the inability of many appellants to advocate their own case; and the limitation on the ability of chairs to assist unrepresented appellants.

The majority of chairs interviewed also perceived the difficulties that appellants have in preparing and presenting their cases. Most believed, however, that they were able to compensate for lack of representation. The evidence of Chapter 3 suggests that chairs may be overestimating their ability to do this.

2. MENTAL HEALTH REVIEW TRIBUNALS

Mental health review tribunal hearings take place within the hospital in which the patient is detained, often in tiny, claustrophobic offices, with the tribunal, patient and other participants sitting across a table. In mental health review tribunals, the Responsible Medical Officer, or a substitute doctor, will be present to support the recommendation that has been made.

In the few hearings that were observed, judicial members were relatively informal, courteous and careful to explain to patients the nature of the proceedings and to allow them, on occasions, to choose in what order information should be given to the tribunal.
In common with social security appeals tribunal chairmen, the members of mental health review tribunals regarded review hearings as inquisitorial rather than adversarial.

(a) Tribunals views on the role of representation

Free legal representation is available to patients who apply for a review hearing through ABWOR, and the members of mental health review tribunals who were interviewed generally regarded legal representation as being of value to patients. Those interviewed were, however, considerably less convinced than chairs and members in other tribunals, of the value of representation to their own decision-making processes. This is partly because members of mental health review tribunals do not characterise their decision-making process in terms of a legal model (cf Chapter 4). Although decisions are taken within the context of the provisions of the Mental Health Act 1983, tribunals feel that their responsibility is to make the 'best possible decision' in all the circumstances of the case. This sometimes brings them into conflict with legal representatives who argue the case strictly according to the law. For example:

> 'My attitude is to do the best we can for the patient, and the best thing for the patient very often is that he stays in hospital. Doing the best for the patient sometimes means having to bend the law.' [MHRT MEDICAL MEMBER]

> 'Some representatives get bogged down in the letter of the Act and forget to look at the real problems of the patient.' [MHRT JUDICIAL MEMBER]

The potential conflict between the objectives of the tribunal and the objectives of legal representatives may account for the view of some of those interviewed, that representation did not particularly assist

decision-making, and rarely made any difference to the outcome of review hearings. For example:

> 'In many cases representation is unnecessary. I can't think of any tribunal where the representation made a difference to the conclusion, and where there is no representative we bend over backwards to make sure that the case is thoroughly explored.' [MHRT JUDICIAL MEMBER]

> 'I don't think that representation makes any difference at all to the outcome, but it is good for the patient. It makes it seem fairer to them, and particularly if they are very inarticulate, as are some, it is very helpful and it is important that justice is seen to be done. But I don't think it makes any difference to the outcome.' [MHRT MEMBER]

> 'Sometimes we get lay representatives. They are well meaning amateurs who make fools of themselves. Some solicitors may know about the legal side but they don't know about the psychiatric side. They all ask questions to impress relations of the patient and to make the patient feel that they are doing something for them. My feeling is that representatives don't make a ha'peth of difference one way or the other.' [MHRT MEDICAL MEMBER]

There were, however, a number of tribunal members interviewed who believed that representation did assist in decision-making and that good representation could affect the outcome of the hearing. Representation, it was thought, gave patients the opportunity to get their case across, and it assisted the tribunal by providing extra information about the patient's circumstances.
For example:

> 'A good representative, I think, does make a difference to the outcome. When there is no representative there is a double burden of checking the procedure and putting questions to the patient. I like it when there is a representative here because I can sit back.' [MHRT JUDICIAL MEMBER]

> 'I believe very much in representation. It gives the patient the full opportunity to say what they want to say and to have their case presented properly. But in all the Tribunals I have seen, although some of the reps have been very good, they have never made a difference to what the outcome would have been anyway.' [MHRT LAY MEMBER]

> 'A good representative, I think, does make a difference. A good representative is someone that is competent and knows the Act and can adduce the evidence. I've seen advocates making a case of bricks without straw, but that may be good

for the patient because at least he has had his day and justice is seen to be done.' [MHRT JUDICIAL MEMBER]

'The development of expertise among solicitors is required, and the greater the expertise the greater the advantage to the patient.' [MHRT JUDICIAL MEMBER]

One of the problems, and causes of conflict, between tribunals and representatives, concerned the style of representation. Some members felt that the style of representation adopted by legal representatives was inappropriate to the atmosphere of a mental health review tribunal. For example:

'With a representative quite often we have got to intervene. Often it is because they are trying to run a case that is not acceptable to the Tribunal. These are not adversarial actions. We are here to determine the facts and some representatives haven't grasped that. Representatives often forget that we peruse reports before the hearing. We don't rely on oral evidence and some solicitors try to read everything to us.' [MHRT JUDICIAL MEMBER]

'We try not to be adversarial. If the Representative puts the RMO up 'in the box' we try to bring it back to Tribunal norms.' [MHRT JUDICIAL MEMBER]

'There are certain dangers in legal representation. Lawyers are conditioned to expect the forum to be like a trial. The lawyer will attempt to adapt the proceedings to those of a trial. That procedure is not effective and not desirable. A number of solicitors do not appreciate that we are not a magistrates court.' [MHRT JUDICIAL MEMBER]

There were also suggestions that representation could unnecessarily protract proceedings, and that independent psychiatric reports contributed to delay in getting cases reviewed. For example:

'In some cases representation does nothing but lengthen the time of proceedings. Some representatives come when the issues are quite clear and can be dealt with adequately, fairly and justly in half-an-hour, but it becomes three hours with a representative.' [MHRT JUDICIAL MEMBER]

'Legal people ask for independent reports. I don't know if they help. It leads to delays and they are often not used. Sometimes they are useful particularly in considering recommending transfer. Sometimes they are pretty hopeless and largely unnecessary. They delay the

tribunal and it's bad luck on the patient when the tribunal has to be put off.' [MHRT MEDICAL MEMBER]

In general, the views expressed by mental health review tribunal members about the value of representation to hearings, were more equivocal than in those expressed by social security appeal tribunals. Although most of those interviewed regarded representation as important from the point of view of patients, they were much less certain of the value of representation to their own difficulties in reaching decisions about patients. Indeed in some cases, members believed that representation made their job more difficult.

(b) Views of representatives

Representatives who appeared at mental health review tribunals regarded their chief function to be informing patients about what it might be possible to achieve in their particular situation, and then obtaining for the patient at the tribunal hearing the outcome that the patient most wanted. This involves putting pressure on doctors, obtaining information and getting the patient's point of view across. For example:

'We are providing a forum for a person who has not had a voice. They are mentally ill, so they are the last person who is going to be listened to. We provide space for them instead of saying "We're deciding because you are ill."' [SPECIALIST REPRESENTATION UNIT]

'Tribunals underestimate the importance of instructions. Everyone is telling the patient what is in their best interest, but no one is asking them what they want.' [SOLICITOR]

The provision of information to the tribunal about the patient's condition, including securing independent psychiatric reports, was seen as a fundamental part of the representative's job. They believed that tribunals explored the issues more fully and took the case more seirously if the patient was represented, but that tribunals did not always appreciate the importance of the effort put into the collection of information:

'I think what the tribunal simply haven't got a clue about is how parcelled up the cases that we deal with are. The fact that they can apparently deal with them expeditiously and get to the point is not due to their forensic skills. It is simply due to the fact that we have spent a lot of time with the applicant telling them that what happened at their admission ten years ago is not particularly helpful and to concentrate on particular points. In other words,

you have really primed the applicant. I think the problem of the tribunal is not understanding what we do.' [SOLICITOR]

Representatives believed that the quality of tribunals was very variable and that, in some cases, legal members were not always sufficiently familiar with the law and the powers of the tribunal:

'I had always assumed that lawyers on the tribunal knew the law, but I'm not sure that that is always true. They ought to know the criteria for discharge, but some of them have no legal training at all in mental health law, so that makes me a little careful about spelling out the law to them. Not so much the discharge criteria, but, say, recommendations in default of discharge, restriction directions and transfer directions.' [SOLICITOR]

The views of representatives also indicated a perception that their objectives in representation might be at odds with those of the tribunal (see also Chapter 4).

Representatives were sceptical of the extent to which tribunals could compensate for the lack of representation when patients appeared before tribunals unrepresented. They believed that in order for decisions to be taken properly, tribunals needed comprehensive information. Without representation the reports before tribunals might be inadequate, and the information about the patient's home circumstances incomplete, but that tribunals did not allow sufficient time to investigate these matters themselves:

'They are not willing to spend the time. You are under a lot of pressure as a representative to fight against that. You are talking about someone's history over hears and years. In a proper court it would be put down for a three day trial, but that doesn't happen at a tribunal.' [SOLICITOR]

It appears then that while representatives regard their activities in relation to mental health review tribunals as crucial to the interests of patients detained in mental hospitals tribunals have a more ambivalent attitude. Among those tribunal members interviewed, many believed that the activities of representatives had little effect on the outcome of tribunal decisions, although they assisted patients in putting forward their case. The evidence of Chapter 3 indicates that although mental health review tribunals overwhelmingly ratify the recommendation of the Responsible Medical Officer, representation significantly and independently increases the probability of a favourable outcome to a tribunal hearing. The evidence of this Chapter, therefore, suggests that members of tribunals may underestimate the impact of the activities of representatives and overestimate their own ability to compensate for lack of representation.

B. ADVERSARIAL HEARINGS

1. IMMIGRATION ADJUDICATORS

Immigration hearings occupy an intermediate, and to some extent peculiar position, on the procedural formality spectrum. Appeals are heard by a lone adjudicator sitting either on a raised platform, or at a distance, but on the same level, as the appellant. The proceedings commence when the adjudicator enters and those in the hearing room are required to stand. The adjudicator normally gives no introduction or explanation of procedure, but begins by asking the Home Office Presenting Officer whether they have anything to add to the respondent's explanatory statement. Where an appellant is unrepresented, and the hearing proceeds nonetheless, the adjudicator will outline what is going to happen during the hearing. Adjudicators tend, on the whole, to remain formal and distant. They take an active part in the proceedings, putting questions to witnesses, and asking for clarification. Decisions are not normally given to appellants on the day, but posted to them some time after the hearing.

Whether or not appellants and witnesses are required to take an oath or affirm, depends on the region or on individual adjudicator's preference. In most regions the appellant, sponsor or witness is required to give their from a table and chair which is situated some distance from the adjudicator and from the appellant's or sponsor's representative. Sometimes witnesses are permitted to remain in the hearing room throughout the proceedings; sometimes they are not allowed in until it is time to give their evidence.

The hearings are adversarial to the extent that a Home Office Presenting Officer is present and his or her main function is to cross-examine witnesses. The appellant, or his representative, does not, however, have the same opportunity, since the person responsible for the original refusal is almost never present.

(a) Home Office Presenting Officers on the adversarial quality of immigration hearings

Home Office Presenting Officers have a different responsibility in hearings from that of DSS Presenting Officers. Their primary function is to conduct the cross-examination of the appellant, sponsor and/or witnesses, and to expose inconsistencies, or other shortcomings in the verbal evidence given. In short, their task is to discredit those giving evidence. Sometimes this objective is accomplished in a businesslike manner without hostility. On other occasions, cross-examination is aggressive and lengthy, and proves to be a harrowing experience for appellants, whether or not they are represented (this is discussed in Chapter 7). During observations

Home Office Presenting Officers were seen, on occasion, to cross-examine in a belligerent manner. They do not shrink from accusing witnesses of lying.

> 'Our role is different from the other side because our role is to get at the truth whereas the other side's is to get what their client wants. Our role is to assist the Adjudicator as well and that can be to our detriment. It can enable us to lose the case by assisting the Adjudicator on the law.' [HOME OFFICE PRESENTING OFFICER]

> 'There are some people who won't run their case once they know who the Presenting Officer is, because they know that the Presenting Officer, having no professional restraints will go over the top if needs be. He or she doesn't feel bound by any sort of membership of the Bar Council or the Law Society and if it's up for grabs he will go for it. A lot of this stuff turns on credibility and if you can dent this person, then they are fair game and a lot of people know that. Certain colleagues will do that, they will go for the jugular.'[HOME OFFICE PRESENTING OFFICER]

Home Office Presenting Officers appear experienced and generally undaunted by legal opposition. They present cases every week:

> 'Presenting Officers are not intimidated by lawyers. Sometimes you can have a fight on your hands and it is a challenge, but not intimidating. In fact, often we have a better working knowledge of the law than they do, because we do it three or four times a week and they may not specialise. As for people from advice centres, often we have to help them with the case law.' [HOME OFFICE PRESENTING OFFICER]

Those who were interviewed were conscious of growing complexity in the law and felt that appellants needed to be represented at hearings. For example:

> 'These are adversarial hearings. They are formal and that is why it is important for appellants to have a representative, because they know the immigration law and they should be pretty well up to date with case law. A person on their own is not going to know that. I don't see how a person on their own can do it.' [HOME OFFICE PRESENTING OFFICER]

(b) Adjudicators on the adversarial nature of immigration hearings

Immigration adjudicators regard hearings as relatively formal and adversarial, although they feel that they have a right, and a duty to take an active part in the proceedings if they feel that they require more information or clarification in order to make their decision. Some adjudicators feel that hearings have become more adversarial with the growing complexity of the law.

> 'The hearings are adversarial. It has become more adversarial since it began. It used to be possible to treat the hearings as informal with little law - just a question of fact. But now you must appreciate that the Rules involve consideration of issues that are anything but simple. They involve considerations of intention.' [ADJUDICATOR]

> '[This region] is more adversarial than [elsewhere]. The problem is that the Presenting Officers here are a pretty tough lot. They are people who will leave no stone unturned. Whereas elsewhere there is more readiness to accept things on each side. They call less evidence and elsewhere many cases go off. The Presenting Officers here are very thorough. We keep the hearings reasonably informal, but consistent with maintaining a proper atmosphere for giving evidence.' [ADJUDICATOR]

Despite the adversarial quality of immigration hearings, Adjudicators nonetheless feel that Home Office Presenting Officers have a duty to assist the Adjudicator in reaching his or her decision. They have, a duty to assist the tribunal similar to that of DSS Presenting Officers. This involves being prepared to bring to the attention of the Adjudicator relevant cases that might assist the appellant. This is particularly important since Home Office Presenting Officers, unlike appellants' representatives, receive all immigration appeal decisions, whether reported or not as a matter of course. UKIAS and other representatives, do not have access to unreported decisions:

> 'The Home Office have copies of unpublished tribunal decisions as a matter of course. The tribunal's unpublished decisions are not available to UKIAS. Of course I give them all the help I can under those circumstances. It doesn't seem to matter a great deal at the end of the day, although of course he might have advised his client differently if he had seen the cases.' [ADJUDICATOR]

> 'Because tribunal determinations are closely guarded and access to that information is difficult to come by and a lot remains unreported, if the person representing isn't au

fait with the law or has had some lay experience on a frequent basis, then they are not going to have a cat in hells chance of being able effectively to represent the case.' [BARRISTER]

The perception of adjudicators tends to be that Presenting Officers are, on the whole, experienced and knowledgeable about immigration law and that they normally perform their function well:

'The very best Home Office Presenting Officer in my view is somebody who regards himself as an officer of the court whose duty it is to put the facts fairly whether on paper or against the appellant and not to take a too partisan line. Obviously when a person who has that reputation does make a firm submission that the appeal should be dismissed, one is rather more likely to listen to him with greater concentration than somebody who is always saying 'I ask for this appeal to be dismissed' every time. The Home Office Presenting Officers, I think you could say without exception, have an exceedingly good knowledge of immigration law, including case law.' [ADJUDICATOR]

Adjudicators perceive that they have the freedom to be flexible about procedure. Although hearings follow a set pattern, this can be interfered with if the Adjudicator thinks that it would be appropriate. Rules of evidence are relaxed, and witnesses are allowed to give hearsay evidence, although Adjudicators were frequently observed to remark during hearings that hearsay evidence carried little weight. Adjudicators do not, on the whole regard immigration hearings as informal proceedings. Indeed, they perceive that a relatively high degree of formality is desirable and appropriate:

'I think it would be dangerous if we were less formal. I think a certain amount of formality helps to fix the issues and to establish that you are dealing with a set of laws which have to be applied and not just a social security case conference where you've got to make your mind up what is good for the appellant and what isn't.' [ADJUDICATOR]

'I try and put people at ease if I can, but I think that one can take that too far. You don't want everyone sitting round the table having a cup of tea. It wants to be formal at some stage and I achieve the formality that's necessary by getting them to affirm that they are going to tell the truth. Quite honestly I don't think that it makes a lot of difference as to whether someone tells the truth or not,

but this is as much to punctuate the proceedings and it emphasises that what they are going to say is going to be taken down and form part of the record.' [ADJUDICATOR]

'These hearings to me always appear exactly like any other civil proceedings. But they are not fully civil. They have got this criminal element in them in spite of the balance of probabilities. There must be a criminal element if the result is to deport you. [ADJUDICATOR]

Adjudicators characterise their function as scrutinising decisions, and checking that they have been made in accordance with the law. This is not a particularly straightforward procedure, however, since the question of whether a decision is the 'correct' decision in the circumstances, often depends on the view taken of the 'intention' of the appellant in making their request under the immigration rules. Establishing the true intention behind a request is further complicated by the fact that the appellant may not be in the country and cannot, therefore, be questioned directly:

'I think the purpose of immigration hearings is to make certain that decisions are right and in accordance with the law and immigration laws and the other is to make certain that it seems that the right decision has been taken. The two really go together.' [ADJUDICATOR]

'Assessing credibility is nine-tenths of the job. Attesting to the credibility of the person in front of you and usually with political asylum cases there is no corroborating evidence so you are relying on your own judgments, which means you are getting often unreliable outcomes.' [ADJUDICATOR]

Although the procedure of immigration hearings is relatively flexible and although adjudicators take an active role during hearings, the hearings are fundamentally adversarial to the extent that the appellant is attempting to establish his or her credibility and the Home Office Presenting Officer is trying damage it.

(c) Representatives on the adversarial quality of immigration hearings

Representatives regard immigration hearings as formal and explicitly adversarial. They perceive the proceedings as a battle to protect the credibility of their witnesses and to neutralise the effect of cross-examination conducted by Home Office Presenting Officers. For example:

'It is said that the normal rules of evidence don't apply and that immigration hearings are less formal than another court, but it's a joke. Some adjudicators are very officious and formal. Some even bow to you as though you were in the High Court. It's ludicrous. The perception of the adjudicators is not that it is informal in terms of their very persona and the way they turn up at the hearing room and the way they present themselves. And of course the way the appeals are conducted equally show that it is not an informal forum. It is terribly formal and it can be terribly legalistic. [BARRISTER]

'I see that immigration hearings have become an extremely complex legal set-up. I can give you legal reasons why tribunals are different from courts, but I don't think that in practice it makes much difference to a person who is giving evidence in an immigration appeal or county court. The level of formality is about the same. I agree that people are not dressed up, but then they are not always dressed up in the county court. People forget. I've been doing it for twenty years and I'm not scared of walking into an immigration appeal, but most of my clients are.' [SOLICITOR]

Representatives felt that on occasions, cross-examination by Home Office Presenting Officers could turn into ugly battles. It was thought that, unlike DSS Presenting Officers, Home Office Presenting Officers could become too concerned about winning their cases, and that adjudicators did not always control proceedings when Presenting Officers badgered witnesses:

'There is a total fear of losing, which I think is more unhealthy in many ways from their point of view, than if we become obsessed with winning. We have a duty to represent our clients to the best of our ability, but as long as you have a clear conscience you shouldn't get terribly upset if you don't win your appeal. Adjudicators have often allowed appeals to develop into trials of the sponsor or the relevant witness, rather than what clearly is an appeal process which should be a trial of their decision. It is the adjudicator's job to decide whether or not the Home office decision is right. I think people are treated sometimes extremely badly. It is just sloppy advocacy to be so forceful.' [UKIAS]

(d) The contribution of representation to immigration hearings

(i) Views of adjudicators

On the whole, the Adjudicators who were interviewed felt that representation at immigration hearings was necessary, and that unrepresented appellants would be at a grave disadvantage, except in the most straightforward cases. Of all the tribunals interviewed, immigration adjudicators were the most likely to express a categorical belief in the need for representation. For example:

> 'I don't think unrepresented appellants can manage on anything other than the simplest cases. It would be impossible, for instance, dealing with 'relative cases' where the rules of dependency have become so complex. I really don't see how an unrepresented man here seeking to bring an old mother from the subcontinent could possibly argue the case. The only advantage would be that he would probably end up having to be reviewed by the Immigration Appeal Tribunal.' [ADJUDICATOR]

> I think that it depends on the case. There are a lot of simple cases which are factual where if somebody just comes along with a simple visit with relatives here, I don't know whether representation matters particularly. Where there is any complexity of law, I think that representation is absolutely essential. The main problem lies in the quality of representation. [ADJUDICATOR]

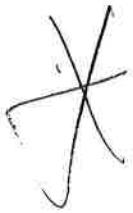
When asked whether they felt that they could compensate for lack of representation, all Adjudicators said that it was their duty to attempt to assist unrepresented appellants, but those interviewed generally expressed doubts both about their ability to do so, and about the propriety of appearing to run appellants' cases for them. Immigration adjudicators were more concerned than social security appeals tribunals that assisting unrepresented appellants might affect their objectivity, or the appearance of impartiality. One of the difficulties mentioned in this respect by adjudicators was the fact that they would have read the papers before the hearing, and possibly begun to form a view on the basis of those papers. For example:

> 'I suppose if there isn't a representative present one would normally tend to help somebody unrepresented to make the points. I think it is very difficult, because you get a lot of cases where you form a view perhaps on the papers and then you will be trying to direct the relative or

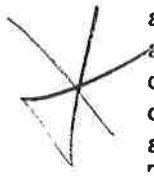
friend that's come along as to matters that will help. [ADJUDICATOR]

'I consider that if either the representative or the Home office have not asked a relevant question, I still think it is right that the adjudicator should ask the question, but certainly not conduct the case in any way and not interfere with the conduct of the case. If the appellant is not represented you always find yourself bending over backwards to help them run the case to their greatest advantage.'[ADJUDICATOR]

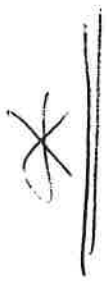
'Undoubtedly it is better to have a representative than to have no representative, but we can get along without them. It isn't easy though, because if the adjudicator starts asking a lot of questions that look to the appellant as if the adjudicator is getting at him, then the appellant will immediately think that the adjudicator is against him, which is unfortunate. Somebody once said that if you descend into the arena, you tend to get dust in your eyes.' [ADJUDICATOR]



'I think that the public relations aspect is very important. It is very difficult for an adjudicator to know how he is behaving, and if he starts being too inquisitorial he may give the impression that justice is not being done. That he may be more interested in securing a deportation than having a fair hearing.' [ADJUDICATOR]



'I think it is a natural instinct that if you have got a party who doesn't understand the law and an adjudicator is helping on the law, it's a little bit difficult to remain objective on the legal considerations. I think that the answer is that as a general rule, representation is desirable. The answer must be a firm yes.' [ADJUDICATOR]



'It is much easier for somebody else to present your case than for your to do it yourself. You know the saying "A lawyer who represents himself has a fool for a client". Well that is very true. I don't think I would go into court and represent myself except on a very simple matter, because sometimes you can't see it dispassionately. You get all involved in the emotional business of wanting what you want; and you don't perhaps see that you haven't got a case, or that your case could perhaps be put in a different way.' [ADJUDICATOR]

Although tribunals in social security appeals also see the papers before the hearing, members of tribunals interviewed did not feel that the danger of forming a view, before the hearing on the basis of the Adjudication Officer's statement, would affect their ability to assist an unrepresented appellant. This is an interesting difference in perception between social security appeals tribunals and immigration adjudicators.

Adjudicator's also felt that representation was generally desirable since it assisted decision-making. In common with all of the tribunal chairs and members interviewed, immigration adjudicators felt that it was easier to isolate the salient facts of the appellant's case when a representative was present. In all tribunals, the experience of those responsible for adjudicating is that unrepresented appellants tend to present their story in an undifferentiated stream of information, leaving it to the tribunal to untangle the relevant from the irrelevant. This is because it is the regulations that determine the relevance of information. Appellants, being largely ignorant of the significance of the law to their appeal hearing, let alone the content of it, are unable to sort their information according to the requirements of the regulations.

> 'I find it difficult when an appellant is unrepresented because in the end I have the problem of having to make sense of the case and doing the determination, and inevitably representatives don't cover points which stick out a mile from the appellant, and then I have to find out for myself. I'm not totally convinced that the concept of immigration appeals are really adversarial litigation. Basically you are reviewing an administrative decision on a view of the evidence you have got. The question is how far you should search out the evidence.' [ADJUDICATOR]

Adjudicators therefore prefer appellants to be represented so that information can be given succinctly, but, more importantly, because, by citing the relevant law, representatives can assist the Adjudicator in reaching his decision. This is again a reflection of the fact that adjudicators, Presenting Officers and representatives, regard the law relating to immigration matters as highly complex:

> 'I think the quality of a determination depends to some extent on the quality of the representative. Because if the representative helps you by citing all the relevant cases and putting arguments clearly, then it is much easier to get those arguments into those determinations. If you have someone who doesn't help you at all, you have to do all of the work for yourself and sometimes you may miss relevant cases. It helps tremendously. In a simple case, of course,

it doesn't make much difference, but in a complicated case involving legal points, it is a great advantage. [ADJUDICATOR]

(ii) Views of representatives

Representatives believed that representation was absolutely vital for immigration appellants. They believed that the adversarial nature of the proceedings, the complexity of the law and the inability of appellants to understand the law or argue their cases before adjudicators made it impossible for immigration appellants to succeed at hearings without representation, even though their case might have merit. Representatives did not think that adjudicators were able to compensate for lack of representation, nor did they feel that it was correct for them to attempt to perform this function in the context of immigration hearings. For example:

'I would have no confidence at all that they would be in any sense able to be impartial as both judge and presenter of an appeal. To my mind it would contradict any basic rule or tenet of natural justice. You shouldn't have someone judging who is at the same time expected to present the case. They could not be impartial. And also, inevitably, it is only going to be the appellant who is unrepresented. The Home Office have their Presenting Officer who are there and indeed if they were not no one would ever suggest, 'Well, let's get on with it anyway and let the adjudicator help out.' It would be both laughable and outrageous if that were to happen. And yet it is suggested that just because it is the appellant, it doesn't seem to matter. I suppose that shows that immigration is downgraded. It is not regarded as an issue which deals with sufficiently important rights. But of course it does. It deals with the most fundamental of rights.'[BARRISTER]

'Some of the cases are difficult and demanding and you can't expect unrepresented people to be able to cope with all that, nor can you expect, or should you expect an adjudicator to deal with someone who is not represented in a way which could in any sense be expected to lead to the just and proper determination of the issues You can't wear two hats. It is clearly an adversarial system.' [SOLICITOR]

(e) The need for legal skills and Legal Aid

(i) Views of adjudicators

Adjudicators, in common with chairs in social security appeals tribunals, felt that good representatives were those who had a

thorough knowledge of the law and who could present cases coherently and succinctly. They were generally critical of representatives who were not specialists in the area. Non-specialists were of no assistance to the tribunal.

> 'A good representative is someone with a firm grasp of the issues and who is able to phrase questions succinctly and leave out irrelevancies. Really it is the same as in any other field. Legal training is a help because the evidence inevitably improves. Court experience is invaluable.' [ADJUDICATOR]

> 'A good representative must know his law. Second he must conscientiously study each and every case which he is representing. Third, he must have the ability to express himself in clear and concise terms. It's no good rambling on for two hours advising the adjudicator of facts and law which he is fully aware of.' [ADJUDICATOR]

Adjudicators felt that it was important for appellants to be well-represented. This view was common throughout the tribunals. Adjudicators said that they would feel it incumbent upon them to attempt to assist where it was clear that representatives were not competent, but that there was a limit to their ability to overcome incompetence:

> 'If the representative has a full knowledge of the regrettably increasingly complex case law he is more likely to succeed. I would hope that where the representation was not of a high order the adjudicator would try and restore the balance, but I can't say that the incompetent representative can in all respects be balanced by an intervening adjudicator.' [ADJUDICATOR]

> 'It is worse for the appellant to have bad representation than no representation, because they prove the wrong things. Their questions are irrelevant and often they get appellants to say a lot of things that show they are not entitled.' [ADJUDICATOR]

Immigration adjudicators generally agreed that legal skills were not vital in order to conduct expert representation of immigration appeals. Although the experience of a number of adjudicators was that specialist immigration barristers were the best representatives, there was unanimity in the view that UKIAS provided an extremely high standard of representation, and some adjudicators felt that, in fact, some of the best representatives were from UKIAS. For example:

> 'Almost half the cases that come before adjudicators are represented by UKIAS and I would say that in general they do a pretty good job. Some are represented by members of

the Bar who have specialised in immigration law and perhaps those people provide the best possible representation. One of the very best representatives is a person who is not legally qualified but is a full-time salaried employee of JCWI. He is exceptionally good. So it is very difficult to generalise about representation. The best possible representation is provided by those specialist lawyers who have established themselves. A qualified representative is generally speaking more effective than an unqualified representative.' [IMMIGRATION ADJUDICATOR]

'Some Law Centres and CABx do an absolutely superb job, there are others which do not. ....Law Centre produces representation of the highest possible order. There are other Law Centres where the standard of representation is not satisfactory.' [IMMIGRATION ADJUDICATOR]

'There are certain Counsel who are very, very good and certain solicitors who are very very good. Basically you like before you the people you really know. Some UKIAS reps are absolutely excellent. With all of the people I am quoting, you know that they will be absolutely honest and direct and they know their law and they will fight the case excellently for the person concerned. Some of the community workers are not lawyers and they don't appear to know what they are trying to prove and I think the most annoying of all are people of every sort who come in and want everything adjourned for that, that and the other.' [IMMIGRATION ADJUDICATOR]

'I always advise people to go to UKIAS. There are some frightfully good solicitors, but there are also some terribly bad ones.[IMMIGRATION ADJUDICATOR]

'UKIAS are better than everyone else generally. Others who appear here are local solicitors, neighbourhood law centres. Representation shouldn't be limited to legally qualified people. UKIAS do as well as anybody. It is a matter of experience. Some solicitors and barristers haven't got a clue. They are worse than unqualified people. They ask inadequate questions. They ask improper questions and they are often barking up the wrong tree.' [IMMIGRATION ADJUDICATOR]

Adjudicators did not feel, on the whole, that an extension of Legal Aid to immigration hearings was necessary, or would be beneficial.

'I doubt that extending Legal Aid to immigration hearings would be of any value. I think what you want is to give

more assistance to organizations like UKIAS who are specialists. If you have people who have a limited training in a restricted field they can become expert in that. A UKIAS counsellor doesn't have to go into court and argue about a divorce case or a running down action. He has to come in and argue about immigration appeals and he can become highly expert on that and I think that's the best way, rather than put money into the pockets of lawyers. Where a case had difficult legal connotations, then I would think probably Legal Aid would be a good idea.' [IMMIGRATION ADJUDICATOR]

'Legal Aid is not the answer. Some specialist solicitors and barristers make a business out of it. Even where cases won't run. UKIAS are far and away the best. They do it four or five times a week and they are very good. Some lay advice centres that specialise are excellent. You really know where you are with them.' [ADJUDICATOR]

There was, however, a minority view that specialist legal representation provided the best service, and that an extension of Legal Aid would encourage that sort of specialisation.

'Legal Aid would be good for immigration. Free representation means basically that immigrants are getting second best. Solicitors would be best. You wouldn't get any more knockabout solicitors than we are already getting, and at least with Legal Aid you would get specialists.' [IMMIGRATION ADJUDICATOR]

(ii) Views of representatives.

None of the representatives interviewed believed that legal skills were vital in order to represent appellants at immigration hearings. Since there was no opportunity for representatives to cross-examine, traditional legal skills were not required. In common with adjudicators, representatives felt that specialisation in immigration law was the most important qualification for expert representation and that familiarity with the law and practice, together with experience of representing cases was sufficient.

'In immigration hearings you have no opportunity to cross-examine whatsoever. You need particular skills in examination and in submission. That's the important thing.' [SOLICITOR]

'I think that you can acquire those skills without necessarily having to be a lawyer. What I would be worried

about would be one-off people doing cases who don't do it regularly.' [SOLICITOR]

'I certainly think that there is no magic to having legal qualifications. People who have had a lot of experience in immigration law are going to be able to pick up the concepts and issues more quickly than someone who has never done it.'[BARRISTER]

'Representation is mainly experience. Just because you are qualified doesn't count. It's a question of whether you have got the experience. DSS and Home Office Presenting Officers aren't legally qualified, but they have been trained to present their cases cross examine for a legal forum.' [LAW CENTRE]

There was little support among representatives for the extension of Legal Aid to immigration hearings (although JCWI are strongly in favour of it). The objection was based, first, on the belief that representation could be, and was being, conducted perfectly adequately by non-legal specialists, and secondly, the fact that lawyers are not normally taught immigration law and that extending Legal Aid might encourage non-specialists to take on cases that they were not competent to represent.

'By and large solicitors are not taught anything about social security or immigration law so initially extending Legal Aid wouldn't help. Immigration law is practised appallingly at the moment by solicitors.' [LAW CENTRE]

The conclusion drawn from interviews with adjudicators, Presenting Officers and representatives, was that representation of appellants in immigration hearings was absolutely necessary. Adjudicators were notably much more likely than social security tribunals or mental health review tribunals to assert that appellants needed to be represented in order for hearings to be, and appear, fair. The reasons given were the complexity of the law, the adversarial nature of hearings and the difficulties that appellants had in putting their cases across coherently. The contribution of representation to decision-making was also considered to be important. Adjudicators were prepared to say that good representation assisted them in reaching their decisions by clarifying issues and advising on the law. The willingness of adjudicators to commit themselves forcefully to the view that representation was necessary, in contrast with other tribunals, is likely to stem, in part, from the fact that free representation is available for appellants. Adjudicators are not

made to feel that they should, themselves, be able to compensate for lack of representation, and, in fact, where appellants appear unrepresented, adjudicators will often, as a matter of course, adjourn so that appellants can seek representation from UKIAS. Adjudicators were convinced that although some specialist Counsel may be the best representatives, UKIAS representation was generally of a high standard, and the results presented in Chapter 3 indicate that their perceptions are correct.

2. INDUSTRIAL TRIBUNALS

Industrial tribunals are totally adversarial. They are courts of first instance and their purpose is to adjudicate disputes between employers and employees, arising under employment protection legislation. Industrial tribunals are not resolving disputes between citizen and State, nor are they scrutinising administrative decision-making. Aggrieved employees initiate applications to the tribunal for compensation or some other remedy, following dismissal, redundancy, or other problem involving the workplace. Respondents are normally the ex-employer who defends the application.

Although the procedures for initiating applications to industrial tribunals are more straightforward than those for the county court or High Court, and although tribunals have some flexibility in the way proceedings are conducted, on the whole hearings are indistinguishable from county court hearings. The tribunal is seated on a raised bench and the opposing sides sit at separate tables before the bench. The parties usually stand when the tribunal enter. Evidence of the parties and their witnesses is given on oath, by means of examination and cross-examination.

During observation of tribunal hearings, chairs were rarely seen to commence proceedings with any form of introduction where there was representation on both sides. Where a party is unrepresented the chair will explain the procedure and ask if there are any cases to which the tribunal will be referred.

> 'The hearings are not <u>too</u> formal, but oath taking is important. It makes people feel that they are involved in something serious. If it was any more informal, people wouldn't feel that it was just.' [IT CHAIR]

(a) The Role of the Tribunal

(i) Views of tribunals

Chairs and members of industrial tribunals are well aware that hearings are a contest between two parties, but differ in their opinion as to their proper role. Some felt that it was important to remain aloof, unless one of the parties was unrepresented. Others felt that they had a more active role, and would ask questions and intervene even where parties were represented.

There was far less consistency in the views expressed during interviews by industrial tribunals than among immigration adjudicators. Many chairs and members of industrial tribunals expressed completely contradictory views within the space of one hour, or less. The tendency to swing back and forth between opposing positions may be evidence of the fact that while industrial tribunals feel that they are expected to compensate for lack of representation, they perceive the difficulties in doing so.

Because industrial tribunal hearings are completely adversarial, tribunal chairs and members feel that they must appear impartial at all times. Some industrial tribunal chairs interviewed also sat as chairmen in social security appeals tribunals, and drew a very sharp distinction between their role in the two tribunals. Whereas social security appeal hearings were inquisitorial, and the task of the chairman was to give unrepresented appellants as much assistance as possible in order to obtain all of the necessary information, their role in industrial tribunals had to be more limited, since they were not to appear to favour the applicant over the respondent.

> 'In Industrial tribunals you've got to be a bit careful if you are a chairman because you are not in a position like you are in SSATS. There you have got to be strictly impartial because it is adversarial. If somebody doesn't put his case well that's his hard luck. You can't put it for him or help him on his way because you have got to be absolutely down the centre. So you see in industrial tribunals a lot of cases get lost by default. You know, the applicant is shooting himself in the foot, but you mustn't help him. It would be absolutely wrong. You haven't got the amount of discretion that you have in SSATs. I have to remember this very carefully to go straight down the middle. Whether its the employer or the employee, and it can be either, you have to let them go.' [INDUSTRIAL TRIBUNAL CHAIR]

All tribunal chairs and members interviewed said that they were at pains to assist unrepresented parties, whether they were applicants or respondents. For example:

'An applicant on his own has the advantage of being very carefully looked after by the Chairman. The only disadvantage is that the Chairman is only aware of the applicant's case in so far as it has been written down in the documents, and if the documents are very meagre, then , of course, his case comes out as he talks and you have to go along with him.' [IT CHAIR]

The majority of industrial tribunal chairs were confident that in what were characterised as 'straightforward' cases, at least, they would be able to elicit from an unrepresented party the information that was required by the tribunal in order to come to the correct decision. Most tribunals did not feel that unrepresented applicants were at a disadvantage in industrial tribunal hearings, and some did not believe that the way in which cases were conducted affected their decision. For example:

'I think a lot of talk goes on about industrial tribunals, but when you come down to the actual nitty gritty, we get the answers whichever way it is done, whether inquisitorially or adversarially, we get the facts because that is what we are looking for. I cannot say that I have come across a single case where the way the case has been conducted has led to my changing my mind. [IT CHAIR]

'I think all the chairmen here are very helpful towards an applicant who is not represented and draw out all the facts of the case, certainly much more so than a poor representative and equally well as a good representative, because they are lawyers of some standing, whether solicitors or barristers.' [IT MEMBER]

'We have a very different approach to unrepresented parties. It is much more like conducting a seminar. Many Chairmen see unrepresented parties as a pain. I see them as a challenge. They have come for their day. You have got to explain everything in very careful detail. Even my determinations are different when the parties are unrepresented. I talk to them in terms they can understand and I write the decision in the same way. You can see the difference in my written decisions and in how I deliver them at the hearing. When I have got Counsel, I tend to assume that they know what they are doing.' [IT CHAIR]

'I think that really you are only as good as your case and I think that if the facts determining your case are good, you will win regardless of bad representation, good representation, no representation, because I think that's the way it goes. I think that that is almost the way it goes in life.' [IT CHAIR]

A substantial minority of industrial tribunal chairmen, however, had misgivings about assisting unrepresented parties on a number of counts. First, some felt that it was difficult to perform the roles of adjudicator and representative at the same time; that there was an inherent conflict between the two roles and that there were practical constraints on their ability to elicit all of the information necessary. Second, they feared that where only one party was represented, giving assistance to the unrepresented party might be perceived as partiality. For example:

'We'd like to say representation makes no difference because it is a confession of failure if it does. On difficult points of law you have to play so many different roles with unrepresented applicants. I am happy to put the applicant's case in an unequal case where the respondent is a big company represented by solicitors, but then they are liable to complain about that. It is dangerous to say that industrial tribunals are cosy and informal. In fact they are very demanding and complex.' [IT CHAIR]

'When the tribunals were set up it was hoped that it would be on a not too formal basis, but over the years we have had legislation, precedent and that can put the applicant at a disadvantage without a representative. The chairman tries to be helpful, posing questions, getting the relevant evidence, but he must not descend into the arena. He must not become adversarial. It might be better if applicants were legally represented.' [IT CHAIR]

All Chairmen said that they adopted a different approach when both parties were represented. They felt that they should sit back and allow the representative to put the case on behalf of his client. Chairmen admitted that this raised problems for applicants or respondents who were being represented by inexperienced representatives, since they did not feel at liberty to intervene. This is a problem for applicants being represented by non-lawyers in

industrial tribunals, and the evidence of Chapter 3 indicates that non-legal representation of applicants in industrial tribunals affords little advantage over appearing alone, unless the respondent is unrepresented.

> 'You are only well represented in so far as your representative is any good. So if you are represented by a bad solicitor, and there are a lot of them, you are at a double disadvantage, because you don't get any help from the Chairman. I feel that this man is paying excessive money to a solicitor and it is not for me to step in and tell the solicitor how to run the case. Whereas, if someone is representing himself, or is represented by somebody who is obviously doing his very best but he is basically a trade union rep, then I feel that I have to give him a certain amount of help, but the help decreases according to the professionalism of the representative.'
> [IT CHAIR]

(ii) Views of representatives

Representatives, on the whole, were completely sceptical about the ability of industrial tribunal chairs to compensate for lack of representation. Those interviewed who represented cases in industrial tribunals, in common with those who represented immigration cases, felt that unrepresented applicants were at a disadvantage at every stage of the tribunal process. They felt that they were unable to prepare their own cases adequately, to deal with interlocutory procedures, and, most importantly, they felt that unrepresented applicants were at an enormous disadvantage in hearings because they would be cross-examined, but would be unable to conduct an effective cross-examination themselves. Representatives did not feel that the tribunal could genuinely overcome or compensate for these disadvantages, no matter how well-intentioned the tribunal might be. For example:

> 'To leave it to the Chairman to take on the role of the Inquisitor seems to me very dangerous indeed, because the job of the Chairman of a tribunal seems to be very ill-defined in that respect. When we see them in action they are adjudicating between the two contentious parties. They are not an inquisitorial body at all. Evidence is given on oath. Evidence is given formally. People have to be properly cross-examined and I don't see how unrepresented individuals can be expected to do all that.'
> [SOLICITOR]

'Cross-examination is vital. It's what lawyers are for. They are there to probe, to get out the information, and if you haven't got those skills then you are not going to get that information out, and I defy any Chairman of a tribunal to divorce himself so utterly from his judicial role as to be able to do that. I'm not saying that they are not trying to be helpful. What I am saying is that it must be almost impossible to do that.' [SOLICITOR]

The problems, as expressed by representatives, are that in order for the tribunal to assist an unrepresented applicant they must know the right questions to ask, they must be able to sift the information given by the applicant in order to discover what is relevant, and that even if they are able to accomplish those things, they cannot conduct a cross-examination of the respondent's witnesses in order to test the reliability of the information given about the respondent's actions. For example:

'Most lay people do not know how to cross-examine and it's no use saying 'Oh well the tribunal are going to sit there and help them', because the tribunal is only going to ask the questions that it thinks it wants to know. Ninety percent of the time they might be asking the right question, but it might be the vital ten percent where they are not.' [SOLICITOR]

'Unrepresented people go in and then they just give all of this information, some of which might be highly relevant, there may be a shred there, and whether or not it is picked up in amongst all the other rubbish depends on how much the tribunal wants to do the job of the advocate for that person and find out where their case might lie, and then try and help them to bring that out.' [LAW CENTRE]

'An unrepresented person won't necessarily know what he is supposed to bring to the attention of the tribunal and I do not believe for one minute that the tribunal will ask all the necessary questions if they are not put on notice.' [SOLICITOR]

Some representatives believed that even it were theoretically possible for the tribunal to run an unrepresented applicant's case, the time was not available for the job to be done properly.

'The tribunal is meant to assist unrepresented applicants, but I'm not sure that's true. It presupposes that the Tribunal does its job and in most cases the Tribunal haven't got the time to do the job.' [LAW CENTRE]

Representatives were also aware of the conflict between the requirements of impartiality, and the wish of tribunals to assist unrepresented parties:

'Where you have an imbalance of representation there is a difficulty with tribunal chairmen seeming to be impartial. It might actually mean treating the legal representative in the same way. Not allowing that person simply to lay the case out and bang away, but to ask sharp questions. That offends a lot of lawyers and brings complaints.'
[ACAS]

(b) The contribution of representation

(i) Views of tribunals

There was no consistency whatsoever either between tribunal chairman, or, indeed, in the views of individual chairman as to the impact of representation on tribunal hearings. Almost all chairman said that, on the one hand, the intrusion of solicitors and barristers had a tendency to overcomplicate and protract proceedings. On the other hand, the same chairmen would concede that where the parties were legally represented the tribunal could control proceedings better; and that the salient facts of cases could be presented and dealt with more easily, than when they had to be drawn out from the undifferentiated evidence of unrepresented applicants. Many chairmen felt that representatives could assist the tribunal in bringing to their attention relevant case law. For example:

'I think that to the extent that there might be an authority that we don't know or to the extent that there might be a real matter of law that ought to have been brought to our attention, to that extent good representation might well change our minds because we wouldn't have known about it. But that is rare in the extreme, because we know what we are looking for.' [IT CHAIR]

'The role of the representative is to crystallize the issues. They seize the issues that the tribunal needs to think of.' [IT CHAIR]

'I much prefer it when both sides are represented,

because otherwise you have got to bend over backwards to help one side or the other and then the other side thinks it is unfair.' [IT CHAIR]

'It is easier for a tribunal where the applicant is represented. If you have people who know the issues you can keep to them. You can determine the case on the issues presented.' [IT CHAIR]

'I feel more at ease when I have two barristers. I know that they know how we work.' [IT CHAIR]

'Some Chairmen believe you should be allowed to have your day in court and let them ramble on. I believe in getting to the point and not wasting our time and their time and money.' [IT CHAIR]

Others felt that representation was important in order for applicants to feel that they had had a fair hearing and an opportunity to say all that they wanted to say:

'It is important that applicants get plenty of chance to tell their story. They need a chance to say it. If they can tell their story they feel cleansed even if they don't win.' [IT CHAIR]

'It is most important that the applicant feels that even if it didn't go their way, that they got a fair hearing.' [IT CHAIR]

A number of chairmen, however, felt that representation could make it harder for them to do their job.

'Representatives often make it harder, although there is no general rule. You just need someone who is experienced and it is often best just to have the applicant in person. If the British system of justice were different we could take on a purely inquisitorial role which would be the best. After all, why get a lawyer and two professionals if not for their experience. If they can't elicit the details and decide, what is the point in having them in the first place? I like to give applicants a free reign, but that usually means you get a lot of entirely irrelevant stuff that you just don't want. You must let them feel it has been fair and that they have had a chance to say their bit.'[IT CHAIR]

There was little agreement about the impact of representation on the length of hearings. Many chairs and members felt that

representatives, especially legal representatives, protracted proceedings by lengthy examination of the law. For example:

> 'I think the more you have Counsel and the more it becomes legalistic, the more you have documentation, bundles and bundles, the more it takes days. And at the end of it you say, "Well did we actually need more than the first three pages?" and the answer is No, we didn't. We didn't need the first three days which was Counsel opening the case and referring us to documents and calling witnesses who really didn't take it any further, but they are obliged to do it because this is they way they do it and they mustn't leave any stone unturned.' [IT CHAIR]

> 'Barristers and solicitors drag out cases generally, and the Chairman is at fault for letting them go on.' [IT CHAIR]

> 'Lawyers especially drag it out. They just make it longer. The problem is that they come with so much irrelevant documentation. Who cares if he was late eight years ago? The question is, did he punch the foreman last night?' [IT MEMBER]

Other chairs and members felt that representation, if it was good representation, could make hearings shorter by focussing on the issues and moving rapidly through the evidence. For example:

> 'It's true to say that if you've got two experienced good Counsel on either side they will get to the point quickly and restrict the issues to the most important, and will get through a case in a day, which would otherwise have gone on for four. So in those cases it can be very helpful to the Tribunal.' [IT CHAIR]

Others interviewed felt that there was no general rule. Sometimes representation lengthened proceedings, sometimes they shortened them:

> 'Representation might help the Tribunal. Sometimes lawyers lengthen proceedings. Sometimes they might shorten them by focussing on critical issues.' [IT CHAIR]

(ii) Representatives views

The views of representatives on the contribution of representation to industrial tribunal hearings were largely at odds with those of industrial tribunal chairs and members. Representatives view

industrial tribunal hearings as relatively formal and highly adversarial. Respondents are generally represented, and even when they are technically unrepresented, they may have had experience of defending industrial tribunal applications before, and in any case are more likely than applicants to be familiar with the legal principles.
Representatives therefore perceive industrial tribunal hearings to be a very unequal contest. Respondents have control of the evidence, control of the witnesses who are usually still in their employ, and respondents are therefore in a position to manipulate and obscure evidence. Without representation the applicant has an uphill struggle to prove his case. This is borne out by the findings of Chapter 3 which indicate that even where applicants are legally-represented and respondents are unrepresented, the probability of an applicant winning his hearing is about 48%. Where a respondent is legally-represented and an applicant is unrepresented, the probability of the respondent winning at an industrial tribunal hearing is 90%.

The problems for applicants, according to representatives, are that they do not understand the relevance of the law, they are unable to put forward a clear and concise argument, they are unable to support their arguments with evidence, and they are unable to cross-examine the respondent's witnesses. The following quotations are typical of both the substance and force of representatives' views on the need for representation at industrial tribunals:

> 'People are terrified to go into an industrial tribunal on their own. They don't understand the procedures. They don't know when they should speak, or who puts their case forward first. They don't know how to put their case forward. They don't know whether they are supposed to have documents.'[LAW CENTRE]

> 'In industrial tribunals you have got to know how to present your case. People don't know what are the most important things for them to go through and how much detail they have to give. When they give evidence there is a tendency for them to rush things out in about one sentence. They don't go through stage by stage because they don't think in a legalistic way. If you have are representing a case, you can take them through. You can ask them questions to give them the opportunity to expand as much as possible on the points that are going to be of most importance.' [LAW CENTRE]

Representatives can also foil the attempts of respondents to obscure the most important evidence:

> 'Employers are very adept at not calling the right witnesses, because they don't want to call the person who was really involved in the decision-making because that

person might be vulnerable to cross-examination. Now we always like to get at the man who did the job. If you are a good representative you can make incredible play out of the fact that the right person hasn't given evidence. A lay person won't always appreciate that, and I don't believe that a tribunal will always pick it up either. What the employers don't give in evidence is often as important as what they do.' [SOLICITOR]

'You can try and do it on your own, but you cannot rely on the tribunal to get the best deal it can for you. You have got to put energy into it, and that is what a representative can do. Concentrating the tribunal's mind. Using legal skills. Using practical, moral help. Helping appellants to express and articulate their case.' [LAW CENTRE]

The ability to cross-examine in industrial tribunals is also important. Representatives believe that cross-examination requires skill and many solicitors use Counsel in industrial tribunal hearings because if they are not accustomed to advocacy they feel that they themselves would be disadvantaged.

'I think that you either have the killer instinct or you don't when it comes to cross-examination. You need to be thinking very fast because you don't always know what people are going to say. You have to be listening and at the same time analysing what they are saying and looking for the chinks and thinking of ways of asking a question that will elicit what you want, or will probe what looks like a weakness in the case. Thinking that quickly is quite difficult.' [GLOCAB]

'I've got plenty of self-confidence when it comes to making representations. But I have no experience of cross-examination and I always use barristers and have always found them splendid. If I was made to cross-examine I would be terrified. I would have no idea how to go about it.' [SOLICITOR]

'We do not represent claimants in industrial tribunals, we use Counsel invariably. The reason is simple. We are not trained advocates and I think advocacy skills are very important, because they make the difference between winning and losing in difficult cases. In principle, anything with complexity of law or evidence are better represented by a skilled advocate, even though it is a tribunal.' [SOLICITOR]

Representatives also felt that it was difficult for applicants to be objective about their case and to argue it without becoming emotionally involved. Becoming aggressive was dangerous, because applicants might lose the sympathy of the tribunal.

> 'The problem for people representing themselves is that they tend to get very up-tight and you end up having arguments rather than cross-examinations and that doesn't impress the tribunal at all. People who are argumentative automatically put the backs up of tribunal chairmen - even when they are represented.' [SOLICITOR]

> 'It is fundamentally very difficult to ever represent yourself. Because you are not objective. How can you think and write at the same time. How can you examine a witness, write your own notes, and be getting ready for the evidence you are going to give. And what if the employer decides to call two or three witnesses. Barristers who cross-examine take careful notes when they are actually cross-examining. The solicitor or someone else is taking notes. It is the objectivity. The individual won't always understand what is relevant and what isn't relevant.' [SOLICITOR]

Representatives did not, on the whole, believe that their activities protracted industrial tribunal hearings. On the contrary, they were convinced that representation could speed-up hearings and also made it easier for tribunals to control proceedings. Their experience was that whereas chairmen did not, on the whole, mind cutting off a representative in full-flight, they felt unable to adopt the same approach with unrepresented parties.

> 'We have had experience of unrepresented individuals and cases are protracted because the Chairmen will allow unrepresented individuals to waste everybody's time at enormous length. Obsessive people. I think there is a tendency of Chairmen who wish to be fair, to allow people to say anything they like, to get it off their chest, to have their day in court. So when there are representatives, the thing is usually much more disciplined and the Chairmen are much more prepared to have a go at representatives and tell them to stick to the point than they are with lay people.' [SOLICITOR]

> 'Representation saves time. It takes a lot longer if applicants are unrepresented and the tribunal don't

do them justice. The tribunal can't shut people up. People will ramble on for as long as they are allowed. People don't know what points are important.' [BARRISTER]

This experience accords with tribunals' accounts of their behaviour with unrepresented parties, and their sense that applicants should be allowed to get everything off their chests.

The views of representatives in general, however, do not accord with tribunal' views of the value of representation to industrial tribunal hearings. Representatives do not regard industrial tribunal hearings as informal fora in which unrepresented applicants are able to put their case. They regard them as adversarial and unequal contests. When applicants appear unrepresented against respondents, whether or not respondents are represented themselves, they believe that the applicant is at a disadvantage, as a result of his lack of experience, lack of knowledge about the law, lack of ability to obtain evidence and witnesses, and inability to argue his case objectively, relevantly and succinctly.

(c) The need for legal skills and Legal Aid

(i) Views of tribunals

There was, again, no consensus among tribunal chairs and members as to the need for legal skills in industrial tribunals, as to which representatives were the most effective, or as to the necessity or desirability of extending Legal Aid to facilitate legal representation at hearings. Many believed that legal skills were an advantage, but that simply being a lawyer did not automatically give that advantage. It was thought that specialist skills were required, and sometimes, for difficult cases, specialist legal skills. Most chairmen and members complained that there was a great deal of poor representation in industrial tribunals, and both legal and lay advisers came in for criticism. In general, tribunal chairs and members in industrial tribunals had reservations about lay representation, although many thought that trade union officials were capable of being good advocates.

'CAB people can ramble on. Lawyers present cases better, but it's not essential to be a lawyer. Some non-lawyers have a very clear idea of how to present a case. What is needed is an organised mind which leads to an organised case.' [IT CHAIR]

'People from Law Centres and CABx vary from indifferent to average. On the whole they are not good, I don't think. There will be the odd one or two who I think are quite adequate. I think they are also terribly understaffed, but

FRU do a better job than Law Centres on the whole.' [IT CHAIR]

'The view really comes back to the fact that because you have got legal representation it doesn't mean that it's good. We have people here from the Free Representation Unit and some are excellent. People who have them are getting a fantastic service. Some are appalling. It is a matter of luck.'[IT CHAIR]

'You can't really generalise about representatives. They can all be as bad as each other. Quite often they are just no help at all and get in the way of us doing our job, because you can't ask the applicant direct questions in order to get to the facts and you end up with a great deal of irrelevant information.' [IT CHAIR]

A number of tribunals believed that industrial tribunals required representation by lawyers, especially in legally complex cases.

'If you are in industrial tribunals you have the need to cross-examine or somebody has got to argue a very difficult point of law, that's lawyers work and very often you really want a barrister. You do sometimes need to brief leading Counsel because it can involve a lot of money and make legal history. These are cases where really you have got to look at the particular case and say "Well what is the particular skill I want?"'[IT CHAIR]

'I advise people to seek legal advice, because someone who has legal training and is a good advocate conveys authority not only with the tribunal but with the client and will tell them if they have got a duff case. If you are a well-meaning good sort you might not have
the power to be hard enough to differentiate.' [IT CHAIR]

'In industrial tribunals solicitors and barrister tend to be quite knowledgeable. They have a gut feeling about the proceedings.' [IT CHAIR]

'Advocacy is important, but you only really need lawyers for legal points, then they can be very helpful, but that is not too often. The system has become such that the little people are being cut out, what with complexity and people are scared of unemployment. The legislation has been with us for so long now that employers should be penalised for not complying.' [IT CHAIR]

There was also criticism of non-specialist representation by lawyers in industrial tribunals. Chairs felt strongly that a high standard of representation was necessary, otherwise applicant's would lose the

advantage of representation and lose the advantage of the tribunal assisting them.

> 'There is a tremendous attempt by lawyers to be seen to be earning their fee. They end up doing everything to convince you that they have the expertise to justify the astronomical fee. What is often characterised as legal skills are not those on which a lawyer has a monopoly. They are often those of a good administrator.' [IT CHAIR]

Tribunals were also divided in their views as to the necessity or desirability of extending Legal Aid to industrial tribunals. Some foresaw practical difficulties if changes were made to the costs rule. For example:

> 'If you had Legal Aid then costs would have to follow the event and that would have a deterrent effect on a lot of genuine applicants. So I don't think that Legal Aid would actually be the answer.' [IT CHAIR]

Others felt that encouraging legal representation would inevitably lead to further complications in the law and longer hearings. For example:

> 'I am against Legal Aid being extended for this. There would be more lawyers points. The likelihood is that lawyers are more capable of settling cases and the number of cases disposed of without a hearing might increase. But it might make it more of a playground for lawyers. Legal Aid delays things and you would need a body to decide whether to grant it because of the merits of the case.' [IT CHAIR]

There was, however, a significant minority who believed that the extension of Legal Aid to industrial tribunals would be of benefit to applicants. For example:

> 'I think extending Legal Aid to industrial tribunals would be a positive thing. I can think of a lot of applicants who would have done better if they had had someone to appear for them.' [IT CHAIR]

> 'Extending Legal Aid to industrial tribunals might be a good thing. A lot of it is judge-made law and then you have got the factor that the Employment Appeal Tribunal says it's a precedent that you have got to follow, but you are not bound by it. So you end up not knowing what on earth you are talking about. I think what is essential is that solicitors should read the authorities and really

understand them. That is solicitors work. On the whole I think Legal Aid would be helpful.' [IT CHAIR]

There were also chairs who believed that extending Legal Aid, by increasing representation, would reduce the number of cases that resulted in a hearing by encouraging pre-hearing settlement.

'There is no case for Legal Aid for general run of the mill cases. Preliminary advice and consultation is useful because it reduces the number of cases that are heard. The number of settlements increase. We have unhappily got ourselves into a situation of high technicality and we should be given the power to grant Legal Aid, but not in run of the mill cases.' [IT CHAIR]

(ii) Views of representatives

Representatives felt that although specialist skills were necessary for effective representation, it was not always necessary for an applicant to be represented by a lawyer, nor did representatives feel that lawyers had a monopoly on advocacy and cross-examination skills. Almost all agreed, however, that in difficult cases, lawyers, and often barristers might be required. For example:

'There is nothing miraculous about doing representation. Not in the majority of cases. It's a learnable skill. Learnable by solicitors, learnable by lay people. What may catch the lay people out is not so much advocacy skills, but highly complicated areas of law or having command of highly detailed areas of employment law where there is masses of case law. That's not impossible for lay people to do, but those are the two areas that make it tricky for lay people.' [LAG REPRESENTATIVE]

'[Cross-examination] is not a skill that only lawyers have and I am sure that there are lay people who have got it as well.' [SOLICITOR]

'Trade union reps can usually do quite a good job, mainly because they have done it all before. They are involved in things and I think some of them are very competent.' [SOLICITOR]

'It depends what the case is about, what the complexity of the evidence and law is. Obviously if its complex evidence and complex law, then yes, lay representatives are at a disadvantage. But if it is not complex law or evidence, then the answer is maybe not.'[SOLICITOR]

'I think representation is essential, but I don't think that it has to be by lawyers. Skilled representation of Trade Union officials is perfectly adequate in many cases. And I am prepared to accept that there may be a lot of solicitors who go into industrial tribunals and haven't got a clue what they are doing. I often think that Trade Union officials are better than lawyers because they bring a down to earth approach to the tribunal proceedings. They will not get bogged down in legalisms and they will get to the point which some chairmen prefer.' [SOLICITOR]

It was interesting, that in common with chairs, representatives talked of the skills required for representation without reference to the question of against whom the representative would be appearing. The data in Chapter 3 show clearly that the ability of solicitors, and indeed lay representatives, to succeed at hearings, is partly dependent on whether the respondent is legally represented. A trade union official may put over a good case where the respondent is unrepresented, or represented by a personnel manager. He may not, however, be an adequate adversary for employment law Counsel representing the respondent. Observation of industrial tribunal hearings provided ample evidence of the extent to which lay representatives were at a disadvantage when opposed by high-quality legal representation.

Despite the failure of representatives to consider the effect of the balance between the parties in considering the necessity for legal, or specialist skills, their opinions concerning Legal Aid were primarily influenced by perceptions of unfairness. Representatives believed that the fundamental inequality between employers and employees made an extension of Legal Aid crucial to the credibility of the industrial tribunal system.

'The gross thing about Legal Aid is that the thing is totally unbalanced. How can they possibly maintain that it's fair. The protagonists in the present system, one side is never legally represented purely through lack of funds and the other side is always represented. To maintain that claimants don't need representation when employers always do is ludicrous. The only problem with representation is that some people don't get it.' [SOLICITOR]

'Non-trade union members have got quite a problem, because they have got to put money up front and it's quite expensive, and, of course, this money will come out of their compensation. So often people who should be represented won't be, because they can't afford it before the hearing. There should be Legal Aid in industrial tribunals,

because there are many individuals who should have the right to legal representation because the case requires it.' [TRADE UNION SOLICITOR]

'Saying that tribunals are informal and that you don't need representation is just trying to justify an unsatisfactory system. We have won a lot of cases that would not have been won without our representation. No question. We are very careful. We put in a great deal of work and good advocacy wins the case.' [SOLICITOR]

'What we need is something like a duty solicitors scheme. A Chairman could say "We deem this to be a suitable case for Legal Aid to be granted for this tribunal." Effectively that is what happens in magistrates courts and I don't see why the same system shouldn't prevail in the tribunals.' [SOLICITOR]

'Even if you were to ban legal representation there would still be an imbalance. You couldn't ban personnel managers. There is a problem because the respondent is not simply an individual but an enterprise.' [ACAS]

'It's so important, this perception of justice being done and what I am frightened of is that disadvantaged people will perceive that they are not being treated justly, and I think they are right. They are getting something less than people with money are getting. And when you have a system that is based on law, it is wrong that people should have this perception.' [SOLICITOR]

SUMMARY

Representatives regard representation as vital in all tribunals. Their view is based on perceptions of legal complexity, the imbalance of power between the parties at hearings, whether inquisitorial or adversarial, and the inability of appellants and applicants to advocate their own case. Their view was also, importantly, influenced by a unanimous belief that no matter how well-intentioned tribunals might be, it was impossible to compensate for lack of representation. Representatives felt that lack of representation placed a great burden of responsibility on tribunals. Some felt that it was undesirable that tribunals should be expected both to adjudicate and to represent the appellant at the same time. Many considered this to be a theoretically incorrect approach to the conduct of appeal hearings, and, in any case, a practical impossibility. Tribunals cannot spend the time necessary to elicit

relevant information from the undifferentiated stream in which most appellants and applicants present their stories. Nor can they always know, in advance of hearing the evidence, what questions should be asked. The opinions of representatives were largely confirmed in observation of hearings (see Part III).

There was consistency in the views expressed by tribunals regarding the contribution of good representation to hearings. The experience of tribunals was that good representation resulted in properly investigated cases, the provision of the correct sort of evidence, coherent and succinct isolation of relevant material and presentation of facts. Good representatives also assisted the tribunal by researching the law and presenting relevant cases to the tribunal. In sum, the view of tribunals was that good representation always made their job easier.

There was no consistency between tribunals in their views on the extent to which representation was necessary at their particular hearings, or on their ability to compensate for lack of representation. Immigration adjudicators and members of mental health review tribunals were the most likely to assert that representation was always desirable. Chairs of social security appeal tribunals and industrial tribunals were divided in their views. The majority of chairs believed that they could compensate for lack of representation.

There was little agreement about the need for legal skills, although all tribunals agreed that specialist skills were required. In social security appeals, the view of tribunals was overwhelmingly that specialist lay advisers were as good, and probably better, than the solicitors who occasionally represented appellants. Immigration adjudicators felt that UKIAS provided the best overall representation, although many believed that specialist barristers were the most expert advocates. The views of industrial tribunal chairs were mixed, although few believed that lawyers were necessarily the best advocates. In industrial tribunals, the ability to conduct cross-examination was regarded as crucial by representatives, but most felt that this skill was learnable by lay advocates.

There was no consensus on the desirability of extending Legal Aid. Most of those interviewed believed that financial provision was necessary in order to make representation more readily available. The most common proposal was a combination of extra funding for lay agencies together with the availability of Legal Aid for 'difficult' or 'complex' or 'serious' cases. In other words, where the tribunal thought that it was necessary.

PART III THE VALUE OF REPRESENTATION TO APPELLANTS AND APPLICANTS

Part I of this Report analysed objectively the effect of representation on the outcome of tribunal hearings. Part II presented the subjective assessments of tribunals and representatives of the value of representation to the preparation and presentation of tribunal cases, and the contribution of representation to tribunal decision-making processes. Part III of the report is concerned with the effect of representation, or lack of it, on appellants and applicants themselves.

Information is presented about appellants expectations of tribunal processes, the difficulties they experience in obtaining representation, and their experiences of bringing cases before tribunals both with and without representation. The purpose of Part III is to analyse the extent to which representation enables appellants and applicants to participate in the tribunal process, and how far representation reduces the difficulties of appearing at a tribunal appeal. The contribution of representation to perceptions of fairness and to the process of losing at a hearing are also considered.

The information presented in Part III was obtained from interviews conducted with appellants at social security appeals tribunals, appellants and sponsors at immigration hearings and applicants at industrial tribunals. 387 appellants were interviewed by means of semi-structured tape-recorded interviews, or using a structured questionnaire schedule . In immigration hearings, sponsors 'represent' those who appeal from outside the United Kingdom against decisions to refuse their entry to this country. Although it is not the sponsor's own claim that is being appealed against, the sponsor takes on the full role of processing the appeal, and usually will take the place of the appellant at the witness table in the hearing. In many immigration cases, therefore, it was the sponsor who was interviewed.

Appellants at social security appeals tribunals and applicants at industrial tribunals were interviewed in three stages: in the waiting room before the hearing began; after the hearing while the tribunal deliberated and finally after the decision had been given. Appellants and sponsors at immigration hearings were usually only interviewed twice, before and after the hearing, because immigration adjudicators tend to reserve their decisions and the parties are informed by post.

Appellants and applicants were interviewed in this way in order to find out about their expectations of the hearing, what they thought the tribunal could do for them, what they hoped to achieve by attending the hearing, and finally what their experience of presenting their case had been. By interviewing appellants and applicants progressively, it was possible to learn how people responded to hearings and how their views and perceptions changed as the hearing progressed.

In some cases it was not possible to complete the final stage of the interview. Once decisions had been delivered, appellants and applicants were often too upset or too tired to answer any more questions. Some previously agreeable respondents stormed off in anger after the delivery of an unfavourable decision.

This intensive method of interviewing had the advantage of providing richness in the information collected, but it was often difficult to accomplish because many of those interviewed were anxious and under stress.

The information gathered from appellants and applicants covered the following broad topics:

1. Expectations of the process of appealing, including comprehension of the meaning of 'appealing'; and the objectives of asking for a hearing.

2. Perceptions of the need for advice or representation; knowledge of sources of advice; experiences of the availability of advice or resources for representation.

3. Expectations of tribunal procedure, expectations of their own role in the hearing; expectations of the power or discretion of the tribunal.

4. Experiences and reactions to the hearing without representation, and with representation.

5. The value to individuals of having been able to bring an appeal or application and opinions as to whether they would repeat the experience.

6. Beliefs about what constitutes a "fair" hearing and perceptions of whether their hearing had been "fair".

CHAPTER 7. EXPECTATIONS AND EXPERIENCES OF TRIBUNAL HEARINGS

The knowledge and expectations that appellants and applicants have of the tribunal process has an influence on whether they seek advice about their tribunal case, and conditions their response to what occurs at the hearing itself. Appellants were therefore asked what they thought would happen when they decided to apply for a tribunal hearing, what they thought the meaning of "appealing" was, and what they thought would happen as a result of their appeal.

1. The Process of Appealing

The majority of those interviewed at all of the three tribunals were experiencing their first tribunal hearing. As a result, they could not draw upon past personal experiences. Instead, appellants and applicants relied upon information that had been given to them by friends or relatives or from 'general knowledge'. Those interviewed often found it difficult to say what they had thought was going to happen when they lodged their appeal or application.

Interviewees had had little or no experience of 'legal' processes which accounted for the lack of knowledge or awareness about appealing. Appellants at social security appeals are, by definition, among the most disadvantaged groups in society and often have experience of being passed back and forth between different bureaucratic departments. They tend to have low expectations of bureaucracy.

Immigration appellants are nationals of countries other than the United Kingdom. They often lack knowledge about the British legal system and they believe that there may be prejudice and discrimination against foreigners. Many appellants and sponsors also experience cross-cultural problems because in other countries immigrants have no right of redress. They also, therefore, may have low expectations of the immigration appeals process.

Applicants before industrial tribunals will have been in employment. On the whole, industrial tribunal applicants tend to have a greater awareness of 'rights' in general, and often appeared to be more articulate than appellants at the other two tribunals.

Among all three groups of appellants and applicants, many had little idea about what 'appealing' or making an application actually meant. They certainly had little accurate knowledge about the powers of tribunals or what the possible outcome of their hearing could be.

When appellants at social security appeals tribunals and immigration hearings were asked how they knew that they could have the decision of the Department looked at again, most replied that they learnt about this from the letter sent to them by the relevant Department advising them that their original application had been refused. Many did not know what would happen next; they did not seem to know what asking for an appeal would lead to. Applicants to industrial tribunals, on the other hand, had a clearer idea of the consequences of applying to the tribunal, but many said that they had not thought the case would get to the stage of a hearing. They had hoped that the case would settle at an earlier stage, and that they would not have had to go through the ordeal of facing their former employer at a tribunal hearing.

In spite of the unclear, and often unrealistic expectations of what appealing actually involved, appellants and applicants were usually very clear about why they were appealing and what they wanted from the tribunal. Appellants and applicants described this, for example as follows:

> 'Having another go at trying to get what the DSS have refused.' (Social Security Appellant)
>
> 'To clear my name.' (Industrial Tribunal Applicant)
>
> 'This time they will grant my [relative] to come here.' (Immigration appellant)

Appellants received many documents from the various tribunal offices in connection with the hearing. These usually described the tribunal and informed the appellant or applicant of the date, time and place of the hearing. Unfortunately, the recipients of these documents often found them confusing and although they had, in principle, been advised what to expect at their hearing, this frequently had little meaning for appellants. It is difficult for people to appreciate and anticipate what is going to take place in a situation totally outside of their experience. Appellants often did not realise that an appeal would lead to a hearing. As a result, appellants often appeared at the hearings in a state of confusion, having little idea about what they were doing there. For example:

> 'I never thought it would get to this stage.'
>
> 'I thought this would just be another interview.'
>
> 'I don't know what happens here.'

This confusion is sometimes the result of the 'appeals conveyor-belt' which can operate in social security and immigration hearings. Once the appeal is lodged, the appeal process takes over. The appellant receives various pieces of paper which may mean nothing to them or confirm in their mind that the claim has been rejected a

second time. At some point, the appellant will be notified about the hearing and they will be requested to attend. By this time circumstances may have changed:

> 'I appealed back in December last year, since then I'd forgotten what the problem was all about.' [Social Security Appellant]

> 'I just got this letter saying that I had to be at [this place] at 10.00 and my case would be heard. I don't know what is going to happen.' [Immigration Appellant]

These situations occur less frequently at industrial tribunals. where applicants exhibit a greater degree of 'participation' in the process. They are more involved and more aware of the possibility that they may have to attend a hearing where they will be asked questions. Nonetheless, many admit that they had hoped at the outset that the matter would not have to come to a hearing.

This relatively high level of confusion about what is involved in bringing a case to a tribunal provides a partial explanation for failure to seek advice about tribunal hearings.

2. Advice and Representation

There are two stages in the process of obtaining advice and representation about tribunal hearings. First, appellants and applicants must perceive a need for advice and/representation, and secondly such advice or representation must be available.

(a) Perceiving the need for representation

Social Security Appellants

The majority of those who appeal to social security appeals tribunals are informed of their right to appeal by the DSS. The appeal forms sent out by the tribunal list the types of agencies an appellant might approach, should they wish to obtain advice about their appeal. This information is sent to appellants after they have lodged their appeal.

Perceiving the need for advice depends on the claimant understanding what making an appeal is about and what the consequences of that appeal are likely to be. Lack of knowledge results in appellants being unaware that they may have to do more than simply re-state their case. Many of those interviewed regarded the appeal as an opportunity to 'have another go'; they did not have any appreciation of the fact that they would be required to provide a persuasive argument explaining why the DSS decision was incorrect.

At the outset at least, lack of knowledge about the process of appealing and appellants' inability to anticipate what they must do in order to have the original decision revised, often means that they do not appreciate that they may need help to do this. The belief, or assumption, that tribunals can simply decide appeals without reference to rules or regulations is reinforced by the description of the Tribunal as 'independent' and 'informal', which leads appellants to believe that it is a simple procedure for which no special expertise or knowledge is required. As will be discussed later, this misconception often led appellants to be stunned by the formality and complexity of the proceedings.

A minority of appellants recognised that the appeal would involve a formal hearing which might require a representative, but felt that they were able to present their own case without representation. This was usually because appellants were concerned that if they had a representative, they would not be allowed to have their say, or because they simply felt that they were able to put their case themselves. Some claimants felt strongly that they did not wish to appear helpless or incapable:

> 'I've always been very independent.'
>
> 'I've always done this sort of thing myself. At the end of the day, you've only yourself to rely on.'
>
> '[A representative] couldn't tell me more than I already know...I can manage without help.'

Some appellants were also afraid that attempting to obtain any kind of assistance with their hearing would involve expense which they could not afford.

Applicants to Industrial Tribunals

The route by which industrial tribunal applicants find out about their right to apply to the tribunal for compensation is more complicated and more haphazard than that for social security appellants. Applications to industrial tribunals are dependant on information from Job Centres, Unemployment Benefit Offices, Union Officials, ex-colleagues and friends. Many industrial tribunal applicants are advised by their trade union, who then go on to represent the applicant at the tribunal hearing.

Among those applicants who were interviewed, only a tiny minority attended their hearings without a representative through choice. Two or three of those interviewed appeared in person because they felt that they were the best person to present their case, since they believed that only they knew the circumstances. The overwhelming majority of applicants interviewed, however, perceived clearly the need for advice and representation.

Appellants before Immigration Adjudicators

Those wishing to appeal against decisions made by the Home Office, Immigration Officers, Visa Officers, or Entry Clearance Officers are informed of their right of appeal when their request is refused. The appeal form has printed on it the address of the United Kingdom Immigration Advisory Service, the free representation service funded by Government. Many appellants therefore nominate the UKIAS as their representative. Nonetheless, some immigration appellants do not perceive the need for advice and representation, particularly those who imagine that they are coming to a form of interview. Some immigration appellants associated the need for representation with wrong-doing. They felt that people only needed to have a representative to speak for them if they had done something wrong, or committed a crime, or if they intended to lie. Some found it difficult to accept the need for representation since they thought that they were only coming to the hearing to explain their situation.

(b) Obtaining advice and representation

Appellants at Social Security Appeals Tribunals

Many of those who attended their hearings unrepresented felt that they needed advice and assistance with their appeal, especially with the hearing itself. They had often, however, experienced difficulty in obtaining advice and representation.

The distribution of advice agencies is very uneven throughout England and Wales, and the ease with which people can obtain advice is dependent upon where they live. In London, for example, some boroughs have many different types of specialist advice agency whereas other may rely on one overstretched Citizens Advice Bureau. The disparity in distribution of advice centres is reflected to some degree in the differing knowledge and expectations which people have about appealing and obtaining assistance with their appeal. However, even where people are aware of existing advice agencies, they may be unable to obtain help as a result of lack of resources. For example:

> 'I suppose I might have gone to the CAB. It's good that those people give up their time, but ours has only got one person there at a time and it's not a proper place. It's in a room at the back of the Church. There is no sign or anything. You have got to know it's there.'

> 'I've spent whole days on that phone just trying to get through to the CAB. In the end you just give up.'

'My husband did go down to the Citizen's Advice to ask what they thought we would get, but unfortunately the man there said that he didn't know because the law had changed and he wasn't up on the new rules.' (November following the April 1988 changes)

The problems of increased demands (particularly since the changes to the Social Security legislation since April 1988) and low funding of advice agencies, means that claimants often arrive at advice agencies and find a long queue of people before them. Many agencies do not have the facility to open during the evening, making it difficult for people who cannot get to them during the day. Those appellants with mobility problems find difficulty in getting through to CABx on the telephone.

Among those interviewed, many had used the CAB as their source of advice. Unfortunately, the restricted opening hours of many Bureaux presented difficulties:

'The CAB's difficult because they are only open three days a week for two hours, and they are so crowded.'

'It's not easy to find a CAB that is open.'

'It said in the letter (from the DSS) to go to the CAB. Ours has a staff shortage, and it's closed at all different times. I couldn't get anything from them and I didn't know anyone else to get in touch with.'

In addition, people are often unclear about what advice agencies can do. For example:

'I didn't bother with Citizens Advice. I didn't think that they did this sort of thing. I thought they were more for sorting out arguments with your neighbours.'

'They are only ordinary people, just volunteers. I didn't think that would know much more about it than me.'

Claimants experience a variety of difficulties in trying to get assistance with their appeals and the pressure of trying to get advice, and failing, leads people to drop their appeals or fail to turn up on the day.

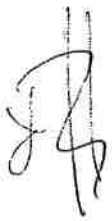
There were a few social security appellants who consulted solicitors about their appeals. These were most often solicitors who were already acting for the appellant on other matters, for example, divorce or custody of children. The majority of appellants who considered the possibility of obtaining legal advice simply felt that they would not be able to afford to consult a solicitor.

'I just couldn't afford a solicitor. Mind you, they would probably consider this sort of thing to be beneath them.'

Those who appeal to social security appeals tribunals are therefore dependent on whatever advice and assistance is provided in their local area as a result of local authority funding. The experience of those interviewed is of long queues, full waiting rooms and hours spent waiting to be seen. Even when they have succeeded in seeing an advice worker, the agency may not be able to provide representation as a result of lack of trained staff, or staff shortages. If an appellant does, therefore, attend their hearing with a representative, it must be considered an achievement.

Industrial Tribunal Applicants

Industrial tribunal applicants are often given initial advice by a Job Centre or their local Unemployment Benefit Office when they sign on. ACAS also advise clients about where to get advice. If an individual either fails to sign on within the time limit for applying to the tribunal, or, as in the case of many married women, fails to sign on at all, they are unlikely to receive information about the tribunal. In spite of this, industrial tribunal applicants are likely to attend their hearing having received some advice, most frequently from a solicitor. The cost of having a solicitor represent them at the hearing, however, is often prohibitive in their circumstances. There are a number of applicants who obtain advice about their application under the Green Form Scheme, but then appear before the tribunal unrepresented. For example:



'The solicitor wanted £250 before he would do anything. It doesn't make sense to me this Legal Aid. If I was a murderer or a sex maniac, you would represent me in court. But because I am a working class man, worked all my life, and never had a penny from the State, why do they want £250 to represent me in court? They go on about closed shops, but if you think of justice, it's a closed shop, and the only freedom you have got is what you have got in the bank.'(Unrepresented applicant)

'The Citizens Advice Bureau gave me a list of solicitors, but I just knew that I wouldn't be able to afford it so I didn't bother.'(Unrepresented applicant)

Appellants at hearings before Immigration Adjudicators

Appellants who bring cases before immigration adjudicators have the greatest ease in being directed to an advisory body, since they are usually advised to go to UKIAS, whose name and address are printed on the appeal application form. Many appellants nominate UKIAS at the outset. UKIAS do not represent all of those who nominate them, since

some cases are without merit, and other appellants subsequently seek private legal advice, or go to other advice agencies. Appellants who come before immigration adjudicators span a wide range of social class and background. Many are able to afford the services of a private solicitor and in spite of the existence of UKIAS, a number of appellants prefer to pay for representation. Some consider that the representative will work harder on the case if they are being paid. Some believe that there is a tactical advantage in paying for representation, since it might be evidence of the seriousness of their intention. Some appellants are directed by friends and relatives to a number of independent advice agencies who are well-known within the established ethnic communities, and who advise on a range of related areas, including immigration appeals.

3. Expectations of the Hearing

Many of those interviewed did not know what a tribunal is or what it does. Although appellants and applicants receive information from the tribunals about their appeal or application, this information does little to explain what the tribunal hearing will be like, or, for example the formality involved in appearing before an industrial tribunal or immigration adjudicator. Most importantly, appellants and applicants are not informed in advance about their role in the hearings and what they will have to do in order to persuade a tribunal or adjudicator to allow their case.

The majority of those interviewed had very vague expectations of the hearing. They did not really know what to expect. Those interviewed expressed uncertainty about what they could do at the hearing, and how much the tribunal would be able to do for them. Nevertheless, appellants were clear about the importance of the appeal in terms of getting what they originally claimed from the Department, or redress for unfair treatment from a former employer. Appellants and applicants were unsure how this would be achieved, since they could not visualise the forum in which the decision would be taken.

Those interviewed held a variety of images of what the hearing would be like. There were some who realised that it would be a hearing of some sort, and expected a courtroom with people wearing wigs and gowns:

> 'There will be a judge with a wig and a jury.'

> 'I expect massive chairs and a lot of people, and me in a cubicle, standing there with a big box round me and a lot of questions.'

More frequently, however, the notion of informality which tends to be stressed in tribunal documentation, gives rise to misconceived expectations, with many presuming that informality is synonymous with

a quiet chat or, at worst, an interview. There were numerous vivid illustrations of this misconception. For example:

'I don't think it was informal. They had laws and sections and all this sort of thing.' (Industrial Tribunal applicant)

'My representative explained it all to me, but I thought it would be quite informal, not like a court which is what it is, with swearing and everything.'
(Industrial Tribunal applicant)

'We didn't do anything against the law to come here to a court...When we are going to the court it means you have done something wrong against the law.'
(Immigration appellant)

Those appellants and applicants who had felt confident about their ability to conduct their own case were often surprised by the degree of formality which they experienced. Those who actually attend hearings often take the terms 'independent' to mean 'on their side', and 'informal' to mean that they can proceed on their own terms, believing that all they have to do is talk to the tribunal about their problem.

The role of the Tribunal

The difficulty which appellants and applicants had in visualising what the hearing would entail, extended to their perception of the role of the tribunal. Their expectations of the powers that tribunals have to alter the original decision, or decide in their favour, are often unrealistic:

'Well I think they can make me go back and work there.'

'They should look at what we need to live on and put our money back to what it was, or higher.' (Social security appellant)

People appeal because they are aggrieved. Many people appeal or apply to an industrial tribunal because they say that they do not want to be seen to be taking an unfavourable decision 'lying down'. They want a wrong put right. This was illustrated clearly when those interviewed were asked about what they expected that the tribunal could do for them. For example:

'To get them to see that this is a genuine case.'
(Immigration appellant)

'To get a bit of humanity and sympathy into this.'
(Social security appellant)

'For there to be a favourable outcome and for my name to be cleared.' (Industrial tribunal applicant)

'The fact is when you have been treated very badly you want fair play. You want the tribunal to say that you have been unfairly dismissed, in other words, for them to find in my favour.' (Industrial tribunal applicant)

Tribunal hearings also present an opportunity for appellants to talk to somebody. Social security claimants and immigration appellants experience great frustration at not being able to see the people who are dealing with, and deciding their case:

'There is never any signature on the letters. No one will ever tell you their name when you phone up. They are just faceless.' (Social security appellant)

This sense of frustration leads to a widely held view across all of the tribunals, that by coming to the hearing they will finally have a chance to tell someone about their particular problem.

'These are the only people I could come to. I've done everything in my power. I want justice, however they are prepared to dish it out. I'm quite happy with knowing that they are going to do something and that there are people there to listen, such as this tribunal.' (Industrial tribunal applicant)

'To me what is important is that they are not biased, that they don't go on the grounds that because you are on the Social, that you are a scrounger. To be able to talk to them, to tell them that I can't manage, that I can't cope.' (Social security appellant)

'Knowing that there would be a hearing made me happier, because I can speak to somebody who is prepared to listen. Somebody who is independent, because the Immigration people never gave us a chance to convince them.' (Immigration appellant)

Although there are appellants who are glad of the opportunity to 'get it off their chest', there are also many who are frightened about the hearing. Fear was most noticeable among those attending immigration hearings.

The evidence from interviews with appellants suggests that many have unrealistic expectations about the powers of the tribunal and this stems from lack of knowledge about the tribunal process. Lack of knowledge manifests itself in two very different ways:

i) Bewilderment. This is particularly prevalent among social security claimants, who have been carried along on the appeals

'conveyor-belt'. They may attend their hearing without having a clue about what is going to happen or even why they are there:

'I thought I was going to the local office.'

'As far as I know I am going to have an interview here.'

ii) Uninformed confidence. Lack of knowledge leads to unrealistic beliefs about the role of the tribunal and the powers of the tribunal to make favourable decisions. Appellants in this category tend to assume that all they have to do is to convince the tribunal that they have an honest/genuine/needy claim, and may appear in waiting rooms with file pads and documents. Appellants in this group are often relatively articulate and apparently in control. They are the most likely to be unrepresented as a matter of choice.

'I'm just going to tell them the truth.'

'You only need someone to speak for you if you are telling lies.'

'I know what my case is about. If I had a representative I would only have to tell them what I know, so that they can tell the tribunal. I've got a voice and I can use it.'

'It's an open and shut case. It will only take me a few minutes.

'It's the law that makes it difficult, and my case isn't in law.'

Appellants' expectations about what they can achieve at tribunal hearings are linked closely with knowledge about the process. In many cases, lack of information and preparation can ultimately lead to frustration on the part of the appellant and a feeling that they have not been given a fair chance.

4. Reactions to the Hearing

The majority of those interviewed were experiencing their first tribunal hearing. Many expressed great anxiety and concern about what they were going to face. Most of the appellants interviewed had no other similar experience to draw on. Many found the setting intimidating, and the procedures formal and difficult to understand. Indeed, many found the process traumatic, but it was worst for those who were unrepresented. Apart from an inability to understand the law and the procedure, many unrepresented appellants found difficulty in simply explaining the details of their case. Even those who won their cases often said that they would only go through the process again if it was absolutely necessary because of the stress involved.

It was interesting to note that the pre-hearing confidence displayed by some appellants was often short-lived.

There are differences in the degrees of formality between the three tribunals at which appellants and applicants were interviewed. Social security hearings are the least formal while industrial tribunals and immigration hearings are the most court-like. Although there were differences in the experiences of appellants at the different hearings, there were also great similarities.

i) Unrepresented appellants and applicants

'They said there was a clause for this and a clause for that, and that I didn't come into such and such clause. What are all these clauses anyway?' (Social security appellant)

Appellants and applicants attend their hearings in order to ask for something. To do this effectively, they must be convinced of their entitlement. Appellants do not, on the whole, attend hearings lightly. Despite their belief in the merit of the case, the atmosphere of hearings and the questioning of appellants reduced the conviction that appellants had about their entitlement.

Appellants found presenting their case difficult. They described feelings of being very much alone and outnumbered by the opposition, which included the tribunal or adjudicator. Appellants felt that they had not known how they should have put their case and had not been prepared for what was required of them at the hearing. The following comments illustrate these experiences:

> 'It just cracked me up being in there.' (Social security appellant)
>
> 'You've got to come back from being the lowest of the low and try to put your case.' (Industrial tribunal applicant)
>
> 'It was like going to a court.' (Social security appellant)

Some appellants said that they had not thought about bringing anyone with them before the hearing, but they now wished that they had done so. There were also some who, when asked if they had had any help of advice from anyone, asked the interviewer if they ought to have had some help before coming to the hearing.

Because the hearings vary in formality and procedure, appellants' reactions differed between different types of hearing.

Social Security Appellants

Appellants at social security appeals occasionally expressed relief because the hearing was not as bad as they had expected it would be.

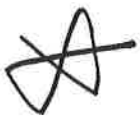
Many were, however, dismayed at the binding nature of regulations and did not understand why they had to be rigidly adhered to. Many appellants had believed that the tribunal were capable of looking at the case in a different manner from the DSS, at least with 'humanity and sympathy', and were frustrated that decisions were being made in accordance with regulations:

'I don't care about the bloody law, I want my money.'

'They don't look at you as a person. They have got the rule book there and they have got to go by the book.'

'They should bring a bit of humanity or common sense into the thing. All I have heard up until now is section this and subsection that, which are very rigid.'

'I couldn't understand what they were talking about at all because everything was schedule such and such, you know, different numbers, but not saying to me <u>why</u>. It's hard, it's confusing. I'd sooner be told point blank. It's too complicated for me.'



Given that there is such a high level of confusion about the law and how it operates, it is not surprising that appellants do not comprehend the significance of case law and precedent:

'I just don't understand. That Chairman kept going on about this other bloke's case all those years back, and not looking at mine. I mean, I don't care what happened to a bloke down a quarry however many years ago it was.'(Social security appellant confused by a leading case on industrial injuries introduced during his hearing)

Appellants also found the language of the tribunal formal and difficult to follow, despite the efforts of tribunal chairmen to 'enable' appellants to put their case. Appellants were often inarticulate, and some had literacy problems, which meant that they were easily intimidated by the fluency of the DSS Presenting Officer's submission and the jargon of the tribunal:

'These AOs, they have all been to college or had to be well-educated or pass exams to get into these jobs. It's just the uneducated battling against the educated. I'm not saying I am stupid, but I bet they didn't go to a council school like me.'

Unrepresented appellants were often successful. In spite of winning the appeal, they still complained about the difficulties of the hearing. Those who were successful were more likely than those who lost their case to say that they would go through the process again, but only if there was no alternative:

'If you are entitled, you should get it and shouldn't be put through a hearing.'

'Even though I won, I wouldn't like to do it again.'

Many stated that because they had been very nervous, if they were to come to another tribunal in the future, they would prefer to come with a representative. This need to attend hearings with 'someone who knows what they are doing' was shared by many of the appellants and who were interviewed. The following case studies illustrate this vividly:

Case 11132:
The appellant appealed against the decision to refuse a single payment. The appellant went to a local law centre for advice but did not obtain any because "it was too packed out, there were too many people". The appellant did not know anywhere else to go for advice. The appellant attended the hearing alone. The appeal was dismissed by the tribunal. After receiving the decision the appellant said that the outcome might have been different if he had had a representative:"...a representative could use legal jargon and would have been able to understand the rules and laws which I didn't."

Case 11381:
The appellant appealed against a decision to withdraw unemployment benefit. The appellant tried to get help from a private solicitor. " They said that they didn't have the time and that they would send somebody down today, but they have let me down at the last minute." After the hearing, while the tribunal were deliberating, the appellant complained that he had not been able to say everything that he had wanted to say about the case: "I was bombarded with questions, I didn't know what was going on." The tribunal dismissed the appeal. Unfortunately the appellant was too angry to answer any further questions. He was clearly very dissatisfied.

Case 11116:
The appellant appealed against a decision to refuse a single payment. The DHSS advised the appellant to go to a Citizens Advice Bureau. " It was packed with people and they said that nobody would be able to come with to the tribunal." She attended the hearing alone. After the hearing, the appellant said " I needed somebody who knew what they were talking about. " The appeal was dismissed. After the decision was given the appellant said " It would have been different if someone had come who knew how to talk right, with authority..it's just degrading."

Case 11472
The appellant appealed against a decision to refuse a single payment. The appellant went to a local law centre. "They told me to appeal and told me about Regulation 30." The appellant did not want anyone to go with her because she thought that she could manage. After the hearing the appellant said "I thought I could handle it myself, but I

couldn't. Once you're in there you are nervous and you realise you could have been better prepared. It's all so unfamiliar and authoritarian." After the appeal was dismissed, the appellant said that she thought the decision might have been different if she had had a representative. "They could have put things better and they know the procedure..it was very degrading, all your dirty washing is hung out, so to speak."

Case 11476
The appellant appealed against a decision to refuse a single payment. "I went to the Citizens Advice Bureau but they were fully booked." After the hearing the appellant commented that the hearing had been just like going to court. "I was only answering questions." The appeal was dismissed. In response the appellant said " A representative would have been able to say more. He could have spoken up a bit more. There's too much jargon. I was lost by all the legal talk."

Case 11489
The appellant appealed against a decision to refuse a single payment. She had no information other than the fact that she could appeal. The appellant did not know that she could have been represented. After the hearing the appellant said that she had not been able to say the things that she had wanted to say about the case. "I didn't know what to say. I didn't understand the situation. It's very complicated. I didn't have a clue about what was happening. No one explained who was who and what role they played. There was no explanation of the proceedings. I didn't understand what was being said." The tribunal allowed some of the items that had been claimed and refused others. After the decision the appellant said that it would have been a lot easier if she had known about taking someone with her.

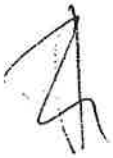
Industrial Tribunal Applicants

Unrepresented applicants before industrial tribunals had similar experiences to social security appellants. The formality of industrial tribunals, however, involving swearing-in and cross-examination, present difficulties for unrepresented applicants. They have to contend with adversarial court-like proceedings and face the people who dismissed them, while attempting to make a case which will show that the respondent company acted unreasonably. The cases of unrepresented applicants may be weakened by the fact that they are less likely than respondents to call witnesses. Some do not know that they can do this, but the majority do not call witnesses because this requires asking former colleagues who are still working for the respondent to attend the tribunal and give evidence against their employer:

> "I knew I didn't have enough evidence without my witnesses, but the company were leaning on them, so what could I do?"

A great deal often hangs on the success of applications before industrial tribunal: money, the possibility of future employment, qualification for unemployment benefit, withdrawal of allegations of dishonesty, and pride. The hearing may also be the first time that the applicant has seen their former employer since the dismissal, all of which contribute to feelings of pressure and a sense of intimidation.

The difficulties of the situation were exacerbated by the language of the tribunal, which was unfamiliar and daunting for many applicants. It also made it difficult for them to follow what was going on:



> "I talk plain English. I don't like big words and yet I find myself coming to a court like this and you do get big words. The way they speak in these places, it's all just gobbledygook. They are words that you just don't understand."

Where the respondent was legally-represented, applicants' sense of intimidation was increased:

> "Their barrister knew I didn't know the game, and he took advantage of it."

Applicants whose cases reach the stage of a tribunal hearing are by definition tenacious. Had they not been so, they would have relinquished their claim at an earlier stage. Despite the fact that unrepresented applicants are often the most confident of all appellants, they nonetheless expressed great concern about the hearing. As hearings progressed, many applicants became increasingly anxious, and some commented that it was worse than they had anticipated. Most applicants had not foreseen the stress involved in being cross-examined themselves, nor the difficulty they would experience in trying to cross-examine the respondent's witnesses. The following case studies provide examples of the difficulties:

CASE 12034
The applicant applied to the tribunal claiming that she had been unfairly dismissed. She originally went to a Citizens Advice Bureau, who then referred her to a solicitor. The solicitor wrote letters on her behalf and prepared some documents "but I couldn't afford to pay for the solicitor to represent me at the hearing." After the hearing the applicant said that she felt at a disadvantage by not being represented. "It would have been better to have had somebody who knew the right terms to use. In fact it would have been better to have had somebody even if they didn't say anything. The opposition had their people like a praying Mantis. I didn't even know that I could bring witnesses." The application failed.

CASE 12008
The applicant claimed that she had been unfairly dismissed because of pregnancy. "I went to a solicitor and got advice on Legal Advice, but was told that I could not have Legal Aid for representation. They did not tell me that I could get a representative from other agencies. I couldn't afford to pay for a solicitor to represent me." After the hearing the applicant commented "The procedure was not explained properly and I wanted to ask questions. I just didn't feel on the same level as the respondents." The application failed. After the decision the applicant said that she would have been better off with a representative. "They would have known the procedure better."

CASE 12113
The applicant claimed that he had been unfairly dismissed. He had taken advice from his trade union and they had agreed to represent him. Unfortunately, the union official could not attend on the day of the hearing. "It has already been postponed twice, and I want to get it over." After the hearing the applicant said "I didn't have a prayer in there really, did I? I didn't understand the other side's summing up or the categories he used. It would have given me more confidence if I had had a representative. It would have given me words. I would rather have had someone with me, a professional person who's done it before. I was a bit stuck for words..It seemed very unfair, just me against them. Some of the questions they asked me put me under a lot of pressure. They called me a liar. If I'd had a person to cross-examine them, they might have opened up a bit."

CASE 12106
The applicant claimed that he had been unfairly dismissed. He went to the local Aid Centre for advice. "They gave me a list of some solicitors to contact. I went to one. He wrote some letters, but got no reply, so I decided to take it to the tribunal. The solicitor couldn't represent me because I couldn't get Legal Aid and the solicitor told me it would cost £1000 for him to do it. The Aid Centre said they would try and get me a representative, but there was no guarantee." The applicant represented himself and after the hearing he said, "I didn't stand a chance. I couldn't get any witnesses to come. I had a lot of things to say about the company. I didn't ask all the questions I would have liked to ask. They probably wouldn't have answered them anyway. All of that could have been brought out if I had had someone with me, but I don't have £1000. The application was successful. After the decision was given the applicant was quite happy with the way everything had gone and claimed that having a representative wouldn't have made any difference.

CASE 12002
The applicant claimed that he had been constructively dismissed. "I went to the Citizens Advice Bureau and asked them how to get advice. They gave me a list of solicitors on the Green Form Scheme, but I was told it would cost a lot if the case lost and I've already spent £200 on advice to date." After the hearing the applicant said that he had

been too nervous to say everything that he had wanted to say. "I just didn't have the experience of doing it, to put the case over fully. I just couldn't put it over." The application failed and the applicant said "If I had been represented, a solicitor might have presented the case in a wider way. I just didn't cover the points as well as I should. I haven't got that sort of experience."

CASE 02172
The applicant applied to the tribunal claiming that he had been unfairly dismissed. "I went to a solicitor to get some advice and was told that if I wanted to be represented, a barrister would cost me £500 a day and this case was listed for two days. There's no way I could have afforded to pay that kind of money, particularly since I'd just lost my job. Many people can't afford the services of a barrister..unlike criminal law, in these tribunals one appears to be guilty until proven innocent." After the hearing the applicant said "More time should have been spent...to say that this is what's going to happen. Really, one has no idea of what to expect. All the time I was finding it difficult to convince the tribunal, or the Chairman, that there's two sides to every story. I had a lot of notes, I had prepared a fair bit of work, but the Chairman objected to my reading what I had written, suggesting that it would be better if I recall what I know to be the case, rather than what I was reading to be the case." The tribunal decided that the application failed and after the decision the applicant commented, "Certainly someone who had greater experience of how these hearings work and how they tick might have had a better opportunity."

Appellants before Immigration Adjudicators

Appellants who bring cases before immigration adjudicators also find hearings difficult. Far fewer, however, appear unrepresented than at social security appeals or industrial tribunals, largely because free representation is available through UKIAS. Even in the circumstances that an appellant does attend his hearing without a representative, a UKIAS representative can often be found in the building (in London at least) who will apply for an adjournment in order to take instructions. Many adjudicators will automatically adjourn a hearing where the appellant is unrepresented in order for representation to be obtained.

As a result of the easy availability of free representation, those who attend immigration hearings unrepresented do so generally because they do not believe a representative is necessary. This can be the result of failing to realise that they were attending a hearing, rather than an interview. When the hearing is adjourned for representation to be obtained, this can result in frustration or confusion among appellants who do not understand why they have not been allowed to put their case:

"I wanted to know the answer today. I wanted it to be finished. I don't understand why they could not let me talk."

In addition to the difficulties of presenting cases, appellants and applicants in the three tribunals often found it difficult to understand the decision, sometimes not knowing whether they had won or lost.

In general, unrepresented are disadvantaged in hearings by not being able to understand what is going on, by not knowing what they have to do, and by not understanding what the tribunal is there to do. Unrepresented appellants and applicants rarely feel that they have the necessary verbal skills to present a genuine challenge to the other side. They do not feel that they are able to ask the right sort of questions, or express their case in the right sort of terms.

"If someone had told me what it was going to be like I would have just gone home. No hassle, no questions asked." (Immigration appellant)

"It was so traumatic, I never want to go through anything like that again. I was just like a lamb to the slaughter." (Industrial tribunal applicant)

ii) Represented appellants and applicants

"You couldn't do without a representative. Just like you can't clap with one hand. You need someone to protect you." (Industrial tribunal applicant)

Representatives act as a mouthpiece for appellants and as a form of support, reassuring the appellant that they are not present at the tribunal to be put on trial, but to question others.

Most represented appellants interviewed felt that the presence of the representative made the presentation of their case easier for them. Interestingly, having a representative did not seem to improve appellants' and applicants' knowledge of the law, or of tribunal procedure. Nonetheless, those interviewed were more likely to have some knowledge of what was about to take place than interviewees who were unrepresented. They also expressed greater confidence before the hearing commenced.

"You've got more confidence with somebody who knows that they are doing and how to put things across." (Social security appellant)

"I wouldn't have known how to respond in the same way as the representative and a representative adds to your confidence. They are more knowledgeable about the procedure." (Social security appellant)

"Without a representative you would be on to a loser from the kick off. You wouldn't stand a chance. I don't understand the rules of law. I wouldn't know what questions to ask. A representative is a necessity." (Industrial tribunal applicant)

"I need someone to ask the questions that I want to ask and I need someone for support." (Immigration appellant)

The advantage of prior information was evident during interviews with represented appellants and applicants. Many of those represented were able to use terms associated with the hearing. For example, applicants spoke of 'giving evidence', being 'cross-examined', and their representative giving 'a submission'. This did not necessarily mean, however, that appellants genuinely understood what was going to happen during the hearing. Some represented appellants actually admitted to the interviewer that their representative had tried to explain everything to them, but that they still had not understood. Others were able to recite an explanation of events that had been given to them, and then, asked the interviewer if they knew what has going to happen and if they could tell them what the hearing would be like.

Appellants often said that they had difficulty taking in the information given to them by representatives and that they felt overawed by the surroundings. It was clear that many represented appellants and applicants, in spite of the information and assistance they received, did not have a sufficient understanding of the proceedings to take an active part.

Appellants often described the most important advantage of being represented as having someone to speak on their behalf:

"I wouldn't know what to say."

"I would have been too afraid to say anything."

"I wouldn't have known where to start."

"I'm not technical enough. I don't think I would have gone the first round without my representative."

"There are all these barriers if you do it on your own. You need a solicitor. He knows how to say things, how to nit-pick. We can't talk like him and that's what has an effect."

In addition, and importantly, appellants look on the representative as a protector. For many, the feeling that someone was on their side provided a sense of relief. One unrepresented appellant thanked the interviewer for having observed the case, saying:

> "I feel better now because you are here. It has made me feel secure. It's like having a representative. Someone to lean on. I just needed a bit of moral support."

There is also the practical protection that a representative can provide by re-examining the appellant on difficult and confusing matters or on questions where the appellant has not clarified the point adequately.

In most cases, prior to the hearing, appellants did not know what the representative was going to do during the hearing, other than to ask them some questions and help to explain the case. It was not usually until after the hearing had finished that appellants appreciated the technicalities of the hearing and the law:

> "I would have just crumbled without help. I would have been out-talked by the tribunal." (Social security appellant)

The emotional and financial investment in the outcome of the hearing often prevents appellants from stating their case in a convincing and dispassionate manner. Some appellants commented that having a representative controlled them during proceedings:

> "If he hadn't been there I would probably have jumped up and called them liars." (Industrial tribunal applicant)

In a minority of cases representatives added to an overall sense of frustration by advising appellants to withdraw certain parts of their claim, or by advising appellants to restrict their statements to 'relevant' details. It is often difficult for appellants and applicants to accept that not all the details of the case are relevant and that, in the interests of producing a concise, well-prepared case, past events may not be particularly significant to the tribunal. Many appellants see the hearing as their opportunity to have somebody listen to their grievance and resent the intervention of the representative in defining the nature of the grievance:

> "The representative said that going through all that would take too long, but I don't care if it takes until Christmas if it means that I win my case." (Industrial tribunal applicant)

There was very little difference in the experiences of represented appellants at the different tribunals. The majority of those represented appellants interviewed said that they did not think that

they would have been able to cope with the hearing without assistance.

There were, however, some criticisms of representatives who appeared to be unprepared. There were also criticisms of advice agencies for misleading appellants and applicants about the informality of hearings and the ease of presenting cases themselves. For example:

> "People like us are very dependent upon the advice we're given. If he says we don't need representation we thought it would be straightforward." (Industrial tribunal applicant)

The evidence from represented appellants and applicants suggests that the value of being represented at a tribunal hearing has less to do with increasing the chances of winning, than having someone to put the case coherently and to act as a buffer between the appellant and the tribunal, and between the appellant and the 'other side'. Appellants find tribunal surroundings unfamiliar and often forbidding. They are confused by the language, the procedure and the law. At the time of the hearing the appellant wants a guide. The representative performs this function, whether or not the case succeeds in the end.

Having a representative present does not, necessarily, make losing the case acceptable. It does, however, increase the likelihood that appellants and applicants will feel that they had a fair chance. For the majority of appellants, fairness is all about getting what they came for. They are not able to assess whether the tribunal was acting in accordance with the law or the rules of natural justice. For many appellants the concept of impartiality simply means that the tribunal will realise that the appellant is right. Delivering justice involves recognising that the original decision, or dismissal, was wrong.

Unrepresented appellants and applicants who lost their cases did not speak specifically about injustice. What they expressed was a perception of disadvantage. They felt that they would have had a better chance if they had been represented by somebody who knew what they were talking about. Represented appellants and applicants who lost their cases were more likely to feel that they were 'in the game', even though they lost in the end.

SUMMARY

Appellants and applicants embark on tribunal cases with little knowledge of what is involved and unrealistic expectations of the nature of hearings and the powers of tribunals to overturn Departmental decisions or provide compensation. This lack of realism is often fostered by the information emanating from tribunals which stresses their independence and informality.

The ability to obtain representation depends on appellants and applicants perceiving a need for advice, and most importantly, on the ability of overstretched advice agencies to provide advice and representation. Those who appeal to social security tribunals and those who apply to industrial tribunals, rarely have the resources to pay for advice and representation.

The experience of unrepresented appellants and applicants is overwhelmingly of feeling ill-equipped to present their case effectively at their hearing. They are intimidated, confused by the language and often surprised at the formality of the proceedings. Those who are subjected to cross-examination find the experience stressful, and feel unable to conduct cross-examination themselves. It is difficult to convey the degree of incomprehension common among appellants and applicants who appear unrepresented at tribunals, or the extent of the difficulties experienced by ordinary people trying to present their case in a legal forum.

Representatives perform a number of functions. They prepare the case, act as a mouthpiece, and protect and support appellants and applicants. They act as a physical buffer between the appellant and the tribunal, and between the appellant and the opposing side. Most importantly, representation reduces the sense of being at a disadvantage experienced by unrepresented appellants. It increases the likelihood that those who appear before tribunals will perceive the process as fair.

CHAPTER 8. SUMMARY, CONCLUSIONS AND POLICY IMPLICATIONS

This report has provided quantitative and qualitative evidence concerning advice and representation in social security appeals tribunals, hearings before immigration adjudicators, industrial tribunals and mental health review tribunals. Quantitative data have been presented on the reasons why appellants and applicants fail to seek advice and obtain representation; the role of advice in pre-hearing processes; and the effect of representation on the outcome of tribunal hearings. Qualitative data based on extensive interviews conducted with tribunals, Presenting Officers, and representatives have demonstrated the value of advice and representation in case preparation, the collection of evidence and the settlement or disposal of cases prior to a tribunal hearing. Interview data have also been utilised to analyse the impact of representation on tribunal hearings, the contribution of representation to reducing the imbalance of power at hearings, to the presentation of cases and to the quality of tribunal decision-making. Interviews with appellants and applicants conducted at tribunal hearings have provided evidence of the extent to which representation can reduce the difficulties faced by appellants and applicants in pressing their cases, increase participation in the process and contribute to the feeling that appellants and applicants have had a fair hearing. Interviews also provide evidence of the extent to which representation can make the process of losing tribunal cases more acceptable to appellants.

I SUMMARY OF MAIN FINDINGS

A. Patterns of Advice and Representation

1. The majority of appellants and applicants, except in social security appeals attempt to obtain advice about their hearing. In social security appeals only a minority of appellants obtain advice.

2. Advice is being provided by a wide range of agencies and by solicitors. Applicants to industrial tribunals and mental health review tribunals obtain advice most often from lawyers. Those appealing against immigration decisions seek advice most frequently from UKIAS and solicitors. Social security appellants seek advice most often from Citizens Advice Bureaux.

3. In all four tribunals there are significant geographical variations in the extent to which advice about appeals and applications is obtained. This geographical variation is

equally true in mental health review tribunals and immigration adjudications, where free representation is available.

4. Those appellants and applicants who succeed in obtaining advice about their cases are more likely to attend their hearings, or, in immigration cases, to request a full hearing of the case.

5. The rates of representation in the four tribunals, excluding family and friends are as follows: social security appeals 12%; applicants in industrial tribunals 58%; respondents in industrial tribunals 73%; immigration appellants 90% at full hearings; mental health review tribunals 65%.

6. The most frequent cause of lack of representation among those who had sought representation was lack of resources on the part of the lay agency approached, or lack of ability to pay for legal services where a solicitor had been approached.

B. The Effect of Representation on the Outcome of Hearings

1. In all four tribunals, the presence of a representative significantly and independently increases the probability that appellants and applicants will succeed with their case at a tribunal hearing.

2. The relative contribution of representation to the likelihood of success in the four tribunals is as follows:

Social Security Appeals	-	probability of success is increased from 30% to 48%
Immigration hearings	-	probability of success is increased from 20% to 38%
Mental Health Review	-	probability of success is increased from 20% to 35%
Industrial Tribunals	-	probability of success is increased from 30% to 48% if the respondent is not represented

3. In industrial tribunal hearings the probability of the applicant succeeding is influenced not only by his own representation but also by the representation of the respondent. Applicants can only significantly increase the likelihood of success through representation when the respondent is unrepresented. Where the respondent is legally-represented and the applicant is unrepresented the applicant succeeds in only 10% of cases.

4. The type of representation is important in all of the four tribunals. In social security appeal hearings lay agencies

specialising in welfare law have the greatest impact on the outcome of hearings. In immigration hearings before adjudicators UKIAS, other specialist lay representatives, solicitors and barristers have the greatest impact. In industrial tribunals, barristers, followed by solicitors have the greatest impact on success, whether they are representing applicants or respondents. In mental health review hearings barristers and specialist units have the greatest impact on the outcome of hearings.

5. Other factors independently associated with success were the type of case, number of witnesses, and in social security appeals, geographical location. In social security appeals, immigration hearings and industrial tribunals, the identity of the chair or adjudicator was found to have a significant and independent effect which could either increase or reduce the probability of success (this particular analysis was not carried out for mental health review tribunals).

C. The Contribution of Representation to the Conduct of Hearings

1. The view of tribunals, representatives and Presenting Officers was that much of the law with which they were concerned was complex, and that the adjudicative function of tribunals was often a highly technical forensic process.

2. Representatives contribute to the quality of tribunal hearings and the accuracy of tribunal decision-making by investigating the background of appeals and applications, filtering out unmeritorious cases, clarifying relevant issues, obtaining the evidence necessary to prove the case at the hearing, and addressing the tribunal on the law relevant to the instant case. These activities, they believe, save the tribunal's time, lead to more accurate decisions, and therefore increase the likelihood that clients, whose cases have merit, will win at the hearing. Early advice about applications to Departments can also increase the accuracy of first-line administrative decisions by improving the quality of the information upon which decisions are made. This reduces the number of occasions in which tribunals are merely performing an expensive information-gathering function.

3. The experience of representatives is that unrepresented appellants and applicants are disadvantaged at tribunal hearings because there is an imbalance of power between the parties, because appellants and applicants do not understand the law, are unable to present their cases coherently and are unaware of the need to furnish the tribunal with evidence of the facts that they are asserting. The problem is particularly acute in industrial

tribunals where cross-examination presents an impossible hurdle for applicants. Representatives do not believe that tribunals can compensate for these disadvantages. Their beliefs were largely supported by observation.

4. There was consistency in the views expressed by tribunals regarding the contribution of good representation to hearings. The experience of tribunals was that good representation resulted in properly investigated cases, the provision of the correct sort of evidence, coherent and succinct isolation of relevant material and presentation of facts. Good representatives also assisted the tribunal by researching the law and presenting relevant cases to the tribunal. In sum, the view of tribunals was that good representation always made their job easier.

5. There was no consistency between tribunals in their views on the extent to which representation generally was necessary at their particular hearings or on their ability to compensate for lack of representation. Immigration adjudicators and members of mental health review tribunals were the most likely to assert that representation was always desirable. Chairs of social security appeals tribunals and industrial tribunals were divided in their views. Many believed that representation was desirable from the appellant's or applicant's point of view, but that it was not necessary in order to reach an accurate decision on a case. Some chairs in both tribunals believed that representation was both necessary and desirable. The majority of chairs, except in immigration hearings, believed that they could adequately compensate for lack of representation. The results of Chapter 3 and observation of hearings suggests that chairs may be overestimating their ability to do this.

6. There was no consensus among tribunals as to whether representation protracted hearings or expedited them. There was a tendency to assert that representatives increased the length of hearings by raising 'technical' points. However, it was also said that tribunals could control proceedings more easily where representatives were present, and that hearings could be limited to relevant issues.

D. The Value of Legal Skills and the Need for Legal Aid

1. Few among the tribunals or representatives interviewed believed that lawyers were necessarily best equipped to conduct representation in tribunals.

2. The most common view was that specialisation and experience

were the most important qualifications for good representation.

3. Some immigration adjudicators and some industrial tribunal chairs, however, believed that the law in those areas was so complex, and the hearings so adversarial, that specialist solicitors or barristers would almost always be the best representatives. Some employment law solicitors also maintained that barristers were necessary to represent at industrial tribunal hearings.

4. All representatives interviewed believed that current levels of representation were undesirably low, and that this was the result of lack of resources on the part of lay agencies, and lack of Legal Aid in those areas where there were no specialist lay agencies and solicitors were advising on tribunal cases. The solution was thought to be increased funds for lay agencies and a general extension of Legal Aid, or the availability of Legal Aid for complex cases.

5. There was no consensus among tribunals about the need for Legal Aid. Most tribunals interviewed believed that lay agencies did not have the resources to represent all of the cases that required representation. A minority believed that extending Legal Aid to tribunals would be beneficial. Rather more tribunals believed that Legal Aid should be available for cases that were serious or complex.

E. The Value of Representation to Appellants and Applicants

1. The evidence of interviews with appellants and applicants at tribunal hearings indicates that their knowledge and expectations of tribunal processes and powers are both vague and unrealistic.

2. The majority of appellants and applicants who come before tribunals without representation do so not as a matter of choice, but because they are ignorant of the availability of advice, or because they are unable to obtain representation because of lack of resources on the part of lay agencies, or because they cannot afford to pay for legal representation.

3. Despite documentation from the tribunals giving information and advice about the hearing, appellants and applicants often arrive at their hearings in a confused and bewildered state.

4. The experience of unrepresented appellants and applicants indicates that, even in the most informal hearings, they have difficulty in expressing themselves; they do not understand the relevance of the rules and regulations that

are quoted to them; and when they lose, frequently leave in a state of disappointment and frustration. They do not necessarily express their frustration in the language of fairness, but often feel that they did not have a chance. Even those who succeed with their appeals, often find the process stressful.

5. Those appellants who were represented at their hearings still displayed only a limited understanding of the process that they had just experienced, but valued the assistance of the representative in presenting their case and in acting as a buffer between themselves and the tribunal, whom they regard as intimidating. The presence of a representative cannot overcome the disappointment of losing at a hearing, but results in appellants and applicants feeling that, at a minimum, they had had a chance.

II CONCLUSIONS AND POLICY IMPLICATIONS

The evidence presented in this report leads inescapably to the general conclusion that specialist representation at tribunals increases the likelihood that those who bring their cases before tribunals will succeed at their hearings. The study has demonstrated that while in some tribunals specialist lay representation is presently as effective as legal representation, in industrial tribunals, at least, legal representation provides both applicants and respondents with the greatest advantage. In all tribunals, representatives who specialise and who are experienced in presenting tribunal cases provide the greatest assistance to their clients and to the tribunals before whom they appear.

Unless the activities of representatives are thought to lead tribunals into allowing unmeritorious cases, the conclusion must be that representation increases the accuracy of tribunal decision-making. Representatives do this by furnishing tribunals with the information needed to reach reasoned decisions, based on all of the relevant facts of the case, and on the law which relates to the case. In investigating cases, obtaining evidence, and advocating cases, representatives are ensuring that appellants whose cases have merit, are given the best possible chance of succeeding before the tribunal.

These findings would not be surprising or worthy of comment if the study had been conducted in the context of ordinary civil or criminal courts. If the findings are surprising at all, it is because discussion of the need for representation in tribunals has historically been dogged by misleading arguments about the nature and quality of tribunal proceedings.

It has been persistently asserted by policy-makers, some administrative law scholars, and those concerned with the administration of tribunals, that the informality of tribunals, their simplicity, and their accessibility, have rendered representation both unnecessary and undesirable. The evidence of this study indicates that while simplicity in initiating proceedings, informality in surroundings, and procedural flexibility are valuable qualities worthy of preservation, they should not be used as a justification for denying the contribution that representation makes to tribunal decision-making processes, nor the need of appellants to have cases advocated on their behalf.

It was argued in Chapter 4 that where scope for the exercise of discretion on the part of tribunals has been largely removed, and where the demands of fairness require consistency in decision-making, the concepts of informality and freedom from technicality are of limited application. They do not avoid the necessity of appellants and applicants bringing their cases within the regulations or the provisions of the Statute, and proving their factual situation with evidence. Nor does the concept of informality relieve tribunals from the obligation to make reasoned and consistent decisions that will survive appellate scrutiny.

The continued adherence to the notion that representation is, or should be, unnecessary to the achievement of accurate and fair tribunal decision-making, leads to meritorious cases going by default because appellants are unable to prepare and present their cases properly. It also places a heavy burden of responsibility on tribunals, who are required to reach their decisions by eliciting all relevant information about the case from the unrepresented appellant or applicant, to consider the relevant regulations and case law, and to apply the facts to the law in an impartial and objective manner. It is not surprising that in the absence of representation, chairmen differ in their ability to assist appellants and applicants in this way. Nor is it surprising, that where representatives are present, cases are investigated more thoroughly.

Representation of appellants and applicants contributes to more accurate decision-making and to the fairness of the process by which decisions are reached. If it is considered desirable that tribunals should achieve these objectives, and if those appearing before tribunals unrepresented do so because free representation is not available to them, and they cannot afford to pay for representation, then the argument for improving access to representation is unassailable.

> 'In all of these situations the power balance is such that the Home Office, DSS and employers are always represented at hearings. The unrepresented party is going to be the person whose liberty is at stake, of the person who is living on the poverty line and is arguing that they are

below the poverty line; or someone who is claiming that they have been unfairly treated in their work, or has lost their job and their livelihood. It seems to me that you can't say that tribunals are informal or are intended to be informal to help the applicant, and then have the other side usually represented, using whatever legal means they have to win the case. Even if you start from the idea that the tribunal is going to adopt an inquisitorial role, they can't do that if there is an inequality between the two parties. It seems to me that you are not going to get a fair crack of the whip unless you are represented.' [LAW CENTRE]

The arguments **against** increased representation are that it might slow down hearings, that it might lead to increased legalism in hearings, and, presumably, that providing free representation would involve increased public expenditure. The evidence of this study is that skilled representation can filter unmeritorious cases out of the tribunal process; it can lead to out of court settlements or to other forms of pre-hearing resolution of claims. Representation also results in more disciplined hearings. Tribunals can control representatives without being accused of unfairness.

As for the technicality of proceedings, the view of tribunal chairs, adjudicators and representatives, tends to be that deciding cases in accordance with the relevant regulations, Statutes and case law, is a necessarily technical business to which good representation can make a valuable contribution. The technicality at the heart of decision-making, however, can and does co-exist with relative informality in atmosphere and with procedural flexibility, which should be preserved.

Increasing access to representation will certainly involve public expenditure. All of the lay agencies interviewed during the study were stretched to the limit. Most had to turn away people who came for help with their tribunal cases. Many were uncertain about whether there would be money available for them to continue their activities in the future. If levels of representation are to be increased, lay agencies need to be able to take on more staff, and this requires funds.

Increasing funding to lay agencies, however, would not provide a complete answer to the needs of appellants and applicants. In industrial tribunals, there may be a need for skilled legal representation. The evidence of Chapter 3 on outcome of hearings indicates that representation by a barrister increases the probability of success for both applicants and respondents, and that lay representation of applicants barely increases the applicant's probability of success where the respondent is legally-represented. This is the result of the explicitly adversarial nature of

proceedings, and the importance of cross-examination. In addition, the uneven coverage of lay advice and representation agencies results in clients depending on the services of solicitors to provide advice and representation for tribunal matters. Those who cannot afford to pay for these services, cannot at present, obtain representation. Finance is also required, therefore, to provide free legal representation. In considering policy alternatives, the model of UKIAS could be borne in mind. It is an example of a publicly-funded representation service, which, despite the doubts of sceptics about its independence, appears to provide as good a service to its clients as solicitors and barristers in the immigration field.

The more general conclusions of this study are, first, that tribunals may not be ordinary courts, but they should not blindly be categorised together merely as a result of distinguishing them from courts. The differences between individual tribunals are as great as the differences between some tribunals and courts. In the case of immigration hearings and industrial tribunals, it is difficult to see where the differences from civil courts lie in practice.

The development of coherent theories about tribunals upon which policy can be based has been held back by at least two factors, both of which derive from the limitations of the Franks Report on Tribunals. These are:

1. The failure adequately to distinguish between different tribunals. Among those with adjudicative functions there are differences in the legal framework and different levels of discretion. There are differences in procedure, differences in the composition of tribunals and differences in appellate structures. Some are established to scrutinise administrative decisions made in accordance with regulations. Others are established to check that administrative discretion has been exercised correctly. The differences go on.

2. There has been a failure to establish clear objectives for tribunals with guidance as to how to accomplish these objectives. Resistance to increased representation in tribunals has been supported by focussing on the objectives of informality and freedom from technicality, to the exclusion of principles of accuracy, consistency and procedural fairness.

Finally, it is clear that calling adjudicative fora 'tribunals' rather than courts does not constitute sufficient justification for assuming that representation is unnecessary. It is not the name that is important. It is the nature of the issues at stake, the characteristics of the proceedings and the quality of justice meted out that are important.

BIBLIOGRAPHY

Abel, R. (1986) 'What Do Legal Aid Lawyers Do?' Legal Action: Lag Bulletin, October 1986, p.10.

Adler, M. and Bradley, A (eds) (1975) Justice Discretion and Poverty - Supplementary Benefit Appeal Tribunals in Britain, Professional Books.

Advice Services Alliance, (1987) A Survey of Current Advice and Law Centre Provision

Allbeson, J and Smith, R (1984) We Don't Give Clothing Grants Any More. The 1980 Supplementary Benefit Scheme, Child Poverty Action Group

Baldwin, J and Hill, S (1988) The Operation of The Green Form Scheme in England and Wales, Lord Chancellor's Department

Baldwin, J (1988) ' The Green Form: Use or Abuse?' September New Law Journal 631-633

Baldwin, J (1989) 'The Role of Citizens Advice Bureaux and Law Centres in the Provision of Legal Advice and Assistance' 8 Civil Justice Quarterly 25-44

Baldwin, R and Hawkins, K (1984) 'Discretionary Justice: Davis Reconsidered' Public Law

Barnes, I (1985) 'Waiting Room Survey' 65 Welfare Rights Bulletin 2

Beale, D and Stow, B (1986) CAB and Access to Legal Services in South Wales, CAB Occasional Paper 17, NACAB

Bell, K (1974) 'National Insurance Local Tribunals' Journal of Social Policy 3,4, 289-315

Bell, K (1975) Research Study on Supplementary Benefit Appeal Tribunals, HMSO

Benson Committee, (1979) Final Report of the Royal Commission on Legal Services, HMSO, Cmnd 7648-1

Birkinshaw, P (1985) Grievances, Remedies and The State Sweet and Maxwell

Blake, C and Gillespie, J (1979) 'The Immigration Appeal Process - A Study of Legal Ritual' (unpublished)

Blake, C (1986) 'Immigration Appeals: The Need for Reform', in Dummett, A (ed) (1986) Towards A Just Immigration Policy, Cobden Trust

Blankenburg, E and Rogowski, R (1986) 'German Labour Courts and the British Industrial Tribunal System: A Socio-Legal Comparison of Degrees of Judicialisation', 13,1 Journal of Law and Society, Spring

Bogart, W (1989) 'Courts and Tribunals: Conflict and Coexistence.' 8 Civil Justice Quarterly, 9-23

Bridges, L (1975) 'Legality and Immigration Control', 2 British Journal of Law and Society 221

Camden Citizens Advice Bureaux Service (1986), Annual Report 1985-1986

Cane, P (1986) An Introduction to Administrative Law, Clarendon

Coleman, R J (1970) Supplementary Benefits and the Administrative Review of Administrative Action CPAG Poverty Pamphlet, No. 7
Commission for Racial Equality (1985) Immigration Control Procedures: Report of a Formal Investigation, CRE
Commission for Racial Equality (1985) Review of the Race Relations Act 1976: Proposals for Change, CRE
Confrey, N and Boland, J (1987) ' Advocate: Next Friend or Professional Witness ?', The Law Society's Gazette 970-971
Council on Tribunals (1980) The Function of the Council on Tribunals, HMSO
Council on Tribunals (1986) Annual Report for 1985-86, HMSO, Cmnd 42
Craig, P (1983) Administrative Law, London: Sweet and Maxwell
Davis, K (1969) Discretionary Justice, University of Illinois Press, Urbana
Dean,H (1985) Legal Dis-Service: A Critical Appraisal of Legal Service Provision and Proposals for and Alternative Approach Brunel Occasional Papers in Law, No. 2
Department of Employment (1986) Industrial Tribunal Procedures, HMSO
Dickens, L, Jones, M, Weekes, B and Hart, M (1985) Dismissed, Basil Blackwell
Donovan Commission (1968) Report of the Royal Commission on Trade Unions and Employers Associations 1965-1968, HMSO, Cmnd 3623
Evans, E M (1983) Immigration Law, Sweet and Maxwell
Farmer, J (1974) Tribunals and Government, Wiedenfeld and Nicolson
Farrally, M (1987) 'I Only Want Justice', 4 The Adviser, June/July
Farrally, M (1988) 'Why People Do Not Attend Their Social Security Appeal Tribunal' Spring Birmingham Tribunal Unit Newsletter,1
Findlay, M (1987) ' Law on the Cheap: The Legal Samaritans.' 13 The Law Magazine, 30-31
Franks Committee (1957) Report of the Committee on Administrative Tibunals and Enquiries, HMSO, Cmnd 218
Free Representation Unit (1988) Annual Report 1987-88
Frost, A and Howard, C (1977) Representation and Administrative Tribunals, Routledge and Kegan Paul
Fulbrook, J (1987) Administrative Justice and the Unemployed, Mansell
Fuller, L (1978) 'Forms and Limitations of Adjudication', Harvard Law Review, 353
Galligan, D J (1976) 'The Nature and Function of Policies Within Discretionary Power', Public Law, 332
Galligan, D J (1986) Discretionary Powers., Clarendon
Ganz, G (1974) Administrative Procedures, Sweet and Maxwell
Garner, J F, Jones, B L Administrative Law, Butterworths
Genn, H (1988) Hard Bargaining: Out of Court Settlement in Personal Injury Actions, Oxford Socio-Legal Studies Series,Clarendon Press.
Greenhalgh, R M (1973) Industrial Tribunals: A Practical Guide, Institute of Personnel Management
Griffiths, J (1959) ' Tribunals and Enquiries', 22 M.L.R 125

Goodman, M J (1985) Industrial Tribunals: Practice and Procedure, Sweet and Maxwell
Gostin, L and Rassaby, E (1980) Representing the Mentally Ill and the Handicapped, Quartermain House
Gostin, L, Rassaby, E and Buchanan, A (1984) Mental Health: Tribunal Procedure, Oyez Longman
Harlow, C and Rawlings, R (1984) Law and Administration Wiedenfeld and Nicolson
Harris, D et al, (1984) Compensation and Support for Illness and Injury, Oxford Socio Legal Studies Series, Clarendon Press
Harris, N (1987) ' Welfare Benefits and Legal Aid' The Law Society's Gazette, 1644-5
Herman, M (1972) Administrative Justice and Supplementary Benefits Occasional Papers in Social Administration No. 47
Hoggett, B (1984) Mental Health Law, Sweet and Maxwell
Home Affairs Committee (1987) United Kingdom Immigrants Advisory Service, Seventh Report session 1984-85, HMSO, Cmnd 389
Islington Peoples' Rights (1988) Annual Report 1987-88
Jackson, M P, Stewart, H R,and Bland, R E (1987) 'Appeal Tribunals on Supplementary Benefits' 21 1 Social Policy and Administration, 58-69
Jowell, J (1973) ' The Legal Control of Administrative Discretion', Public Law
JUSTICE (1988) Administrative Justice
Kay, D (1984) Tackling Tribunals. A Study of Access to Social Security Tribunals in Scotland, Scottish Consumer Council
Kempson, E (1986) A Survey of Current Advice and Law Centre Provision, Commissioned by the Advice Services Alliance, ACUMEN
Khan, A N and Murgatroyd, D S, (1988) ' Mental Health Review Tribunals ' 132, 19 Solicitors Journal 682
Lawrence, R (1980) Tribunal Representation. The Role of Advice and Advocacy Services, Bedford Square Press in asssociation with NACAB
Lawrence, R (1980) 'Solicitors and Tribunals', Journal of Social Welfare Law, 13
Lister, R (1974) Justice for the Claimant, CPAG Poverty Research Series, No. 4
London Social Security Appeal Tribunal Forum (1988) Results of Survey into Representation in London, GLOCAB, mimeo
Lord Chancellor's Department (1986) Legal Aid: Efficiency Scrutiny, HMSO
Lord Chancellor's Department (1987) Legal Aid in England and Wales. ' A New Framework ', White Paper, HMSO, Cmnd 118
Marshall, G ( ) 'Justiciability' in Guest (ed) Oxford Essays in Jurisprudence Vol I
Mashaw, J L (1983) Bureaucratic Justice , Yale University
Mashaw, J 1 (1985) Due Process and the Administrative State, Yale University
National Consumer Council (1989) Ordinary Justice, HMSO
Newham Rights Centre (1988) Annual Report 1987/8

Nonet, P (1969) Administrative Justice, Russell Sage, New York
Office of the President of the Social Security Appeal Tribunals (1985) Social Security Appeal Tribunals: A Guide to Procedure, HMSO
Pannone, R (1987) 'Improving Access to Civil Justice' Supplement to The Law Society's Gazette, Council of the Law Society
Peay, J (1981) 'Mental Health Review Tribunals: Just or Efficacious Safeguards?', 5 Law and Human Behaviour 161
Peay, J (1982) 'Mental Health Review Tribunals and the Mental Health (Amendment) Act', Criminal Law Review 794
Peay, J (1988) Mental Health Review Tribunal After the Mental Health Act 1983, Summary Report to the DHSS, Centre for Criminological Studies, Oxford, (unpublished)
Prosser, T (1977) 'Poverty, Ideology and Legality: Supplementary Benefit Appeal Tribunals and Their Predecessors' 4 British Journal of Law and Society, 39
Prosser, T (1982) 'Towards A Critical Public Law' 19, 1 Journal of Law and Society
Rawlings, R (1986) The Complaints Industry: A Review of Sociolegal Research on Aspects of Adminstrative Justice, ESRC, London
Sainsbury, R (1988) Deciding Social Security Claims: A Study in the Theory and Practice of Administrative Justice, Ph.D Thesis, University of Edinburgh (unpublished)
Sara, C (1987) 'Industrial Tribunals and Court Procedures', November, Law Society's Gazette
Shapiro, M (1980) 'Appeal' 14, Spring Law and Society Review
Snell, H (1986) Representation Before the Mental Health Review Tribunal, Discussion Paper, Kings Fund Trust
Springfield Advice and Legal Representation Project (1988) Biennial Report 1986-88
Sunkin, M (1987) 'What is Happening to Applications for Judicial Review?' 50 Modern Law Review, 433-467
Titmuss, R (1971) 'Welfare, "Rights", Law amd Discretion' 42 Pol. Quarterly 113
Thompson, P (1988) 'Legal Aid Practitioners: An Endangered Species?' The Law Society's Gazette No.43 29
Tottenham Neighbourhood Law Centre (1987) Annual Report 1986-87
Tower Hamlets Law Centre (1988) Annual Report 1986-87
Tyler, T R (1987) 'What Litigants Want From Legal Authorities' Paper given at the Law and Society Annual Meeting
Wade, H and Bradley (1982) Constitutional and Administrative Law, Longman
Watts, J (1987) 'Local Authority Possession Proceedings' LAG Bulletin 6
White, R (1985) The Administration of Justice, Basil Blackwell
Williams, D (1988) 'Industrial Tribunal Approach: Has it Changed or is it Changing?', 7 Civil Justice Quarterly
Wilson Report (1967) Report of the Committee on Immigration Appeals, HMSO Cmnd 3387
Wraith, R E and Hutchesson, P G (1973) Administrative Tribunals George Allen and Unwin

APPENDIX A

PROBIT REGRESSION ANALYSIS

PROBIT REGRESSION ANALYSIS

The structure of the linear model estimated in Chapter 3 is as follows:

$$y_i = \beta' x_i + u_i \qquad [1]$$

where $y_i = 1$ if the i'th appellant is successful, and $y_i = 0$ otherwise; x_i is a vector of factors, including representation, which are assumed to affect the i'th appellant's chance of success; and u_i is an error term with mean zero. Interpreting the coefficients of this model (i.e. the vector β) presents difficulties if it is estimated by orthodox least squares techniques. Essentially, the predicted values of y_i may lie outside the range 0,1. To solve this problem, it has become common to estimate such models by assuming that there is an underlying response variable y_i^* which is unobservable in practice. What we observe is the variable y_i, which is defined by:

$$y = 1 \text{ if } y_i^* > 0$$

$$y = 0 \text{ otherwise} \qquad [2]$$

This implies that

$$\text{Prob}(y_i = 1) = \text{Prob}(u_i > -\beta' x_i)$$

$$= 1 - F(-\beta' x_i) \qquad [3]$$

where F is the cumulative distribution function for u. If we assume that u is normally distributed, this approach yields what are known as probit estimates for the coefficients of the above model. In interpreting these coefficients, it should be remembered that they are showing the estimated effect of each factor on y_i^*; a more accessible way of interpreting the results is to use the relationship at [3] to show the effect which is predicted on Prob(y_i = 1) - in this context, the effect on the probability of success. This is the convention which was followed in Chapter 3 above, in interpreting the probit coefficients reported fully in this Appendix.

The probit estimates were obtained using a suitable maximum likelihood procedure. The intercepts are not reported here because they will be biassed given the stratification employed in the sampling. A further potential methodological problem results from the possibility that there are unobservable factors which correlate with both success and representation (i.e. it may be that red-haired individuals never win at tribunal hearings, and representatives know this fact, although we do not have a variable which picks this up). It is possible to test for this effect by estimating a two equation model for success and representation, in which the possible interdependence is acknowledged in terms of a non-zero covariance between the error terms. This was done for each of the models reported here, but in none of them were the results significantly changed, implying that this effect was not particularly important.

SOCIAL SECURITY TRIBUNALS: PROBIT REGRESSON RESULTS

1. Dependent variable = SUCCESS

	Regression Coeff.	Standard Error	Coeff./S.E.
SB	-.24016	.10973	-2.18872
UB	-.06425	.19626	-.32739
DEL	-.25122	.17869	-1.40592
OVER	.04624	.16340	.28298
DISQUB	.56593	.17848	3.17079
DISQSB	-.67246	.25833	-2.60307
MALE	.02767	.09292	.29776
SINGLE	-.11880	.10957	-1.08430
MARRIED	-.02011	.11090	-.18130
SPARENT	.28038	.16090	1.74261
AGE1	-.04699	.10300	-.45626
AGE3	-.27375	.12889	-2.12393
CABREP	.28193	.16176	1.74285
SOLREP	.33241	.32652	1.01805
TUREP	.38072	.30020	1.26823
OTREP	.46462	.12215	3.80373
FAMREP	.21505	.15201	1.41474
CENTRAL	.31965	.09668	3.30617
CH107	.72477	.26290	2.75687
CH122	.11765	.30116	.39067
CH136	.03081	.32576	.09459
CH208	-.68982	.37006	-1.86407
CH217	-.43089	.19861	-2.16954
CH218	-.87534	.29211	-2.99666
CH223	-.51225	.23860	-2.14691
CH317	-.54080	.32127	-1.68332
CH332	-1.27268	.51137	-2.48876
CH339	-1.08011	.35047	-3.08184
APPRES	.68767	.08932	7.69854
WITNS	.70370	.17191	4.09356
EMPWITNS	.46862	.48726	.96174

Pearson Goodness-of-Fit Chi Square = 1100.47

DF = 1083

P = 0.349

SOCIAL SECURITY

2. Dependent variable = REPR

	Regression Coeff.	Standard Error	Coeff./S.E.
ADV	1.85130	.09746	18.99546
SB	.25189	.11999	2.09933
UB	.29602	.22564	1.31194
DEL	.18455	.19897	.92752
OVER	.44285	.18320	2.41727
DISQUB	-.08922	.19856	-.44932
DISQSB	.03200	.27036	.11837
MALE	-.28640	.10414	-2.75020
SINGLE	.07128	.12499	.57029
MARRIED	.27716	.12490	2.21898
SPARENT	-.26732	.18973	-1.40893
AGE1	.01630	.11840	.13766
AGE3	.45999	.14100	3.26237
CENTRAL	.53746	.09576	5.61265

Chi Square = 1143.9
DF = 1100
P = 0.174

3. Dependent variable = ADV

SB	.25978	.10107	2.57040
UB	-.05021	.19729	-.25451
DEL	-.23810	.18028	-1.32069
OVER	.56522	.15233	3.71061
DISQUB	-.11920	.16716	-.71306
DISQSB	-.27058	.23282	-1.16219
MALE	.09232	.08902	1.03703
SINGLE	-.11314	.10539	-1.07350
MARRIED	-.17867	.10653	-1.67712
SPARENT	-.07371	.15443	-.47727
AGE1	-.24005	.09799	-2.44982
AGE3	-.01901	.11928	-.15941
CENTRAL	.43180	.08060	5.35757

Chi Square = 1113.9
DF = 1107
P = 0.386

IMMIGRATION TRIBUNALS: PROBIT REGRESSION RESULTS

Dependent variable = SUCCESS

PARAMETER	ESTIMATE	STANDARD ERROR	T-STATISTIC
C	-1.208904	0.5546168	-2.179711
UKREP	0.5511138	0.2092018	2.634365
SOLREP	0.4736735	0.2483497	1.907284
OTREP	0.3369349	0.2416899	1.394079
COUNSEL	0.6928979E-02	0.1704076	0.4066120E-01
WITNS	0.1011977	0.5771776E-01	1.753319
INTERP	0.1003929	0.1260209	0.7966368
IMMHIST	-0.2615939	0.1168271	-2.239155
MALE	0.8586053E-01	0.1162628	0.7385040
AGE20	0.3187970	0.1689162	1.887308
AGE65	0.1055251	0.1428465	0.7387309
AGEOV65	-0.2980972	0.3417216	-0.8723396
SINGLE	-0.2808552	0.1610526	-1.743872
MARRIED	0.1139222	0.1553650	0.7332554
ENTRYDEP	-0.1817512	0.2090288	-0.8695030
ENTRYOTH	0.2979033	0.2105234	1.415060
ASDEP	-0.8471557	0.2450868	-3.456554
LEAVE	-0.3163135	0.2119726	-1.492238
NAT1	0.7866185	0.4919416	1.599008
NAT2	0.7099363	0.4990477	1.422582
NAT3	0.5026896	0.5097939	0.9860645
NAT4	0.5865156	0.5260559	1.114930
NAT5	1.380618	0.5310328	2.599873
NAT6	1.073293	0.5550994	1.933516
NAT7	0.8120070	0.6022463	1.348297
NAT8	-0.3247116	0.7468776	-0.4347588
NAT9	-0.5242501	0.7582876	-0.6913605
ADJ18	-0.6509662	0.2430730	-2.678069
ADJ41	-0.4792318	0.2578424	-1.858623
ADJ42	-1.257010	0.4292379	-2.928470
ADJ43	-0.7228735	0.2419874	-2.987236
ADJ48	0.4739559	0.2105382	2.251163

Pearson Goodness-of-Fit Chi Square = 828.294

DF = 745

P = 0.018

IMMIGRATION

2. Dependent variable = UKREP

PARAMETER	ESTIMATE	STANDARD ERROR	T-STATISTIC
C	-1.097726	0.6054111	-1.813191
UKAD	2.353330	0.1267519	18.56642
IMMHIST	0.1502448	0.1438783	1.044249
MALE	0.1446548	0.1389695	1.040911
AGE20	-0.2599034	0.2029134	-1.280859
AGE65	-0.2702464	0.1787425	-1.511931
AGEOV65	-0.9082539	0.4282586	-2.120807
SINGLE	-0.1423733	0.1919052	-0.7418937
MARRIED	-0.3296014	0.1882981	-1.750424
ENTRYDEP	0.5100726	0.2532032	2.014479
ENTRYOTH	0.4139524	0.2403494	1.722294
ASDEP	0.3411866	0.2785045	1.225067
LEAVE	0.4133204	0.2445202	1.690332
NAT1	-0.3383621	0.5843793	-0.5790110
NAT2	-0.1970429	0.5928630	-0.3323581
NAT3	-0.3327265	0.6053588	-0.5496352
NAT4	-0.5863885E-01	0.6305258	-0.9299991E-01
NAT5	0.2748596E-01	0.6374502	0.4311861E-01
NAT6	-0.2682684	0.6554004	-0.4093199
NAT7	-0.3223047	0.7377994	-0.4368460
NAT8	-0.3971250	0.8004059	-0.4961545
NAT9	-0.9807688	0.7708201	-1.272370
BIRM	0.6008765E-02	0.1677656	0.3581642E-01
HARM	0.1004793	0.1612898	0.6229734
LEEDS	-0.1404058	0.1871234	-0.7503383

3. Dependent variable = SOLREP

PARAMETER	ESTIMATE	STANDARD ERROR	T-STATISTIC
C	-1.250127	0.6684225	-1.870265
SOLAD	2.760519	0.1558721	17.71016
IMMHIST	-0.1201502	0.1771074	-0.6784028
MALE	-0.1514297	0.1715923	-0.8824970
AGE20	0.4781142	0.2328278	2.053510
AGE65	0.4830637	0.2043657	2.363722
AGEOV65	-0.3602365	0.4845000	-0.7435223
SINGLE	0.2831803	0.2579480	1.097819
MARRIED	0.3804188	0.2333532	1.630228
ENTRYDEP	-0.3131813	0.3009714	-1.040568
ENTRYOTH	-0.8368916	0.3227706	-2.592838
ASDEP	-0.7516623	0.3403787	-2.208312
LEAVE	-0.6055520	0.3016726	-2.007315
NAT1	-0.2456765	0.6419365	-0.3827115
NAT2	-0.1778808	0.6530061	-0.2724030
NAT3	-0.2135222	0.6710645	-0.3181843
NAT4	-0.4145863	0.7206731	-0.5752765
NAT5	-0.5364215	0.7209170	-0.7440822
NAT6	0.1887069	0.7304970	0.2583267
NAT7	0.1695128E-01	0.8548321	0.1982995E-01
NAT8	-0.8212542E-01	0.9309999	-0.8821207E-01
NAT9	0.4230402	0.8776241	0.4820289
BIRM	-0.2257473E-01	0.2055844	-0.1098076
HARM	-0.1438562	0.2014512	-0.7140996
LEEDS	0.2253641	0.2134881	1.055628

4. Dependent variable = OTREP

PARAMETER	ESTIMATE	STANDARD ERROR	T-STATISTIC
C	-1.858870	0.7184015	-2.587509
OTAD	2.580977	0.1846417	13.97830
IMMHIST	0.2452016	0.1978055	1.239610
MALE	-0.3307200E-01	0.1882724	-0.1756604
AGE20	-0.7039846	0.3007428	-2.340819
AGE65	-0.6034013	0.2723341	-2.215665
AGEOV65	0.3151857	0.4760832	0.6620390
SINGLE	0.6353610E-01	0.2403099	0.2643924
MARRIED	0.7567575E-01	0.2422687	0.3123629
ENTRYDEP	-0.4417095	0.3290705	-1.342295
ENTRYOTH	-0.3144805	0.3103903	-1.013178
ASDEP	-0.1852835	0.3289132	-0.5633202
LEAVE	-0.2498407	0.3035082	-0.8231759
NAT1	0.4041620	0.6841690	0.5907341
NAT2	0.1101750	0.7027799	0.1567703
NAT3	0.3518766	0.7048753	0.4992040
NAT4	0.5504981	0.7358484	0.7481135
NAT5	-0.3570578	0.8573159	-0.4164833
NAT6	0.3641239	0.7879453	0.4621182
NAT7	-0.4352521E-01	0.9821916	-0.4431438E-01
NAT8	-0.5069715	1.076670	-0.4708699
NAT9	1.021744	0.8737940	1.169319
BIRM	-0.4502644E-01	0.2188702	-0.2057221
HARM	-0.1000213	0.2108682	-0.4743311
LEEDS	-0.7182053E-02	0.2326194	-0.3087469E-01

5. Dependent variable = ADV

PARAMETER	ESTIMATE	STANDARD ERROR	T-STATISTIC
C	6.684104	5753.009	0.1161845E-02
IMMHIST	-0.6229148E-01	0.1679790	-0.3708290
MALE	0.9392815E-01	0.1567888	0.5990744
AGE20	0.8397951	0.3428735	2.449286
AGE65	0.3045260E-01	0.2081360	0.1463110
AGEOV65	-0.5502373E-01	0.4083943	-0.1347319
SINGLE	-0.3360770	0.2137387	-1.572373
MARRIED	-0.3061484E-01	0.2160039	-0.1417329
ENTRYDEP	0.1053851	0.3151938	0.3343502
ENTRYOTH	-0.1686815	0.2845504	-0.5928001
ASDEP	0.3878761	0.3527786	1.099489
LEAVE	-0.1968722	0.2907928	-0.6770189
NAT1	-5.041961	5753.009	-0.8764042E-03
NAT2	-5.521873	5753.009	-0.9598234E-03
NAT3	-5.261823	5753.009	-0.9146211E-03
NAT4	-5.312008	5753.009	-0.9233443E-03
NAT5	-0.2394726E-02	6331.907	-0.3781998E-06
NAT6	-5.150619	5753.009	-0.8952913E-03
NAT7	-4.985697	5753.009	-0.8666242E-03
NAT8	0.4332923E-01	8122.158	0.5334694E-05
NAT9	-0.7471754E-02	8121.189	-0.9200320E-06
BIRM	-0.1857792	0.1925355	-0.9649085
HARM	-0.1981508	0.1823807	-1.086468
LEEDS	0.2026293E-02	0.2310896	0.8768428E-02

INDUSTRIAL TRIBUNALS: PROBIT REGRESSION RESULTS

Dependent variable = SUCCESS

	Regression Coeff.	Standard Error	Coeff./S.E.
CLAIM1	-.95953	.27750	-3.45781
CLAIM2	-.14427	.34633	-.41656
CLAIM3	-.43489	.35516	-1.22450
CLAIM4	-.82667	.28944	-2.85606
CLAIM5	-.32538	.27594	-1.17917
CLAIM6	-.54446	.33879	-1.60709
MALE	-.18167	.14118	-1.28679
AGE1629	-.05557	.15477	-.35905
AGEOV50	.15726	.15175	1.03629
LENGTH	-.00084	.01080	-.07816
APPRE	.93811	.28425	3.30024
RESPRE	-.41093	.20963	-1.96023
CHAIR5	-.76856	.31890	-2.41002
CHAIR64	-.12308	.31901	-.38583
CHAIR67	-.38531	.30277	-1.27258
CHAIR68	.23234	.25418	.91408
CHAIR69	-.10333	.27017	-.38246
AREPL	.47791	.32114	1.48816
RREPL	-.74739	.26189	-2.85382
AREPN	.35995	.28140	1.27916
RREPN	-.46706	.26222	-1.78116
REPLL	-.46000	.22864	-2.01187
REPNN	-.53885	.24680	-2.18334
REPLN	-.02095	.28590	-.07329
REPNL	-.41464	.23368	-1.77444
APPWIT	.17205	.05738	2.99834
RESWIT	-.01344	.05003	-.26871

Pearson Goodness-of-Fit Chi Square = 551.105

DF = 511

P = 0.107

INDUSTRIAL

2. Dependent variable = AREP

	Regression Coeff.	Standard Error	Coeff./S.E.
ADAPP	1.71613	.14081	12.18735
CLAIM1	.11648	.27320	.42635
CLAIM2	.10243	.36377	.28156
CLAIM3	.09665	.37485	.25785
CLAIM4	-.10811	.29203	-.37021
CLAIM5	-.32634	.28816	-1.13250
CLAIM6	-.13695	.35535	-.38539
MALE	-.31953	.15268	-2.09275
AGE1629	-.03895	.16221	-.24013
AGEOV50	-.34990	.16321	-2.14379
LENGTH	.05442	.01279	4.25616
BIRM	.15681	.27977	.56050
LEEDS	.27791	.15839	1.75459
CARD	-.07574	.17366	-.43610

Chi Square = 518.3

DF = 524

P = 0.562

3. Dependent variable = PREP

	Regression Coeff.	Standard Error	Coeff./S.E.
ADRES	1.63214	.14621	11.16336
CLAIM1	1.05177	.28725	3.66147
CLAIM2	.52713	.36964	1.42607
CLAIM3	1.35675	.44630	3.03996
CLAIM4	.85245	.30534	2.79177
CLAIM5	.48070	.29759	1.61533
CLAIM6	.19778	.36613	.54020
MALE	-.10157	.16243	-.62529
AGE1629	-.20568	.17488	-1.17612
AGEOV50	-.16411	.17765	-.92375
LENGTH	.02832	.01317	2.15054
BIRM	.16434	.29829	.55092
LEEDS	.59668	.17450	3.41934
CARD	.28618	.18730	1.52796

Chi Square = 514.4

DF = 524

P = 0.608

INDUSTRIAL

4. Dependent variable = ADAPP

	Regression Coeff.	Standard Error	Coeff./S.E.
CLAIM1	.31270	.23903	1.30819
CLAIM2	-.05595	.31663	-.17672
CLAIM3	.36110	.33384	1.08167
CLAIM4	-.36916	.25233	-1.46299
CLAIM5	.16444	.25454	.64604
CLAIM6	-.42926	.31574	-1.35952
MALE	.17127	.13296	1.28816
AGE1629	.25566	.14752	1.73304
AGEOV50	.00345	.14392	.02397
LENGTH	.02539	.01081	2.34912
BIRM	.01445	.23811	.06068
LEEDS	-.13368	.13778	-.97021
CARD	.50658	.16401	3.08862

Chi Square = 540.4

DF = 525

P = .311

5. Dependent variable = ADRES

	Regression Coeff.	Standard Error	Coeff./S.E.
CLAIM1	1.16032	.23878	4.85937
CLAIM2	.84544	.31665	2.66998
CLAIM3	1.14124	.33472	3.40953
CLAIM4	1.00587	.25538	3.93870
CLAIM5	.94145	.25322	3.71799
CLAIM6	.80080	.31735	2.52341
MALE	.14533	.13524	1.07459
AGE1629	-.18932	.14744	-1.28399
AGEOV50	-.02065	.14976	-.13787
LENGTH	.01417	.01107	1.28077
BIRM	.64878	.28234	2.29787
LEEDS	.13420	.14187	.94590
CARD	.31749	.16108	1.97095

Chi Square = 541.1

DF = 525

P = .305

MENTAL HEALTH REVIEW TRIBUNALS: PROBIT REGRESSION RESULTS

1. Dependent variable = SUCCESS

	Regression Coeff.	Standard Error	Coeff./S.E.
MALE	-.00437	.14726	-.02970
AGEL30	-.16390	.15303	-1.07103
AGEG50	-.03746	.18854	-.19867
UK	-.00599	.16509	-.03628
SINGLE	-.03924	.14708	-.26682
MARRIED	-.17658	.21709	-.81341
HIST	-.06212	.13500	-.46018
HOSAPP	-.53833	.23274	-2.31303
AUTOAPP	-.35859	.23655	-1.51593
SEC2	-.53488	.31159	-1.71660
SEC3	-.73641	.30326	-2.42832
SEC37	.08043	.24266	.33146
AGG	-.33810	.15296	-2.21041
DEL	-.29300	.16173	-1.81166
SUI	-.21124	.24597	-.85880
CRIMR	-.45669	.23106	-1.97649
RMOPP	-.62051	.15643	-3.96676
PSYDIS	.45824	.29954	1.52983
REPR	.38584	.15686	2.45979
DOCPRES	.19561	.69637	.28090
SOCPRES	.20674	.14453	1.43042
FAMPRES	.12388	.14491	.85487

Pearson Goodness-of-Fit Chi Square = 555.615

DF = 508

P = 0.071

MENTAL HEALTH

2. Dependent variable = REPR

	Regression Coeff.	Standard Error	Coeff./S.E.
ADV	2.97733	.21145	14.08027
MALE	.09314	.19988	.46597
AGEL30	-.26166	.21875	-1.19613
AGEG50	.03749	.25125	.14922
UK	-.19827	.24886	-.79670
SINGLE	.33071	.21267	1.55503
MARRIED	.60106	.29596	2.03087
HIST	-.34531	.19850	-1.73959
HOSAPP	-.74639	.28894	-2.58324
AUTOAPP	-.46816	.34025	-1.37590
SEC2	.18235	.44908	.40607
SEC3	.26078	.41709	.62523
SEC37	-.24696	.36478	-.67702
AGG	-.10853	.21457	-.50580
DEL	.05376	.22145	.24278
SUI	-.08408	.31295	-.26869
CRIMR	.29418	.32453	.90648
RMOPP	.41693	.23439	1.77873
PSYDIS	2.11792	4.35298	.48655
LIVER	-.11772	.22993	-.51198
NOTT	-.15765	.26935	-.58529

Chi Square = 543.3
DP = 509
P = 964

3. Dependent variable = ADV

	Regression Coeff.	Standard Error	Coeff./S.E.
MALE	-.00768	.13342	-.05758
AGEL30	.13927	.14492	.96103
AGEG50	-.28564	.17285	-1.65253
UK	.07327	.15945	.45952
SINGLE	.28378	.14015	2.02493
MARRIED	-.15512	.19298	-.80381
HIST	-.20461	.13069	-1.56560
HOSAPP	-.44643	.18766	-2.37894
AUTOAPP	-1.11103	.22982	-4.83424
SEC2	-.71552	.31152	-2.29687
SEC3	-.39740	.29663	-1.33970
SEC37	.03134	.25204	.12435
AGG	-.02653	.14347	-.18494
DEL	.19443	.14656	1.32658
SUI	-.10368	.21543	-.48129
CRIMR	.01463	.21783	.06715
RMOPP	.09340	.15785	.59173
PSYDIS	3.31341	3.79581	.87291
LIVER	.48222	.15468	3.11750
NOTT	-.00373	.17419	-.02143

Chi Square = 510.7
DP = 510
P = .433

SOCIAL SECURITY: VARIABLE LIST

a) Outcome

SUCCESS = 1 if appeal is allowed in full or in part, 0 otherwise

b) Representation

CABREP	= 1 if CAB representative, 0 otherwise
SOLREP	= 1 if solicitor representative, 0 otherwise
TUREP	= 1 if trade union representative, 0 otherwise
OTREP	= 1 if other formal representative, 0 otherwise
FAMREP	= 1 if family representative, 0 otherwise

c) Characteristics of appellant

MALE	= 1 if male, 0 otherwise
SINGLE	= 1 if single, 0 otherwise
MARRIED	= 1 if married, 0 otherwise
SPARENT	= 1 if single parent, 0 otherwise
AGE1	= 1 if age under 30, 0 otherwise
AGE3	= 1 if age over 50, 0 otherwise

d) Type of case

SB	= 1 if supplementary benefit, 0 otherwise
UB	= 1 if unemployment benefit, 0 otherwise
DEL	= 1 if delayed claim, 0 otherwise
OVER	= 1 if overpayment, 0 otherwise
DISQUB	= 1 if disqualification for unemployment benefit, 0 other
DISQSB	= 1 if disqualification for supp.benefit, 0 otherwise

e) Circumstances of hearing

APPRES	= 1 if appellant present, 0 otherwise
WITNS	= 1 if appellant has witnesses, 0 otherwise
EMPWITNS	= 1 if employer has witnesses, 0 otherwise
CHxxx	= 1 if chairman xxx, 0 otherwise

f) Advice

ADV	= 1 if advice received, 0 otherwise

g) Location

CENTRAL	= 1 if central tribunal centre, 0 otherwise

IMMIGRATION: VARIABLE LIST

a) Outcome

SUCCESS	= 1 if appeal allowed in full or in part
	= 0 otherwise

b) Representation

UKREP	= 1 if UKIAS representative, 0 otherwise
SOLREP	= 1 if solicitor representative, 0 otherwise
OTREP	= 1 if other representative, 0 otherwise
COUNSEL	= 1 if counsel instructed, 0 otherwise

c) Characteristics of appellant

MALE	= 1 if male, 0 otherwise
AGE20	= 1 if age under 20, 0 otherwise
AGE65	= 1 if age 50-65, 0 otherwise
AGEOV65	= 1 if age over 65, 0 otherwise
SINGLE	= 1 if single, 0 otherwise
MARRIED	= 1 if married, 0 otherwise
NAT1	= 1 if from Indian sub-continent, 0 otherwise
NAT2	= 1 if from Africa, 0 otherwise
NAT3	= 1 if from Middle East, 0 otherwise
NAT4	= 1 if from Far East, 0 otherwise
NAT5	= 1 if from Europe, 0 otherwise
NAT6	= 1 if from W. Indies, 0 otherwise
NAT7	= 1 if from S. America, 0 otherwise
NAT8	= 1 if from N. America, 0 otherwise
NAT9	= 1 if from Australasia, 0 otherwise
IMMHIST	= 1 if immigration history, 0 otherwise

d) Type of case

ENTRYDEP	= 1 if entry to join dependents, 0 otherwise
ENTRYOTH	= 1 if other entry, 0 otherwise
ASDEP	= 1 if asylum deportation, 0 otherwise
LEAVE	= 1 if leave to remain, 0 otherwise

e) Circumstances of hearing

ADJxx	= 1 if adjudicator xx, 0 otherwise
WITNS	= no. of witnesses
INTERP	= 1 if interpreter needed, 0 otherwise

f) Advice

UKAD	= 1 if advice from UKIAS, 0 otherwise
SOLAD	= 1 if advice from solicitor, 0 otherwise
OTAD	= 1 if advices from others, 0 otherwise

g) Location

BIRM	= 1 if Birmingham, 0 otherwise
HARM	= 1 if Harmandsworth, 0 otherwise
LEEDS	= 1 if Leeds, 0 otherwise

INDUSTRIAL: VARIABLE LIST

a) Outcome

SUCCESS	= 1 if appeal allowed or determined in appellant's favour, with compensation settled subsequently
	= 0 otherwise

b) Representation

AREPL	= 1 if applicant:lawyer with respondent:none
RREPL	= 1 if applicant:none with respondent:lawyer
AREPN	= 1 if applicant:non-lawyer with respondent:none
RREPN	= 1 if applicant:none with respondent:non-lawyer
REPLL	= 1 if applicant:lawyer with respondent:lawyer
REPNN	= 1 if applicant:non-lawyer with respondent:non-lawyer
REPLN	= 1 if applicant:lawyer with respondent:non-lawyer
REPNL	= 1 if applicant:non-lawyer with respondent:lawyer

c) Characteristics of applicant

MALE	= 1 if male, 0 otherwise
AGE1629	= 1 if aged 16-29, 0 otherwise
AGEOV50	= 1 if aged over 50, 0 otherwise
LENGTH	= length of service, in years

d) Type of case

CLAIM1	= 1 if misconduct, 0 otherwise
CLAIM2	= 1 if poor performance, 0 otherwise
CLAIM3	= 1 if sickness/disability, 0 otherwise
CLAIM4	= 1 if voluntary leaving, 0 otherwise
CLAIM5	= 1 if redundancy, 0 otherwise
CLAIM6	= 1 if not eligible, 0 otherwise

e) Circumstances of hearing

APPRE	= 1 if applicant present, 0 otherwise
RESPRE	= 1 if respondent present, 0 otherwise
APPWIT	= no. of applicants witnesses
RESWIT	= no. of respondents witnesses
CHAIRxx	= 1 if charman xx, 0 otherwise

f) Advice

ADAPP	= 1 if applicat received advice, 0 otherwise
ADRES	= 1 if respondent received advice, 0 otherwise

g) Location

BIRM	= 1 if Birmingham, 0 otherwise
LEEDS	= 1 if Leeds, 0 otherwise
CARD	= 1 if Cardiff, 0 otherwise

MENTAL HEALTH: VARIABLE LIST

a) Outcome

SUCCESS	= 1 if patient discharged, transferred or conditions charged = 0 otherwise

b) Representation

REPR	= 1 if patient represented, 0 otherwise

c) Characteristics of applicant

MALE	= 1 if male, 0 otherwise
AGEL30	= 1 if age less than 30, 0 otherwise
AGEG50	= 1 if age greater than 50, 0 otherwise
UK	= 1 if UK national, 0 otherwise
SINGLE	= 1 if single, 0 otherwise
MARRIED	= 1 if married, 0 otherwise
HIST	= 1 if previous admissions, 0 otherwise
AGG	= 1 if behaviour aggressive, 0 otherwise
DEL	= 1 if behaviour delusionary, 0 otherwise
SUI	= 1 if suicidal, 0 otherwise
CRIMR	= 1 if criminal record, 0 otherwise

d) Type of case

SEC2	= 1 if section 2 appeal, 0 otherwise
SEC3	= 1 if section 3 appeal, 0 otherwise
SEC37	= 1 if section 37 appeal, 0 otherwise
HOSAPP	= 1 if application by hospital, 0 otherwise
AUTOAPP	= 1 if application by sec.state, 0 otherwise

e) Circumstances of hearing

RMOPP	= 1 if RMO opposes application, 0 otherwise
PSYDIS	= 1 if psychiatrist disagrees with RMO, 0 otherwise
DOCPRES	= 1 if doctor present, 0 otherwise
SOCPRES	= 1 if socialworker present, 0 otherwise
FAMPRES	= 1 if family present, 0 otherwise

f) Advice

ADV	= 1 if advice received, 0 otherwise

g) Location

LIVER	= 1 if Liverpool, 0 otherwise
NOTT	= 1 if Nottingham, 0 otherwise