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Tribunals for diverse users

Professor Hazel Genn, Ben Lever, Lauren Gray with Nigel Balmer and National Centre for Social Research

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The Research Unit, Department for Constitutional Affairs, was formed in April 1996. Its aim is to develop and focus the use of research so that it informs the various stages of policy-making and the implementation and evaluation of policy.

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Disclaimer

The views expressed are those of the authors and are not necessarily shared by the Department for Constitutional Affairs.

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Executive summary

This is a study of access, expectations, experiences and outcomes of tribunal hearings from the perspective of tribunal users in three tribunals: the Appeals Service, Criminal Injuries Compensation Appeals Panel, and Special Educational Needs and Disability Tribunal. The study was designed specifically to compare the experiences of White, Black, and Minority Ethnic users in order to establish not only how users perceive and are treated within tribunals, but whether Black and Minority Ethnic users experience any direct or indirect disadvantage in accessing and using tribunal services. The study comprised a number of elements. These were:

- Focus group discussions with 115 members of the general public exploring knowledge and attitudes to seeking redress for administrative disputes and grievances;
- Face-to-face interviews with 529 users in tribunal waiting rooms exploring expectations and levels of preparedness for hearings;
- Observation of 391 of those users during their tribunal hearing assessing the enabling skills of tribunal judiciary and users' ability to participate in hearings;
- Face-to-face interviews with 374 of those users after their hearing and before their decision, focusing on reactions to the hearing and perceptions of the fairness of the process;
- Face-to-face interviews with 295 of those users after receiving their decision, exploring users' understanding of the reasons for tribunal's decision and views on the fairness of the outcome;
- A statistical modelling exercise using 3,058 tribunal decisions from the three tribunals to identify factors associated with success or lack of success at hearings, including case type, ethnic group, representation, pre-hearing advice and the presence of an observer at the hearing;
- Telephone interviews with 63 tribunal judiciary, exploring approaches to delivering fair hearings, any challenges presented by users from different ethnic or cultural backgrounds, and views on the value of diversity training.

Public knowledge about and access to systems of redress

Discussion groups with Black, South Asian and White members of the public revealed generally weak levels of understanding about avenues of redress for administrative grievances and limited awareness of tribunals. There was little consistent variation between ethnic groups in attitudes to seeking redress or expectations of tribunal proceedings, but language and cultural barriers, coupled with poor information about systems of redress, were seen as critical obstacles in accessing tribunals. Public awareness of advice sources was rather variable. Reported experiences of difficulty in accessing free advice services demonstrates the continuing need to improve the availability of information and advice about seeking redress and for more information to be produced in community languages. Those who take the step of challenging administrative decisions tend to be the most determined and confident, or those who are successful in obtaining advice and support.

There was evidence of reluctance to become involved in legal proceedings because of anticipated expense and complexity. The dominance of criminal justice in the public imagination of courts and tribunals also deters people from seeking redress.

There is a considerable job to be done in educating the public about the difference between the criminal courts and those parts of the legal system where rights or entitlements can be made effective. Discussions revealed nagging apprehensions among Black and Minority Ethnic groups about their likely treatment within the legal system. Although concerns tended to be more acute among those who associated legal processes with criminal courts, these concerns, and in some case fears, need to be taken seriously. Tribunals and other legal institutions should seek to reinforce the message that all users are treated fairly and that citizens are equal in the eyes of the law.

Motivation and preparedness for tribunal hearings

A waiting room survey of tribunal users revealed that, across all ethnic groups, the principal motivation for appealing to tribunals was a sense of unfairness. Few users had known about the possibility of seeking redress from their general knowledge and in most cases information about the possibility of appealing to the tribunal had come from the initial decision letter sent by the Department or Authority.

Users' expectations of proceedings were relatively vague, with an unacceptably high proportion of users in TAS and CICAP not knowing what to expect. Some anticipated a judge and jury, others a friendly and informal chat. This presents a challenge to the new Tribunal Service in helping to prepare users for hearings so that they can present their cases effectively. In SENDIST, the practice of sending a video to users prior to their hearing appears to have been effective in framing users' expectations.

About half of the users interviewed at hearings were attending without representation, generally because it had not occurred to them to seek representation, or because they had tried and been unable to obtain representation. Unrepresented Minority Ethnic users attending hearings were more likely than White users to have tried and failed to obtain representation.

Delivering fair hearings

Observation of tribunal hearings revealed generally high levels of professionalism among tribunal judiciary, with most being able to combine authority with approachability. There were few examples of insensitive language and with rare exceptions tribunals treated users from all ethnic backgrounds with courtesy and respect. Tribunals used a wide range of techniques to enable users to participate effectively in hearings and to convey that they were listening to, and taking seriously, the user's case. Although, with the assistance of tribunals, most users were able to present their cases reasonably well, observation of users during hearings revealed deep and fundamental differences in language, literacy, culture, education, confidence and fluency, which traverse ethnic boundaries. These differences significantly affect users' ability to present their case. Even with the benefit of training, there are limits to the ability of tribunals to compensate for users' difficulties in presenting their case. In some circumstances, an advocate is not only helpful to the user and to the tribunal, but may be crucial to procedural and substantive fairness.

Users' assessments of hearings and outcome

Most users, interviewed after their hearing and before receiving their decision, made generally positive assessments of treatment during hearings and of their own ability to participate. Where dissatisfaction occurred, it tended to result from tribunals communicating the impression that they had already made up their mind or that they were not listening attentively to the user. This underlines the significance that users attach to feeling that they have been heard, that their arguments have been taken seriously and weighed by the tribunal. Lack of preparedness affected users' responses to the hearing and those startled by the relative formality of hearings tended to feel less comfortable and to express greater dissatisfaction. Despite users' generally positive assessments of hearings, about one in five, when prompted, raised concerns about perceived unfairness or lack of respect during the hearing. South Asian users and some other non-European users were consistently more negative than other groups in their assessments of hearings and were the most likely to perceive unfairness. Importantly, however, there was evidence that those Minority Ethnic groups most likely to perceive unfairness at hearings were less likely to do so when the tribunal was itself ethnically diverse. This suggests that increasing the ethnic diversity of tribunal panels might have a positive effect on perceptions of fairness among Minority Ethnic users.

Post-decision interviews revealed that about one-quarter of unsuccessful users had not understood the reason for the decision and this was more often the case among Minority Ethnic than White users. This presents a significant challenge to tribunals since understanding the justification for a decision is important for confidence in procedures and perceptions of fairness.

The outcome of tribunal hearings

Modelling the outcome of hearings in the three tribunals revealed that in TAS case type, representation and ethnic group independently influenced the outcome of hearings. Controlling for other factors, unrepresented TAS users were less likely to succeed at their hearing than represented TAS users and Minority Ethnic TAS users were slightly less likely to be successful at their hearing than White TAS users. By contrast, in CICAP and SENDIST only case type had a significant impact on the outcome of hearings, although the number of Minority Ethnic users in SENDIST is very small. Once case type had been controlled for, neither representation nor ethnic group appeared to affect outcome in either CICAP or SENDIST. The TAS outcome findings regarding representation and ethnicity raise some important questions. Identifying the source of disadvantage that seems to flow from lack of representation and ethnicity would be valuable not only for TAS, but also more broadly for discussion about procedures and judicial training in other tribunals and in the courts. One clue may be that users' observed ability to argue their case was significantly associated with outcome at hearings. TAS users, who often come from among the most disadvantaged groups in society, were significantly less likely than CICAP or SENDIST users to present their cases well. This constitutes a general challenge to the enabling skills of TAS judiciary during relatively brief hearings, but in the case of some Minority Ethnic groups, language and cultural differences may present additional complications in enabling users to make the best of their case.

The tribunal perspective

Tribunal judiciary generally displayed high levels of sensitivity to diversity issues and mostly felt that enabling Minority Ethnic users to participate in hearings was an aspect of ensuring fairness that applied to all users. Significant concerns were raised, however, about the involvement of interpreters in hearings, who were of variable quality and tended to prolong hearings, creating pressure on the tribunal. This was particularly so in TAS where listing schedules are relatively brisk. The perception of tribunal judiciary about the difficulty of managing hearings with interpreters was consistent with assessments made by observers during hearings.

Representation was generally felt to be of value to all users and particularly so for Minority Ethnic users. It was felt that there was scope for improving information about tribunal procedures, access to advice and representation and access to high quality interpreters. There was some feeling that increasing the diversity of tribunal membership might boost the confidence of Minority Ethnic users and enhance the appearance of the fairness of proceedings. With rare but voluble exceptions, tribunal judiciary regard diversity training as valuable in maintaining levels of awareness and providing information about cultural practices.

Conclusion

The research establishes with some degree of confidence that within the three tribunals included in the research, users are on the whole treated well during hearings and that the majority of users, across ethnic groups, perceive this to be the case, at least before they receive their decision. The study also contains strong messages about preparing users for hearings, paying attention to those features of proceedings that contribute to perceptions of fairness, of the need to equip the judiciary with the necessary skills to enable unrepresented parties to present their cases, and of the limits to this enabling role. It also continues to confirm that in some cases representation may be crucial to procedural and substantive fairness.

It is hoped that the results of this study will contribute to discussion about objectives, procedures and training within the new Tribunal Service. The issues raised may also be of relevance to other administrative dispute resolution bodies such as ombudsmen and, indeed, the courts where the judiciary increasingly have to face the challenge of dealing with unrepresented litigants.

Chapter 1. Introduction

Background to the research

In 2000, the former Lord Chancellor, Lord Irvine, announced the launch of a four-year programme of research funded by his Department *"specifically dedicated to examining whether, and to what extent, the court system deals fairly and justly with the needs of a diverse and multicultural society"*[1]. The programme, initially entitled "Race and the Courts", was a response to the publication in 1999 of the Macpherson Report on the circumstances surrounding the racially motivated murder of the Black teenager Stephen Lawrence in 1993. It was alleged by Stephen Lawrence's parents that their colour, culture and ethnic origin, and that of their murdered son, had affected the way in which the case had been dealt with by the police and pursued through the criminal justice system. Following a comprehensive review of the case, Sir William concluded that the investigation and subsequent prosecution had been marred by fundamental errors and by what he termed *"institutional racism*", defined as:

> *"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage Minority Ethnic people. It persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease."* (Para 6.34)

Although the Macpherson Inquiry focused specifically on the work of the police and prosecution, the concluding comments and recommendations of the Report ranged much more widely:

> *"… our conclusions as to Police Services should not lead to complacency in other institutions and organisations….**It is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities*** (emphasis added)[2].

[1] Lord Chancellor's Department Research Unit, Courts and Diversity Research Programme (March 2003) p1.
[2] *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson,* February 1999, CM 4262-I, Para 46.27.

In responding to the challenges contained within the conclusion and recommendations of the Macpherson Report, the first wave of the Lord Chancellor's special research programme comprised three substantive projects designed to establish the extent to which discrimination might exist within the court system. The studies investigated the experiences and perceptions of Black and Minority Ethnic defendants in the criminal courts; the experiences of Minority Ethnic tenants in housing possession cases; and the impact of race, language, culture and religion in care proceedings. A fourth project designed to assist in the development of ethnic monitoring within the civil justice system was also included in the first phase of the research programme.

In 2001 the Department announced a second phase of the research programme (now entitled "Courts and Diversity") which was to "*focus on potential discrimination which might be indicated by the under-representation of particular groups among staff or users of the court service, and on perceptions of and confidence in the system with regard to both the operation of the courts and the outcomes for those involved".* In this second phase of the research programme, the Department identified four areas of interest. These were: the experience of magistrates from Minority Ethnic backgrounds; ethnic diversity and the jury system; the experience of Minority Ethnic families in care proceedings; and ethnic diversity and the tribunal system. The inclusion of tribunals within the Courts and Diversity research programme was regarded as important, given their significance in the administrative justice system and the large and diverse population of tribunal users. This report therefore presents the findings of a comprehensive study of the experiences and treatment of Minority Ethnic and White tribunal users in three of the largest existing tribunals: the Appeals Service (TAS), Criminal Injuries Compensation Appeals Panels (CICAP) and Special Educational Needs and Disability Tribunals (SENDIST).

The tribunals world

Tribunals are an important part of the justice system, dealing annually with around one million cases involving, principally, disputes between the citizen and the State. Tribunals are informal court-like bodies created by statute to review decisions made by Government Departments and Agencies of the State and in a few cases to adjudicate on private disputes. The system of tribunals in England and Wales has developed and grown over the last 50 years and now comprises around 70 different tribunal jurisdictions covering a wide-range of subjects, with new tribunals established piecemeal over the years in response to a growing body of regulation. They deal with a huge range of activities, rights and entitlements with jurisdictions as

diverse as rent assessment, HGV licences, school exclusion, war pensions, parking fines, social security benefits, mental health, immigration, employment, and meat hygiene. Tribunals are generally administered by their "sponsoring Department" – which is the body whose initial decisions the tribunal has been established to review.

Although there is considerable variation in tribunal structures and procedures, they have historically been regarded as flexible and relatively informal forums for adjudication with some common features that are distinct from court processes. Some of the most notable of these features are:

- Adjudication often by a mixed panel of legal, specialist and lay decision-makers
- Relatively simple processes for initiating applications
- Absence of procedural steps prior to hearing
- Absence of court dress
- Flexible hearing procedures with relaxed rules of evidence
- Interventionist decision-makers
- Variable but often low level of legal representation at hearings
- No fee for use
- Costs not normally awarded

Until recently the work, processes and development of tribunals have not been a central focus of Government attention or policy. Between a wide-ranging review of tribunals by the Franks Committee 1957[3] and the end of the twentieth century, the tribunals' world experienced a relatively obscure profile, being subject only to the light advisory supervision of the Council on Tribunals and the administrative concerns of sponsoring Departments. The Franks Report considered the relationship between tribunals and their sponsoring Government departments and pronounced tribunals to be part of the *"machinery provided by Parliament for adjudication rather than as part of the machinery of administration".* Their decision-making processes were to be open, fair and impartial and they were to offer services to the public that were cheap, accessible, non-technical, expert and quick. During the second half of the twentieth century, new tribunals were regularly created and the number of people being dealt with through tribunal systems increased accordingly, but no significant review was undertaken and no radical policy changes were initiated or mooted. However, the incorporation of the European Convention on Human Rights into UK law through the

[3] *Report of the Committee on Administrative Tribunals and Enquiries*, HMSO, Cmnd 218.

Human Rights Act 1998 signalled the beginning of a transformation of the tribunals' world.

The Human Rights Act raised concerns about how tribunals, administered by their sponsoring Departments, could demonstrate the necessary degree of independence in decision-making required by Article 6 of the Convention. In light of these concerns, at the 1999 Annual Conference of the Council on Tribunals, Lord Irvine announced the establishment of a wide ranging review of tribunals. In outlining the need for the review the Lord Chancellor referred to the "haphazard" growth of tribunals in the preceding 40 years, the complex routes of appeal that existed, and the impact of the Human Rights Act. In relation to Human Rights, he argued that it was necessary to *"ensure that tribunals really are seen to be entirely independent of Government. They must also be seen to be wholly impartial, and responsive to the needs of a modern, diverse society"*. The Review was charged with the task of ensuring that tribunals provide an effective control on the implementation of Departmental policies and *"that citizens have the right information so that they can use each of the tribunal systems effectively, so that they know what standards of service to expect, and so they know whether those standards are being met".*

The terms of reference of the review established in May 2000 under the chairmanship of a retired Lord Justice of Appeal, Sir Andrew Leggatt, were wide-ranging, and included ensuring:

- That there are fair, timely, proportionate and effective arrangements for handling disputes, within an effective legal framework.
- That the administrative and practical arrangements for supporting decision-making meet the requirements of the ECHR for independence and impartiality.
- That there are adequate arrangements for improving people's knowledge and understanding of their rights and responsibilities in relation to tribunals.
- That tribunals overall constitute a coherent structure for the delivery of administrative justice.

"Tribunals for Users"

Echoing the view of the Franks Committee Report on Tribunals in 1957, the Leggatt Review of the tribunal system published in 2001 and entitled "*Tribunals for Users*" praised the special features of tribunals that are seen to offer advantages over the ordinary courts for users and potential users. In Leggatt's view, these advantages are that tribunal decisions are often made jointly by panels comprising lawyers and

experts who are able to meld their legal and expert knowledge in order to bring a broad range of skills to bear on decisions. He felt that tribunal procedures and hearings could be simpler and more informal than courts and that as a result *"most users"* should be capable of preparing and presenting their cases at tribunal hearings *"providing they have the right kind of help".* Indeed, in his view the ability to enable such direct participation in hearings was an important justification for establishing tribunals in the first place.

Despite the generally positive appraisal of the potential contribution of tribunals to administrative justice, Leggatt's report was critical of their "haphazard" development and the fact that tribunals represented more a collection of individual decision-making bodies rather than a coherent "system" in any realistic sense.

> *"Most tribunals are entirely self-contained, and operate separately from each other, using different practices and standards. It is obvious that the term 'tribunal system' is a misnomer… each tribunal has evolved as a solution to a particular problem, adapted to one particular area."* (Para 3.2)

Most importantly, he felt that the perception of independence was compromised by the fact that Departments of State provide administrative support for tribunals, appointing and paying some tribunal members, and occasionally promoting legislation prescribing the procedures that tribunals must follow. In such a situation, he commented, *"the tribunal neither appears to be independent, nor is independent in fact".* Leggatt felt that the responsibility for tribunals and their administration should not lie with the Department whose policies or decisions tribunals were considering. In his view, the only way to achieve independence and coherence would be to sever the connections between tribunals and their sponsoring departments and to have all tribunals supported by a common administrative "Tribunals Service".

The review was also critical of standards in tribunals, suggesting that they were variable in quality, rather "old-fashioned", and daunting to users. In relation to the situation of tribunal users, Sir Andrew notably commented, *"It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases".* Based on his review, Sir Andrew concluded that although tribunals are intended to provide a simple, accessible system of justice where users can represent themselves, he felt it *"discouraging to note the growing*

perception that they cannot". He therefore argued that every effort should be made to reduce the number of cases in which legal representation is needed in tribunals. He believed that this could be achieved if users were provided with comprehensible decisions, necessary information about tribunal procedures, assistance from free legal advice sources, and if *"tribunal chairmen are trained to afford such assistance as they legitimately can by ensuring that the proceedings are intelligible and by enabling users to present their cases".*

Recognising that there might be a residual category of "complex cases" that would require greater assistance, Leggatt felt that advice agencies should be funded to give relevant advice and that only "as a last resort" should such advice be funded by legal aid (Para 7). Consistent with these views, and the belief that users should be able to represent themselves, on the question of training for tribunal panels, Leggatt felt that the key necessity was for *"improved training in the interpersonal skills peculiar to tribunals so as to enable users to cope on their own".* The new Tribunals System was to develop a fresh culture, *"starting with improved recognition of just how daunting the tribunal experience usually is for first-time users, as most are".*

In March 2003, the Government announced its response to the Leggatt recommendations and, in particular, its intention to create within the Department for Constitutional Affairs an independent Tribunal Service that would bring together within the Department the major tribunal systems with a unified administration. This announcement was followed in July 2004 by a White Paper setting out in more detail the vision for the new tribunal service.

"Transforming Public Services"

The White Paper "Transforming Public Services" confirmed the Government's commitment to continue with the plan to create a new unified Tribunal Service that would have at its core the top ten non-devolved central government tribunals. However, the White Paper went beyond the original vision stating that the Tribunal Service would become a "new type" of organisation, and not just a federation of existing tribunals. The Tribunals Service is to have *"a straightforward mission: to resolve disputes in the best way possible and to stimulate improved decision-making so that disputes do not happen as a result of poor decision-making. All of its activities will be subordinated to these aims".* Existing tribunal judiciary and staff are to work together to provide a range of established and innovative services "*to the large and diverse range of customers currently served by tribunals and to those entitled to*

redress but who at present do not seek it. Its key features need to be independence, professionalism, accessibility and efficiency – which is what we believe users and potential users want and are certainly entitled to". The Government believes that this major undertaking is comparable in scope and more radical than recent reforms of the civil and criminal justice systems.

The Tribunals Service Agency is to be formally launched in April 2006[4], and in April 2005, the Agency began its transitional year with the appointment of its Senior President Designate (Sir Robert Carnwath) and Chief Executive (Peter Handcock). The stated aim of the reforms is to improve the services delivered to those who make use of tribunals. In particular, the reforms are to ensure that tribunals are *"fair, effective and efficient and provide access to justice to all who require it"*. The Tribunals Service will be focused on delivering "real benefits" to tribunal users, including:

- Ensuring that tribunals are manifestly independent from those whose decisions are being reviewed;
- Helping to provide better information to users and potential users;
- Delivering greater consistency in practice and procedure; and
- Making better use of existing tribunal resources.

The new Tribunal Service will initially incorporate 16 tribunals for which the DCA is currently responsible[5], and by 2008, it is expected that the five largest tribunals will join including the Employment Tribunals Service, The Appeals Service, Special Educational Needs and Disability Tribunal, Mental Health Review Tribunal and the Criminal Injuries Compensation Appeals Panel. The creation of the new Tribunal Service is, with justification, proclaimed "*the biggest change to the tribunals system in England and Wales in almost half a century*".

In light of these momentous changes to the world of tribunals, a study providing insights into the work of tribunals from the perspective of users from diverse backgrounds is therefore timely.

[4] The anticipated Courts and Tribunals Bill, which constitutes the legislative vehicle for the necessary changes, was announced in the Queen's Speech in 2004. It has yet to be introduced into Parliament.
[5] Including Immigration Services Tribunal, General Commissioners of Income Tax, Information Tribunal, Lands Tribunal, Pensions Appeal Tribunals, Social Security Commissioners, Transport Tribunal, Asylum and Immigration Tribunal.

Tribunals and ethnic diversity

Despite the general agreement that tribunals should be accessible and informal forums responsive to the needs of users, and despite Leggatt's focus on users, the Report did not make specific reference to the experiences or situation of Minority Ethnic tribunal users. Similarly, although market research on user experiences of tribunals was commissioned to inform thinking for the 2004 White Paper, no direct reference to Minority Ethnic tribunal users or potential users was made in the White Paper discussion of research findings or policy intentions. It seems reasonable to assume that concern about Minority Ethnic users of the tribunal system was swept into the White Paper's general emphasis on fairness and on the objective of delivering high quality services to the *"diverse range of customers"* currently being *"served"* by tribunals. On the other hand, without information about the experiences of Minority Ethnic tribunal users it is difficult to be confident that tribunals are meeting that objective and, indeed, perceived to be so, by users from a diverse range of ethnic backgrounds.

Moreover, Leggatt and the White Paper are not alone in their silence regarding Minority Ethnic tribunal users. In a comprehensive review of scholarly research on tribunals published in 2003, Adler and Gulland summarise evidence from a large number of studies about users' access, expectations and experiences of tribunal processes. None of the studies reviewed had focused on the experiences of Minority Ethnic users. The broad learning from the review suggests that many users in a range of tribunals are confused by appeal procedures and have little idea about what is likely to happen at a hearing. Users have trouble in obtaining advice about appeals, particularly where there is a shortage of specialist advice agencies able to provide representation or when free advice services are overstretched. Most of the cited research concludes that users find it difficult to represent themselves at tribunals.

A comprehensive study of the effectiveness of representation in four of the largest tribunals published in 1989[6] dealt comprehensively with tribunal applicants' use of advice and representation, their experiences of tribunal procedures, and some of the factors influencing the outcome of tribunal hearings. Although a large amount of data

[6] H Genn and Y Genn, *The Effectiveness of Representation in Tribunals*, Lord Chancellor's Department, 1989, covering Social Security Appeals Tribunals, Immigration Adjudicators, Mental Health Review Tribunals and Employment Tribunals.

was collected for the study and some personal factors were included in the analysis of tribunal outcomes, the study was not designed to look separately at the experiences of ethnic minorities and the ethnic origin of tribunal users was not included in any of the analyses.

This dearth of research on the experiences of Black and Minority Ethnic users of tribunals is merely one aspect of the absence of research on Black and Minority Ethnic users of the justice system outside of the realm of the criminal courts. There has been a relatively long-standing concern about experiences and perceptions of the criminal justice system among Black and Minority Ethnic groups and a number of studies have shown a common perception that the criminal justice system is unfair. Moreover, among Black and Minority Ethnic groups expectations of unfair treatment by public bodies are highest in relation to the criminal justice system[7]. By contrast, there is no comparable body of work relating to the civil courts and tribunals. O'Grady et al (2005) note that almost no major work has been conducted on the experiences of Black and Minority Ethnic users of the civil justice system in England and Wales, or indeed elsewhere and that such work as exists tends to be small scale and narrow in scope. A relevant exception from the USA published in the early 1990s involved a study of the impact of litigants' ethnicity and gender on monetary outcomes in adjudicated and mediated small claims cases[8].

Although in Britain some steps have recently been taken to explore the experiences of Black and Minority Ethnic groups within the civil justice system[9], knowledge remains very limited. The *Paths to Justice* national surveys in 1999 and 2001[10] estimated the prevalence of justiciable disputes and public experiences of seeking to

[7] See the discussion in Chapter 3 of Julie Vennard, Gwynn Davis, John Baldwin, and Julia Pearce, *Ethnic Minority Magistrates' Experience of the Role and of the Court Environment*, DCA Research Series 3/04, December 2004.
[8] Gary LaFree and Christine Rack, 'The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases', *Law & Society Review*, Vol 30, No 4 (1996), p 767. The study showed that in adjudicated cases, apparent differences related to gender and ethnicity were eliminated by controlling for case type, but that some ethnic differences remained in mediated case outcomes.
[9] Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O'Grady and Hazel Genn, *Causes of Action: Civil Law and Social Justice* (LSRC Research Paper No 11), Norwich: The Stationery Office, 2004; Aoife O'Grady, Nigel Balmer, Bob Carter, Pascoe Pleasence, Alexy Buck and Hazel Genn, 'Institutional Racism and Civil Justice', *Ethnic and Racial Studies* Vol 28 No. 4 July 2005 pp 620-638.
[10] H Genn, *Paths to Justice: What People Do and Think About Going to Law*, Hart Publishing, 1999 and H Genn and A Paterson, *Paths to Justice Scotland: What Scottish People Do and Think About Going to Law*, Hart Publishing, 2001.

resolve such disputes through the civil justice system. The surveys revealed a general conviction that the formal justice system had an important or "backstop" value as a means of enforcing vital rights *in extremis*. However, this fundamental expression of confidence in the value of courts and tribunals was overlaid by a pervasive negative perception of the cost, delay and discomfort of actually using such processes, as well as a need for information and assistance in knowing how to navigate redress systems. While the surveys provided national pictures of public experiences of civil disputes in England, Wales and Scotland, the limitations of the sample design meant that it was not possible to conduct separate analyses of the experiences of Minority Ethnic groups. Nonetheless, the studies provided some clues about the perceptions of the legal system among Minority Ethnic respondents, for example:

> *"To tell you the truth, I think if I was to go to court now, if there was a White person against me, I know that it won't be fair anyway. Because there would be some prejudice. Because obviously the judge, the lawyers and everyone, they are all going to be White... From my point of view, I know I would lose. It's the judges. I've heard about so many cases. You do hear a lot of things about any ethnic person. Anyone who's got a case, I mean they've always lost."*

Taking forward work on public experiences of civil justice problems, the first sweep of the Legal Services Research Centre's Periodic Legal Needs Survey investigated whether Black and Minority Ethnic users within the civil justice system have different experiences from those of White people and if so, whether this might be attributable to institutional racism or other explanations. O'Grady et al (2005) report that although Black and Minority Ethnic respondents to the survey experienced similar rates of civil disputes and problems as White respondents, they were less likely than White respondents to take action to deal with those problems and disputes. Moreover, when they sought advice about a justiciable problem, Black and Minority Ethnic respondents were more likely than White respondents to receive poor quality advice. In each of these cases, the findings appeared to be related specifically to ethnicity, and not other potential explanatory variables such as the type of justiciable problem being experienced. The authors concluded that although distinct differences existed between Black, Asian and White respondents in relation to advice-seeking behaviour and experiences of accessing advice in the civil justice system, the survey data did not provide adequate information as to *why* this may be the case. They argue that it is inappropriate, without further research, to suggest that observed differences might be attributable to racism, whether institution*al* or institutionali*sed* – in the sense that racist attitudes and practices have become incorporated into institutional practice. It

is hoped that subsequent sweeps of the LSRC's Periodic Legal Needs Survey may be able to focus more comprehensively on the experiences of Minority Ethnic groups in accessing and using the civil justice system.[11]

The DCA Courts and Diversity Research Programme has helped to bridge a little of the knowledge gap. Two of the studies in the research programme have dealt with experiences of Minority Ethnic groups outside of the criminal justice sphere. In a study of defendants in housing possession cases Blandy et al[12] explored the perceptions, experiences and understanding of the court functions and processes among Black and Minority Ethnic defendants and more widely within their communities. It also compared the experience of Black and Minority Ethnic defendants in housing possession cases with those of White defendants. Drawing on court records, individual interviews and focus groups, the study found that the experiences of White and Minority Ethnic defendants leading up to eviction processes and during possession proceedings were very similar. Black and Minority Ethnic defendants who had attended court hearings did not feel they had been treated unfairly because of their race.

In an exploratory study of decisions about child protection Brophy et al[13] looked at how far the legal criteria used to assess significant harm and future risk to children are sensitive to diverse parenting styles. Using evidence from court files, observations of court hearings, and interviews with key court personnel, the study found a need for ethnic monitoring of public law proceedings to support both policy and the everyday work of family courts. Analysis of court files revealed significant gaps in the information available to courts about children and their families. The authors conclude that the heavy dependence on written evidence in decision-making requires that courts and professionals ensure that, when appropriate, attention is drawn to culturally diverse contexts. They argue that this is necessary to ensure that decisions are based on all relevant information and that it may help to reassure parents that their treatment by the court has been fair.

[11] The second National Survey is due to report in 2006.
[12] Sarah Blandy, Caroline Hunter, Diane Lister, Lisa Naylor and Judy Nixon, *Housing Possession Cases in the County Court: Perceptions and Experiences of Black and Minority Ethnic Defendants*, DCA Research Series 11/02.
[13] Julia Brophy, Jagbir Jhutti-Johal, and Charlie Owen, *Significant Harm*: *Child Protection Litigation in a Multi-Cultural Setting,* DCA Research Series 1/03.

Responding to a diverse user population

While the Leggatt Report and the White Paper did not detail how tribunals should ensure responsiveness to the needs and expectations of a diverse range of tribunal users, recently many tribunal systems have been placing diversity issues explicitly on their agendas. The Judicial Studies Board (JSB) has encouraged tribunals to take diversity training seriously and to integrate diversity issues within standard training curricula. This emphasis on equal treatment has been supported through a programme of training for tribunal trainers and the publication of equal treatment training materials. Equal treatment is one of the core competences included in the Competence Framework for Tribunals developed by the JSB that sets out the skills, knowledge and behaviour that tribunal judges are expected to demonstrate in the performance of their role. The Race Relations Amendment Act 2000 laid a duty on all public authorities to eliminate discrimination and to promote equality of opportunity and good relations between persons of different racial groups. One of the specific duties under the Act is for public authorities to produce race equality schemes and to indicate how they intend to comply with the Act. As a result, a number of tribunals have devised and published such schemes, raising consciousness about race equality within tribunal organisations and establishing externally the commitment of tribunals to principles of equality. The Council on Tribunals has also made explicit its concern about the need for tribunals to be responsive to the diversity of tribunal users, devoting a section in its Annual Report in 2004 to the issue. Such public commitments to equal treatment are important in seeking to deliver fairness for all tribunal users, but they only have meaning if, in Sir William Macpherson's terms, the everyday "*processes, attitudes and behaviour"* of tribunal personnel are consistent with that commitment.

The present study addresses the question of how far these equal treatment ambitions are being met within three of the largest existing tribunal systems.

The research brief

The scope of the Tribunals and Ethnic Diversity study commissioned by the DCA was to be wide-ranging. The Department's research specification outlined five key questions for the research:

- To what extent is there evidence of direct discrimination against ethnic minorities within the tribunal system?
- Do questions of race influence tribunal decisions and if so how?

- Is there evidence of indirect discrimination within the tribunal system and if so how is it manifested?
- Do tribunal processes impact differently on different minority groups?
- Do different minority groups believe they are likely to be treated fairly within the tribunal system?

Although the DCA did not provide an explanation of the terms 'direct' and 'indirect' discrimination, there are a number of generally accepted formulations. Direct discrimination broadly addresses differences in treatment on prohibited grounds, so that a person is directly discriminated against if they are less favourably treated on the grounds of their race, sex, or other personal factor. Indirect discrimination is a course of action which, although based on an ostensibly impartial and general rule, instruction or practice has the effect, in reality, of operating to the detriment of people belonging to some particular group.

In order to address the questions posed by the DCA this research project comprised several distinct phases, each involving different data collection techniques. The central core of the research comprised a survey of expectations and experiences of tribunal hearings involving around 500 tribunal users attending tribunal hearings. Interviews were conducted while users waited for their hearing, after their hearing and before they received their decision, and then again after the tribunal had given their decision. The user survey was complemented by an observational study of the behaviour of tribunal judiciary and tribunal users during tribunal hearings. Additionally, in order to explore determinants of success at tribunal hearings an analysis was conducted of over 3,500 tribunal decisions. Finally, although questions of access to tribunals were not part of the original research brief, the scope of the study was broadened to embrace issues relating to public knowledge of systems of redress for tribunal-relevant grievances and expectations of treatment within the legal system. This part of the study involved 16 focus group discussions, principally with Minority Ethnic members of the public. **In each phase of the research project, a fundamental objective was to compare the situation of Black, South Asian and White tribunal users in order to identify any areas of difference and/or disadvantage that might be associated with the user's ethnic origin.**

Defining 'ethnic groups'

Consistent with the preoccupations of the Macpherson Report, the emphasis of the early phases of the DCA Courts and Diversity programme has been on the experiences of visible ethnic minorities, i.e. a definition of ethnicity based principally on skin tone. The 1991 National Census classification of ethnic group used three broad categories based on self-identification, incorporating skin tone and country of origin: Black (originating from the Caribbean or Africa), South Asian (originating from India, Pakistan or Bangladesh), and Chinese and other minorities. The 'White' majority included all people of European descent. The most recent National Census in 2001 and the monthly Labour Force Survey adopted the same approach. Data from these sources reveal that around eight percent of the UK population belongs to a Minority Ethnic group[14]. A little over half of the Minority Ethnic population of the UK is of South Asian descent, with the majority being of Indian, Pakistani or Bangladeshi origin. Just over a quarter of the total Minority Ethnic population described themselves as Black, with approximately equal proportions being of Caribbean and African descent. The census shows that Ethnic Minority populations are concentrated in large urban centres, with nearly half the total living in the London region, and the next largest concentrations in the West Midlands and North West.

Although theorising about race has developed considerably in recent years with a growing appreciation of the significance of culture and religious affiliation in self-definition and ascription of ethnic group[15], national data sources on the ethnic composition of the population of England and Wales continue to define ethnic categories using a combination of skin tone and country of origin. While such definitions of ethnicity may be less nuanced than those based on cultural and/or religious identity, they nonetheless retain value for exploring experiences of discrimination, since physical identity often provides the trigger for negative stereotyping of minority groups[16].

The purpose of the present study was not to challenge the conclusions of the Macpherson Report, or to assist in refining theories of ethnic identity. There was no attempt, therefore, to contest standard ethnic categorisations or to utilise special or

[14] *Social Focus in Brief: Ethnicity*, Office for National Statistics, 2002.
[15] For an excellent review of the literature on ethnicity and identity, see Julie Vennard, Gwynn Davis, John Baldwin, and Julia Pearce, *Ethnic Minority Magistrates' Experience of the Role and of the Court Environment*, DCA Research Series 3/04, Chapter 3.
[16] K. Anthony Appiah, *Color Conscious: The Political Morality of Race*, Princeton University Press, 1998.

more sophisticated definitions. Accordingly, in agreement with the DCA, the research focused on the experiences of tribunal users and potential users of 'Black' (African or Caribbean) and 'South Asian' (Indian sub-continent) origin, in comparison with 'White' users. While most analyses in the report focus on comparisons between Black, South Asian, and White respondents, a further group defined as 'other ethnicity' is also included comprising tribunal users of non-European descent, from areas such as China, Iraq, Iran and Latin America. Very occasionally, when numbers available for analysis have been very small it has been necessary to collapse ethnic categories to produce a simple 'non-White'/'White' distinction. This has been done rarely because of the danger of masking differences in experiences and perceptions of the various ethnic groups comprising each category. Although the number of respondents in sub-groups of ethnic categories was often too small for reliable conclusions to be drawn, there are clear indications of disparities between Black African, Black Caribbean, Pakistani and Indian respondents in both their experiences and perceptions of tribunal justice. These differences underline the potential distortion involved in categorising individuals on the basis of skin tone and the risk of obscuring significant and illuminating variation between ethnic groups.

The tribunals

The diversity of tribunals referred to above presented challenges for the research, which were somewhat different from other Courts and Diversity studies that focused on specific types of court or jurisdiction. As Sir Andrew Leggatt noted in his review, tribunals do not comprise a coherent system. Although they have certain features in common and are distinctive from ordinary courts, there as many differences between tribunal jurisdictions in practice and procedures as there are between tribunals and courts. For example, while many tribunals have three-person panels comprising a legally qualified chair, a specialist member and a lay member, some comprise a single decision-maker. Most, but not all, tribunal jurisdictions deal with disputes between the citizen and the State. Many tribunals have very informal procedures and low levels of representation, while others are court-like and have high levels of representation. It was therefore impossible to choose tribunals to include in the study that could be regarded as "representative" of tribunals as a whole. The decision about which tribunals to include was influenced by DCA preferences and the need to include tribunals with a substantial caseload and significant numbers of Black and Minority Ethnic users. Although employment, mental health and immigration tribunals would have been obvious choices to include within the study, for various

practical and policy reasons the DCA preference at the inception of the study was to select other tribunals. The final decision therefore was to include the Appeals Service, the Special Educational Needs and Disability Tribunal, and the Criminal Injuries Compensation Appeals Panel on the ground that they all had relatively large caseloads, and dealt with issues that may affect most, if not all, social groups.

The Appeals Service

The Appeals Service is the largest of all tribunals and has a wide jurisdiction dealing with appeals concerning:

- Social Security
- Child Support
- Housing Benefit
- Council Tax Benefit
- Vaccine Damage
- Tax Credit
- Compensation Recovery
- Child Tax Credit
- Pensions Credit

The annual caseload of the Appeals Service is around 350,000. It has a President and 2,047 tribunal judiciary comprising 73 full-time legally qualified panel members, 647 part-time legal members, 541 GP members, 235 specialists, 531 disability panel members, and 20 financial panel members. Many Appeals Service cases are dealt with by tribunals comprising a three-member panel, for example, Disability Living Allowance appeals, which are heard by a legally qualified chair, medical member and lay member. Other cases within the Appeals Service jurisdiction are dealt with by a single tribunal judge who will be legally qualified.

Appeals Service hearings take place with the tribunal and appellant sitting across a table. The setting is informal and a representative from the Department is rarely present. Appellants at Appeals Service hearings are represented in around 40 per cent of cases, although this varies significantly by case type. The hearings usually last around forty minutes with tribunals taking a very flexible approach to proceedings.

The Criminal Injuries Compensation Appeals Panels

There has been a Scheme in existence in Great Britain for payment of compensation to victims of crimes of violence since 1964. Until April 1996, awards were made on the basis of common law damages under Royal Prerogative and administered by the Criminal Injuries Compensation Board. A statutory scheme was established in 1996 and the Criminal Injuries Compensation Appeals Panel (CICAP) was created to take over the work of the CICB. It hears appeals against decisions made by the Criminal Injuries Compensation Authority (CICA) regarding applications for criminal injuries compensation. The new Scheme (amended in 2001) made changes to the administration and substance of compensation for criminal injuries. The most significant are that a victim's damages for pain and suffering and loss of amenity have been replaced by a tariff of awards; and that the entitlement to and amount of awards are now assessed by claims officers, who are civil servants, and not by the senior lawyers who previously formed the membership of the CICB. Awards under the Scheme are made as follows:

- to recognise physical and mental injuries caused by a violent crime;
- in certain circumstances, to compensate for past or future lost earnings or special expenses caused by a violent crime; and
- for the death of a close relative as a result of a violent crime, including, in some cases, compensation for the lost earnings of the person who was killed.

CICAP has a Chairman and 102 Panel Members all of whom sit part-time. Of the existing Panel Members, 43 are legally qualified, 34 are lay and 25 are medically qualified. Panels sit as a panel of three with a legal chair, a lay member and a medically qualified member. The Annual Report for 2003-4 indicates that 4,079 appeals were resolved during the year. The caseload of the CICAP has been gradually decreasing since 2000.

CICAP hearings usually take place across a large table. A presenting officer from the CICA will usually be present and police officers frequently attend. CICAP hearings appear more formal than Appeals Service hearings, with the CICA presenting officer directly questioning the appellant, and police officers formally giving evidence and being questioned by the Panel. Hearings are somewhat longer than Appeals Service hearings at around an hour on average, but it is not unusual for a hearing to last for an entire morning. Appellants in CICAP hearings attend hearings with representation in about 60% of cases, with representation being higher

in cases involving appeals against the amount of the award as opposed to cases challenging eligibility to receive an award at all.

The Special Educational Needs and Disability Tribunal

The Special Educational Needs Tribunal (SENT) was established by the Education Act 1993 to hear appeals from parents against decisions taken by local educational authorities during the process of assessing and making special educational provision for children with special educational needs. It has a President, 63 legally qualified chairs and 137 specialist members with experience in either local government or special educational needs. During the year 2003/4, SENDIST disposed of 1,859 cases and the caseload of the tribunal has been increasing over the past few years. The majority of appeals dealt with by the tribunal are against a refusal by the Local Education Authority to assess the special needs of a child, or against the LEA's statement of a child's special needs. Disability discrimination was added to the jurisdiction in 2002 (when it became SENDIST). The current caseload of disability discrimination cases remains very small with only 69 decisions being issued in 2003-4. Cases are heard in SENDIST by three-person panels comprising a legally qualified chair and two specialist members.

SENDIST hearings take place across a large table. The local authority invariably attends the hearing and there are frequently many people present during the hearing, including representatives and experts. The hearings are more formal than Appeals Service hearings and are on average considerably longer, with hearings often taking half a day or more. A little over half of appellants attending SENDIST hearings are represented at the hearing.

The report

The report comprises eight substantive chapters. The next chapter provides detail on the methods adopted for the different phases of the research, including focus group discussions, the survey of tribunal users, the observational study and the analysis of tribunal outcomes. It also provides detail about the ethnic composition of the various samples used in the research. Chapter three presents the results of the qualitative study of public knowledge and attitudes to seeking redress for tribunal-relevant grievances among samples of Black, South Asian and White respondents. Chapter four discusses the results of waiting-room interviews with Black, Minority Ethnic and White tribunal users about their expectations of tribunal hearings, their motivation for seeking redress, and use of advice and representation services.

Chapter five presents the findings of observation of tribunal behaviour during hearings and assessments of users' ability to participate effectively in hearings. Chapter six presents the results of a survey of users' own perceptions of their treatment during hearings, their reactions to the tribunal, and their perceptions of the fairness of hearings prior to receiving their decision. The chapter also discusses respondents' reactions to their decisions and perceptions of the fairness of decisions. Chapter seven presents the results of an analysis of a large sample of decisions in each of the three tribunals identifying factors associated with the likelihood of being successful at hearings and, in particular, whether there is any *disadvantage* to tribunal users associated with their ethnic background. In chapter eight, the perspective of tribunal judiciary is discussed in relation to the challenges posed for and by Minority Ethnic users. Chapter nine summarises some of the key findings of the research and discusses the implications of the research for understanding of how to achieve procedural and substantive fairness in judicial proceedings for all court and tribunal users.

Chapter 2. The study methods

Broad objectives

In order to collect evidence on the broad questions posed by the DCA research specification, discussed in the previous chapter, the final research design involved four primary elements addressing the key research questions as follows:

1. A qualitative study of attitudes to seeking redress, knowledge about and perceptions of tribunals among Minority Ethnic and White members of the public (research objective (a) discussed in chapter three).
2. A quantitative survey of the expectations and experiences of Minority Ethnic and White users in tribunal hearings and their perceptions of the fairness of decisions (research objectives (a), (c), (d) and (e) discussed in chapters four and six);
3. An observational study of the treatment of Minority Ethnic and White users attending tribunal hearings and users' ability to participate in hearings (research objectives (b), (d) and (e) discussed in chapter five);
4. A quantitative analysis of the outcome of tribunal hearings in relation to a number of key variables including the ethnicity of the user (research objectives (c), (d), and (e) discussed in chapter seven).

In addition to these primary elements in the study, a telephone survey of tribunal judiciary was also undertaken in order to provide their perspective on some of the research questions.

Ethnic groups

In light of the concerns of the Macpherson Report, the DCA was centrally interested in the experience of tribunal users and potential users of Black African, African Caribbean, and South Asian origin, since the Macpherson concerns about institutional racism relate specifically to discrimination based on skin tone rather than cultural or religious identity. The research therefore sought to include, so far as possible, sufficient numbers of respondents from these ethnic groups at each stage of the research so that it would be possible to compare the attitudes and experiences of Black, South Asian and White tribunal users.

Qualitative study: attitudes to seeking redress and knowledge of tribunals

This preliminary phase of the research was conducted in Winter 2003/4. Focus group discussions were conducted in several areas of England with members of four different Minority Ethnic groups and with a White British sample for comparative purposes[17]. The research identified the range of ways that people would go about resolving tribunal-relevant disputes and grievances and the factors accounting for this behaviour. It also explored knowledge about tribunals, and public attitudes towards them. Focus group discussions were adopted for this part of the study because they are well-suited to revealing perceptions, behaviour and motivation, and for comparing experiences between different sections of the public.

Because discussion groups work best when there is an element of commonality among participants, the sample was structured so that each individual group was homogenous in terms of ethnic group, age group and educational attainment and language:

- *Ethnicity:* discussions were conducted among four main ethnic groups: Black African, African Caribbean, White British and Pakistani. Given the diverse nature of the UK Black African population, this ethnic group was specified further and both Nigerian and Somali respondents were included in the research. The Nigerian population is the largest Black African group in the UK and it was therefore important to explore their views. The Somali population is around the third largest, but contains the largest number of non-English speakers and also a significant number of first-generation migrants.

- *Age:* groups included a broad age range, from 18-65. Respondents were split into two age groups: 18-40 and 41-65.

- *Educational attainment*: Two categories were included here: above GCSE or equivalent and below GCSE or equivalent. Given the size of the sample and the need for some of the groups to be single sex (see below) however, it was not possible to represent a range of educational levels within each age and gender group for the Pakistani and Black African populations. Instead, it was decided to

[17] This part of the study was carried out in collaboration with the National Centre for Social Research, who were responsible for fieldwork and analysis of data and for producing an early draft of the findings.

include a diversity of educational levels across the Pakistani and Black African groups as a whole.

- *Language*: four of the group discussions – two of the four Pakistani groups, and both of the two Somali groups – were conducted with non-English speakers in their community languages. The remainder of the group discussions were conducted in English.

In addition, the composition of each group was controlled to ensure that there was sufficient heterogeneity to generate diversity and debate. The other main sampling criteria employed were:

- *Gender:* in the White British and African Caribbean groups, a balance of men and women were included in each group. The Pakistani and Black African groups were single sex, in order to permit free discussion and avoid situations whereby women might have deferred to men.

- *New arrivals:* both of the Somali groups deliberately included a number of new arrivals who had been in the UK for two years or less, in order to explore how knowledge about and attitudes towards the legal system and resolving grievances might differ from those of respondents who had been in the UK for a longer period of time.

- *Main economic activity*: every group contained a mixture of people in different work situations. Thus, there was a mixture of full time and part-time employees, unemployed and available for work, unemployed and not available for work (in receipt of benefits such as Incapacity Benefit, Income Support), students, retired people and those who were full-time carers or homemakers.

- *Family status:* the research also deliberately included a mix of respondents who were parents and respondents who did not have children.

- *Geographical area:* the research was conducted in four different locations of England – London (Catford and Tottenham), Birmingham, Oldham and Bradford.

Sixteen discussion groups were held in all as described in Table 2.1 below.

Table 2.1 Discussion group composition (total of 115 participants)

Area 1, Greater London[18]	Area 2, Oldham	Area 3, Birmingham	Area 4, Bradford
G1: Nigerian, 18-40, female, GCSE or lower	G7: Pakistani, 18-40, female, above GCSE	G9: White British, 18-40, mixed sex, GCSE or lower	G13: Pakistani, 18-40, male, GCSE or lower
G2: Nigerian, 41-65, male, above GCSE	G8: Pakistani, 41-65, male, non-English speaking	G10: White British, 41-65, mixed sex, above GCSE	G14: Pakistani, 41-65, female, non-English speaking
G3: Somali, male, non-English speaking, some 'new arrivals'	-	G11: African Caribbean, 18-40, mixed sex, GCSE or lower	G15: White British, 18-40, mixed sex, above GCSE
G4: Somali, female, non-English speaking, some 'new arrivals'	-	G12: African Caribbean, 41-65, mixed sex, above GCSE	G16: White British, 41-65, mixed sex, GCSE or lower
G5: African Caribbean, 18-40, mixed sex, above GCSE	-	-	-
G6: African Caribbean, 41-65, mixed sex, GCSE or lower	-	-	-

Recruitment

With the exception of the Somali groups, respondents were recruited via a door-to-door or telephone screening exercise in each of the four areas. The sample was designed to include people with limited experience of the tribunal system. Selected respondents were sent a letter that confirmed their involvement in the research and which advised them of the details of the forthcoming focus group. It also reiterated the aims of the research and assured them of the confidentiality of the study and their involvement.

Staff at the Haringey Somali Community and Cultural Association recruited participants in the two Somali groups. Because the 'pool' of potential participants

[18] The Somali groups took place at the Haringey Somali Community and Cultural Association in Tottenham. The Nigerian groups took place in Catford.

was reasonably limited, these respondents were not screened on parental status, age, or economic activity.

Conduct of the research

The research team conducted all of the English-language group discussions, with the exception of the Pakistani groups. A Punjabi speaking moderator conducted the four Pakistani groups. Project workers at the Haringey Somali Community and Cultural Association, with the assistance of the research team, conducted the two Somali groups.

All groups were exploratory and interactive, and discussion was based on a topic guide that outlined key subject areas to be discussed (see Appendix B). Each participant received a payment of £20 in appreciation of their time and to cover any expenses incurred in taking part. Each group discussion lasted between one and one and a-half-hours. With the agreement of respondents, groups were tape-recorded for verbatim translation.

Qualitative data analysis

The qualitative material was comprehensively and systematically analysed. Based on the verbatim transcripts, a detailed content analysis was undertaken. Analytical charts were constructed, summarising the key themes emerging from the group discussions in relation to the research objectives. The analytical charts were then reviewed and scrutinised with research team members exploring patterns in the data, key differences between groups and the range of explanatory factors accounting for differences.

The first stage of the interpretive analysis focused on analysing the data for key differences between White and Ethnic Minority participants. However, this stage in the analysis did not reveal significant differences related to ethnicity alone, with the exception of a few instances. The charts were then re-analysed and team members found that a range of other factors, most notably cultural differences and language differences, accounted for the key differences between participants' perspectives of the tribunal system. This analysis is presented in the chapter three, together with quotations or extracts from transcripts which illustrate the key findings. Throughout the report quotes have been anonymised to protect confidentiality, although they have been labelled to indicate which group within the sample the respondent belonged to.

Survey of tribunal users

The survey was conducted using face to face Interviews with tribunal users in three tribunals, the Appeals Service (TAS), Criminal Injuries Compensation Appeal Panels (CICAP) and Special Educational Needs and Discrimination Tribunals (SENDIST). An ethnically mixed team of research assistants was specially recruited to the Law Faculty at UCL and trained by the research team to conduct face to face interviews with tribunal users and to observe tribunal hearings. The user survey was divided into three distinct phases:

Pre–Hearing survey

This phase was designed to explore users' motivation for appealing, their expectations and preparedness for hearings, including any advice that might have been obtained prior to the hearing. The method adopted was to approach users in the waiting rooms and to administer a structured questionnaire that took approximately 5-10 minutes. Interviewers were instructed, in so far as possible, to approach as many Black African, African Caribbean and South Asian users as possible, and thereafter to approach White users (see further below). The overwhelming majority of users approached in tribunal waiting rooms agreed to be interviewed and the refusal rate was below 10%. Some 529 interviews were conducted in tribunal waiting rooms in the three tribunals in different geographical locations as follows:

Table 2.2 Breakdown of pre-hearing interviews conducted in three tribunals

Tribunal	Location	Number of Interviews
Appeals Service	London	210
	Birmingham	101
	Leeds	42
CICAP	London	71
	Birmingham	23
	Manchester	31
SENDIST	London	51
TOTAL		529

Post-hearing survey

Generally interviewers would accompany respondents into their tribunal hearing in order to observe the hearing. Whether or not the hearing had been observed, respondents who had been interviewed in the waiting room before their hearing were interviewed again after the hearing and before they had received their decision. This phase was crucial in exploring users' evaluation of their experience during the hearing without that evaluation being influenced by knowledge of the outcome of the hearing. Using another structured questionnaire, users were asked about their feelings of comfort in the tribunal setting, their ability to participate in the hearing, their evaluation of the tribunal, the presenting officer and their own representative (where present) and whether they had experienced anything during the hearing that they considered to be unfair, biased or showing a lack of respect.

It was not always possible to undertake post-hearing interviews or occasionally they were truncated, if the tribunal reached its decision very quickly. In the event 374 post-hearing interviews were conducted as follows:

Table 2.3 Breakdown of post-hearing interviews conducted in three tribunals

Tribunal	Post-hearing interviews
Appeals Service	236
CICAP	94
SENDIST	44
TOTAL	374

Post-decision survey

In order to explore users' understanding of the explanation for their decision, perceptions of the fairness of the decision reached and reactions to the procedures of the tribunal once the decision was known, a final questionnaire was administered once the decision had been given and the hearing concluded. This was only possible for TAS and CICAP hearings because SENDIST decisions are always posted rather than delivered on the day. Occasionally, some of the post-decision questions were asked to SENDIST users at the end of their hearings. In some cases post-decision interviews were not conducted because the case had been adjourned or because the user hurried away after the hearing. Some 295 interviews were

conducted after the decision or at the conclusion of the hearing and resulting breakdown of post-decision interviews in the three tribunals is as follows:

Table 2.4 Breakdown of post-decision/post-conclusion interviews in three tribunals

Tribunal	Post-decision/conclusion interviews
Appeals Service	169
CICAP	85
SENDIST	41
TOTAL	295

Analysis

All data from the waiting room questionnaires, the post-hearing questionnaires and the post-decision questionnaires were entered into an Excel database and then transferred to SPSS for analysis. Responses to open-ended questions were recorded in Word documents.

Observational study of tribunal hearings

A large-scale observation exercise provided the opportunity to assess user and tribunal performance during hearings (discussed in chapter five). The method adopted was for interviewers, having completed a pre-hearing interview, to ask users if they could accompany them into the hearing. In the overwhelming majority of cases users were content, and indeed sometimes pleased, to have the research observer accompany them into the hearing. Having established a rapport with users during the pre-hearing interview, users did not tend to find the presence of the observer threatening. Permission was also obtained from tribunal chairs to observe hearings. In almost all cases permission was granted, although on a few occasions when other observers were present, research observers were asked not to sit in on the hearing. Occasionally, tribunal chairs appeared to be more disconcerted than users by the presence of the research observers.

Table 2.5 Observations by tribunal and location

Tribunal	Location	Number of Observations
Appeals Service	London	137
	Birmingham	62
	Leeds	40
CICAP	London	56
	Birmingham	22
	Manchester	27
SENDIST	London	47
TOTAL		391

Observers used a structured observation schedule to assess various aspects of tribunal behaviour during hearings including introduction, degree of assistance and enabling, appearance of listening, and courtesy shown to users. Users were also assessed in relation to their ability to participate in the hearings including their ability to present their case, their degree of understanding of the process, and apparent confidence during the hearing. Observers assessed each aspect of behaviour on a scale from 1 to 5 and were required to record specific pieces of evidence supporting the evaluation. Observers tried to be as unobtrusive as possible, and whenever feasible sitting well to the side of proceedings. Brief assessments were also made of representatives, interpreters, and department presenting officers when they were present during hearings.

Observations were made by a team of specially recruited and trained research assistants. The team was ethnically diverse with three South Asian researchers, one African-Caribbean researcher, one mixed-race observer and five White researchers. Seven of the researchers were female and four were male. While observation of behaviour has the advantage of providing more objective evidence than self-assessment, as a research method observation has a number of accepted limitations, the most obvious being that observation by its nature is likely to have an independent influence on the behaviour being observed. In the context of this study, it is clear that both tribunal judiciary and users were aware of the presence of an observer at the hearing for research purposes. Individual tribunal judges had varying degrees of information about the purpose of the research depending on whether they

were full or part-time and the extent to which information about the research communicated by tribunal Presidents had been noted. Whatever the level of detail recalled about the objectives of the research, there can be little doubt that tribunal judiciary were conscious of the presence of an observer and therefore likely to demonstrate special care in their dealings with tribunal users. It is thus reasonable to assume that observers were seeing "best" behaviour as opposed to "careless" behaviour during hearings. On the other hand, it is not fair or realistic to assume that tribunal judiciary know what good and best standards are, but succeed in meeting those standards only if they are being observed. It is more fair and reasonable to assume that during observed hearings tribunal judiciary were most likely to be operating at the top end of their personal performance spectrum.

A second concern in relation to the observational study arises from the relatively large number of observers used. While on the one hand the larger the number of observers the greater the potential for inconsistency in assessments, the counterbalancing benefit may be that a mixture of observers may iron out personal differences in assessment which is likely to reduce any systematic bias in evaluation scores.

Both the scores given during observation of hearings and the evidence supporting scores were added to the main survey SPSS database so that the results of observation could be linked with users' perceptions and information about the outcome of hearings.

Statistical analysis of tribunal decisions

Although there is clearly value in undertaking a survey of users' perceptions of their experiences in tribunal hearings to explore the extent to which Minority Ethnic users perceived any procedural unfairness during hearings, it was regarded as important also to assess the extent to which Minority Ethnic users might be subject to any substantive disadvantage in terms of tribunal outcomes. In order to undertake regression analysis of tribunal outcomes from which confident results could be obtained about Minority Ethnic groups a large sample was required. This aspect of the research was the most challenging in terms of data collection. Although all three tribunals record information about the outcome of hearings on electronic databases, only SENDIST makes any attempt to collect information about the ethnic origin of their users.

Having considered a number of alternatives for creating a large sample of cases with information about ethnic origin and tribunal outcome, the only feasible solution to the problem was to distribute ethnic monitoring forms to users attending tribunal hearings at TAS and CICAP. A form was handed out by tribunal clerks in tribunal waiting rooms. The clerks explained that the form was part of a research project, and then asked the user to fill it in and hand it back to the front desk. Users were asked to complete the forms with their name, case reference number and address so that the case could be linked with the tribunal database containing information about case type, representation and outcome. The forms then invited users to tick an appropriate box to indicate their sex, nationality and ethnic group. The options provided on the forms were:

Bangladeshi
Black African
Black Caribbean
Black Other
Chinese
Indian
Pakistani
Asian Other
White
Other (please specify)

Users were also asked to say whether they were using an interpreter at the hearing and if so, what their language was.

Monitoring forms were produced in English, Urdu, Punjabi and Gujarati and were distributed in tribunal waiting rooms over a period of about six months. Once forms had been collected from tribunals, the information provided on the forms was entered on to an Excel database and case numbers were linked with tribunal databases to record the outcome of the cases, which were then added to the research database.

This procedure relied on the cooperation of the clerks to give out the forms, and the research team is very grateful to them for their help. In TAS forms were distributed to the London, Birmingham and Leeds venues and were taken by the clerks to other related centres. They were then delivered back to the research team for inputting. In CICAP the forms were taken to the hearing locations by the clerks from the London and Glasgow centres as non-permanent venues were used. The breakdown of

completed ethnic monitoring forms in TAS and CICAP and the number of cases from SENDIST with information available for the analysis of outcomes, which represent cases additional to those where interviews were conducted, is as follows:

Table 2.6 Breakdown of cases for analysis of outcomes

Tribunal	Completed monitoring forms
Appeals Service	1,568
CICAP	403
SENDIST (cases available for analysis)	1,087
TOTAL	3,058

Creating a sample

Locations

In order to ensure that the survey of users and analysis of outcomes incorporated some geographical variation, data collection was carried out at several different locations. The choice of locations had to satisfy a number of criteria:

1. Centres needed to have fairly large case loads in order for cost-effective fieldwork which involved interviewers being sent around the country.
2. The locations needed to be areas in which there were sizeable Minority Ethnic communities in order to maximise the opportunities for securing interviews with Minority Ethnic respondents.
3. There was a limit to the number of centres that could be investigated, so using centres that acted as hubs for the wider region in which they were located presented a logical opportunity to maximise potential caseload in different regions.

Tribunals in urban areas provided the best opportunities to meet these various criteria. Although resource constraints necessitated that interviews were only carried out in the larger urban areas, monitoring forms were often completed at the smaller centres which are linked to the larger hubs. The final choice of centres for fieldwork was as follows:

TAS:	London, Birmingham, Leeds
CICAP:	London, Birmingham, Manchester
SENDIST:	London

For resource reasons SENDIST hearings were only observed in the London centre. SENDIST holds on average a maximum of 4 hearings per day with two of these running concurrently. This is reduced to an average of 1-2 a day in locations outside of London. Posting a researcher outside of London would not have been cost-effective, particularly since SENDIST hearings are subject to a high proportion of withdrawals and cancellations, many of which can occur as late as the morning of the hearing.

Survey sample selection

The survey sample needed to be representative of the number of people attending a tribunal. The breakdown of numbers across the tribunal types and locations roughly represent the variation in case loads at each centre. Other constraints affected the distribution of the sample, for example the timing of available hearings.

The sample was both purposive and random. Respondents were generally selected while at the tribunal. Targeted Minority Ethnic groups were identified as 'visible ethnic minorities' or selected by name from the hearing schedule. Random sampling of users, irrespective of ethnicity, was also conducted if the case was the next available hearing. This method helped to establish a sample of White users. The frequencies of respective groups in the sample were monitored throughout the research and later into the study certain groups were targeted to boost their representation in the sample. The type of sampling used varied by tribunal and location as each differed in their type of procedure, as is explained below.

TAS

The Appeals Service had the largest case load of all the tribunals. This meant that a wide range of respondents could be sampled without selecting specific cases beforehand. Listings of cases were subject to late modification so it was decided that no targeting of respondents would be made before the collection of data. The running time of the hearings would also vary greatly. Given that more than one hearing room would run at a time it proved more beneficial to have a more flexible sample technique,

allowing the best use of time while at the hearing centre. Minority ethnic users were identified by sight or name.

CICAP

The sample process in CICAP was predominately the same as for TAS. Respondents were chosen at random on the day of the hearing. CICAP only runs one hearing at a time so all the users attending the centre on the days of data collection were in the sample. Given the lower case load a more targeted sample was taken when visiting centres in Birmingham and Manchester to ensure time in these places was used as efficiently as possible. Again cases could only be selected by the identification of names from the hearing schedules.

SENDIST

The sampling procedure was quite different for SENDIST than for the other tribunals. Due to the rather sensitive nature of these hearings parents needed prior knowledge of a researcher's attendance so that they had the opportunity to object to the presence of an observer. Cases were chosen in advance from a hearing list and the parties notified by letter of a researcher's intention to attend. This also enabled the researchers to be certain they could gain access to the hearing which was important since only 1-2 hearings would run in each session. Cases were again chosen by name since data on ethnicity was not available on the hearing schedule lists. The fact that fewer SENDIST cases were available meant that a more purposive sample had to be taken to ensure a good demographic spread of respondents.

Survey of tribunal judiciary

Although the research focus was on users' perspectives of tribunal hearings, it was considered important to explore the views of tribunal judiciary about any special needs that they perceived Minority Ethnic users to have, or any particular challenges presented to tribunals in providing Minority Ethnic users with fair hearings. Telephone interviews were conducted with tribunal judiciary from TAS, CICAP and SENDIST covering, among other things, the requirements of a fair hearing, perceptions of the dynamics of hearings particularly those involving Minority Ethnic users, performance of users in hearings, any need for special knowledge or skills in dealing with Minority Ethnic users, and views on the value, quality and effectiveness of diversity training. Some 63 interviews were conducted with tribunal judiciary as displayed in Table 2.7. All interviews were, with permission, tape recorded and transcribed verbatim.

Table 2.7 Distribution of interviews with tribunal judiciary

Tribunal	Number of telephone interviews
TAS	24
CICAP	24
SENDIST	15
TOTAL	**63**

Sample composition

Ethnicity and nationality

Survey of users at tribunal hearings

Table 2.8 Self-defined ethnic group: users interviewed at tribunal hearings

		TAS	CICAP	SENDIST	TOTAL
	Bangladeshi	14	1	0	15
	Black African	38	5	2	45
	Black Caribbean	15	4	2	21
	Black Other	12	1	7	20
	Chinese	2	0	0	2
	Indian	22	4	4	30
	Pakistani	22	4	1	27
	Asian Other	14	1	4	19
	White	156	90	29	275
	Afghan	1	0	0	1
	Arabic	4	0	1	5
	Egyptian	2	0	0	2
	Greek Cypriot	4	0	0	4
	Iranian	6	0	0	6
	Iraqi	5	0	0	5
	Israeli	1	0	0	1
	Kurdish	2	0	0	2
	Lebanese	2	0	0	2
	Mauritian	1	1	0	2
	Middle Eastern	1	1	0	2
	Mixed	1	2	0	3
	North African	2	0	0	2
	Persian	1	0	0	1
	Sri Lankan	1	0	0	1
	Turkish	2	0	0	2
	Turkish British	1	0	0	1
	Turkish Cypriot	2	0	0	2
	Gujarati	0	1	0	1
	Unclear	0	1	0	1
Total		334	116	50	500

Table 2.9 Self-defined nationality of 'White' users interviewed at tribunal hearings

	Australian	1
	British	189
	Dutch	1
	German	1
	Greek	4
	Greek Cypriot	1
	Irish	16
	Italian	2
	Kosovoyan	2
	Portuguese	3
	Spanish	2
	Turkish	1
	Welsh	1
	French	1
	Scottish	1
	Hungarian	1
	Cypriot	1
	Polish	2
	New Zealander	1
	Missing	44
Total		275

Table 2.10 Self-defined nationality of 'non-White' users interviewed at tribunal hearings

	Afghan	2
	African	1
	Bangladeshi	4
	British	111
	British Turkish	1
	Chinese	2
	Dutch	1
	Egyptian	1
	Eritrean	3
	Ethiopian	1
	Ghanaian	2
	Indian	6
	Iranian	4
	Iraqi	5
	Iraqi Kurdish	1
	Jamaican	2
	Kurdish	1
	Mauritian	2
	Moroccan	1

	Pakistani	5
	Portuguese	1
	Sierra Leonean	2
	Somalian	10
	Sri Lankan	3
	St Lucia West Indies	1
	Sudanese	1
	Tanzanian	1
	Turkish	2
	Ugandan	1
	West Indies Barbados	1
	French	1
	British Nigerian	1
	African Jamaican	1
	Kashmiri	1
	Zimbabwean	1
	Finnish	1
	Missing	40
Total		225

Table 2.11 Length of residence in UK by ethnic group based on survey sample only

	Black African/ Caribbean	South Asian	Other ethnicity	White	Total
Born in UK	27%	18%	0	85%	56%
Less than 1 year	0	0	7%	1%	1%
2-5 years	21%	4%	36%	1%	7%
6-10 years	8%	2%	7%	2%	3%
11-20 years	17%	18%	21%	3%	9%
More than 20 years	27%	59%	29%	8%	24%
	48 100%	68 100%	14 100%	168 100%	298 100%

Sample for outcome study derived from self-completed monitoring forms

Table 2.12 Self-defined ethnic group: users completing monitoring forms

		TAS	CICAP	SENDIST	TOTAL
	Bangladeshi	25	1	0	26
	Black African	72	13	0	85
	Black Caribbean	65	8	0	73
	Black Other	12	2	0	14
	Chinese	5	0	0	5
	Indian	90	9	0	99
	Pakistani	86	9	0	95
	Asian Other	27	1	0	28
	White	1,038	330	2	1,370
	Afghan	3	0	0	3
	African White	1	0	0	1
	Arabic	13	0	0	13
	Egyptian	1	0	0	1
	Black British	1	0	0	1
	Caribbean African	2	0	0	2
	Caribbean Caymanian	1	0	0	1
	Chinese Indian	1	0	0	1
	Cypriot Irish	1	0	0	1
	Filipino	1	0	0	1
	Greek	1	0	0	1
	Greek Cypriot	2	1	0	3
	Iranian	2	1	0	3
	Iraqi	6	0	0	6
	Iraqi Kurdish	2	0	0	2
	Irish Jamaican	1	0	0	1
	Italian	1	0	0	1
	Kenyan Indian Asian	1	0	0	1
	Kurdish	1	0	0	1
	Latin American	7	1	0	8
	Mauritian	1	0	0	1
	Middle Eastern	4	0	0	4
	Middle Eastern Kurdish	2	0	0	2
	Mixed	8	2	0	10
	North African	1	1	0	2
	Persian	3	0	0	3
	Turkish	4	0	0	4
	Turkish Cypriot	2	0	0	2
	Turkish Iranian	1	0	0	1
	European	1	0	0	1
	Welsh	1	0	0	1
	Assyrian	1	0	0	1
Total		1498	379	2	1,879

Table 2.13 Self-defined nationality of 'White' users completing monitoring forms

	American	1
	Australian	1
	Brazilian	1
	British	1171
	British Turkish	4
	Canadian	2
	German	1
	Greek	3
	Greek Cypriot	1
	Iranian	2
	Iraqi	5
	Irish	51
	Italian	3
	Kosovo Albanian	1
	Kosovoyan	2
	Kurdish	1
	Palestinian	1
	Portuguese	3
	South African	1
	Spanish	4
	Turkish	5
	Venezuelan	1
	Welsh	22
	Yugoslavian	3
	Georgian	1
	Scottish	2
	Bosnian	1
	South American	2
	German South African	1
	Danish	3
	British Italian	1
	Spanish British	1
	Missing	68
Total		1,370

Table 2.14 Self-defined nationality of 'non-White' users completing monitoring forms

	Afghan	4
	African	1
	Afro-Caribbean-Jamaican	2
	American	1
	Bangladeshi	7
	Barbados	1
	British	298
	British West Indies	1
	British Pakistani	1
	Chinese	2
	Columbian	3
	Congolese	2
	Dutch	2
	Eritrean	1
	Ethiopian	3
	Ghanaian	2
	Greek	1
	Greek Cypriot	1
	Hindu	1
	Indian	20
	Iranian	8
	Iraqi	11
	Iraqi Kurdish	2
	Irish	4
	Jamaican	6
	Kurdish	1
	Liberian	1
	Mauritian	2
	Moroccan	1
	Nigerian	6
	Pakistani	16
	Palestinian	2
	Portuguese	2
	Sierra Leonean	3
	Somalian	23
	Somalian Baajuni	1
	Sri Lankan	1
	St Lucia West Indies	1
	Sudanese	1
	Turkish	4
	Ugandan	1
	Yemeni	2
	Zairian	1

	French	1
	Rwandan	1
	Kuwaiti	1
	Gambian	1
	West Indian	1
	Jamaican British	1
	Lebanese	1
	Netherlands	2
	Burundian	1
	Cote Ivoirian	1
	Montserrat	1
	Missing	43
Total		509

Table 2.15 Self-defined ethnic group for whole sample including categories used on SENDIST database (excluding missing information for ethnicity)

		TAS	CICAP	SENDIST	TOTAL
	Bangladeshi	39	2	1	42
	Black African	110	18	11	139
	Black Caribbean	80	12	15	107
	Black Other	26	3	12	41
	Chinese	7	0	2	9
	Indian	112	13	11	136
	Pakistani	108	13	18	139
	Asian Other	43	3	4	50
	White	1,193	420	558	2,171
	Middle-Eastern	63	2	1	66
	White Other	34	3	0	37
	Mixed/Other	16	6	37	59
	Black British	1	0	0	1
Total		1,832	495	670	2,997

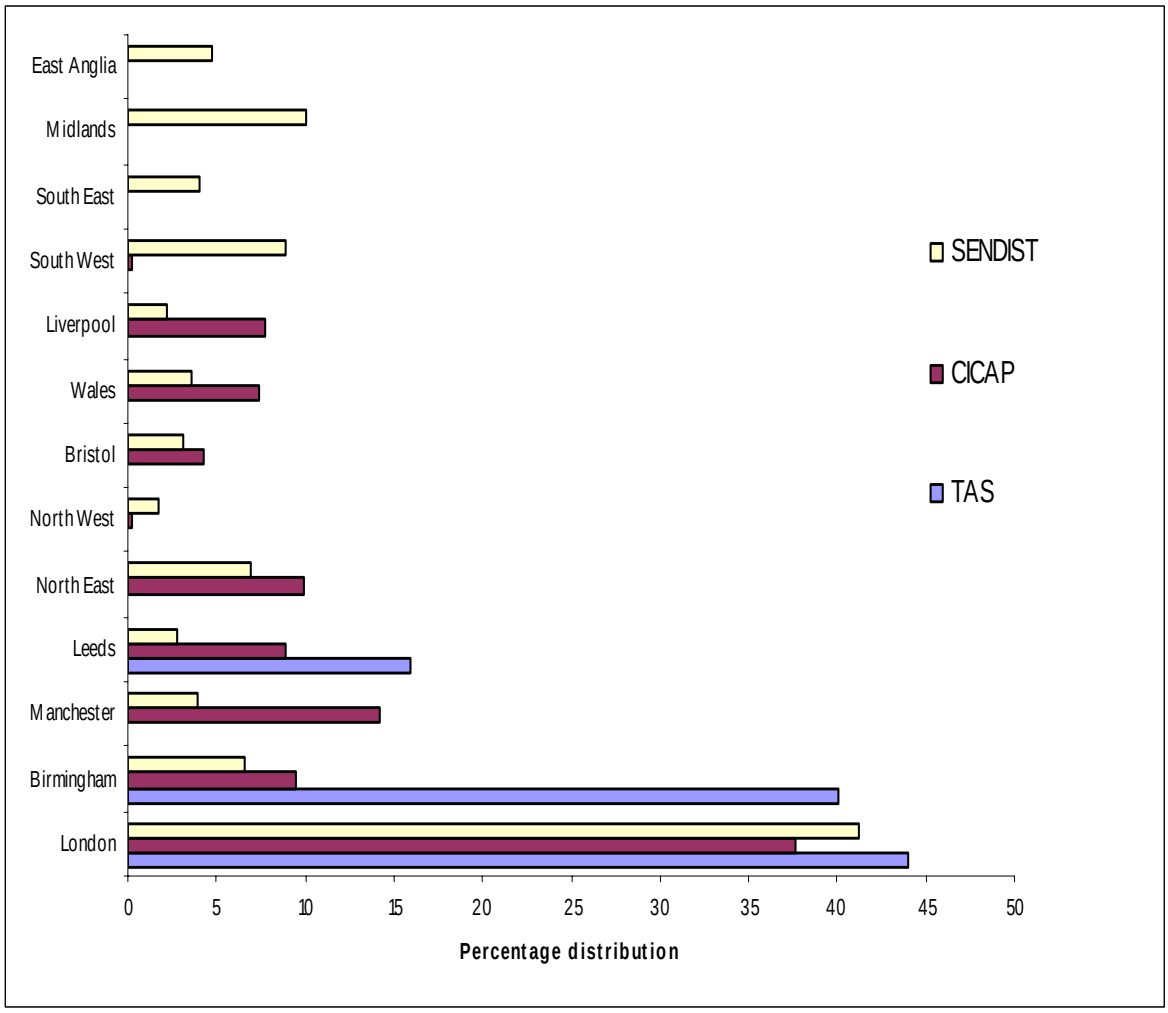
Gender

Table 2.16 Gender breakdown of sample: survey and monitoring forms

		Monitoring Forms	Survey Interviews	Total
	Male	1106 (56%)	274 (60%)	1,380
	Female	863 (44%)	185 (40%)	1,048
Total		1969 (100%)	459 (100%)	2,428

Geographical breakdown of data collection

Figure 2.1 Data collection from forms and survey by tribunal and location



Chapter 3. Access to tribunal justice

While the central focus of the project was with the treatment and perceptions of Minority Ethnic users of courts and tribunals *during* hearings, it was felt important that in the context of the imminent and significant change to the tribunal world and the policy emphasis on tribunals "for users", the scope of the project should include issues relating to public access to tribunal justice. This chapter therefore presents the findings of the initial phase of the study, which explored public awareness of redress systems for tribunal-relevant disputes and grievances, as well as knowledge and experience of advice and assistance services. The findings are based on sixteen focus group discussions with members of the public involving 115 Black, Minority Ethnic and White respondents in different locations in England[19].

The fundamentals of access

In practice only a minority of disappointed applicants and claimants take the step of seeking a review of administrative decisions or launching tribunal proceedings. Where the ability to challenge decisions of public bodies depends on the motivation and personal resources of individual citizens, it is necessary for policies aimed at improving access to justice to be informed by, and respond to, the factors that influence individual choices about whether and when to seek redress, and what action to take. Effective access to systems for redress requires a number of things:

- Awareness of rights, entitlement, obligations and responsibilities.
- Awareness of systems for redress.
- Ability effectively to access redress systems.
- Ability effectively to participate in the redress processes in order to achieve just outcomes.

In this model of access, the advice and assistance provided by traditional legal practice and the not-for-profit sector in the UK have, historically, been crucial in contributing to access to administrative justice through community campaigns to educate and raise awareness about entitlement, via the provision of information, and through individual advice and representation for tribunal users.

[19] This part of the study was carried out in collaboration with the National Centre for Social Research, who were responsible for fieldwork and data analysis, and for producing an early draft of the findings.

The Leggatt Review of tribunals placed access to administrative justice and the needs of users central in the design of the new unified Tribunal Service. This emphasis reflected a vision of tribunals as accessible decision-making bodies in which representation is, or should be, unnecessary. Leggatt saw advice services as important in preparing tribunal users to present their cases, but implied that that representation was antithetical to the conception of tribunals as accessible, user-friendly forums:

> *"The effective communication of information about how to start a case, prepare it for submission to the tribunal and present it at a hearing is not an optional extra of good service to users. It is fundamental to the reason why tribunals exist separately from the ordinary courts. With very few exceptions the aim should be that tribunals' distinctive procedures and approach should enable users to prepare and present their cases themselves."* (Para 4.3 Leggatt Review of Tribunals, 2001)

The subsequent Government White Paper published in 2004[20] reinforced the Leggatt message, and while acknowledging that *"public understanding of the tribunal system generally and of the work of individual tribunals seems to be much lower than is desirable" (*Para 10.12) nonetheless re-asserted the Government's commitment to making tribunals more accessible to users so that users will be able to take their cases to tribunals *"with little or no support or assistance".* Easy access for tribunal users and the ability to participate effectively in proceedings are therefore issues of fundamental importance to tribunal justice, and arguably of more significance in the tribunal context than the ordinary courts, where legal representation remains the norm[21].

Access to justice research

Discussion about public access to systems of redress has changed over the past two decades. The historic 'access to justice' policy emphasis on providing legal representation to low income groups has broadened to encompass the principle of effective access to just **outcomes**, together with a shift of interest away from traditional ways of resolving disputes through courts and tribunals towards alternative and 'proportionate' procedures. Interest has also turned to the role of advice services in helping to "lift" people out of social exclusion and the potential of advocacy to

[20] *Transforming Public Services: Complaints, Redress and Tribunals*, Department for Constitutional Affairs, July 2004.
[21] Although for recent evidence of significant numbers of unrepresented parties see Richard Moorhead and Mark Sefton, *Litigants In person Unrepresented Litigants in First Instance Proceedings,* DCA Research Series 2/05.

promote social inclusion by ensuring effective access to critical benefits and services[22].

The corpus of access to justice literature stretching back over the last thirty years suggests a number of broad categories of barriers to access to redress systems: personal or psychological barriers such as a sense of social powerlessness; physical barriers, such as availability of advice sources or distance to advice and opening hours; and structural barriers such as the cost of legal and advice services.[23] Few access to justice studies have focused specifically on the extent to which such factors operate equally or differently for citizens from different ethnic and cultural backgrounds and whether there are additional concerns that might deter Black and Minority Ethnic citizens from seeking redress or, indeed, whether there are concerns that might lead them to be more determined to seek redress.

Recent studies of public responses to everyday justiciable problems and disputes are helpful in understanding levels of public awareness about rights and use of avenues of redress. The *Paths to Justice* studies[24] and the Legal Services Commission's Periodic Legal Need Surveys[25] have estimated the prevalence of "justiciable" disputes and revealed public strategies for resolving such disputes and problems. Although the studies focused principally on civil disputes, they also shed some light on public responses to administrative grievances and identified some of the barriers experienced by the public in seeking redress. The studies revealed a pervasive lack of information about redress processes and significant areas of unmet need for advice, assistance and representation. Although these studies provided national results for England, Wales and Scotland, the sample design did not permit reliable comparison of the strategies and experiences of White respondents with those of Black and Minority Ethnic respondents.

[22] Stein, J (2001) *The Future of Social Justice in Britain: A New Mission for the Community Legal Service*, Centre for Analysis of Social Exclusion, London School of Economics, Paper 48.
[23] For an excellent review of these issues see Roderick A Macdonald, 'Access to Justice in Canada today: Scope Scale Ambitions'; in *Access to Justice For a New Century: The Way Forward,* J Bass, W A Bogart, and F H Zemans (eds), Law Society of Upper Canada, 2005, pp 19-112.
[24] H Genn, *Paths to Justice: What People Do and Think About Going to Law*, Hart Publishing 1999; H Genn and A Paterson, *Paths to Justice Scotland: What Scottish People Do and Think About Going to Law*, Hart Publishing 2001.
[25] P Pleasence, A Buck, N Balmer, A O'Grady, and H Genn, *Causes of Action: Civil Law and Social Justice* (LSRC Research Paper No 11), Norwich: The Stationery Office, 2004.

Developing the *Paths to Justice* research, the Legal Services Commission's Legal Needs Study has analysed experiences of civil disputes and strategies for resolving them among Black and Minority Ethnic groups. The study revealed that although Black and Minority Ethnic respondents were not more likely than White respondents to experience justiciable problems, they were, however, **less** likely to take any action to resolve those disputes. They were also more likely than White respondents to feel that **nothing could be done** about their dispute, or to feel that they did **not know *what* could be done** to resolve the problem. The study also explored the routes taken by the public in seeking information and advice about redress systems and found, in common with the *Paths to Justice* studies, a range of personal and structural obstacles operating to inhibit access to advice. The structural barriers experienced were principally lack of availability of free sources of advice such as CABx because of limited opening hours, and unanswered telephones; unacceptable cost as far as solicitors were concerned; and an inability to offer the kind of help needed among the wide range of "other" advice sources approached[26].

In a recent report on access to publicly funded advice services, Citizens' Advice argued that under the Human Rights Act 1998, the State has an obligation to ensure equality of access to legal redress and that in this context the provision of both affordable and publicly funded legal services is vital to citizenship. The report draws attention to the special need for advice and support in tribunal hearings on the ground that many jurisdictions deal with intensely complicated regulations and that many tribunal users have a particular need for support. However, the report notes that knowledge and use of advice services is variable both socially and geographically and a major concern of the report was the identification of "advice deserts"[27] in which communities may suffer from a lack of specialist or any advice services.

Although there is a relatively substantial body of research on public use of complaints and redress mechanisms for administrative grievances, such studies have tended to focus on the experiences of people who have used redress processes. While these studies reveal much about the problems faced by people involved in seeking redress,

[26] Hazel Genn, Pascoe Pleasence, Nigel J. Balmer, Alexy Buck and Aoife O'Grady, *Understanding Advice Seeking Behaviour: Further Findings from the LSRC Survey of Justiciable Problems,* Legal Services Research Centre, Research Paper No 13, February 2005.
[27] Citizens' Advice*, Geography of Advice: An Overview of the Challenges Facing the Community Legal Service,* 2004.

they offer little insight into the factors that constrain people from taking action to challenge decisions of government departments and public bodies[28]. Recent ongoing research by Adler and others specifically explores factors that inhibit or encourage members of the public to seek redress for administrative grievances. Early results have identified five key factors influencing decisions to seek redress: the perceived seriousness of the grievance; the expected outcome of any attempt to resolve the grievance; extent of knowledge about how to resolve the grievance; the accessibility of mechanisms of redress; and the resources available for resolving the disputes. The authors' provisional conclusion is that:

> *"...in developing a model of the likelihood of people attempting to resolve their grievances it would seem that action is dependent on both motivation (a problem which deserves attention and a reasonable chance of a positive outcome) and means (knowledge of how to proceed, accessible procedures and sufficient resources)".*[29]

They also indicate that both the motivation and the means for taking action are strengthened when people have previous experience of successfully taking action to resolve a grievance.

A recent National Audit Office report on citizen redress[30] concluded that access remains a problem and that for many citizens simply getting started is the major hurdle:

> *"[F]ar and away the most important and troublesome problems that focus group participants saw with accessing government redress processes concerned taking the first step towards making a complaint or lodging an appeal. An especially difficult stage was seen to be finding out where you were supposed to go to complain when you did not have a specific letter or government form in front of you and had no previous experience of how processes worked in that part of the government system to draw on. Some people in the groups contrasted the remoteness and impersonality of government agencies unfavourably with a firm like Marks and Spencer, which 'have a branch in every High Street' that you could visit in person and where you could be confident that your grievance or issue would be handled respectfully."*

All of the relevant studies exploring public motivation and ability to seek redress indicate the significance of information and advice about avenues of redress. In this

[28] For a comprehensive review of the literature on public experiences of tribunals see Adler, M. and Gulland, J. [2003] *Literature Review of Users' Experiences, Perceptions and Expectations of Tribunals*, London: Council on Tribunals.
[29] Michael Adler, Christopher Farrell, Steven Finch, Jane Lewis, Sue Morris, Dan Philo (unpublished) *Administrative Grievance: a Development Study*.
[30] *Citizen Redress: What Citizens Can Do If Things Go Wrong With Public Services*, Report by The Comptroller and Auditor General, Hc 21 Session 2004-2005, 9 March 2005.

context public experiences of the availability and usefulness of advice and assistance, and in particular those of Minority Ethnic communities, are critical to policy aspirations concerning improving access to administrative justice and promoting social inclusion.

Public awareness redress systems

Within the context of what has been learned from these recent studies, the first phase of the Tribunals and Diversity study had several broad aims:

- To explore how Black and Minority Ethnic citizens might go about resolving disputes and grievances that fall within the jurisdiction of tribunals.
- To explore awareness of, and attitudes towards, tribunals among Black and Minority Ethnic members of the public.
- To explore any differences in perceptions of access to systems of redress, or expectations of the legal system between White, Black and Minority Ethnic members of the public.

Conduct of the research

Sixteen group discussions were held involving 115 participants drawn from Somali, Nigerian, African Caribbean, Pakistani and White British communities in different areas in England. Twelve of the discussion groups involved Black and Minority Ethnic respondents (4 Pakistani, 4 African Caribbean, 2 Nigerian, 2 Somali) and four groups comprised White respondents[31]. Four of the discussion groups were conducted in community languages comprising a male and a female group of non-English speaking Somalis, including some new arrivals (London); a group of Pakistani non-English speaking men aged 41-65 (Oldham); and a group of Pakistani non-English speaking women aged 41-65 (Bradford).

The discussions were based on a topic guide that initially encouraged general conversation around tribunal-relevant disputes and grievances. Discussion then focused on expectations and experiences of seeking redress, attitudes towards the legal system, awareness of tribunals and any concerns about barriers to access or anticipated disadvantage arising from ethnic origin.

The discussion in the remainder of the chapter is based on a comprehensive and systematic content analysis of verbatim transcripts of the focus groups' discussions.

[31] See chapter two for description of method and sample achieved.

The analysis involved exploring patterns in the data, key differences between groups and the range of explanatory factors accounting for differences. The first stage of the interpretive analysis focused on searching the data for key differences between White and Minority Ethnic participants. Surprisingly, with the exception of a few instances, this stage in the analysis **did not reveal significant differences related simply to ethnic origin.** Re-analysis, however, revealed that a range of other factors, most notably cultural differences and language differences, accounted for the key differences between participants' perspectives on seeking redress, attitudes to the legal system in general and to tribunals in particular.

Experience of tribunal-relevant disputes

Initially respondents were encouraged to talk about any disputes with public bodies that they, or close friends or family members had experienced. To establish the context of disputes with government agencies or public bodies rather than civil disputes, respondents were prompted to think about issues such as difficulties over claims for social security benefits, school inclusion or exclusion, special educational needs provision for children, granting of asylum or permanent residence rights, or parking fines. Since group selection had been engineered to ensure limited direct experience of the tribunal system, a number of scenarios were also devised concerning tribunal-relevant disputes in order to facilitate discussion, such as a dispute over eligibility for Incapacity Benefit and a dispute concerning school exclusion. Respondents were also asked to think about problems that they or close acquaintances might have experienced with employers, for example unfair or wrongful dismissal, racism or sexism in the workplace, unfair pay or unreasonable working conditions. Having talked about experiences of tribunal-relevant disputes and grievances the groups then discussed how they had attempted to resolve, or would envisage resolving such disputes and grievances. Respondents talked about whether they would pursue matters and why, where they might go for advice, whether they would consider taking formal action, and what sort of action they might take to resolve the problem.

General discussion about problems in dealing with public bodies revealed some direct experiences of benefit difficulties, immigration problems, and problems relating to school exclusions. For example, there was experience of being denied, or taken

off a benefit (Housing Benefit, Child Benefit, Income Support, Incapacity Benefit)[32] and of being asked to pay back a proportion of benefit received (Housing Benefit, Income Support) where respondents had believed that these decisions were wrong or unfair.

In the case of some of the Somali recent arrivals, being denied benefit was related to their status as UK residents. Benefits might have been stopped following expiry of Home Office status, or while respondents were waiting to receive Indefinite Leave to Remain. In some cases benefits were stopped because the Benefits Agency had apparently not recognised or acted upon respondents being granted Indefinite Leave to Remain.

A number of respondents in the Pakistani, Nigerian and Somali groups also mentioned having experienced disputes or grievances concerning immigration issues, some of which were linked with benefit-related problems. Examples included being refused Indefinite Leave to Remain by the Home Office, applications being lost by the Home Office, or decisions taking a significant period of time, and benefits not being granted in the meantime.

A small number of participants said that they had experience of their children being excluded or suspended from school in situations which they felt were unfair or unjustified. Others mentioned that their children had been refused entry to the primary or secondary school of their choice.

Several participants had received parking fines that they had felt were unfair, for example, because a parking restriction had not been made sufficiently clear, or because they had reached their car by the time a parking ticket was being issued.

Direct or close experience of employment problems appeared to be relatively common among respondents who attended discussion groups. The types of problems mentioned included being unfairly dismissed from work, being falsely accused of wrongdoing in the workplace, being denied benefits (for example a company car) that other employees of a similar level were receiving; being

[32] The word 'unfairly' is used, in these descriptions to describe *respondents'* perceptions of the situation, rather than as an objective assessment of the situation's fairness.

consistently passed up for promotion; returning to work after maternity leave to find that they had been placed in a different, less well-paying role; being treated in a derogatory way in the workplace – in some instances this involved or included what were perceived to be racist remarks.

In some of the cases mentioned, respondents had felt that their ethnic origin had been a major or contributing factor to the circumstances of the dispute or grievance.

Imagining seeking redress

In talking about what action they might take to resolve either fictional scenarios or real problems that had been experienced, groups were asked whether they might consider taking legal action and what that might mean. What people meant and understood by the phrase 'taking legal action' varied immensely and ranged from paying a solicitor to write a letter to a government body or employer, to fighting a government body or employer in court. There was often considerable lack of clarity about what *type* of court this might be, although some group participants included taking a case to a tribunal in their definition of 'taking action'. Many, however, did not mention tribunals in this context, either because they had not heard about them, did not associate them with the particular grievances under discussion or did not associate tribunals with "legal" powers.

Factors influencing the likelihood of seeking redress

A number of considerations affected people's attitudes towards taking legal action to obtain redress for tribunal-relevant grievances, and these were often inter-related. The most common factors mentioned by respondents in the discussion groups were:

- General knowledge about taking legal action
- Perceptions of length/cost of process
- Perceived importance of the issue at stake
- Perceived importance of standing up for principles
- Attitudes around seeking legal support, including:
    - views about whether legal was support necessary
    - access to legal representation
    - cost of legal representation
    - trustworthiness of legal representatives
    - communication and cultural concerns around accessing and using legal support
    - perceptions of cost

- Ethnic and cultural issues
- Communication
- Views about likelihood of fair treatment in a legal setting
- Views about whether it was possible to win

Knowledge about seeking redress

Knowledge or lack of knowledge was a key factor affecting people's attitudes towards taking action in relation to tribunal-relevant grievances. It has two principal dimensions. The first was levels of awareness about *whether* there was a remedy for the types of grievances discussed and second, what *might* be done to seek redress.

Generally speaking, with the exception of employment disputes, awareness levels of redress mechanisms were low. Tribunals were rarely mentioned in relation to the disputes discussed, the key exception being employment tribunals or "industrial tribunals" as they were more often called. Courts were mentioned more often, with a sense that the kinds of grievances being discussed could potentially be dealt with in a court, although people were often unclear about what sort of court they would need to access or how this could be done.

The second dimension was the extent to which people felt that they would be able to *go about* taking legal action. Some felt that they would find a way. They had either taken legal action in the past, knew other people who had taken action or were generally confident in their ability to find their way around systems and push for their rights. However, others felt that they simply would not know where to start in seeking redress. This view was cited across a range of respondent groups.

> *"I wouldn't know where to go [in relation to a serious employment dispute]. I would want to take it further, but wouldn't know where to start."*
> Pakistani male, 18-40, GCSE or lower, Bradford

> *"…As far as courts and tribunals and representations are concerned, I think an awful lot of people wouldn't know where to start, not just sort of what you'd class as disadvantaged, I think just generally people, you know."*
> White British, 18-40, above GCSE, Bradford

> *"If there were a problem, I have no inkling as to where to go or what to do…I wouldn't know about these services at all."*
> Pakistani female, 41-65, Bradford

> *"I wouldn't have a clue where to go if I needed advice."*
> African Caribbean, 18-40, above GCSE London

Lack of knowledge was often particularly strongly expressed, however, by two main groups. The first were those who had **newly arrived in the UK**, and therefore felt that they knew little about UK institutions and the legal structure. Some of the Somali respondents included in discussion groups fell into this category. The second were those who had not been born in the UK, especially when they **did not speak English** and lived in **closed communities** mixing only with people from their ethnic group. This applied in particular to older Pakistani respondents. The combination of these factors appeared to result in a lack of knowledge about, and confidence in, their ability to access the legal system.

> *"…We don't know about it [tribunals], we do not have any idea [until told by moderator] that there is anything like this out there."*
> Pakistani female, 41-65, Bradford

With the exception of the Pakistani non-English speakers, older respondents were generally more knowledgeable than younger respondents, particularly those at the very youngest end of the age spectrum who were often still living at home with their parents, and had had little exposure to public organisations or institutions other than school or college. Educational level was also sometimes a factor, the better educated being more aware of organisational and legal structures than the less well-educated. This was by no means always the case, however, and it was clear that personal experience or the experience of family and friends was a further key factor accounting for people's knowledge. In this context, educational level seemed to make little difference.

Length/cost of process v the importance of the issue at stake

A further factor affecting attitudes towards taking legal action was respondents' views about the likely length and cost of the procedure versus the anticipated gain. Generally speaking, taking legal action was assumed to be a lengthy, time-consuming and frustrating process. This was particularly because people tended to think about legal remedies in terms of courts rather than tribunals, and assumed that accessing a court was a complex and potentially costly process. It was also typically assumed that the groundwork for taking a case to court would be drawn out over a long period of time and – in some cases – that the party with whom they were in dispute would do all that they could to protract the process. As a result, there was often a feeling that the issue under dispute would need to be critical to be worth pursuing. However, as evidenced by the debate below, others took the stance that it would be worth going through difficulties, for the sake of standing up for principle.

> *"Are you really prepared to spend a year trying to get back a month's rent? You know, and the grief, the court cases, the children are crying…it's not really worth it."*
>
> *"But then if you took that attitude, and everyone took that attitude, the Government would do what they like, and no-one would challenge them."*
>
> *"But they are doing what they like."*
>
> *"It just takes so long…"*
>
> *"It does take so long, but at the end of the day if you believe in something you have to fight for something."*
>
> Group: African Caribbean, 41-65, GCSE or lower, London

> *"It all depends about how strongly you feel about the issue [fictional benefit scenario] because I'm well aware that anything to do with appeals, all that kind of thing is just going to be horrendous. It's just going to be paperwork and letters, hundreds of letters."*
>
> Group: White British, 18-40, above GCSE, Bradford

As a result of expectations around length, the perceived importance of the issue at stake was also critical in affecting attitudes towards taking legal action. Some felt very strongly that *any* type of wrong was worth fighting, for the sake of principle – whether relating to a small parking fine or serious benefits grievances. However, more generally, there was often a feeling that it would only be worth going through a lengthy and potentially costly process if the dispute was one in which a person's livelihood or way of life was seriously threatened. In this sample, grievances relating to benefits and immigration were key areas where this opinion was held and this view was cited, for example, in relation to a benefit being cut, taken away or denied; particularly if there was no reasonable alternative way of earning money.

> *"If that [benefit] was my only means of income and I was desperate, then yes, I would fight them [Benefits Agency]."*
>
> *"I would fight them too, I really would."*
>
> Group: African Caribbean, 18-40, above GCSE, London

Those who *had* taken action often confirmed that this was the way that they had felt. They had pursued the matter further because their livelihood, or the livelihood of a close family member, was at stake – often in spite of a perception that they faced a number of barriers.

> *"I took action because I knew that if I didn't, my mother would have been in a really, really hard situation. She would have been left with nothing, you know, because it would not have benefited her in any way at all. So I had no choice. I had to pursue it."*
>
> Group: Pakistani female, 18-40, above GCSE, Oldham

Importance of standing up for principle

The importance of standing up for principles was another major consideration in some cases. This factor often appeared to be related to a respondent's personality, rather than factors such as culture, ethnic group or educational level. For example, there were some people from different ethnic groups who argued that they *would* consider legal action if they had a strong feeling that they had been wronged and other ways of resolving the grievance had not been successful – even if the issue in question was itself relatively minor. These respondents tended to argue that they were the type of people who could not let issues drop, and who could not live with themselves unless they had done all that they could to right a perceived wrong.

Although ethnicity was not usually the major factor here, there were some cases where it did appear to be a *further* factor affecting people's stances, although it is difficult to generalise about the impact on decisions about seeking redress. There were some, for example, who seemed to feel that they were particularly likely to be wronged as a result of their ethnic group, or particularly skin tone. Fighting a wrong was therefore also a matter of fighting prejudice, and therefore something that they felt they would have to do, using legal means if necessary.

On the other hand, perceptions of racial prejudice could also work in the opposite direction. For example, other respondents did *not* think that they would, as a matter of course, fight an issue where they felt that race discrimination had been involved. They argued that they might come up against similar prejudice in a legal forum and therefore that they would do better to drop the issue, unless it was of critical importance to them.

Some also felt that as a matter of pride they would not pursue an action when they felt they had been a victim of prejudice. For example, unfair treatment – such as being subjected to racist treatment or consistently passed up for promotion – was not worth fighting, because one would not want to stay on anyway. Some even thought that staying on would be humiliating in such circumstances.

> *"Matter of pride would restrict me from pursuing it [fictional employment scenario] further. When they say they don't want me, they make me redundant, I would just fly out of there."*
> Group: African Caribbean, 41-65, GCSE or lower, London

Responses on this issue in different discussion groups ranged widely making it difficult to generalise across the board or between groups. There were sharp divisions of opinion within groups and sometimes respondents from the same ethnic group took diametrically opposed positions. What seemed to be clear, however, was that most respondents would carefully weigh principle, anticipated gain, and anticipated loss. The conclusion tended to be that taking action to seek redress was only likely when the former *two* factors outweighed the latter, not the former on its own. These differences are illustrated by the exchange set out below.

> *"I think basically, if you have to go through a certain amount of grief only to get back £1,000 with no profit, it seems cheaper just to walk away then."*
> *"But don't anybody ever think about things like principles?"*
> Group: African Caribbean, 41-65, GCSE or lower, London

The need for legal support

A perceived need for legal support in seeking redress was commonly expressed within discussion groups. In part this was due to a feeling that the strength of the opposing parties – government departments, local government, employers - was such that it would be impossible for an ordinary person to take action and succeed without help. It also reflects a more general feeling among respondents that experts are needed to decipher the legal terminology that would undoubtedly face them in seeking redress. Notably, this feeling appeared often to apply to tribunals as much as courts when respondents were imagining having to seek redress through formal procedures:

> ***"What could be done to make you feel that you had a greater chance of being treated fairly [in a tribunal]?"***
> *"If there was somebody there to represent you…"*
> Group: Pakistani male, 18-40, GCSE or lower, Bradford

> ***"Do you need a solicitor or someone like that [at a tribunal]?"***
> *"In a tribunal? I assume you would, yes."*
> *"I think you would need some form of – I wouldn't necessarily go to the extent of saying a solicitor, but you'd need to have some form of legal backing or legal advice behind you so that you would know exactly what was happening to you, why you were there and what your legal status actually is in that situation."*
> Group: African Caribbean, 18-40, above GCSE, London

> *"I wouldn't feel confident [representing self in a court or tribunal]"*
> *… "No chance."*
> *… "Just the lack of knowledge."*
> *"Just on procedure."*
> *… "They'll find a loophole, they'd do something."*

> *"It's legal jargon isn't it, you don't know the procedures…you may not know that you have to stand when the judge comes in, or… you just wouldn't have a clue, would you?"*
> Group: White British 18-40, above GCSE, Bradford

The extent to which needing legal support was regarded as a barrier to taking legal action varied, however, and was related to several, sometimes inter-related factors. The first was **access to legal representation**. Among most of the sample groups, accessing and communicating with solicitors was not regarded as a problem in itself. People either said that they knew of solicitors through word of mouth or previous experience, or did not think that they would have any difficulties in finding one. However, some non-UK born respondents, particularly when they did not speak English and lived in closed communities, expressed lack of confidence in this respect. They seemed to feel that they would not know where to start looking for a solicitor, and would not have the confidence to make initial contact even if they did manage to find one. In part these feelings appeared to be related to concerns around communication barriers, discussed below. However, a further explanation seemed to be more general lack of confidence in accessing a service that they felt they knew little about.

Second, the presumed **cost of legal representation** was often discussed as a factor affecting attitudes towards accessing legal support. Respondents who thought that they would have to meet the costs of the solicitor themselves – either because they did not know about Legal Aid or 'no win no fee' arrangements or did not think that they would be eligible – often felt that cost would be a significant consideration. It would only be worth fighting a case if the issue at stake was of critical importance to their livelihood or otherwise likely to result in significant financial gain.

> *"If it's something where you're going to get your money back you don't mind spending it, like if it's a thing to do with your property or if you've worked for twenty years. Even if it's going to cost you £1,500 it's worth it, you know."*
> Group: African Caribbean, 18-40, GCSE or lower, Birmingham

Others did not think that they would have to pay a vast amount for a solicitor. As far as they were aware, they would be eligible for Legal Aid, or could use solicitors recommended by CABx or Law Centres, who did not charge very much. Indeed, some argued that these solicitors were often of a very high calibre.

> *"If you were out of work, for example, you'd get one of the lawyers that the CAB would get for you – and they are good, very good. They don't lose many cases."*
> Group: White British, 41-65, GCSE or lower, Bradford

On the other hand there was sometimes a feeling that the chances of a successful outcome in court were lessened if the client was not paying privately for the solicitor. The perception here was that solicitors whose fees were met through Legal Aid, or who were recommended by Law Centres to less well-off people would be of a lower standard than those paid for privately, or would be looked down upon in court.

> *"If you're paying for your solicitor, you're going to get a better case set out than if you're taking Legal Aid."*
> *"…'Cos you're paying them, and money talks, doesn't it?"*
> Group: African Caribbean, 18-40, GCSE or lower, Birmingham

Third, perceptions of the **trustworthiness of solicitors** influenced perceptions. A range of views was expressed in this context. Some worried that solicitors would encourage people to fight their cases in court *whether or not* they thought they had a chance of winning, in order to gain the fees.

> *"The solicitor's going to say fight, because it's money in his back pocket, isn't it?"*
> Group: White British, 18-40, GCSE or lower, Birmingham

A few also said that they felt solicitors were only interested in taking on the cases of prosperous people. Conversely others were much more trusting, feeling that solicitors were generally honest, that they were important for the protection of rights, and that they would only take on cases that they genuinely thought they could win.

Communication was a further factor affecting people's attitudes towards seeking legal support. In particular, non English-speaking respondents often felt that lack of fluency in English posed a significant barrier. Unless they were able to find a solicitor who communicated in their own language, they would struggle to make the complexities of their case understood. This barrier was enough to make some feel they would never seek to fight a case or use a solicitor. Others felt that they might be able to find translators or firms of solicitors with bi-lingual staff through an organisation like the CAB; and some in fact had done this. There was also evidence that language barriers *had* in fact proved problematic between solicitors and clients. One Somali woman, for example, had missed her Immigration Appeal because of communication difficulties with her solicitor.

Finally, perceptions around the **ethnic composition of the legal profession** also influenced attitudes towards seeking legal support in some cases. There was a feeling among some Somali and African Caribbean respondents that they were at a disadvantage because of a shortage of solicitors from their own ethnic backgrounds. This was particularly strongly felt by some of the Somali men. They argued that to have a chance of succeeding in a legal forum, it was necessary to be represented by someone who was able to understand and portray in court the intricacies and cultural backdrop to their case. Because the Somali community did not have such representatives, they were at a significant disadvantage. This argument was also employed, but less strongly, by a few African Caribbean respondents. These respondents said that they were more disadvantaged than the South Asian community when it came to taking a case to court because while the South Asian community had numerous solicitors, they had few. The feeling here seemed to be that members of a Minority Ethnic group known to have significant numbers of legal personnel would somehow be treated better in court than those who did not; and further, that having a solicitor whose ethnic group matched that of the claimant somehow lent the claimant more credibility.

There were also a few cited cases where respondents from Minority Ethnic groups felt that they had been treated badly by the solicitors that they *had* contacted, as a result of their ethnic origin. A Nigerian respondent, for example, described how he had been told by a solicitor he had approached for assistance with an Immigration Appeal that he should go back to live in a warmer climate.

Other respondents did not anticipate such treatment or feel that they would need to use a solicitor from their own ethnic group, particularly where communication issues were not felt to be a barrier. The feeling here was often that it did not matter what the solicitor's ethnic background was, so long as they did a good job.

Ethnic and cultural issues

In some cases, issues relating to ethnic or cultural background affected respondents' attitudes towards the *principle* of taking action. It was particularly striking that these issues could work in diametrically opposed ways. On the one hand, some respondents who had not been born in the UK – in this sample, African Caribbean and Somali – argued that they did not and would not be seen to have the *right* to take legal action, particularly against government bodies. They were guests in the UK,

and should show their appreciation of this fact. Some also argued that they would not have the confidence to take legal action in the first place. Because they had been born elsewhere, they did not feel sufficiently acquainted with, or part of the UK system to feel that taking action was an option. One respondent contrasted his attitude in this respect to that of his wife's, who *had* been born in the UK:

> *"My wife is born in England, I'm born in Jamaica. The difference is that…you tend to be taught in a way that you don't speak back, kind of thing. But with those that are born in England it's a different thing, they believe that where they are now is theirs, that they have right to speak up, and that they should be treated like everyone else walking down the street."*
> Group: African Caribbean, 18-40, GCSE or lower, Birmingham

However, a very different line was taken by other respondents from Minority Ethnic groups, including some of those who had not been born in the UK, but who felt confident about finding their way around the UK legal system. They argued that because of their ethnicity, they were *more likely* to be treated unfairly, whether in relation to employment, benefits, housing or their children's schooling. These respondents felt as a result that they were probably more predisposed to taking action than White British people were, because there was more that they needed to fight.

> *"The smallest thing and I would go to court."*
> Nigerian male, 41-65, above GCSE, London

There were also a number of issues relating to a person's language or cultural group that affected their attitudes towards actually attending a legal forum. Again, language barriers and lack of knowledge about UK culture were cited as a significant barrier by some, particularly the Pakistani and Somali respondents who did not speak much English, who had not been resident in the UK for long or who lived in apparently closed communities within the UK. These people often expressed the view that they would not be able to cope in a court situation. They would not understand what was going on, would not be competent enough to be able to speak, and would not be able to cope with the written documents that they anticipated having to encounter.

> *"Our people, especially of our generation, cannot even fill forms, so it is impossible to go to court to appeal for anything."*
> Group: Pakistani male, 41-65, GCSE or lower, Oldham

Evidence of this also came from some respondents whose parents had not been born in the UK and who did not speak much English, who said that their parents consequently lacked confidence about seeking redress for grievances on account of communication difficulties or difficulties with assimilating to UK culture. Indeed, some

second-generation migrants said that they had pursued grievances on behalf of their parents that, left alone, their parents would simply have dropped.

Finally, some Somali respondents, because of experiences in their country of origin, cited fear of courts as a significant barrier to accessing legal forums. They said that in Somalia going to court was typically a terrifying prospect involving harsh and often arbitrary treatment. Although they recognised that the system in the UK was probably less frightening, they still felt fear at the mention of the word court, and in particular associated it with receiving punishment. The prospect of attending court was therefore an unpleasant one and one that they would avoid if at all possible.

> *"Back home it is very scary to go to a court because there was no justice system and it also depended on the mood of the judge and jury and how wealthy you are."*
>
> *"Sometimes it is very surprising to receive a letter or an appointment for the courts for a minor thing. For example, rent arrears of £50-100, which I can easily pay without going to court, they don't know the stress and emotion they cause us when we receive those letters."*
> Group: Somali female, London

Communication

Concern about communication was a further factor that affected people's attitudes towards taking legal action. As with accessing a solicitor, non-English speaking respondents often felt that they would face significant barriers in a legal forum. Unless they had found a solicitor from their ethnic group – which, as described above, was often felt to be difficult if not impossible – they felt that it would be difficult to make themselves understood in court. These difficulties, they felt, would hinder their ability to be able to make their case or understand the proceedings that were going on around them.

A few felt that they might be able to access translators, which would make the process easier. Others however, expressed similar anxieties around accessing translators to those mentioned around accessing solicitors – not knowing where to start, and lack of confidence around accessing such services.

Expectations of fair treatment

Concern about race prejudice

> *"In a tribunal, we'd be lost to start with. They'd think, 'Well, he's a coloured lad'."*
> Group: Pakistani male, 18-40, GCSE or lower, Bradford

> *"I would never think that anything that happened to me was to do with the colour of my skin. That's the way I was brought up, so it is a lot to do with that."*
> Group: African Caribbean, 41-65, GCSE or lower, London

One feeling expressed within discussion groups was that ethnic origin, and particularly skin tone, definitely *did* affect chances of succeeding in a legal forum; that people from ethnic minorities were less likely to achieve justice and more likely to be treated harshly than the White British population. Such views were especially common among the African Caribbean, Pakistani and Nigerian groups.

> *"It [court] is a place where they put more Black people in prisons and more White people on community service."*
> Group: Pakistani male, 18-40, GCSE or lower, Bradford

> *"It's a known fact that within the court system, African Caribbeans are six times more likely to be sentenced than their White counterparts."*
> Group: African Caribbean, 41-65, above GCSE, Birmingham

There were, however, a variety of different explanations for this feeling. In some cases, the perception that prejudice existed in legal forums seemed to spring from more general expectations about the way that members of particular Minority Ethnic groups were treated by institutions. For example, some respondents seemed to have formed negative expectations about treatment in legal forums as a result of prejudice that they, close friends or family members had encountered in other arenas such as employment, at the Benefits Agency, at school or in dealings with the police. **Negative experiences in one area led to expectations of negative treatment in another.** Slightly differently, others argued that they had had to work much harder than their White counterparts to succeed at school, or in employment. **The expectation here was often that they would also have to work much harder than Whites to succeed in a court or tribunal.**

> *"All the obstacles you face, every day from your schooldays onwards, make you realise that you're constantly facing closed doors. And you start to feel …a lack of confidence."*
> Group: Pakistani male, 18-40, GCSE or lower, Bradford

News coverage of mistreatment of Minority Ethnic groups by the police or judiciary also often formed a backdrop to the overarching perception that people from ethnic

minority groups would face prejudice in court, as did an occasional perception that a minority population was predetermined to be mistreated by the majority. Some of these feelings in relation to the legal system reflect the dominance of the criminal justice system in the public imagination and, as discussed later, this influences expectations of other types of courts and tribunals.

> *"People have been killed in custody…it was an ex-para Black person and they just dismiss it… and that person took it through all sorts of legal procedures and everything and they're still not getting any joy."*
> Group: Pakistani men, 18-40, GCSE or lower, Bradford

> *"The majority of this country is White people…so Black people are like not going to win, we're not going to get anywhere. That's why a lot of people can't be bothered [taking grievances further]."*
> Group: African Caribbean, 18-40, GCSE or lower, Birmingham

There were variations however, in the way that racism was felt to manifest itself, and the perceived reasons for the racism. Some felt that people from Minority Ethnic groups were more likely to lose their cases, particularly against government bodies or local government, because they would be seen as having less of a 'right' than White British people to complain. The people sitting in judgement, they felt, would feel that they should be grateful for being allowed to stay in the country, or to claim benefits at all. There was also fear of being stereotyped by those sitting in judgement on account of ethnic group; some African Caribbean respondents, for example, said that they might expect to be cast as aggressive and trouble-making and therefore be more likely to lose their case. Respondents who had experience of the legal system through current or past work sometimes backed these perceptions up. One African Caribbean respondent whose past work involved sitting in a Juvenile Court, for example, said that Black teenagers were in his experience more harshly treated than White teenagers for displaying similar behaviour.

Others felt that people tended to be stereotyped along racial or ethnic lines *before* they reached a legal forum, thus prejudicing their cases from the outset. A respondent who had worked in the mental health field felt that Black people suffering from psychosis were more likely than White people to be described as violent, aggressive and hostile, and therefore lose an appeal at a Mental Health Review Tribunal. Another – also with relevant work experience – argued that records detailing the reasons for school exclusion were often less detailed for Black children than for White, and often more negative. The perceived implications of all this were that the chances of winning at a tribunal or court were significantly reduced for Black people before the process even got underway.

> *"Any tribunal and any court, to be honest, is only as good as the evidence presented to it and there are different ways you can present evidence. You can present it in a positive manner, or a negative manner, it just depends on what you want to present."*
> Group: African Caribbean, 18-40, above GCSE, Birmingham

> *"I would just feel that somebody looking at my skin colour would assume that I was guilty, possibly, and so that then I would get harder treatment. When we were growing up I was always told you've got to work harder than the White person to get where you are. And that's something that's always kind of been entrenched in me as a young person… I wouldn't be put off because personally if I felt that I was wrong done by in this situation I would still go through the system. But I do think it's about perhaps knowing your way – I mean I don't know my way round the system as much as a lot of people in this room obviously, but I am the type of person who would find out."*
> Group: African Caribbean 41-60, above GCSE

It was also sometimes argued that *actual* characteristics of ethnic groups were misunderstood, or interpreted in a negative way in legal forums. For example, some African Caribbean respondents said that people from their ethnic group were culturally more likely to display emotion in a legal setting, which they felt might have an adverse effect on the way that they were perceived.

> *"First of all, I did want to take it in my own hand, I really did, I wanted to do – get angry, but then I had to sit down and think about it, and say 'But, as a Black man, if I do get angry, then it just makes things worse' - I mean – that's what they want."*
> Group: African Caribbean, 18-40 above GCSE Birmingham

Expectations around prejudice and the legal system were by no means uniform however, and the subject generated a significant amount of debate. One opposing argument was that anticipating negative treatment on account of ethnic group was defeatist; those who went into a legal system expecting to be treated unfairly were more likely to be so treated than those who expected equal treatment. Some of these respondents argued that this was a principle they had applied to other areas as well, for example, school and employment.

> *"I was open-minded [in appealing against the refusal of a place for her daughter in their chosen school] and knew I had to give it the best I could. I had to be positive. If you go in with a negative stance anyway, you're halfway towards losing it, aren't you?"*
> Group: African Caribbean, 18-40, above GCSE, London

A further argument was that in fact considerable care was taken over the treatment of Minority Ethnic groups within the legal system; any whiff of prejudice, and there would be negative coverage and criticism from institutions such as the Commission for Racial Equality and, through them, the media.

> *"You have all the media people there [court] and they know they want to be careful, because if they do it wrong, those people will expose them. Whereas if they do it right, people will praise them or comment on what they've done."*
> Group: Nigerian females, 18-40, GCSE or lower, London

While views among English speaking Nigerian, African Caribbean and Pakistani respondents were often diverse in relation to the feelings set out above, the non-English speaking respondents in the Pakistani and Somali groups did not tend to talk about prejudice specifically in relation to their ethnic group. Rather, their concerns were focused on the cultural barriers to accessing court in the first place.

In common with Black and Minority Ethnic respondents, some respondents from White British groups also felt that people from Ethnic Minority groups were less likely to achieve justice in a legal forum than they were. They argued in particular that the current climate of hostility towards asylum seekers in the UK was likely to result in prejudice, and also that these groups would be less able than others to present their case in a legal forum, or access such as a forum in the first place.

> *"Asylum seekers, refugees, people like that would be seriously disadvantaged [in a legal setting]…They would have language problems, they wouldn't know where to go, who to speak to, they wouldn't have a point of reference."*
> White British, 18-40, above GCSE, Bradford

However another argument cited in one White British group was that asylum seekers were *more likely* to win their cases in legal forums than White British claimants. There were two inter-related strands to this argument. The first was that asylum seekers were often treated better than White British claimants in respect of issues such as benefits and housing, and would therefore similarly be better treated in legal forums. The second was that the judicial system needed to be so careful of displaying any racial prejudice that decision-makers would be more inclined to exercise leniency in the case of asylum seekers than in other cases.

> ***"Who do you think would get better treatment than you in court?"***
> *"…Asylum seekers and all the rest of them."*
> *"The government have to play it safe with asylum seekers – they have to be careful what they say and what they give them."*
> *"They can't offend different countries."*
> Group: White British, 18-40, GCSE or lower, Birmingham

Concerns about class, gender and age prejudice

While skin tone and ethnic group dominated discussion around anticipated treatment in legal forums, a number of other factors were also mentioned, such as **education** and **social class.** With regard to the former, there was often a feeling that the more articulate a person was the better their chance of succeeding, particularly when they did not have legal support. The feeling was that better-educated claimants would gain more respect, be better able to make their case and better able to follow events than people who were less articulate or educationally able.

> *"I think it depends on how you speak to them…If you speak – yeah – and you've got all your big words, you say all these big words to them, then they will listen to you, but if you sit down and say – 'you know what, I don't know'…you've lost straight away, you're lost, you know what I mean, you ain't going to get nothing."*
> Group: African Caribbean, 18-40, GCSE or lower, London

> *"She [wife] is well articulated whereas I'm not. So she says things which even I don't understand. But if you're stood there and somebody's giving all these big words which you don't understand and you're going to lose it, she would understand, so she'd be a lot better off."*
> Group: White British, 41-65, GCSE or lower, Bradford

With regard to social class, there was often a perception that the lower down the social ladder a person was, the less they would be able – and also be *perceived to be able* – to contest adverse decisions. As a result, decisions in legal forums were more likely to go against them, partly because they were less well able to make their case in the first place and partly because they would not have the financial ability to appeal further against an adverse decision. **In this context, some argued that people from Minority Ethnic groups *and* lower social classes faced a 'double whammy' of prejudice that would be very difficult to overcome in a legal forum.**

There was also some feeling that other groups might suffer disproportionately from prejudice including people of certain ages (in particular the young and the post-retirement elderly) and women. In both cases, the examples given were concerned with how prejudice might affect the legal forum's view of what would be fair and right in these cases, based on out-of-touch or mistaken views about the circumstances of young, elderly or female people in today's society.

Views about chances of winning

A final factor affecting people's attitudes towards seeking redress was the extent to which they felt that they had a chance of succeeding against a government department, local government department, or employer. There was often a strong feeling that it was difficult, if not impossible, to take on a government department and win, and this is discussed further later in the chapter.

Taking action in practice – impact of above factors

In spite of all the various constraints cited above, a number of respondents in the sample *had* taken action to seek redress for various tribunal-relevant grievances, including those from groups who tended to express particular lack of confidence about doing so. For example, some of the Somali respondents had attended an Immigration Adjudication Panel, one Somali respondent had attended an Appeals Panel and one had attended an Employment Tribunal. A non-English speaking Pakistani male had also attended an Appeals Panel. More widely across the sample, there were people who had attended – or knew close family or friends who had attended – employment tribunals and school exclusion panels. There appeared to be three main routes to taking action to resolve tribunal-relevant grievances and these are discussed in relation to the factors that appeared to be most important in influencing decisions about whether or not to seek redress.

Routes to redress

Among respondents in the sample who had sought redress from tribunals, three main groups could be identified:

- **Group 1** – *'passengers', no initial knowledge about tribunals:* these respondents had not set out with any knowledge of the options available to them, and had ended up taking action because they had been carried along by events, not because they had been determined to do so from the outset, or known what to do. In these cases, action had often been taken as a result of close involvement from an advice-giving organisation or solicitor. The participants in this category who had attended legal forums (in most cases tribunals) had not tended to know what to expect, or what the exact nature of the institution they were attending was - other than that its purpose was to settle the dispute they had been experiencing. Even after the event, and with prompting, these people often struggled to say whether they had been to a tribunal or not. In this sample, this type of experience

occurred in relation to benefits disputes and immigration disputes. The examples below describe participants who had this type of experience.

Mr A had his benefits stopped when his children came over from Pakistan. He does not know why this happened. He went to the CAB (who had a translator available) who helped him to write a letter to the Benefits Agency. When he still did not receive his benefits they arranged for him to go to an appeal hearing 'with a chairman', which resolved that he should receive the benefits. The process took a year (Pakistani male, 41-65, Oldham).

The Home Office rejected Ms B's application for Indefinite Leave to Remain in the UK. Ms B's solicitor arranged for her to attend a hearing, where the decision was overturned. Before attending the panel, Ms B was very frightened. She expected it to be like a court in Somalia, where she could be instantly thrown into jail or deported. Her solicitor did not explain the true nature of the hearing to her. She thinks that this was because her poor English prohibited explanation (Somali female, London).

- **Group 2 –** *'drivers', no initial knowledge about tribunals:* in these instances, action was taken as a result of proactive behaviour from the respondent, stemming from a determination to 'do something' about the problem. Although people in this category did not tend to know about tribunals specifically, they had some idea of where to go at the outset to try and resolve their problem. For example, in relation to employment disputes they had known about ACAS and contacted them as first port of call; in relation to school-inclusion related disputes, they had known that the LEA was an important organisation to contact. These types of experience occurred, in this sample, in relation to schools-related and employment-related disputes. For example:

  Mrs C's daughter did not get into the secondary school of her choice. Mrs C thought that her daughter's primary school had treated her unfairly, by losing the folder of work that her daughter needed for the secondary school interview. She contacted the head teacher of her daughter's primary school to see if he could help to reverse the decision, but he said he could not. She then wrote to the Chief Executive of her local LEA, explaining why she thought that her daughter had been unfairly treated. As Mrs C is a teacher, she knew that the LEA was the appropriate place to contact. The LEA arranged for her to attend a School Admission Appeals Panel. She did not realise that this had any legal jurisdiction or what its nature was until she got there; prior to attending, she had merely understood that she would be attending a meeting with the head teacher of the secondary school. The decision not to admit her daughter was overturned (African Caribbean female, 18-40, above GCSE, London).

- **Group 3 –** *'drivers', initial knowledge about tribunals:* these respondents were, like those in the second group above, determined from the outset to 'do something' about their problem. However, they differed in that they knew that going to a tribunal was an option from the outset. The only area where this occurred was in relation to employment disputes. The example below describes such a case:

  Mr E's employers were denying him the benefits – for example a company car – that his contract said he was due to receive. Other employees at a similar level were receiving these benefits. Mr E determined to take his employers to an employment tribunal. He had heard about these through acquaintances, and knew what they involved. The tribunal ruled that he should be receiving the benefits (Nigerian male, 41-65, above GCSE, London).

Factors accounting for action taken

The Table below presents some of the potential constraints on seeking redress mentioned by respondents and the factors that seemed to influence decisions about taking action to seek redress. In the case of the least confident groups, in particular those who did not speak English, or did not feel knowledgeable or confident about accessing UK institutions, barriers to action had been overcome when the grievance was perceived to be critical *and* when respondents had received fulsome support and advice. In the case of the more knowledgeable and confident groups, barriers to action – including fears about prejudice – had been overcome when the issue was perceived to be critical, when a strong sense of principle was involved, and when the person knew how to take action, or felt that they would be able to find out.

Table 3.1 Barriers to seeking redress and factors accounting for action

Route to action	Potential barriers	Factors accounting for action taken
Group 1 – 'passengers', no initial knowledge about tribunals (least confident and knowledgeable types)	- Lack of knowledge and confidence around taking action and seeking advice - Concerns about prejudice on grounds of race, educational ability or social class - Communication/ cultural barriers	- Issue critical to respondent's life and livelihood (benefits, immigration) - Fulsome and extensive service and support from advice-giving agency and/or solicitor
Group 2 – 'drivers', no initial knowledge about tribunals	- Concerns about prejudice on grounds of race (cited in some cases but not others)	- Some awareness, but imprecise, that a remedy exists and confidence in finding out - Strong determination to resolve grievance because perceived to be critical and/or because person has strong sense of standing up for principles
Group 3 – 'drivers', initial knowledge about tribunals	- Concerns about prejudice on grounds of race (cited in some cases but not others)	- Strong perception that a legal remedy exists - Strong determination to resolve grievance because perceived to be critical and/or because person has strong sense of standing up for principles

There were also cases described in discussion groups, however, when respondents had experienced problems that fell within the jurisdiction of tribunals and had *not* taken action. In some of these cases, the importance or principle of the issue was not felt significant enough to overcome other barriers, such as perceptions around time and cost, fears about prejudice, lack of knowledge about where to go and lack of knowledge about how to take legal action. In some cases among the least confident groups, even if an issue was apparently critical to livelihood – for example, withdrawal of Incapacity Benefit – action had not been taken because of a perceived lack of access to fulsome support and advice. The extent of people's knowledge

about, and ability to seek, advice was therefore often a critical factor influencing actions and this is discussed further in chapter four.

Seeking advice

Awareness of sources of advice

In each group discussion, respondents were asked about where they felt they could go for advice if faced with a tribunal-relevant dispute or grievance. What emerged from discussion was clear variation in levels of awareness across the sample. There were those who said they did not know of anywhere they could go for advice in the case of a grievance or dispute.

> *"If there were a problem, I have no inkling as to where to go or what to do…I wouldn't know about these services at all."*
> Pakistani female, 41-65, Bradford

> *"I wouldn't have a clue [where to go if needed advice]."*
> African Caribbean, 18-40, above GCSE, London

Comments of this nature were made predominantly by Pakistani and Somali respondents who did not speak English and had not lived for much of their lives in the UK, or who lived with relatively closed communities within the UK. Some of the younger respondents (below the age of 21) also expressed a similar lack of awareness. In the case of all these groups, low levels of knowledge about UK organisations and institutions were apparent.

Generally there were higher levels of awareness among the English speaking groups, whether they were White, Pakistani, Nigerian or African Caribbean. Typically, these respondents were aware of some advice sources, although there was considerable variation in the number of potential sources of advice that respondents were familiar with or had heard of. While many knew about a range of different sources and could mention them by name, others could only think of a single one. Those who were knowledgeable about advice sources also tended to be confident that if they needed advice they would be able to locate it. Nonetheless, these respondents often expressed the view that they, and the general public at large, did not know enough about the range of available advice sources.

> *"I think we need more awareness, definitely."*
> Pakistani male, 18-40, GCSE or lower, Bradford

> *"I don't think people are very well informed…"*
> White British, 18-40, above GCSE, Bradford

The most well-known advice resource was the Citizens Advice Bureau (CAB). Other sources of advice commonly mentioned were solicitors, trade unions and Law Centres. Some Pakistani, Somali and African Caribbean respondents also mentioned voluntary organisations specifically serving the needs of Minority Ethnic communities, and Race Equality bodies. Less commonly cited sources included ombudsmen, the police, a local radio DJ, and Jobcentres. In addition to these formal sources of advice, some respondents also reported that, in the case of a grievance, they would go to their family and friends for advice.

Factors influencing levels of awareness and use of advice

Looking at determinants of awareness, a key finding from the discussion groups was that ethnicity, *in itself*, did not appear to be a determinant of awareness of advice sources. This was reflected in the fact that there were African Caribbean, Pakistani and Nigerian respondents in the sample who reported similar levels of awareness as White respondents. What emerged was a more complex picture, in which there were a number of different but often inter-related factors that influenced levels of awareness or potential use of advice sources. Some of these factors related in part to ethnicity, while others were unrelated. The different factors are summarised in Table 3.2 and then discussed in more detail below.

Table 3.2 Key factors affecting levels of awareness and use of advice sources

- Proficiency in the English language
- Level of familiarity with culture
- Age
- Personal experience
- Gender

Proficiency in the English language. Levels of awareness were particularly low among those respondents who did not speak English. The evidence indicates that this may partly be a consequence of the fact that information and publicity about sources of advice are not commonly available in languages other than English. English speaking respondents reported that they had often become aware of sources of advice through either reading leaflets, posters, local newspapers, or through adverts on television. In contrast, those who did not speak English were not able to learn about sources of advice through these channels. Not a single respondent in the sample had seen or heard of information or publicity in languages other than English, and one of the main suggestions made for improving access to advice was better availability of information in Punjabi, Urdu and Somali.

It was also clear that general lack of familiarity with British institutions and processes played a part in the varying levels of awareness about advice sources across the sample. Respondents who had settled in the UK at some point in their adult lives had less general awareness and knowledge of organisational structures and processes in the UK than respondents who had grown up in the UK. For example, in the following quote, the word 'uneducated' seemed to be being used to imply lack of knowledge about UK culture and institutions.

> *"It's more of a problem for people like us, uneducated people. The educated people know all about the benefits, social workers, where to go, advice centres where they can go for help. For the majority of uneducated people like us it is very difficult for us to know where to go for help, who to go to for the right advice."*
> Pakistani female, 41-65, Bradford

Since many respondents who had not grown up in the UK did not speak English well or at all, they faced barriers around both language and culture.

Age was also a factor that appeared to play a part in varying levels of awareness of where to go for advice across all age groups. Some of the youngest respondents in the sample reported low levels of awareness of sources of advice. They did not talk explicitly about the cause of this lack of knowledge, but evidence from other respondents does offer a potential explanation. In addition to accessing leaflets and seeing publicity, another way in which respondents had become aware of sources of advice was through **previous experiences** of accessing a source of advice, or from the experiences of family members or friends. Unsurprisingly, older group respondents generally had experienced more problems and issues about which they had needed and sought help than those at the younger end of the age spectrum.

> *"Citizens Advice Bureau, I've been there on occasions in the past…"*
> African Caribbean, 18-40, GCSE or lower, London

> *"I've had dealings with Citizens Advice already...this was when I had to give up work to look after my wife and we wanted to know what we was entitled to and it was just through that."*
> White British, 41-65, GCSE or lower, Bradford

> *"People that are in the older generations…they know a lot more about things like Citizens Advice Bureau, Racial Equality and things like that because a lot of people like my mum and dad come over here they had to know about things like that to get by in life…I've never – maybe because I've never had to go down that road of finding out what I'd need to do in a situation where I thought something was, someone was discriminating against me, whether it*

> *be for my colour, for something that I've done or whatever, maybe that's just the reason why I don't know anything about that."*
> African Caribbean, 18-40, GCSE or lower, Birmingham

While in some circumstances age and experience led to greater knowledge and confidence, there was also evidence that in certain communities younger people were perceived as being ***more* aware** of sources of advice than older people. This was raised by some older Pakistani, South Asian and Somali respondents who experienced the kinds of language and cultural barriers already discussed. In these cases it appeared that they were often reliant on younger members of their community, who spoke English and who had grown up in the UK, as a source of information about what sources of advice there were.

Finally, **gender** also emerged as an issue affecting awareness of sources of advice for some respondents in the sample. Overall, there were no clear differences in levels of awareness between women and men. However one group of Pakistani women did indicate that their gender was part of the reason for their low levels of awareness. Respondents in this group said that, as women in their communities, they were often left at home with limited opportunity to engage in employment or other activities. This restricted their opportunities to find out about what sources of advice might be available. As these were women who did not speak English and who had not grown up in Britain, they appeared to face compounded barriers to accessing sources of advice as a consequence of language and unfamiliarity with British culture, in addition to gender.

As well as influencing awareness, these factors also influenced actual use of advice services. Notable barriers to accessing advice services were perceptions about lack of translators, worries about language difficulties and general lack of confidence in accessing UK institutions.

Awareness of particular advice sources

Citizens Advice Bureaux

Across the sample, there were differences in perceptions around the role of CABx. It was generally felt that CABx were there to give members of the public information and help with resolving any problems or grievances they had. However, some felt there were limits to what types of grievance they could help with, and how much they could actually do to help.

> *"…[the CAB] cannot help you with every problem, they are okay for minor problems but they don't cater for everybody. The minor problems can be resolved but the bigger ones are a different matter."*
> Pakistani male, 41-65, Oldham

> *"I've used them before, and they've been very good, but they can only advise you to a certain point…"*
> White British, 41-65, GCSE or lower, Bradford

To this end, some respondents saw the role of CABx as effectively being to signpost individuals to other sources of advice (such as a solicitor) who could help them with addressing their grievance.

> *"The fact is, it is well known, you go to Citizens Advice Bureau and all they give you is direction where to go."*
> African Caribbean, 41-65, GCSE or lower, London

This is reflected in the fact that while many respondents thought the first place they would go for advice was the CAB, they felt they would have to go to another source of advice or help if they were to take their grievance further.

There was a range of views expressed about the work that CABx did, both positive and negative. One positive feature widely associated with CABx was that the advice they offered was free. This was seen as an important advantage over other potential sources of advice, such as solicitors, where people felt that they would expect to pay for advice. Another positive characteristic associated with CABx was that the advice they provided was impartial. In this context there appeared to be a widespread understanding that CABx were **independent** (although one respondent did think that they were part of the Government).

A number of other positive views about CABx were also reported. As well as being free and impartial, CABx were sometimes perceived to be **user friendly**, and easier to approach than other potential sources of advice. For example, one respondent thought that because CAB staff were voluntary they would mainly be 'ordinary' people with whom she would feel comfortable discussing her problems. Another felt that CABx had an image of being non-judgemental, and that she would not be made to feel any stigma or shame about sharing any problem she had with a member of staff – a potential concern about other types of environment.

More negatively, some argued that CAB staff did not always have the necessary specialist knowledge to help a person with their grievance. There was also the

suggestion that staff may not be highly motivated to help with a case because they were working there on a voluntary, rather than professional, basis. More seriously, there was sometimes a feeling that staff had been badly trained, and were ill-equipped to deal with people's queries.

> *"[It] is the actual people that work there because they give out the wrong information…this is where a lot of people get confused and upset you know…Well this is it, 'cos some of them, you know, they have no, the training is just ridiculous."*
> African Caribbean, 18-40, above GCSE, London

A more widespread concern still was that there were likely to be difficulties in getting to talk to someone at a local CAB office. The frequent perception was that people had to queue to be seen and were often not able to get through to the office when they rang. CAB offices were also criticised for limited opening hours. This was seen to lead to even longer queues and delays at times when they *were* open. These problems were generally attributed to a lack of resources and funding on the part of the CABx. In some cases, these perceived barriers appeared to have deterred people from accessing their local CAB.

> *"Citizens Advice Bureau, I've been there on occasions in the past but it's such a lengthy process and it's hit or miss whether you find a reliable or decent individual who can help you… at times you want to give up."*
> African Caribbean, 18-40, above GCSE, London

> *"They're never there if you try and ring them… you just get a telephone answering machine all the time… you just give up in the end."*
> *"There's about twelve people in front of you… I've done that, walked in, walked straight back out and thought, 'Not that desperate for this'."*
> White British, 18-40, GCSE or lower, Birmingham

However, at least one respondent felt the situation had improved at the local CAB office.

> *"They're a bit more accessible now, the Citizens Advice, I know the local ones, whereas before it was an interview system – sort of certain days were interview only – now they're open all day all week and it's drop in."*
> African Caribbean, 18-40, Above GCSE, London

The perceptions and experiences of both the positive and negative aspects of CABx are consistent with research carried out over the past two decades on accessing advice services. A study of represented and unrepresented parties at tribunal

hearings published in 1989[33] contains comments about experiences of CABx that are almost identical with those made during these group discussions with Minority Ethnic respondents some sixteen years later. The comments are also consistent with those expressed during group discussions for the *Paths to Justice* studies in 1999 and 2001[34], and during interviews carried out for the First Periodic Legal Need Survey[35].

A further concern expressed in some quarters was that people had to talk about their problems in an open environment at CABx, with the risk of other people overhearing. However, others argued that CABx had private rooms available on request.

There were also specific issues for non-English speaking respondents in relation to accessing advice from CABx. A Pakistani respondent in one group talked about his experiences of going to his local CAB office and being unable to communicate with the staff there:

> *"Yes, there is the Citizen's Advice Bureau, but the problem there is the language, everybody there speaks English…I have been a couple of times but never really understood what they said...People who cannot communicate in English face the real difficulties."*
> Pakistani male, 41-65, Oldham

He did not think that there were translators at the office and said if he went now he had to take a friend with him who could translate for him. Interestingly, another respondent in the same group said that on occasions he had telephoned the CAB in advance, and they had arranged for a translator to be there when he came to the office.

Trade unions

Trade unions[36] were a less frequently cited source of advice than the CAB, but again, there were some contrasting views expressed about their role and value. Overall, respondents felt they would be able to receive good advice from a trade union if an employment dispute arose.

> *"I think if you're in your union first and foremost, it's the first person you're gonna see because you're actually paying for that service… they're gonna give you some decent advice."*
> White British, 18-40, GCSE or lower, Birmingham

[33] H Genn and Y Genn, *The Effectiveness of Representation at Tribunals*, Lord Chancellor's Department, 1989, Chapter 7.
[34] *Paths to Justice*, 1999 and 2001, op cit, Chapter 3.
[35] *Causes of Action*, 2004, op cit.
[36] As reported later in the chapter, trade unions were primarily seen as an advice source for employment-related disputes.

Those who were members of a union at their place of work generally said that they would use the service. The typical expectation here was that the advice would be free, and be based on expert knowledge of employment issues. Respondents also generally felt their union would be able to give them all the information and help they needed to take up a grievance. There was also a perception in some quarters that unions would 'try harder' to help resolve disputes than other sources of advice because, in the words of one respondent, *'they tend to just battle your battles for you, and they enjoy it'*.

However, a number of more negative views were also expressed about trade unions as sources of advice. Specifically, it was suggested that they could not be relied upon to act independently, and that the existence of a level of collusion between themselves and the employer precluded them from offering impartial advice.

> *"I've found the union and normally – especially like in these factories and warehouses - they're normally sitting in the manager's pockets, the director's pockets, they just basically move as they wish."*
> Pakistani male, 18-40, GCSE or lower, Bradford

> *"I'm very sceptical over these things because, as I said, from the management side, when there was any problems between union disputes and management, when they're at the table with the representatives of the works there, they are against each other, but soon as they've gone out…they're mates. Once they've stopped representing you… they're not really on your side."*
> White British, 41-65, Above GCSE, Birmingham

Solicitors

Solicitors were another potential source of advice cited by respondents across the sample. There was broad agreement about what they could offer, and in what circumstances they would be approached for advice. In particular, solicitors were commonly seen as the place to go in the case of a serious grievance or dispute. This was in contrast with other sources of advice such as the CAB, which was more often associated with minor grievances.

> *"…If it's something quite serious, then [I'd] probably refer to a solicitor more or less straight away."*
> White British, 41-65, GCSE or lower, Bradford

The nature of the advice respondents expected to receive from a solicitor also contrasted with what they expected from other sources of advice. In particular, it was expected to be less directive, and more specifically based around options for taking action.

> *"You can go to the advice bureau and they can say, 'Well, you can go over there to that office', or 'You can go there, you can go there' – but I mean when you have a solicitor, he's advising you the best way to go about what you're going to do."*
> African Caribbean, 18-40, GCSE or lower, Birmingham

As a result, people often said that they would not initially seek advice from a solicitor. They would only do so further down the line if they decided to take an issue further. This approach to advice seeking suggested by respondents in discussion groups was in fact reflected during interviews conducted with users appearing at tribunal hearings, which are discussed in full in the next chapter.

The main advantages associated with solicitors were that they would have specialist knowledge of issues surrounding potential grievances and disputes. There was also some perception that the organisations with which people had a grievance would take them more seriously if it were known that a solicitor was involved; an advantage cited in relation to benefit disputes in particular.

The most significant barrier to seeking advice from a solicitor mentioned in discussion groups was the anticipated cost. The sample included respondents who had used a solicitor in the past and had found them expensive. Among respondents who had not ever used a solicitor, there was a widespread perception that to do so would be expensive and they therefore felt that if they needed help, initially at least, they would be more likely to seek other free sources of advice. On the other hand, if respondents felt that their grievance was serious enough, some thought that they would be prepared to pay for advice. Others indicated that, whatever the circumstances, they did not think they could afford to go to a solicitor. A small number of respondents did mention that they knew of solicitors who would offer an initial consultation free of charge, or take on a case on a 'no win, no fee' basis. One respondent also made passing reference to the Legal Aid Green Form Scheme[37]. In these cases, where respondents did not think they would have to pay for legal advice, they generally felt they would take up these services in preference to other potential sources of advice.

A further constraint on seeking advice from solicitors, mentioned by a few

[37] Now replaced by legal help/assistance within the arrangements under the new Community Legal Service Fund.

respondents, was that going to a solicitor's office was perceived to be an intimidating experience, particularly in contrast with the CAB, where staff were expected to be less formal and less intimidating. This was particularly the case for those who suffered from a more general lack of awareness and confidence around accessing institutions.

There was one notable difference between White and Minority Ethnic groups in attitudes towards the legal profession. Where negative attitudes were expressed, these tended to be confined to White respondents who spoke disparagingly about the motives of solicitors and their unreasonable charges. These views were not dominant among any of the Black or Minority Ethnic groups who tended to perceive lawyers as important in protecting rights and providing fair and effective counsel.

Law Centres

Although there was generally less awareness or familiarity with Law Centres, those respondents who did have some knowledge about them generally expressed positive views. Law Centres were typically regarded as somewhere that people on low incomes could go to for free advice, and in this respect were seen as similar to CABx. However, there was some feeling that Law Centres would be better qualified than CABx to provide more specialist advice because staff tended to be more knowledgeable about these areas.

In terms of access, some thought if they sought advice about a tribunal-related grievance or dispute they might be referred to a Law Centre by another agency, such as the CAB. Others felt that they would be likely to go directly to a Law Centre for advice.

> *"Common sense tells me to go to the Law Centre…it's better to go to somebody that knows about it [remedies for grievance]."*
> African Caribbean, 41-65, GCSE or lower, London

However, language was again a barrier for non-English speaking respondents, some of whom had experience of trying to access advice from a Law Centre.

> "*Yes, there are these [law] centres; sometimes they are helpful and other times they can actually make things more complicated due to lack of understanding because of the language problems."*
> Somali male, London

Specialist advice for Minority Ethnic communities

The sample of respondents from Minority Ethnic groups included some who had past or current experience of using specialist community voluntary organisations. One respondent in a discussion group worked in such an organisation himself. Examples of the types of organisations discussed were: the Asian Resource Centre in Birmingham, the Haringey Somalia Community Cultural Association and the African Caribbean Community Development Agency in Birmingham.

For non-English speaking respondents such organisations were sometimes the only source of advice they felt they could reasonably access and there was widespread praise for the help and advice they had received from these types of organisation. Staff were able to translate and read any letters that they had received, and also write letters and make telephone calls (for example to the Benefits Agency) on their behalf. It was also clear that for the non-English speaking respondents who accessed them, such organisations were highly valued not only in terms of the advice they could provide about redress, but also in terms of the sense of belonging they engendered. It appeared that one such organisation also played an important role in raising awareness about other sources of advice (for example Law Centres), and, if necessary, offering to provide help with translation.

In addition to the advantages of having staff who spoke their own language, there was also a suggestion that minority groups might feel more comfortable talking about their experiences with people from their own community.

> *"If you, if you had a problem and you had to talk personally, and you went into an agency and you find six Black people who is in the agency, as a White person, how would you feel relating your personal feelings?… All people prefer to come to their own people."*
> African Caribbean, 41-65, above GCSE, Birmingham

However, one concern voiced about voluntary organisations that specifically served Minority Ethnic minority communities was that they were under funded, and less well established than more mainstream organisations. As a result one African Caribbean respondent suggested that people in her community might actually have more confidence in the advice offered by mainstream, 'White', organisations.

> *"I know a lot of Black people who would rather deal with a different – you know, not their own colour… I know it seems to be an odd attitude to have, but I know people who think, 'Oh no, perhaps [they're] not giving out the right answers' – if you go to, you know, if organisations aren't established."*
> African Caribbean, 41-65, above GCSE, Birmingham

It was also suggested that people from one Minority Ethnic community might be hesitant about accessing advice from an organisation staffed by people from a different minority community. Specifically, one African Caribbean respondent who himself worked in an advice agency suggested that South Asian people were generally less comfortable about discussing issues of race than people from his community, and consequently might find it difficult to relate to staff of African Caribbean origin.

There was also evidence from a group of older Pakistani women that there were gender barriers to accessing Minority Ethnic voluntary organisations. They indicated that they would not feel comfortable accessing advice from a local voluntary organisation for South Asian people because they felt that the organisation was for men and not women.

> *"There is no organisation we could turn to…there is a community centre, like the Karmand community centre but it's not for us really…I don't think there is anywhere like that for females like us…"*
> Pakistani female, 41-65, Bradford

In addition to discussing potential use of voluntary organisations for Minority Ethnic communities, a few respondents also talked about experiences of race equality bodies (referred to variously as Racial Equality Boards or Organisations). One respondent who spoke about visiting his local Racial Equality Council for advice was quite negative about his experiences.

> *"I wouldn't recommend it, because they're just there for…showing that, 'Look, we've got, we've got something in place for more equal opps', which isn't happening…it's just on paper…"*
> Pakistani male, 18-40, GCSE or lower, Bradford

Family and friends

Many respondents said that if they were to be faced with a dispute or grievance relating to tribunal-relevant issues, they would be most likely to go to their family, friends or other people in their community for advice. This was often seen as the very first thing that they would do, usually before they considered seeking advice from more formal sources. Some younger respondents talked specifically about seeking advice from older people that they knew, expecting them to be more knowledgeable about appropriate courses of action.

More generally many respondents said that they would try to speak to people they knew who had experience of trying to resolve similar sorts of problems for themselves.

> *"If I had a problem I would mention it to a friend and maybe if he knew about this he could suggest or guide me... I would ask around and see if anybody in our community has been before and be able to help me or guide me."*
> Pakistani male, 41-65, Oldham

In this respect, the inclination among Minority Ethnic communities to seek advice initially from friends, relations and other community members is consistent with findings from previous general population studies of advice-seeking behaviour, which have established that a pervasive response to justiciable problems and disputes is to make use of immediate family and social networks[38]. However within the discussion groups for this study, there was some evidence to suggest that non-White respondents were more inclined to seek advice from family and friends than White respondents, and to attach more value to the advice that they could give. In particular, those who had limited awareness of formal sources of advice such as CABx and Law Centres were often dependent on their family and friends as their sole potential source of advice in a dispute. As discussed earlier, these were generally older respondents who did not speak English and had not been brought up in the UK.

MPs

In some groups, respondents also mentioned MPs as potential sources of advice or support in dealing with disputes and grievances. Those who saw MPs as an option said they could ring or write to their MP, or alternatively attend one of their surgeries. Of these options, the latter approach was thought to be the most likely to produce a response, since it would offer the opportunity to 'put them on the spot'. However, not all respondents knew how to contact their MP, and some said that for this reason they would not think of approaching them for advice.

A number of positives and negatives were expressed about the option of contacting an MP. On the positive side, some felt that MPs would carry more 'clout' than other potential sources of advice (such as a CAB), and perhaps even intervene in the case of a grievance. It was also thought that while MPs themselves may not have expert

[38] For similar findings see again the *Paths to Justice* studies 1999 and 2001, op cit. See also Hazel Genn, 'Who seeks compensation?' in Harris et al, *Compensation and Support for Illness and Injury*, Clarendon Press, 1987.

knowledge of different areas, they would be able to call on this kind of expert knowledge from other sources.

More negatively, others felt that MPs were unapproachable, and unlikely to be interested in issues in their local constituency. Overall, there was a degree of cynicism expressed about MPs' motives for helping members of the public in the case of a dispute. In particular, there was a feeling that MPs may only be prepared to help in the run up to an election, when they might feel they could gain positive publicity.

> *"In the last few weeks of his tour, or his – whatever they call the period of office – then he might think: 'Oh, this little chap could give me a lot of votes because I can blow it up, what I'm doing for a child'."*
> White British, 41-65, above GCSE, Birmingham

Other sources of advice

Other potential advice sources mentioned by a handful of respondents were **ombudsman** and the police. One respondent mentioned knowing of a **local radio DJ**, who gave advice to members of the public about disputes with public bodies. There were also respondents who thought they would be able to get advice in an employment dispute from either the **Careers Service** or a **Jobcentre**. Two Nigerian respondents also mentioned that they had used the **United Kingdom Immigration Advisory Service**, and suggested that this was widely known within the Nigerian community.

Availability of advice sources

Discussion in groups displayed variation in levels of awareness of advice sources and confidence about being able to find sources of advice if the need ever arose. While some appeared relatively confident that they would be able to access help, others were concerned that if involved in a dispute with a public body they would not know where to go for help. These concerns appeared to be underpinned by three main feelings, sometimes occurring together:

- That information about advice sources is insufficient.
- That there are not enough advice agencies.
- That the advice agencies that are there do not always meet people's needs.

In terms of the first of these, there was often a feeling that not enough was being done to make people aware of what was out there, either through education or through publicity.

> *"It's not made aware to you, not even in school, you don't necessarily have someone coming round to school and saying, 'Well this is what you do in this situation, this is what you do in that situation', it's not thought that you have to know about it, you have to go and find that information out if you really want to know that information."*
> African Caribbean, 18-40, Above GCSE, London

> *"They don't put that information out, do they? It's not made public, it's not easily available…"*
> Pakistani male, 18-40, GCSE or lower, Bradford

There was also a suggestion that public bodies do not do enough to inform people of where they can go for advice. At the most extreme, some felt that public organisations with whom people might have a dispute were *deliberately* trying to discourage people from taking a grievance further by not providing this kind of information.

> *"…The person you're dealing with, they never tell you where to go, so you have to like, you know...find out for yourself."*
> Pakistani male, 18-40, GCSE or lower, Bradford

Others felt that it was not simply a question of inadequate information about sources of advice, but that there were, in any case, too few advice centres. For example, people mentioned that there was not a Law Centre in their local area or that a local community centre had been closed because of lack of funding. Another feeling, discussed above, was that existing sources of advice did not always meet people's needs on account of cost, lack of bi-lingual staff, lack of staff from people's own particular communities, lack of funding (particularly for advice centres specifically catering for Ethnic Minority groups), long queues and lack of training on the part of staff.

Srategies for specific grievances

Having explored knowledge about and attitudes towards seeking redress for tribunal-relevant grievances *in general,* respondents were asked to consider how they might seek redress *specifically* if they were experiencing a problem over benefits, immigration, school inclusion or exclusion, parking fines, or employment problems.

Seeking advice

CABx were typically perceived as being a key source of information and assistance for **benefit problems**. The general expectation was that they could provide advice about whether there was a case and help to frame an initial approach in a convincing and appropriate way. Law Centres, Community Organisations, ombudsmen, local MPs and trade unions were also mentioned in this context. Going directly to solicitors was also seen as a possibility where the dispute was serious. This course of action tended to be suggested in particular by those with a solicitor in the family, those who had built up a relationship with a solicitor already, or those who had heard of other people making similar approaches. The impression here was that for a small fee, a solicitor could compose a weighty and convincing letter that might obviate any need for further action.

> *"The solicitor's…going to use every loophole and part of the law to get this sorted out straight away, it's just a stronger voice basically."*
> African Caribbean, 18-40, GCSE or lower, Birmingham

There was much less general awareness about where to go for advice about **school inclusion or exclusion.** Some said again that they might approach their local CAB. Others, however, felt that this was unlikely to be an area that CABx knew much about; as they often saw it, CABx were there for advice about issues around benefit, debt and divorce. Approaching the school head teacher or governors was suggested by some, as was approaching the LEA (see the proceeding section). There was often some unease about these routes, a particular concern being that these parties might be obstructive or provide only partial information. There was a similar lack of knowledge about where to go for advice about **parking fines**, beyond the local authority itself, but few respondents thought that they would be likely to spend much time pursuing such a grievance.

Ideas about sources of advice for **employment problems** tended to depend on membership of trade unions. Those who were members generally felt that their trade unions would be expert in employment law and therefore an obvious first port of call. Some non-trade union members suggested ACAS, whose role they envisaged being to resolve disputes between employers and employees. Others suggested CABx and Law Centres. There were again differences in terms of people's perceptions about the suitability of contacting CABx. Some thought that CABx were able to provide such advice and a few respondents said that they had seen notices to this effect in their local CABx. Others felt that CABx staff would be unlikely to have the

specialist knowledge required. In common with responses to dealing with benefits problems, a few respondents suggested going directly to a solicitor and paying for advice, particularly if the dispute was serious. Finally some suggested that if they had experienced race discrimination, approaching the Commission for Racial Equality was an option.

Immigration problems were typically an area where advice was deemed essential, being perceived as a complex and crucial area for many respondents. In these instances respondents typically envisaged contacting a solicitor for advice at the outset and taking the matter to appeal. One person who had taken action said that he had also been in contact with the Immigration Advisory Service.

What has been described above does not apply, however, to respondents in the sample who were new in the UK, lived in relatively closed communities or did not speak English very fluently. These respondents were much less likely than others to differentiate between various advice sources according to grievance type. Instead, they tended to talk about *generic* sources of advice for *all* types of queries and grievance, such as their local community centres or the Citizens' Advice Bureaux. One explanation for this was difficulties with the English language which resulted in concern about whether organisations would be able to cope with non English-speakers and consequent reluctance to access them. Another explanation related to **confidence and belonging**. Attending somewhere that engendered a sense of belonging was often important to respondents in these groups. Seeking help from voluntary organisations for people of their cultural group, and where their language was spoken, was preferable to going somewhere that they feared might not understand them or might not be tolerant towards them.

It was also the case that very young respondents included in this research did not tend to differentiate between advice sources, having little detailed knowledge of the types of institutions that were in place. On the whole they tended to envisage seeking help from older family members, or generic sources of advice, such as CABx.

First steps

> *"I've always gone about it [pursuing grievances] by writing to someone what's higher."*
> African Caribbean, 18-40, GCSE or lower, Birmingham

In the case of *all* of the types of grievances discussed above, except immigration, respondents tended to envisage that the first step in seeking resolution, alongside or instead of seeking advice, would be contacting the person or the organisation that bore responsibility for the decision. The exceptions again were respondents who were new in the UK, did not speak much English, or who lived in relatively closed communities and lacked knowledge of UK institutions, and the very young across all groups.

The most common first step that respondents thought they might take if faced with a dispute about **benefits** would be to contact a representative at the local Benefits Agency. Others knew that there was an address on Benefits Agency letters that described where they should write if they wished to dispute a decision, and thought that they would be likely to follow this route.

For **school exclusion/inclusion issues**, respondents thought that an initial approach could be made to the child's head of year or head-teacher to persuade them to change their mind. Some thought that they might also seek a meeting with school governors at this stage, or if their meeting with a schoolteacher or head-teacher was unsuccessful. Contacting the local LEA was also sometimes put forward as an option, particularly if the school refused to reconsider its decision. However, others said that they would not have known about this route at all, and would probably have taken the head-teacher or governor's decision as final.

Thoughts about the initial steps towards resolving grievances about **parking fines** were generally more consistent. Respondents typically thought that they would contact the relevant department within their local council with a description of their grievance. A small number thought that they would need to contact the specific individual who had imposed the fine.

Perceptions about who should be the first person to contact in relation to an **employment-related grievance** differed according to the nature of the dispute and the perceived perpetrator. A particular factor was the extent to which the higher management was perceived to be involved in the wrongdoing perpetrated. Where they were not, there was often a feeling that management would be the first port of call. A few said that they would feel uncomfortable taking this approach however; if management proved unsympathetic to their grievance, their problems could be

aggravated further. Where management *were* closely involved, some envisaged that they would seek further advice.

The first port of call for grievances concerning **immigration** was typically felt to be a solicitor. The main sources of advice that respondents mentioned in relation to different types of grievances are summarised in Table 3.3.

Table 3.3 Main cited advice sources in relation to specific grievance types

Benefit-related grievances
- Benefits Agency representative
- CABx
- Law Centres
- Solicitors
- Community Organisations
- Local MPs

Immigration-related grievances
- Solicitors
- UK Immigration Advisory Service
- Community Organisations

School inclusion and exclusion-related grievances
- Head teacher, governors
- Local Education Authority
- MP

Parking-related grievances
- Local authority

Employment-related grievances
- Management
- Trade unions
- ACAS
- CABx
- Law Centres
- Solicitor

Further steps

Having discussed what first steps respondents might take to seek to resolve a number of different types of grievances, groups were then asked to consider what they might do if the initial approach to resolving the dispute was unsuccessful.

It was striking that in relation to **benefits**, **school,** and **parking grievances** some respondents across the sample had not thought about or struggled to think beyond, the initial steps described above. They found it difficult, for example, to say what they would do after a written appeal to the Benefits Agency, school governors or LEA or council had been rejected. There were three main explanations for this. The first

was simply that people had not apparently needed to give any attention to these matters in the past. In this context, there was often a strong feeling, particularly among those who felt confident in finding their way around UK organisations that '*you find out when you need to'.*

> *"If you're in a situation when you have to find out about something…then you'll put yourself in a situation to find out about it."*
> African Caribbean, 18-40, above GCSE, London

Another explanation was that people sometimes felt that the decision made by a representative in the Benefits Agency, council, school or LEA office was final and irrevocable. Once it had been made there was nothing that they could do about it.

> *"Somebody would just make a decision [about a letter appealing against a benefits decision]."*
> ***"You mean that somebody sitting in an office would write a letter with a decision and that would be final?"***
> *"Correct."*
> White British, 18-40, above GCSE, Bradford

The final explanation, in the case of some respondents, was that they lacked knowledge about, and confidence around how to take issues further. This tended to apply in particular to the very young, particularly if they still lived with their parents and were still at school or college, new arrivals in the UK and people who lived in closed communities within the UK without speaking English. Educational level did not appear to be a significant differentiating factor in this respect however.

Another group – spanning a number of different ethnic groups, but typically encompassing respondents who were confident in finding their way around UK institutions – thought that these matters *could* be taken further, although there were wide variations in views as to how. In relation to **benefit problems**, a significant reason for this perception was often that they had heard of other people who had disputed a decision – whether through newspapers, or word of mouth. In relation to benefits disputes specifically, a few remembered that there was a specific 'grievance procedure', described in Benefits Agency letters.

Views varied about what taking the matter further would involve. In some cases, sending a letter to the Benefits Agency, perhaps with the help of a CAB, Law Centre or solicitor would be a possible course of action. Others suggested that it was possible to take the Benefits Agency or local council to court to appeal against an adverse decision about benefits or parking. Often people did not have any idea

about what type of court this would be. Civil courts were sometimes suggested; the perception here was that these were forums that dealt with non-criminal matters. Magistrates' courts were also mentioned occasionally with respondents thinking that perhaps these courts were there to deal with disputes between the citizen and a public body rather than criminal cases. In all of these cases it was envisaged that legal representation would be required in order for the party pursuing the grievance to have any chance of success. There were often significant reservations about taking benefit or parking disputes to court. In part this related to the specific subject matter of the grievance, but it also related to more general concerns and apprehension about taking legal action.

Finally, a few were aware that specialist panels existed to resolve disputes between the public and the Benefits Agency. This awareness tended to be a result of specialist knowledge; for example, having worked in a solicitors' firm or Benefits Agency in the past, personal experience or the experience of family and acquaintances.

In relation to **problems about schooling**, some respondents thought that achieving publicity would be the best means of challenging an adverse decision. Exposing the school to public shame through local newspapers, for example, might be one way to seek a reversal of the decision. Others said that they might consider contacting their local MP about a school-related dispute. Achieving their MP's backing might cause the school to reconsider their decision. Courts were not mentioned at all in this context, in contrast to benefits-related disputes.

Others thought it was likely that there was *some* type of independent body for dealing with disputes between parents and schools, although respondents were unsure whether in fact such a body existed. A small number of respondents were aware that specific panels existed to make final decisions about school inclusion or exclusion. Aside from those who had direct experience of appealing to education appeal panels, those who had heard of them tended to have specialist knowledge as a result of their work, or knew of other people who had accessed an appeal panel. These people tended to regard the panels as independent, and having legal status. They also typically saw them as a very last resort, especially in relation to school exclusion, since they would expect matters normally to be settled earlier by the head teacher and governors.

Across all discussion groups there were respondents who did not know what they would be able to do about **employment** problems, beyond personally remonstrating with employers.

> *"I'd just feel, if I'd been discriminated against at work, I would just look to move on. I would never fight anything like that, I wouldn't know where to go, wouldn't have a clue."*
> African Caribbean, 18-40, above GCSE, London

In general, however, people tended to feel that some sort of legal remedy *was* available for employment disputes. The existence of redress systems for employment disputes appeared to be well-known, either through the news or through word of mouth. Views about what the redress system would entail, however, were varied. Some thought that it would involve taking an employer to court. Others, without direct experience of employment tribunals, had heard of 'employment tribunals' or more often 'industrial tribunals'; most often through the news, personal experiences, the experience of friends or family members or work.

> *"I just know that you can – you can go to the tribunal cos my – my sister-in-law is going through that at the moment, she's been sacked unfairly from work… so she says she's going to the tribunal."*
> African Caribbean, 18-40, GCSE or lower, London

> *"I've no experience of tribunals at all, but I've heard other people talking about having taken a company to tribunals for constructive dismissal, or something along those lines, but no personal experience at all."*
> White British, 18-40, above GCSE, Bradford

Finally, respondents for whom immigration was an issue – notably new arrivals in the UK – tended to envisage that any action in relation to this matter would involve a solicitor from the outset[39]. However, knowledge about what the process would involve after this was rather vague. Some imagined that they would have to attend a court; others apparently had no idea about what the process would involve.

The Table below summarises the main cited ways of taking action in relation to specific grievances. It also shows, in italics, what action people with direct experience of the problems had *actually* taken.

[39] These respondents were all in contact with a solicitor because they had needed a solicitor to make their original case to the Home Office.

Table 3.4 Main hypothetical and actual type of action in relation to specific grievance

Benefit-related grievances
- Taking Benefits Agency to court
- Attending a Benefits Agency panel
- Sending a solicitor, Law Centre or CAB-approved letter to the Benefits Agency
- *Sending a solicitor, Law Centre or CAB-approved letter to the Benefits Agency*
- *Contesting a benefits decision by means of the Appeals Service*

Immigration-related grievances
- Contacting a solicitor for help and advice
- Taking the Home Office (or 'government') to court
- *Taking a case to the Immigration Adjudicators*

School inclusion and exclusion related grievances
- Using media to produce publicity against school and in child's favour
- Contacting the local MP
- Attending an independent panel
- *Writing to chief executive of LEA*
- *Attending a School Inclusion panel*

Parking-related grievances
- Taking the local authority to court

Employment-related grievances
- Taking employer to court
- Taking employer to an 'Industrial Tribunal' or Employment Tribunal

Constraints

In encouraging respondents to imagine seeking redress for very specific types of problems, a number of additional influences on likely action were revealed, aside from the question of whether or not respondents were aware of rights of redress. Key additional constraints on action raised in discussion groups were the identity of the opposing party and the concept of "entitlement" to pursue redress.

Identity of the opposing party

In the case of benefits disputes, respondents expressed the concern that, in taking a grievance further, you were *taking on a government department.* There were several different views resulting from this perception, a prevalent one being that it would be difficult if not impossible to succeed. Several reasons were given for this. In the first instance, people argued that the Benefits Agency, or 'social services' were experts who knew the rules well. They were unlikely to dispute a case if they did not think that they would win. Second, people argued that because the Benefits Agency was a huge organisation, they would have the money to pay for the best lawyers. The implication was that the agency was highly unlikely to lose. It was also argued that

the Benefits Agency would have the money to draw out a case for as long as possible, inhibiting the claimant's chance of being financially able to continue the dispute.

> *"If it's social services I know if I take them to court…before I even get there, there's no point…It would just be wasting my time…Because it's social services, who do you know who's ever won…?"*
>
> *"…You can't beat them [Benefits Agency]."*
>
> *"It's their rules at the end of the day."*
>
> *"…Don't forget, the government's got a lot of money."*
>
> African Caribbean, 18-40, GCSE or lower, Birmingham

> *"They [Benefits Agency] have got their solicitors, they're experienced at these situations. They've got their doctors and lawyers and whatever else. At the end of the day, they can afford to stick it out for as long as needs be and you can't."*
>
> African Caribbean, 18-40, above GCSE, London

Most thought that if they were even going to consider taking on the Benefits Agency, expert support and advice, preferably from a solicitor, would be critical.

> *"I'm not strong enough in that particular issue [benefits] and maybe my appeal wouldn't be strong enough. So I would go to someone who could help me formulate a stronger appeal."*
>
> African Caribbean, 18-40, above GCSE, London

There was little spontaneous sense, among those who *were* aware that special panels existed to resolve grievances, that this route would be any less difficult in relation to the issues described above. They said that because the Benefits Agency ran the panels, they would automatically work in their favour.

> *"[In the context of a discussion about Benefits Agency panels] – I'm always very dubious about organisations with their own appeals panels…Because I feel that they're affiliated to that organisation and you know, they'll do anything to find against you in any case. I don't think that they're neutral at all."*
>
> African Caribbean, 18-40, above GCSE, London

Similar arguments were put forward in relation to immigration and in some cases parking and education disputes. Here again, the adversaries – whether the Home Office (often referred to just as "the government"), local council or Local Education Department – were perceived to be large and powerful, and an ordinary person was not felt to have a chance.

> *"We believe that the court is always right and that you cannot mess with the government."*
>
> Somali women, London

> *"You're fighting aginst Big Brother really – little you against the Education Department."*
> *"If they know you're paying out of your pocket, they'll pull all sorts of tricks out to lengthen the dispute out."*
> White British, 41-65, above GCSE, Birmingham

However, this view was by no means unanimous, and in some groups there was much debate about its rectitude. In particular, some argued that they had heard of cases in the news when people had succeeded against the government in challenges relating to benefits or other issues. It was also sometimes felt that good legal representation could mean that members of the public had some chance of being able to win their case.

In the case of employment disputes, where the opposing party was the employer, the sense that you *could* win was stronger; although there were still some who argued that employers would have an advantage because of their superior resources and knowledge of employment law. Companies – and particularly small ones – were typically perceived to be less powerful and more vulnerable than government departments, partly because people were often more aware of cases where companies had lost.

"Entitlement" to seek redress

A further issue influencing respondents' views about seeking redress was the extent to which people felt that they were entitled to pursue a grievance. Generally – and particularly if the grievance was serious – this right was not questioned in relation to employment, parking or school-related grievances. However, views in relation to benefits and immigration were more complex. There was sometimes a strong feeling in relation to benefit and immigration problems that the person pursuing the grievance would face prejudice in view of the *subject matter* of their grievance. The argument here was that benefit claimants and people seeking permanent residence rights were seen by society as the 'lowest of the low'. The system would be against them and, in particular, some felt that they would be criticised for disputing a decision in the first place.

> *"I would not feel happy [about taking action in the case of the benefits scenario]. The implication is that you're a malingerer, isn't it?"*
> White British, 18-40, above GCSE, Bradford

Some non-White respondents felt that their skin tone would be an exacerbating factor: not only were they a benefit claimant, but they were a *Black* or *South Asian* benefit claimant, which would reduce their status further in the eyes of the deciding parties.

> *"If you're an able bodied person [disputing a benefits decision] they're probably thinking, 'Why doesn't this person go back to work? They're getting money free, and want to come to court to argue over free money'."*
>
> ***"But is there any difference between being Black and being White in that situation?"***
>
> *"Yes, I think there is."*
>
> *"…You can have some racist judges and some who are not, you just don't know."*
>
> African Caribbean, 18-40, GCSE or lower, Birmingham

This opinion was also apparent in relation to immigration disputes. People argued, for example, that negative publicity about asylum seekers would prejudice opinion against them from the start. Some Muslim men felt that they faced a particularly difficult situation in this context because of the perceived connection, in the public mind, of Islam with terrorism. Some Nigerian, Somali and Pakistani respondents felt that they would face more prejudice in immigration cases than White migrants.

> *"The immigration people look down on you, especially if you're a Muslim…You have to get paperwork ready and you have to be working and earning so much. Whereas if you look at [people from] some of the other countries in the world, especially the White countries, they don't have to go through that process…and now with the so-called 'terrorist' situation, it's going to be even worse."*
>
> Group: Pakistani male, 18-40, GCSE or lower, Bradford

However, there were some people who took a rather different view, particularly in relation to benefits. Those who had worked for a number of years before claiming benefits argued that they had the *right* to receive them and should not feel ashamed for doing so; they had paid their National Insurance and tax like everyone else. In particular, some White British respondents expressed hostility in this context to asylum seekers, feeling that they had more right to be receiving these benefits than others. For example, the following exchange took place in reaction to a fictional benefits grievance:

> *"You're only fighting for your rights, aren't you, for what you should be entitled to…"*
>
> *"…I have one accident that incapacitates me for work and yet I've got to go through all that rigmarole to try and prove something that's genuinely happened to me. And you see other people coming into the country and getting thrown money left, right and centre."*
>
> White British, 18-40, GCSE or lower, Birmingham

The Table below summarises the main barriers that affected respondents' attitude towards seeking redress for specific types of tribunal-relevant dispute.

Table 3.5 Grievance-specific barriers affecting attitude toward seeking redress

Benefit and immigration-related grievances
- Lack of knowledge about legal options
- Perception that it is difficult, or impossible to win against the Benefits Agency or Home Office in court
- Issues around perceived entitlement to pursue grievance
- Pursuing grievance expected to be lengthy and time-consuming

School inclusion or exclusion related grievances
- Lack of knowledge about legal options
- Perception that it is difficult, or impossible to win against Local Education Department in court

Parking-related grievances
- Lack of knowledge about legal options
- Subject insufficiently serious for legal action to be worthwhile

Employment-related grievances
- Employer might be better placed to produce a convincing case
- Potential unpleasant repercussions of winning (i.e. returning to place of work to face even worse treatment)

Despite the existence of these barriers to action, there was evidence from those who *had* taken action that such barriers could be overcome. This appeared to occur in particular when the issue at stake was perceived to be sufficiently serious and a respondent was propelled into action as a result of receiving fulsome advice or legal support. Interestingly, problems about benefits and immigration tended to be areas in relation to which the most significant barriers were cited but were also the kinds of problems for which action appeared most likely to be taken because of the seriousness of the issues.

Public perceptions of tribunals

A central objective of this phase of the research was to explore levels of awareness of tribunal processes. During the recruitment of respondents to discussion groups and in the early stages of the discussions themselves, no explicit reference was made to tribunals in order to facilitate analyses of unprompted levels of awareness and knowledge about the tribunal system. The group discussions were managed to ensure that participants were given the opportunity spontaneously to mention tribunals as part of general dialogue about potential avenues of redress for tribunal-relevant grievances. Although the objective of the study design was to recruit people who had no experience of tribunals, it emerged that some of the group participants

did have experience of tribunals. It is interesting to note, however, that among these people, recall or understanding of the process was sometimes partially or wholly inaccurate.

Once levels of pre-existing knowledge and awareness of tribunals had been established within the groups, further discussion was prompted by asking groups specifically about tribunals and by providing groups with some basic descriptive information about tribunals. Some groups were also shown a video clip of a fictional tribunal hearing in process. After this explanation, people were encouraged to reflect upon their initial perceptions and ideas about tribunals and to discuss what had surprised them about the information they had been given. In addition to providing evidence about the fit, or misfit between perceptions and reality, this also allowed people to reflect upon their feelings about taking action and how, if at all, hearing what the tribunal process entailed would change their views about seeking redress.

Features of tribunals described to group participants included: the absence of any fee; the ease of arranging a hearing; cases started by writing a letter; no legal representation required; more informal than court; parties sitting round a table; no wigs or gowns.

Awareness of tribunal processes

During discussion prior to receiving information about tribunals and seeing the video it was clear that across the sample there was limited knowledge and awareness of the existence, structure and process of the tribunal system and this was true of people from all ethnic groups and of all ages. People were unclear about what form the tribunal might take, who would be involved in a tribunal hearing and what the hearing process would be like. The discussions were often confused and based on inaccurate perceptions of the purpose and processes of tribunals.

With the exception of participants whose first language was not English, the word 'tribunal' was familiar. Despite this familiarity, people persistently faced difficulties when asked to describe in detail what a tribunal was and for what purpose they might want to make use of a tribunal.

> *"You know about them but you don't know what they're about..."*
> Pakistani male, 18-40, GCSE or lower, Bradford

> *"I wouldn't even know how to set up a tribunal, I wouldn't know where to go or anything. It's something that you're not – that you don't hear about very often, at all."*
> White British, 18-40, above GCSE, Bradford

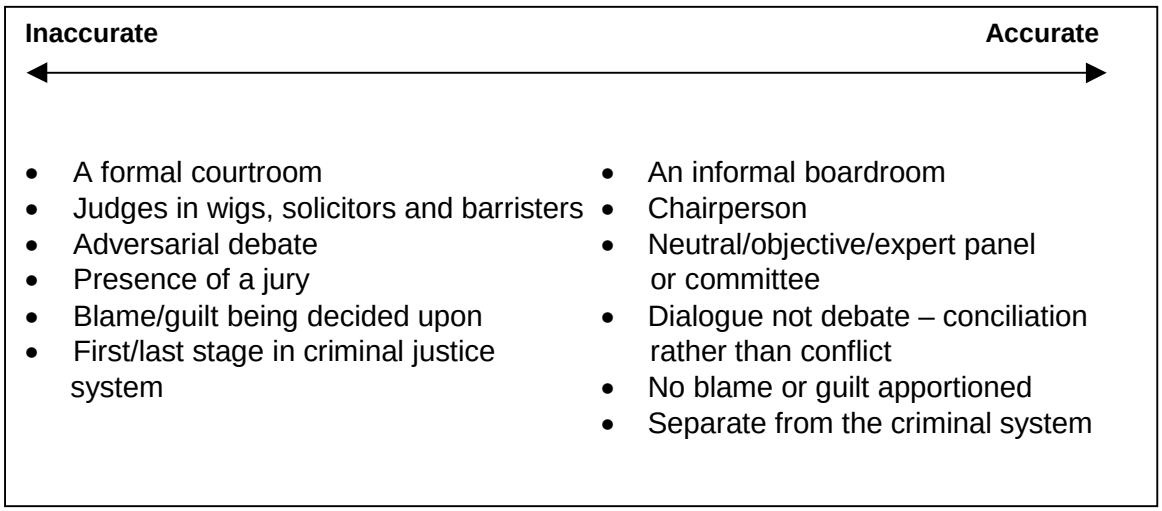
There were some exceptions to this pattern when people displayed some level of knowledge about the tribunal system and the processes involved in tribunal hearings. Notably, these were people whose current or previous occupations had provided them with an insight into, or experience of, the tribunal system and those who had experienced the process as a participant, either personally or through the recounted experiences of friends and family who had taken disputes to a tribunal. However, prior experience of the process did not always correlate directly with an accurate understanding of the process.

Images and perceptions of tribunals

> *"Tribunals, that's where they deal with, hardened criminals. Like fraudulent, murderers. Things like that. That is what tribunals are for. "*
> Nigerian female 18-40, below GCSE

A range of dominant images were associated with tribunals and these reflected underlying perceptions about what the process would be like and who would be involved. Figure 3.1 shows that respondents' descriptions of tribunals ranged from largely accurate accounts which reflect the reality of most tribunals, to largely inaccurate accounts demonstrating misunderstandings about appearance, processes, purpose and personnel.

Figure 3.1 Dominant images associated with tribunals



Among those who had limited knowledge or awareness of the tribunal process, people tended closely to associate tribunals with images of the criminal justice system. Key images included the presence of juries, judges wearing wigs, adversarial behaviour and an intimidating court layout. Overall, people found these images daunting and argued that they deterred them from considering a tribunal as an avenue for resolving grievances.

> *"The term 'tribunal', that in itself is off-putting actually, isn't it? Because tribunal, trials, similar sounding. Say someone was appealing against something like this and say the CAB tells them, 'Well we're working towards you attending a tribunal'. That sends shivers through you – tribunal, trial. You'd start to get worried about it. Well trial, it seems as if you've done something wrong, you're being put on trial – it's usually if you've done something wrong isn't it?"*
> African Caribbean 18-40, above GCSE, Birmingham

Intimidating images were rooted in the formality of the courtroom, the need to apportion blame or *'guilt'* and the public scrutiny of the process. The extent to which participants found these images discouraging varied. For Somali participants in particular, this set of images was frightening since it closely approximated to their experiences of the Somali judicial process which was discussed with considerable fear because of its reputation for delivering swift and brutal summary judgments with little, or no, opportunity for defence representation.

> *"When I was asked to go to the court [actually tribunal] with my relative, I was worried and I made a lot of excuses because I was scared. I did not want to go, but I had no choice because it was very important to my relative."*
> Somali female, London

Those with more knowledge of tribunals tended to view them as a less formal and, less intimidating than the criminal justice system. Nevertheless, the dominant images spoken about still retained an air of *'officialdom'*, heavy, long wooden tables and the presence of solicitors and some form of chairman, adjudicator or judge were commonly described. Despite this, for participants who had knowledge and/or experience of the criminal system there were clear differences between this process and the criminal court. First, the process was perceived (or experienced) as less formal and less adversarial than the criminal court. The understanding was that participants would (or did) sit around a table rather than face each other across a courtroom and this was seen as a positive improvement on the traditional courtroom.

Less formality was seen as a positive characteristic that would encourage people to take grievances to tribunals. People repeatedly said that they would feel more confident and less anxious in a tribunal as compared with a court environment.

Second, unlike courts, tribunal processes did not involve punishment and for some people this was a key difference between the tribunal and court process. With a court there was always the chance that you might *'go down'* or be imprisoned, which was not felt to be the case with a tribunal.

> *"[In a tribunal] it's, 'You've dismissed this person on these grounds but you're not right and you've got to pay them whatever they're owed' or something like that. Whereas in a court, they can send you to prison."*
> African Caribbean, 18-40, GCSE or lower, Birmingham

A feeling that a tribunal was not judging individuals but instead weighing up the issues surrounding a dispute was also an important source of reassurance for people with some knowledge of the system.

> *'I wouldn't feel as intimidated in a tribunal as in a court…It would be more informal, there wouldn't be people there judging you as a person, they would be judging the situation more, as to whether you were being treated unfairly."*
> White British, 41-65, above GCSE, Bradford

Third, people were optimistic that there would be an opportunity to present their case, which was in stark contrast to their perceptions of the court process in the criminal justice system.

> *"A tribunal is where you sit and listen to people."*
> Nigerian female, 18-40, GCSE or lower, London

Tribunals were therefore often perceived as places where disputes were heard and deliberated upon, where there was an opportunity to have 'your side' heard and importantly, taken into account.

Expectations of the composition of tribunals

Although the way in which people imagined the tribunal to be constituted varied, there was a common belief that the process would be dominated by the presence of solicitors and legal representation. In fact, because participants had limited knowledge of tribunals they extrapolated from the knowledge they had of the criminal justice system (often based on images and reports presented by the media) to tribunals.

Three types of images prevailed. First, and closely associated with images drawn from perceptions of the criminal justice process, was the perception that the tribunal would be conducted in an adversarial fashion, presided over by a judge. Another common image of the tribunal was that of a panel or committee made up of 'experts' co-ordinated by an adjudicator or chairperson. The final set of beliefs was that a panel of 'everyday people' would decide the case with an independent chairperson. Unsurprisingly, views about the tribunal process varied depending on these images.

Negative attitudes were frequently expressed in relation to likely tribunal composition. The expectation was that tribunals would be unrepresentative of ethnic minorities (being predominantly White), anachronistic and holding traditional values (being older) and predominantly male. The most common view expressed was that with this type of composition, tribunals would be likely to be biased against Minority Ethnic participants whose culture and religions would not be understood by the judges wielding power in tribunal hearings.

As discussed earlier, concern about the lack of ethnic diversity among the legal profession and judiciary was most keenly expressed among people for whom English was a second language and those whose religion played a defining role in their daily life. In these cases, people expected problems to arise due to cultural or language barriers and misunderstandings between Ethnic Minority participants and their legal representatives or officials sitting in the tribunal. It is important to note that **scepticism about the impartiality of a system that was not representative of those passing through it was widespread across all groups in the sample**, **including both White and Ethnic Minority participants**. However, although deep-rooted images of the legal system as prejudiced and discriminatory were held by some respondents in the discussion groups, this view was not universal and some people held the legal profession and legal system in higher esteem, placing an emphasis on its 'trustworthiness' and the importance of the system in ensuring that fair and equitable decisions were reached.

Where the image of the criminal justice system did not figure so strongly in visualisation of tribunals, respondents' descriptions of who might be involved in the tribunal process were more diverse. Those with less pre-existing knowledge about the process expected a jury to be present or that 'the panel' would be made up of *'ordinary'* members of the public. Others did not think that a jury would be involved

and rather suggested that a panel or committee made of 'experts' and a chairperson would decide cases. There was considerable support for the prospect of experts or those with relevant professional knowledge being involved in tribunal proceedings. People frequently described how these experts would be more likely to reach a fair outcome based on the evidence because of their knowledge of the issue and the fact that an impartial chairperson would help to keep the other panel members from being prejudiced or biased. Despite being reassured by this aspect of tribunal composition, some concern was still expressed about ethnic diversity within tribunal panels. Some respondents who had attended tribunals were concerned about the perceived lack of South Asian and Black panel members.

Sources of knowledge about tribunals

Among those respondents who displayed more extensive knowledge and understanding of tribunal processes, three broad sources of information were identified. First, people learned about tribunals from their personal experiences or those of colleagues, family or friends. Second, people drew on their personal experiences of other legal settings such as magistrates' courts or crown courts. Finally, people's knowledge and perceptions of tribunals were informed by media reports and dramatisations of the legal process. Many respondents, however, simply applied the images of and attitudes to the criminal justice system to the tribunal system.

In contrast, those with low or minimal awareness of tribunals tended to demonstrate unfamiliarity with all parts of the legal system. Typically these were people with little personal exposure to legal processes, who tended to lack any personal contact with others who had been through legal processes, and who did not read or listen to television or newspaper reports about the legal system. Across the sample, and in all ethnic groups, there was a strong link between personal experience and familiarity with the legal system and a better-informed, more accurate, view of tribunal processes.

As a result, those displaying the greatest lack of knowledge and awareness about tribunals and other systems of redress were the four groups of non-English speaking participants from the Somali and Pakistani communities. Two factors accounted for their lower levels of awareness. First, they argued that there was a lack of information about tribunals available in languages other than English and as a result

they were not able to access information about going to a tribunal, or to achieve greater awareness by reading or listening to reports about cases receiving public attention in the media. Second, these participants generally felt less familiar with the legal process as a whole. They felt distanced from the system by what they perceived as linguistic and cultural gaps between their own community and the legal process, which was broadly perceived as not reflecting the values or issues that were important within their communities. For the two Somali groups it could also be inferred that more recent migration into Britain (most were first generation migrants) led to less familiarity and, to a certain degree, more suspicion of the legal process. As already mentioned, this suspicion was heightened by memories of the perceived unfairness of the justice system in Somalia. **Black and Minority Ethnic respondents outwith these four discussion groups tended not to demonstrate such strong suspicion of the justice system or general disengagement from legal processes**.

Prior experience of tribunals

The experience of taking a grievance to a tribunal hearing was a key factor in heightening levels of awareness. Generally, where people had attended a tribunal hearing their descriptions of tribunals were broadly accurate. Similarly, those who had become familiar with tribunal processes through their work or through recounted experiences of family or friends tended to be able to offer fairly accurate descriptions of tribunals. Nonetheless, among those who had participated in, or observed tribunal hearings, there remained significant areas of misunderstanding or confusion about their role and purpose.

Prior experience of other legal proceedings

Those people who had been involved in criminal or civil cases requiring court appearances tended to use those experiences to inform their images of tribunal processes. As a result people assumed that tribunals would closely resemble the court proceedings in which they had been involved and, in visualising what it would be like to attend a tribunal hearing, they generalised from their previous court experience. Where this had been unpleasant, it negatively influenced expectations of what might occur in a tribunal.

> *"It was an absolutely horrendous thought [that respondent had to go to court] but a tribunal, I imagine, would have the same effect – on me, anyway…It was a very nerve-racking experience and I would not like to go through it again."*
> White British, 41-65, above GCSE, Bradford

Media reports and representations of legal processes

A final source of information about the tribunal process was the media. With the exception of those respondents who neither spoke nor read English, people in all groups said that they had learned what they knew about tribunals from the media, either in reports of actual cases, documentaries, or through dramatisations of the process. Dominant images gained from the media were the outcomes of employment tribunals, particularly in relation to sex or race discrimination or unfair dismissal cases. Other media reports specifically mentioned as providing information about tribunal processes included:

- The miners' and fire service strikes.
- Football club tribunals.
- Conciliation meetings between employers and unions.

The range of issues mentioned by respondents as informing them about tribunals underlines the lack of detailed understanding, evident across social and ethnic boundaries, of different processes and avenues of redress. In discussing media reports, people unsurprisingly frequently failed to distinguish between tribunal processes, complaints mechanisms, industrial negotiations, conciliation services, and court processes.

Informing views and changing attitudes?

Once groups had been given the opportunity spontaneously to offer descriptions of tribunals and what they might involve, they were then given a brief description of the key characteristics of tribunals and shown a short video clip of a fictional but realistic tribunal hearing. The opportunity to reflect on the fit between their perceptions of tribunals and the reality raised some interesting issues.

First, surprise was a common response to the description of tribunals. Respondents expressed surprise that the process was so easy to initiate and that it was possible to attend a tribunal hearing without legal representation. In some groups people felt aggrieved that they had not previously known about this system of redress which they felt they might have been able to use with problems they had faced in the past. Other matters of surprise included how different the processes seemed to be from the criminal courts, and in particular that tribunals were felt to be less intimidating and more accessible.

Despite the largely positive reactions to the description of tribunal processes, a level of mistrust and scepticism nonetheless persisted in some quarters. Some people continued to feel that a tribunal hearing would be an intimidating process and others remained concerned about the length of time procedures might take, the financial costs, and the likely outcome.

> *"It [tribunal] would still be a daunting experience wouldn't it, whatever side you were on it would be daunting."*
> White British, 41-65, above GCSE, Birmingham

> *"To go through all this procedure, but at the end of it, like six months, maybe a year, or whatever – because normally things like this, procedures – all procedures like this take a lot of time, and at the end of it, if you're not going to get no good outcome, it's just like – it's just gone down – down the drain, ain't it, basically."*
> Pakistani male, 18-40, GCSE or lower, Bradford

Similarly, despite having been told that the process did not require legal representation some people still felt quite strongly that they would need to involve a solicitor, trade union representative or other person with legal expertise to help them understand the process and present their case in the best way possible.

Nevertheless, the overall reaction of respondents to a brief education about tribunals and their processes suggests that there are challenges and opportunities for the new Tribunals Service in raising awareness levels and overcoming some of the fears and misunderstandings which clearly affect public propensity to seek redress via tribunals.

The relationship of the tribunal process to the wider legal system

With the exception of those with work-related knowledge or prior tribunal experience, respondents had little idea about how, if at all, tribunals fitted into or related to other parts of the legal system. Most commonly, confusion was reported about the relationship of the tribunal process to the criminal justice system and about the role of the tribunal system in relation to the conciliation service.

Views ranged from seeing the tribunal process as closely intertwined with other civil and criminal courts to perceptions that the tribunal process was outside of the legal process, either completely independent or the very first or last step in the legal process. Common misunderstandings included the assumption that the tribunal process was the first step in a legal process which, if the grievance or dispute could not be resolved, might later lead to a full hearing in either the criminal or civil court.

> *"I'd have thought it [tribunal] would be an easy way out, before actually taking it into the law's hands. It's that last step before getting the courts involved, where they [opposing parties] can resolve it themselves."*
> White British, 41-65, above GCSE, Bradford

Alternatively, others viewed tribunals as more 'serious' than for example, magistrates' courts. Tribunals were, in these cases, viewed as highly specialist courts reserved for very serious cases that cannot be resolved elsewhere. They were in effect seen not as the first stage of the legal process but the final stage. The importance of this lack of clarity was on the effect it had in shaping people's perceptions of what the process might involve. The more 'serious' and closely intertwined the tribunal process was imagined to be with the criminal justice system, the more people expressed concerns about fair outcomes, the complicated and lengthy nature of the process, and about their personal ability to see a dispute through to resolution in relation to personal resources such as confidence, language skills, money and time.

Confusion about the place of tribunals within the legal system also led to uncertainty about whether or not tribunal outcomes were legally binding and whether there would be any right of appeal if they were unsuccessful in a tribunal hearing.

Expectations of outcomes

Given the range of perceptions people held about the tribunal system it is unsurprising that expectations about the value of the system for resolving grievances were also diverse. Broadly speaking, views towards the process varied from the optimistic to wholly pessimistic. **The closer images of tribunals were to criminal courts, the greater the level of concern expressed about the likely treatment of non-White participants.**

Those expressing optimistic attitudes expected that tribunals could and would resolve disputes in an objective manner providing fair and equitable outcomes. More pessimistic expectations included assumptions that the process would be lengthy, costly and biased in relation to ethnicity as well as other appellant characteristics such as age or class.

Respondents were also concerned about how decisions in tribunals might be reached. The opportunity to state your case was seen as an important aspect of

fairness, and those who anticipated processes based on exchange and debate with a panel of experts and lay members felt that this favoured fair outcomes.

In contrast, those with more pessimistic expectations about tribunal outcomes mentioned a number of factors that they felt would be likely to undermine the fairness of decisions and it was suggested that such factors would specifically disadvantage claimants from Minority Ethnic groups. These factors were: **the balance of power in a tribunal, deep seated prejudice and stereotypes, levels of public scrutiny and limited acceptance of entitlement to seek redress.**

Power balance

Individuals were perceived as less powerful and having fewer resources than the public bodies with whom they were in dispute and it was felt that this would inevitably affect outcomes. Respondents thought that this imbalance would be critically important if individuals had to speak for themselves or could only afford legal representation funded through legal aid. Respondents argued that public bodies would have an advantage because they could afford specialist legal representatives and because they could afford to wait for a decision to be reached. Respondents from Minority Ethnic groups were felt to be particularly disadvantaged in this respect because they were perceived to have little access to top class legal representation within their own communities.

Prejudices and stereotyping

General social prejudices and stereotypes were also thought to be likely to disadvantage people from Minority Ethnic groups. As we have seen, there was a widespread belief that prejudice against Black and Minority Ethnic groups existed within the legal system. There was also concern about negative attitudes to young adults, women, people with low levels of education and literacy, and people from lower social classes. This finding again reflects the extent to which commonly-held negative perceptions of the **criminal justice system** influence expectations of other parts of the legal system.

Public scrutiny

There were divided views about the belief that tribunals were less public than other types of court proceedings. For those who were concerned about being placed in the public eye, this was reassuring. Others feared that the relatively less public image of

tribunals might militate against a fair decision since there would be less scrutiny of decision-making and fewer constraints on discriminatory behaviour by tribunal panels.

Perceptions of entitlement to seek redress

Linked to concerns about prejudice, some respondents in Minority Ethnic discussion groups felt they would be disadvantaged in taking a case to a tribunal as a result of negative perceptions on the part of the tribunal about "entitlement" to bring a claim. Recent arrivals to Britain and first-generation residents tended to believe that 'others' might query their right to stake a claim for benefits or equal treatment as they would not be perceived as 'proper citizens'. This was a point of view expressed in the Somali groups but also reinforced by the accounts of second and third generation Minority Ethnic participants who described the hesitancy they had seen their parents express about taking a stand in disputes, precisely because they worried that they would not be judged to have "earned" the right to stake a claim. This was particularly felt to be an issue around benefit and immigration grievances.

Ethnicity and attitudes towards tribunals

Evidence from the discussion groups revealed that ethnicity plays a complicated role in public perceptions of tribunal processes. First it is clear that White, Black and Minority Ethnic respondents believed that there is prejudice within the legal system and that this can influence the fairness of outcomes. Such prejudice concerns matters to do with ethnicity and to a lesser extent class, gender, education and age. Tribunals were not exempt from this expectation. Despite this commonly expressed concern, however, ethnicity did not appear to be a critical influence on decisions about whether and when to take action to seek redress in relation to tribunal-relevant grievances. Other factors discussed in earlier sections were found to exert greater power on decision-making. These were:

- Perceptions of the seriousness of the grievance or the seriousness of the principles involved.
- Perceptions of personal entitlement to dispute a grievance.
- Levels of confidence and familiarity with the process and legal system as a whole.
- Access to fulsome and extensive advice.

Of these key factors, **only the last two were found be related to ethnicity and the relationship was more to do with cultural familiarity and language barriers than experience or fear of discrimination**.

All participants, regardless of ethnicity, argued that their decisions about whether or not to take action and seek advice in relation to a grievance were determined to some extent by how important they perceived that issue to be. Seriousness, as previously discussed, was primarily concerned with what people thought was at stake, the higher the stake, the more likely people were to seek out advice and take action. The importance of the grievance was determined not just by the subject-matter of the grievance, for example the relative importance of refusal of benefit as compared with an unfair parking fine, but also by the significance of the principle at stake.

In exploring public expectations about using tribunals as a means of redress, few differences were found to relate directly to ethnic group, with most views being expressed across the sample as a whole. Rather, the factors that were most significant in undermining or strengthening people's abilities to engage with and use the tribunal system were:

- their familiarity with the redress systems;
- their ability to access information;
- their ability to press and advocate their grievance, which depends on personal resources such as confidence and communication skills.

Within this sample, participants in the two Somali groups were predominantly relatively recent, first-generation immigrants who demonstrated unfamiliarity with the legal system, limited access to information and low confidence in relation to seeking redress. Their experiences and attitudes indicate the extent to which language and lack of familiarity with culture may inhibit people from accessing information and from feeling confident about pressing and presenting a case. The Pakistani non-English speaking groups also appeared to face language and cultural barriers.

Reflecting findings presented in previous sections, **language** and **cultural barriers** coupled with **poor or inaccurate information** about the process were identified as the critical barriers to people accessing and using the tribunal system. These issues were perceived as more likely to limit access to tribunal redress than the simple fact of a claimants' ethnicity.

Although it was clear that if faced with a sufficiently serious problem most respondents had, or would, overcome barriers such as limited access to information

in order to obtain redress, there remained a nagging apprehension about the pervasiveness of ethnic stereotypes within the legal system and the resulting potential for Black and Minority Ethnic tribunal users to be treated unfairly. **This poses a continuing challenge to tribunals in providing reassurance through scrupulously fair procedures and sensitivity to cultural diversity.**

Improving access

Increasing access to sources of advice

Having identified barriers to seeking redress, respondents were asked about their ideas for making the system more accessible. A recurrent suggestion was that more should be done to make people aware of what sources of advice were available in the case of a tribunal-relevant grievance. Respondents felt that the availability and location of advice agencies could be more widely publicised in the local media, on the internet, and in schools. They also felt that it would be useful to know what subject areas advice agencies dealt with, and what their charging arrangements were.

Non-English speaking respondents also felt that information should be made available to people in their communities, for example through leaflets printed in a range of different languages. There were also calls from non-English speaking respondents for organisations to provide advice in their own language, either by employing staff from their ethnic community or interpreters who could translate on their behalf.

Some respondents from Minority Ethnic groups also felt there should be more organisations providing advice specifically for people from their communities. This view was held by some Minority Ethnic respondents who spoke English and were UK born as well as those who did not speak English and were born elsewhere. Among the group of older Pakistani women it was also thought that there should be a community organisation catering specifically for women.

Increasing access to tribunal justice

Respondents also made suggestions about ways in which awareness about tribunals could be improved. Some thought that this could best be done via publicity on television and radio. It was also suggested that information could be provided in schools, the workplace and in community centres.

Beyond these measures for increasing the visibility of tribunals, respondents felt that there should be a single body that members of the public could telephone for information about the range of different types of tribunals. This was on the grounds that respondents often felt confused about which bodies they would need to approach in the case of a dispute with a public body. Again, there were calls from non-English speaking respondents for information about tribunals to be made available in languages other than English.

Suggestions were also made about the processes adopted in tribunals, largely as a result of concerns expressed about the likelihood of gaining a fair hearing. One of these was that any decision made by a tribunal should be by three tribunal judges by majority vote. This was felt to offer a better chance of a fair outcome than if the decision was left to a single tribunal judge.

There were also specific suggestions from respondents who were non-UK born, or non-English speaking, about the composition of tribunal. The principal suggestion was that there should be a representative of their own Minority Ethnic community on the panel. A number of reasons were given for this suggestion. At a broad level, it was felt that tribunal panels should represent the diversity of the society as a whole. On a more personal level, respondents said that they would feel more comfortable and have more confidence in talking to someone from their own community. In addition, the presence of someone from their ethnic group would help them to feel that they were being listened to, and that their particular needs and issues would be understood. In particular, it was felt to be important to have someone on the panel able to understand specific cultural and religious issues within ethnic communities.

On this issue, however, there was a division of opinion among Minority Ethnic respondents who were UK born and English speaking. Some said that they would be more confident that they would not be discriminated against on the grounds of their ethnicity if their community was represented on the panel. This view was contested by others who did not feel that having a representative from their community on the panel would necessarily result in a fairer hearing. In particular, some were concerned that Minority Ethnic tribunal members would be concerned to 'prove themselves' on a tribunal panel. The danger here was that they might be *more* rather than less inclined to judge members of their ethnic group harshly.

There were one or two further suggestions about how to overcome concerns that discrimination against Minority Ethnic claimants might occur at tribunal hearings. For example, that tribunals should reach their decision without actually meeting or seeing the claimant. Another suggestion was that tribunals should provide verbal or written reassurance, prior to attendance at a tribunal hearing, that they would not discriminate on the grounds of ethnicity, and would treat everyone fairly. It was thought that this might help to calm the concerns of people from ethnic minorities about potential discrimination

Finally, it was suggested by some female respondents across the ethnic groups included in the sample, and by at least one male respondent, that women should also be equally represented on tribunal panels.

Summary

Influences on seeking redress

Discussion about factors that might motivate or deter members of the public from seeking redress for tribunal-relevant grievances and disputes revealed few consistent differences between groups based simply on their ethnicity. In common with other studies of public response to justiciable disputes, the key factors reported by White and Minority Ethnic respondents in focus groups as being most likely to inhibit taking action were:

- Lack of knowledge about avenues of redress, and a consequent assumption either that:
  - there was no legal remedy; or
  - taking legal action would involve going to court (expressed across all respondent groups).
- Concerns about accessing the legal system, including:
  - the perception that it would be costly, time-consuming and complicated (expressed across all respondent groups);
  - that there would be significant cultural and communication barriers to accessing legal support and the court or tribunal system (expressed among non-English speakers, people who had only been in the UK for a short amount of time, and people living within closed communities);
  - the perception that skin tone (expressed by some respondents in non-White groups, but not others) or other factors such as social class or educational ability (expressed by some respondents across the sample as a whole) might affect chances of succeeding in a legal forum.

However, these feelings were by no means universal and it was also evident from the experiences of respondents in group discussions that these barriers could be overcome when some of the following factors were present:

- A strong sense of principle.
- A feeling that the issue at stake was critical to resolve.
- Some knowledge, or robust knowledge, of how to resolve the grievance.
- Fulsome and extensive advice and support provided by an advice agency or legal representative.

Access to advice

There were varying levels of awareness of sources of advice across the sample, with particularly low levels of awareness among respondents who did not speak English, those who had not been resident for long in the UK, and those living in closed communities. Key factors accounting for this low level of awareness were lack of fluency in English, lack of familiarity with UK organisations and, in the case of some Pakistani women, gender issues. Similar factors also often appeared – either hypothetically or in practice – to hinder these groups from accessing advice-giving sources that they *did* know about, although community centres and agencies that were known to employ translators were an occasional exception. There were some rare instances when a member of one of these groups *had* resolved a grievance as a result of receiving fulsome and extensive support from an advice agency, usually involving translation services.

Awareness was generally higher among other respondent groups with relatively widespread knowledge of the CABx, solicitors, trade unions and Law Centres. Confidence was also often greater among these groups, with people tending to feel that they would be able to find the right information *if they really needed to.* The key exceptions were respondents at the younger end of the age spectrum.

There was however a general concern that more needed to be done to raise public awareness of available sources of advice, and that there were too few sources of free advice. Concerns expressed about advice sources included that they were:

- Understaffed, or ill-staffed (CABx, ethnic community voluntary organisations).
- Insufficiently private (CABx).
- Not staffed by people speaking community languages (Pakistani and Somali respondents).
- Potentially costly (solicitors).

However, those with experience of using advice agencies often expressed positive views about their services.

Influence of type of dispute

Levels of awareness of redress were generally higher for employment, benefits and immigration problems, although this varied among groups, with newcomers and those living in closed communities equally unsure about avenues of redress for any of the suggested problem types. Although many respondents were aware of the existence of rights of redress they generally envisaged that taking action would involve going to court. Tribunals were rarely mentioned spontaneously and usually only in relation to employment disputes.

The factors inhibiting seeking redress in relation to benefits, immigration and school related disputes were:

- the perception that it was difficult to succeed against the government or public bodies (in relation to benefits, immigration and school-related disputes in particular);
- the perception that those pursuing the dispute would might face prejudice in court because they would not be thought "entitled" to bring a claim (particularly newcomers in relation to benefit and immigration issues);
- expectations that pursuing the grievance would be frustrating and time-consuming (particularly in relation to benefits and immigration).

Despite these concerns, there were participants in the group discussions who had themselves taken action in relation to benefit and immigration difficulties. The principal explanation for overcoming such barriers was that the issues were critical to well-being and livelihood.

Knowledge of tribunals

Limited awareness and knowledge of the existence, structures and processes of tribunals was apparent across the sample. Exceptions were those whose occupations had brought them into contact with tribunals, those with direct

experience as a claimant, or those with a relative or friend who had been involved in tribunal proceedings. Interestingly, prior experience of tribunals did not always correlate directly with an accurate understanding of the process.

In the absence of direct knowledge or experience, respondents tended to apply images of the criminal justice system in their visualisation of tribunals. Those with more knowledge viewed tribunals as less formal and less intimidating than the criminal courts, which were often the only point of reference. For these people, tribunals were perceived as places where there was an opportunity to have "your side" heard and importantly, taken into account.

Once provided with a description and images of a tribunal hearing, respondents often expressed surprise and positive feelings about the forum. The reaction of respondents to a brief education about tribunals suggests that there are challenges and opportunities for the new Tribunals Service in raising awareness levels to overcome some of the misunderstandings which clearly influence decisions about whether to seek redress through tribunal processes.

In exploring public expectations about using tribunals as a means of redress, few differences were found to relate directly to ethnic group, with most views being expressed across the sample as a whole. Key factors in determining use of tribunals were:

- Seriousness of the grievance or the principles involved.
- Perceptions of personal entitlement to dispute a grievance.
- Confidence and familiarity with the process and legal system as a whole.
- Access to fulsome and extensive advice.

Of these key factors, **only the last two were found be related to ethnicity and the relationship was more to do with cultural familiarity and language barriers than experience or fear of discrimination**. Overall, **language and cultural barriers** coupled with **poor or inaccurate information about systems of redress** were identified as the critical obstacles to people accessing and using the tribunal system. Both of these issues were perceived as more likely to limit access to the process than the simple fact of an individual's ethnicity.

Chapter 4. Motivation and preparedness: pre-hearing survey

In chapter one it was argued that effective participation in court and tribunal proceedings requires that disputants understand legal processes and their implications. For users to be genuinely involved in proceedings they need information about claims and claiming, an awareness of relevant administrative and legal requirements, the opportunity to be heard, and the opportunity to respond. Achieving this level of preparedness entails the availability of comprehensible information to potential and actual users of tribunals about a number of things. First, users need comprehensible and helpful information about the initial decision made about their claim and the reasons why the claim was refused or only partially accepted by the relevant Department or Agency. Second, users and potential users need comprehensible and helpful information about the existence of a redress procedure and how to access that procedure if they disagree with the initial decision or feel that some mistake or misunderstanding has occurred. Finally, information is needed about the body to whom an appeal might be directed, how that body works and how it will reach a decision about the claim. Such information can be made available by first-line decision-makers, by tribunals, by advice agencies and by legal advisers. This chapter focuses on the extent to which users attending tribunal hearings appeared to have the information they might need to be able to participate in their hearings, and whether they seemed and felt prepared for the hearing, to the extent that they understood something of what was likely to occur during the hearing and expectations of them.

Face-to-face interviews with users attending hearings in the three tribunals were conducted both before and after their hearing. Interviews were first conducted while users waited to be called in for their hearing, during which time they were asked about the nature of their appeal, why they thought their original claim had been refused, their motivation for bringing the appeal, how they had learned about the possibility of appeal, what advice or help they had received prior to the hearing, and their expectations of the hearing. Some 529 interviews were conducted with users in tribunal waiting rooms, although information was not always available for each question on the questionnaire. The overwhelming majority of respondents agreed to be interviewed with about ten per cent refusing. The small proportion of people who

declined to be interviewed generally did so because they were worried about their hearing, or because they needed to talk to their interpreter or adviser.[40]

The cases

Of the interviews conducted in waiting rooms with users attending tribunal hearings, 352 were attending TAS hearings, 126 were attending CICAP hearings, and 51 were users attending SENDIST hearings. All users were asked initially what their claim was about.[41]

About half the users attending TAS hearings (52%) were appealing about Disability Living Allowance, and a quarter of users (24%) were appealing about Incapacity Benefit. Of the remainder: about 12% of cases concerned Income Support and a handful concerned Industrial Injury Benefit (4%), Child Support (3%) and miscellaneous other cases (5%).

At CICAP hearings almost two-thirds of users interviewed were appealing about eligibility to receive compensation for injuries sustained as a result of a violent crime (64%) and about a quarter were challenging the assessment of an award already granted, arguing that they should have been entitled to a more substantial sum given the nature of the injuries suffered. In a small minority of cases users were challenging both eligibility to receive an award and assessment (7%)[42].

Parents attending SENDIST hearings were overwhelmingly bringing a challenge against a Special Education Needs statement made in respect of their child by the Local Education Authority, and in a small minority of cases they were challenging some other action taken by the LEA (12%).

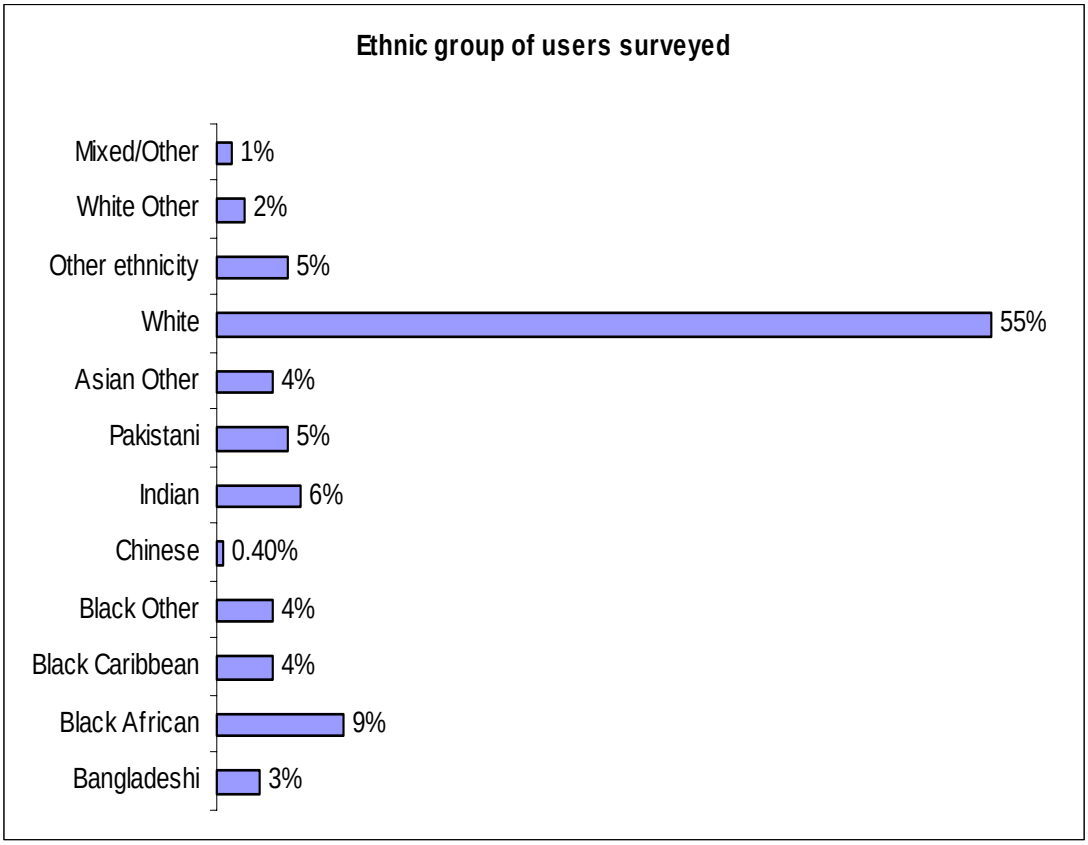
Who were the users?

Interviews were conducted in London (332), Birmingham (124), Leeds (42) and Manchester (31) and the sample of 529 respondents interviewed at tribunal hearings comprised 60% men and 40% women. Information about self-defined ethnic group was available for 501 users interviewed at hearings and of these the largest single

[40] See chapter two for a discussion of the survey method.
[41] Full analysis of case type in relation to outcome in the three tribunals based on a large sample of cases taken from tribunal databases is presented in chapter seven.
[42] We were not permitted to interview users or attend hearings involving sexual abuse.

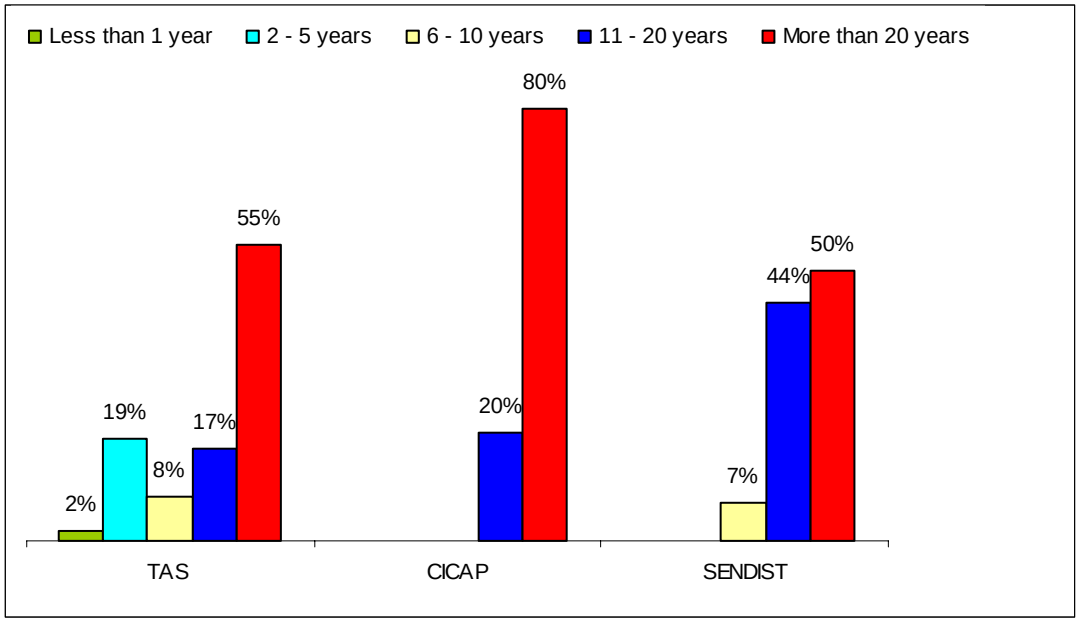
group was White, representing 55% of respondents in the user survey. The remaining 45% of users comprised a wide range of ethnic groups (Figure 4.1) with the largest categories being Black African (9%), Indian (6%), and Pakistani (5%).

Figure 4.1 Ethnic composition of users surveyed (N=529)



A little under half of users interviewed at hearings had been born outside of the UK (44%), although there was a significant difference between tribunals in this respect. In TAS more than half of those interviewed had been born outside of the UK (53%), in SENDIST the proportion was 40%, while in CICAP it was around 15%. As Figure 4.2 shows, in all three tribunals the majority of users born outside of the UK had been resident here for more than 10 years, with only TAS having sizeable numbers of users who were relatively new arrivals to the UK.

Figure 4.2 Length of residence in UK of respondents not born in UK in all tribunals (N=352)



Understanding why the claim had been refused

Users interviewed in tribunal waiting rooms were asked why they thought that their original claim had been turned down by the relevant authority. Although many people gave reasons that were highly individual to their own factual circumstances, answers did tend to fall into a number of broad categories within the different tribunals. In TAS over half of the users attending hearings (56%) stated that they had failed to meet the relevant criteria on health grounds. This clearly reflects the large number of Disability Living Allowance cases within the sample of interviewees. About 5% said that they had failed to disclose certain relevant information about their circumstances and therefore presumably had been overpaid benefit which was being reclaimed, and about 4% said that there had been errors on the form that they had completed about their circumstances. About 18% of TAS respondents said that they did not know why the case had been turned down, or that no explanation had been given. The remaining 17% of cases gave answers specific to their case or situation that were difficult to categorise, but explanations were generally expressed in terms of disagreement with the decision, particularly in overpayment cases, problems with paperwork, and a sense that they were unfairly being denied a benefit that they believed they were entitled to receive. For example:

> *"My DLA was taken away because I missed two medicals, but I was in the North of England and had already attended a full medical"*

> *"Someone made an anonymous phone call telling the benefits agency that my boyfriend was living at my house."*

"They gave me a nil assessment. I am appealing against it for justice."

"They say I am employed and I am not."

"We were told we had been overpaid but it is an administrative error."

"I was refused back-payment of housing benefit because they said I hadn't given enough evidence."

"I was refused benefit because they said I had to prove right of abode – but I have lived here in Great Britain for 35 years."

Almost one in five respondents interviewed at TAS hearings (18%), however, said that they did not know or were unable to give an explanation of why their case had been turned down or what the agency's case was about. **This was the highest figure by far in the three tribunals** and may be a reflection of the nature of the information coming from the Department, the lower levels of representation in TAS as compared with the other two tribunals, or the characteristics of the users of TAS. Certainly those users who attended their hearing with a representative were somewhat less likely than unrepresented users to say that they did not know what the case was about (15% of represented users and 21% of unrepresented users).

There was no significant difference between TAS users from different ethnic groups in the ability to state why their claim had been turned down or the basis of the agency's case. Some 15% of Black users, 17% of South Asian users and 17% White users said that they did not know why their claim had been turned down or what the agency's case was.

Almost all CICAP users interviewed in the waiting room were able to say why their case had been turned down. The most common reason given was their delay or failure to notify the police of the incident (a normal requirement of eligibility to receive criminal injuries compensation) with about one in five users citing this as the reason for the claim having been rejected by the authority (22%). Other reasons given were failure to co-operate with the police (11%) (another requirement for eligibility), insufficient evidence about the criminal incident (10%), that the user had to some extent provoked the incident (6%), that there had been errors on the form filled in by the claimant (3%), and that there had been a failure to disclose relevant information (3%). There was also a miscellaneous collection of other reasons given that were very specific to the facts of the individual case but that broadly expressed dissatisfaction with the decision, or a belief that a mistake or some injustice had

occurred in the information used to make the decision or the decision-making process. Only 7% of CICAP users said that they did not know why their claim had been turned down and the group was fairly evenly divided between represented and unrepresented users.

Among the parents interviewed at SENDIST hearings the vast majority were able to explain why their claim had been rejected or the basis for the decision that they were challenging. The most common reason cited by parents was that the LEA had argued that the provision in the child's current school was sufficient for their needs (39%). The next most common reason given was that there was no funding available to meet the needs of the child (20%). About 9% of parents were challenging the choice of school on the ground that they preferred another, and about 15% of parents gave some other explanation tending to express general dissatisfaction or a sense that an injustice had occurred, for example:

> *"The LEA drafted a statement that meant nothing."*
>
> *"The LEA was deceitful and did not provide all of the information they had."*

There were virtually no cases where parents attending SENDIST hearings were unable to explain why their claim had been refused by the LEA.

Motivation for challenging

All respondents interviewed prior to their hearing were asked about their reasons for challenging the initial decision that had been made about their claim or entitlement. The most common reason given by all groups and in all tribunals was a belief that the original decision was unfair (29% of all reasons given). Aside from a belief in the unfairness of the decision, other common reasons cited for seeking to appeal against the decision were that the respondent "needed the assistance" (14% of all those responding), or that they were challenging the decision for medical reasons (15%). About 12% of respondents expressed a general sense of entitlement and a handful said that new information about their claim was now available. **There were no significant differences between ethnic groups in responses to this question.** The proportion of respondents citing the unfairness of the original decision as the reason for their challenge was virtually identical among different groups (30% of White respondents as compared with 30% of Black African/Caribbean respondents, 28% of South Asian respondents and 19% of respondents from other ethnic groups).

Pathways to redress

In order to understand the different ways in which those attending hearings had been made aware of their right to redress and the procedures to be followed, all respondents interviewed in waiting rooms were asked how they had known about the possibility of appealing against the initial decision about their case to the tribunal that they were attending. The most common response given by tribunal users was that information about appealing had been provided on the form that they received from the relevant authority giving the decision about their original claim (49%). The next most common way of discovering about appealing was from an adviser (28%). Roughly equal proportions of those attending tribunal hearings said that they knew about appealing from general knowledge (4%), had been told by a friend or relative (4%) or because they had appealed previously (4%). About 12% of respondents gave some other source of information, examples being via a telephone conversation or personal contact with the relevant authority, the police, doctors, leaflets picked up for example in DSS offices, employers, helplines, charitable associations, trades union, or social workers. Table 4.1 illustrates the range of sources of information mentioned by respondents and is indicative of the multitude of ways in which individuals are signposted towards tribunals.

Table 4.1 Sources of information about appealing

British Dyslexia Society	Crohn's Association	Leaflet at DSS
Asking specific questions to the dept	Doctor	National Deaf Children's Society
ASLEF	Employer	Police
Autism Outreach Project	Information from knowledgeable friend/rel	Rehabilitation officer
Local advice & grants centre	GP and social security	School
Local tribunal unit	Hospital	Self search and LEA
Benefits adviser	Internet research found SOS	Social Security on the phone
Benefits office	SEN helpline	Social services
CAB	Local People's Rights Centre	Social worker
CAB and GP	Job centre	Solicitor
Care giver network	Key worker in hostel	Trade Union
Career advisor	Local housing office	Victim support
Colleague	Law centre	Welfare Rights adviser
Community advice	Law for All	Welfare office
Community psychiatric nurse	LEA	
Customer service at council		

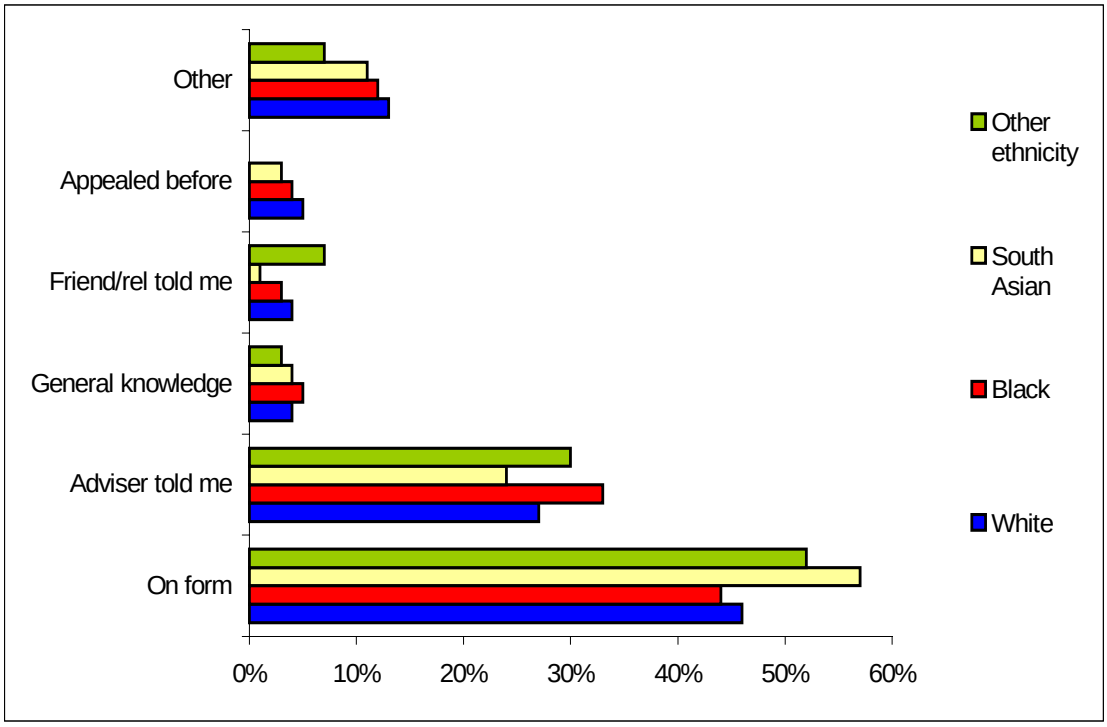
Sources of information about appealing in the three tribunals

Respondents attending the three tribunals tended to have obtained information about appealing from rather different sources. Within TAS and SENDIST the most common source of information about appealing had been the material sent to users from the relevant authority dealing with the original decision (53% of TAS users interviewed and 45% of SENDIST users interviewed). Among users at CICAP a smaller proportion of respondents (about one-third) said that information about appealing had been included in literature from the agency. In both TAS and CICAP the second most common source of information was an adviser (27% in TAS and 38% in CICAP), suggesting that early advice is quite important for those users who get as far as attending a hearing in TAS or CICAP. Among CICAP respondents information about appealing had most often been provided by the police and victim support, while for TAS respondents information had come from a much wider range of sources such as medical, social services and welfare rights. The proportion of users attending SENDIST hearings who said that they had learned about appealing from an adviser seems to be somewhat lower with only 12% of those interviewed giving this response.

Information about appealing and ethnicity

There were few differences between White respondents and Minority Ethnic respondents in the ways in which they came to learn about appealing to tribunals. Figure 4.3 shows that for all ethnic groups the most common source of information about the possibility of appealing to a tribunal was that given on the form received from the relevant department or authority. Among all respondents attending tribunal hearings, general knowledge about the possibility of appealing was relatively rare, and certainly no more common among White respondents than among Minority Ethnic respondents. No more than five per cent of respondents from any Minority Ethnic group claimed that they had known about the possibility of mounting an appeal from general knowledge. South Asian and ‘other’ ethnic respondents appeared somewhat more likely to say that they had learned about appealing from material sent with their decision from the department than White or Black African/Caribbean respondents, but the differences were not statistically significant.

Figure 4.3 Knowledge about appealing (N=449)



Responses given in interviews with users appearing at tribunal hearings therefore indicate clearly that for individuals in dispute with public authorities, the information provided directly by the authority about the possibilities for appeal are very important in terms of providing a pathway into systems of redress[43]. The proportion of users in any group who claimed to have known about seeking redress from their general knowledge was less than one in twenty. **This finding reflects and supports the conclusions of the general public focus group discussions, described in the previous chapter, about lack of awareness of the existence of tribunal redress and of knowledge about how to access such systems.** This is an issue that cuts across ethnic boundaries, although the evidence of the previous chapter suggests that those living in relatively closed communities and those with language difficulties may be even less aware than the rest of the population about the possibilities of seeking redress. This is important in achieving policy objectives of reducing social exclusion.

[43] See also John Raine, Eileen Dunstan and Caroline Sheppard, *Mindsets and Misunderstandings at the Administrative - Judicial Divide:The Case of the Parking Appeals Tribunal,* School of Public Policy, University of Birmingham, UK, forthcoming 2006. More than half of a sample of motorists who challenged parking tickets and paid the charge rather than appealing to NPAS claimed that they had been unaware of their right to independent adjudication.

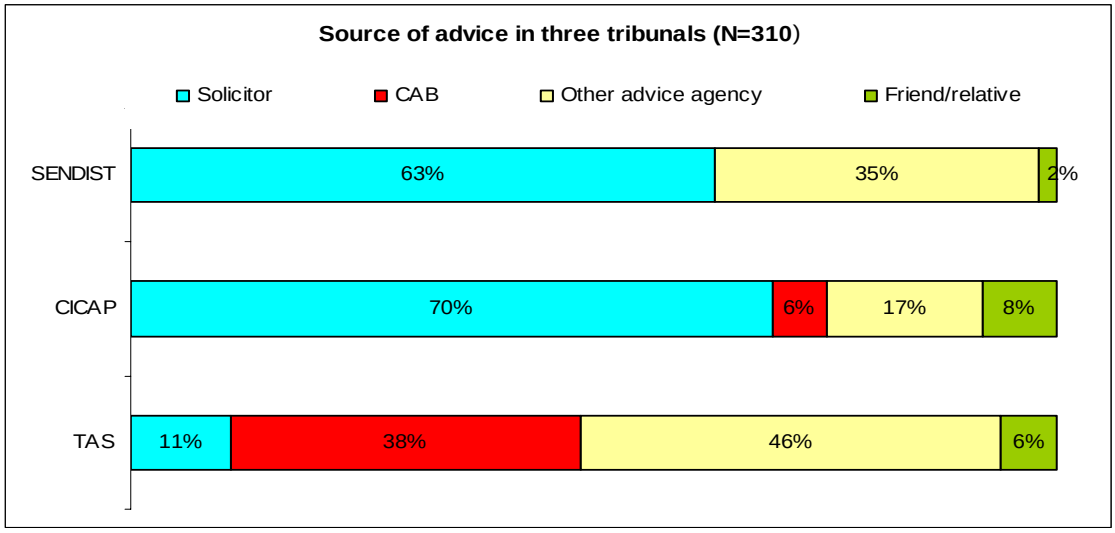
Pre-hearing advice

About two-thirds of respondents interviewed at tribunal hearings said that they had received some help or advice with their appeal to the tribunal. The relatively high levels of advice or help received **prior** to attending a tribunal hearing again tends to confirm the findings of the focus group discussions which indicated the significance of advice in helping people to navigate systems of redress[44]. It also reinforces the message of the previous chapter that those members of the public who finally make it to a tribunal hearing are likely to be those who have *a "strong sense of principle; a feeling that the issue at stake was critical to resolve; some knowledge of how to resolve the grievance or, fulsome and extensive advice and support provided by an advice agency or legal representative".*

Tribunal type and pre-hearing advice

Users attending SENDIST hearings were the most likely to have had advice or help with their appeal (88% of those interviewed at SENDIST hearings, as compared with 65% at CICAP and 63% at TAS). There were significant variations between tribunals both in whether advice had been obtained prior to the hearing and in the source of advice received. SENDIST and CICAP users were much more likely than TAS users to have received advice from a solicitor (Figure 4.4), while TAS users were the most likely to have received advice from a CAB or other advice agency.

Figure 4.4 Sources of advice received by respondents attending tribunals (N=310)



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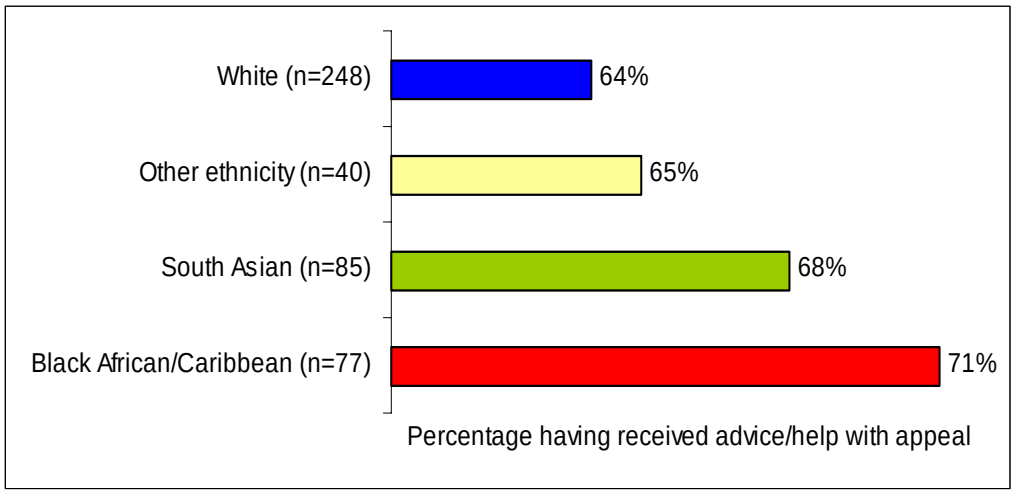
[44] Above chapter three.

There was no difference between men and women in the extent to which they had received advice prior to attending their tribunal hearing, nor, surprisingly, did there appear to be any difference in the extent to which advice had been received in different geographical locations. This again indicates that those who take the step of appealing and attending tribunal hearings are likely to have had the benefit of advice to support them in their challenge. The evidence from chapter three and from other relevant research suggests that there is likely to be a significant number of people who may feel a justified sense of grievance about a decision regarding a claim or entitlement who, in the absence of advice, do not feel sufficiently knowledgeable or confident to persist in seeking redress[45].

Ethnicity and pre-hearing advice

Among respondents interviewed at tribunal hearings, there was **no significant difference between White and Minority Ethnic users in the extent to which advice had been obtained prior to the hearing, nor in the source of the advice received, although White users had obtained advice less frequently than Minority Ethnic users** (Figure 4.5). The relatively higher proportion of White users prepared to attend an appeal hearing *without* having had the benefit of advice could be suggestive of greater levels of confidence about the appeal process. It is also interesting that despite *lower* levels of pre-hearing advice, White users were nonetheless somewhat more likely to succeed at hearings than other ethnic groups. This is discussed in more detail in chapter seven.

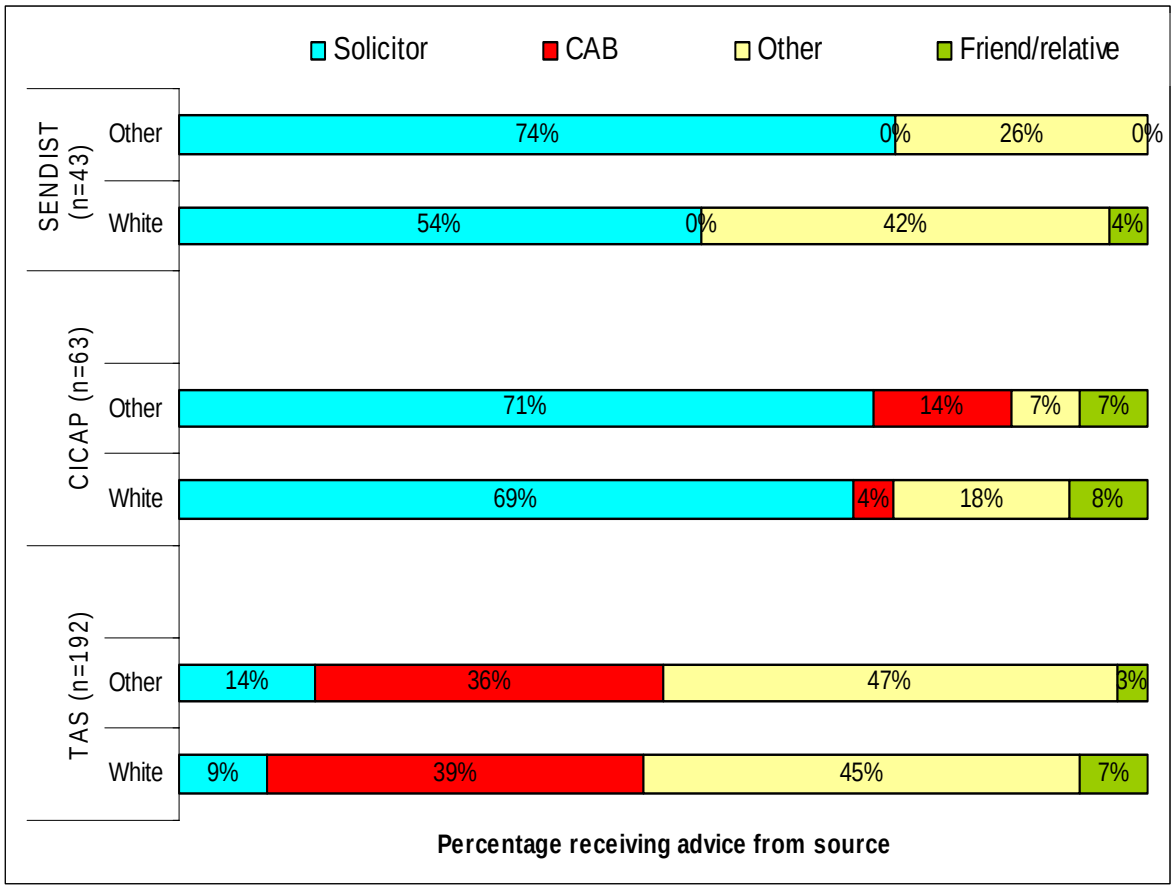
Figure 4.5 Advice/help received for appeal by ethnicity (N=453)



[45] See the earlier discussion of research on access to justice in chapter three.

It is also interesting that although there were differences between the three tribunals in the extent to which pre-hearing advice had been obtained from solicitors, there was *no significant difference* within tribunals between White and Minority Ethnic users in the type of adviser from whom advice had been sought prior to the hearing[46]. The similarity in the pattern of advice between White and Minority Ethnic users is displayed in Figure 4.6. The Figure shows that the only notable difference in type of pre-hearing advice was within SENDIST where there appeared to be a slightly greater tendency for Minority Ethnic users to have received advice from a solicitor prior to the hearing. However, this difference was not statistically significant.

Figure 4.6 Type of adviser providing help prior to hearing by ethnicity (where type of adviser known N=298)



[46] Because of a number of cases where the type of adviser was missing, Minority Ethnic categories have had to be collapsed for this analysis.

Range of advisers used in the three tribunals

Table 4.2 displays the range of advisers consulted by users attending hearings in the three tribunals. It is clear that TAS users obtained advice from an enormously wide variety of sources, while CICAP users seemed most often to be directed toward legal advice by the police and victim support together with a much narrower range of other advisers. Users attending SENDIST hearings tended to have been advised most often by special needs organisations and support groups.

Table 4.2 Sources of advice other than solicitors in three tribunals

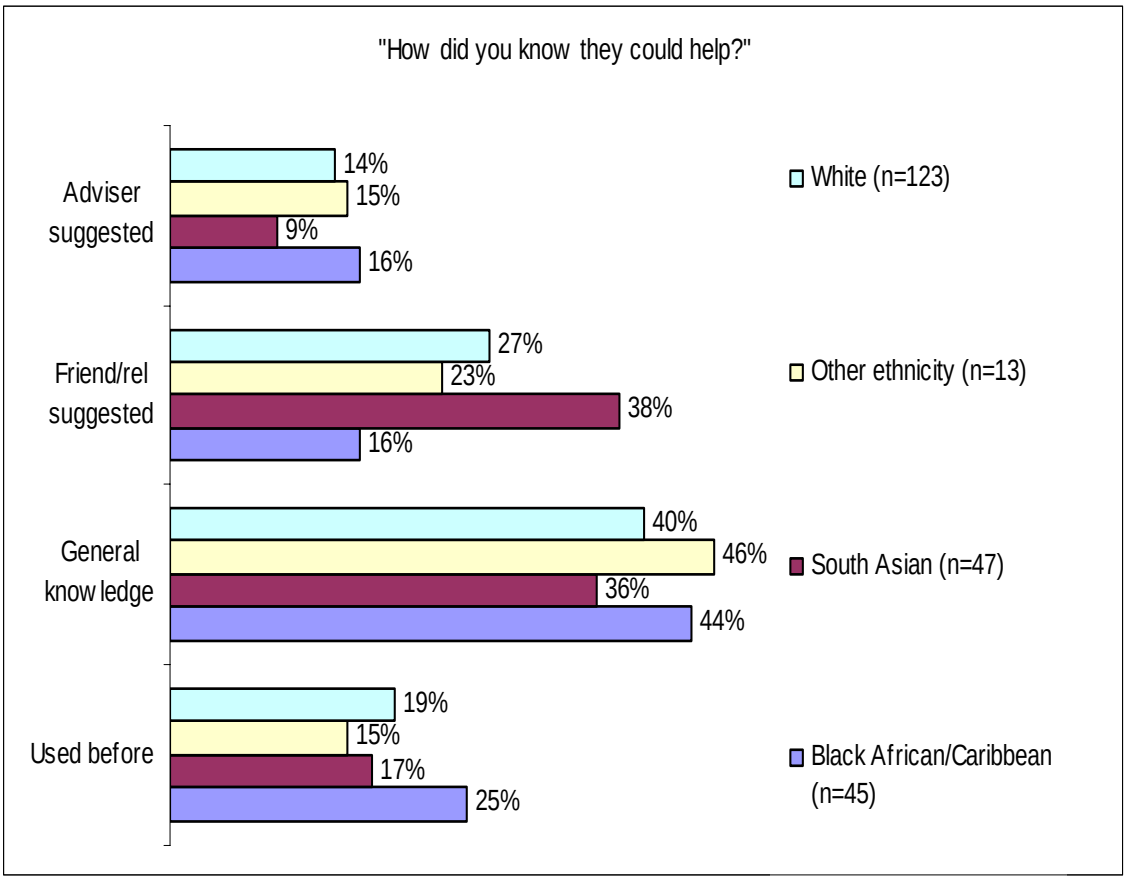
TAS	CICAP	SENDIST
Age Concern	Doctor	British Dyslexia Society
Asian Disability Awareness Action in Bradford (ADAAB)	Free representation unit	Dyslexia Centre of London
Local advice centres	Mental health advocacy	Dyslexia Institute
Benefits and health project	Police	Cystic Society
Benefits officer/council office	Union	IPSEA
Tribunal Unit	Victim support	SPINN (parents' support group)
Career advisor		National Deaf Children's Society
Charity		National Autistic Society
Community worker		Parent's support group
Council		Parent Advice Centre and School
Councillor		SOS SEN
Crohn's association		Video from SENDIST
Doctor		
DSS		
CAS website		
FRU		
Hostels for homeless people		
Housing Association		
Job centre		
Kurdish disability org		
LASA - local advice service alliance		
Law Centre		
Law for All		
Legal aid		
Mental health advocacy support centre		
National Assn for Crohn's Disease		
Paediatric nurse/researcher		
Pension adviser & benefits		
RAC		
RNIB		
Social services		
Terrence Higgins trust		
Trade Union		
Welfare rights		
Youth worker		

Among those respondents who had obtained advice from a source other than a friend or relative, the most common sources of advice were CABx and solicitors. When respondents were asked how they had known that they might be able to get help from the source they had used, the most common response given was that they knew from general knowledge that they might be able to obtain advice from that source (about 40% of respondents) or it had been suggested by a friend or relative (about one-quarter of respondents). However, about one in five respondents had used the source before, and in 14% of cases respondents had been referred on to the advice source by some other adviser – in effect a referral. The signposting to advisers varied somewhat between different sources of advice. Among those obtaining advice about appealing from a solicitor or CAB the most common way of knowing that help could be obtained was through "general knowledge" (46% and 44% respectively). Among those using a solicitor about one in five (22%) said that they had used them on a previous occasion, and a similar proportion had used the CAB previously (20%). Around 12% of those using solicitors and CABx had been referred on to them by some other advice source. Those using more specialist advice agencies were more likely to have been referred by another adviser or signposted by a friend or relative and less likely than respondents using solicitors or CABx to have used the source before or to have known about it from general knowledge. These findings are consistent with other research which emphasises the significance of sign-posters to advice in assisting the public in accessing redress systems and also the wide range of both appropriate and inappropriate sources from which members of the public seek help when faced with justiciable problems and disputes[47].

Analysing access to advice in relation to ethnic background again indicated no significant differences in the routes by which advice was accessed about claims. As Figure 4.7 shows, White and Minority Ethnic respondents were most likely to have drawn on their general knowledge in choosing where to go for advice and were equally likely to have been referred on by a preliminary adviser. The only notable difference in response to this question was among South Asian respondents who were more likely than other groups to have used personal networks in choosing a particular advice source.

[47] *Paths to Justice* 1999 and 2001, op cit; *Causes of Action* 2004, op cit.

Figure 4.7 "How did you know the adviser could help?" by ethnic group



Tribunal users on the whole expressed high levels of satisfaction with the advisers that they had used prior to their hearing. There was no significant difference in the levels of expressed satisfaction with any particular type of adviser. Where some dissatisfaction had been expressed, this was most commonly in relation to friends and relatives from whom advice had been sought, and solicitors.

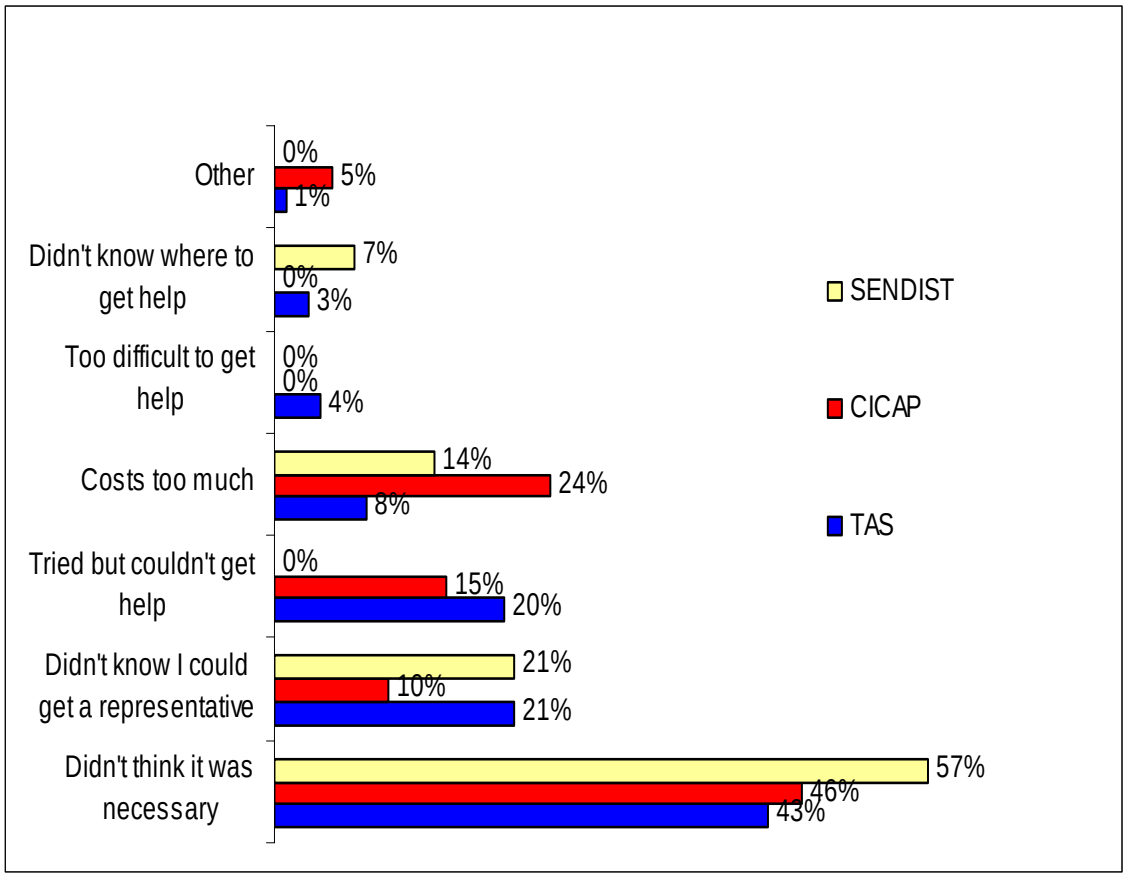
Representation at hearings

About half of all users interviewed at tribunal hearings had brought a representative to assist them with their hearing. There was, however, a significant difference in representation rates between the three tribunals. In TAS a little under half of users interviewed were present at their hearing with a representative (45%), just under two-thirds of those interviewed at CICAP hearings had a representative (63%) and about three-quarters of those interviewed at SENDIST were represented (76%). These figures are slightly different from overall representation figures obtained from tribunal databases which show that overall the representation rate at TAS is around 49%, at

CICAP the rate is about 64% and in SENDIST representatives are present in about 56% of cases. Thus among the relatively small number of users interviewed at SENDIST hearings, the rate of representation was higher than for the average SENDIST user. A full analysis of representation is provided in chapter seven.

All users who were not represented at their tribunal hearing were asked why they had not brought a representative with them. **The most common reason given by tribunal users for attending without representation was that they had not thought representation to be necessary at the hearing** (45%)**.** The next most common reasons given were that the user had **not been aware** that representation was either desirable or necessary (18%), or that they **had tried to get representation but could not obtain help** (17%). Figure 4.8 shows that there were some significant differences between users in different tribunals in the reasons given for lack of representation. No users in SENDIST reported that they had tried but failed to obtain representation, while CICAP users were more likely than those attending other tribunals to say that representation had been too expensive.

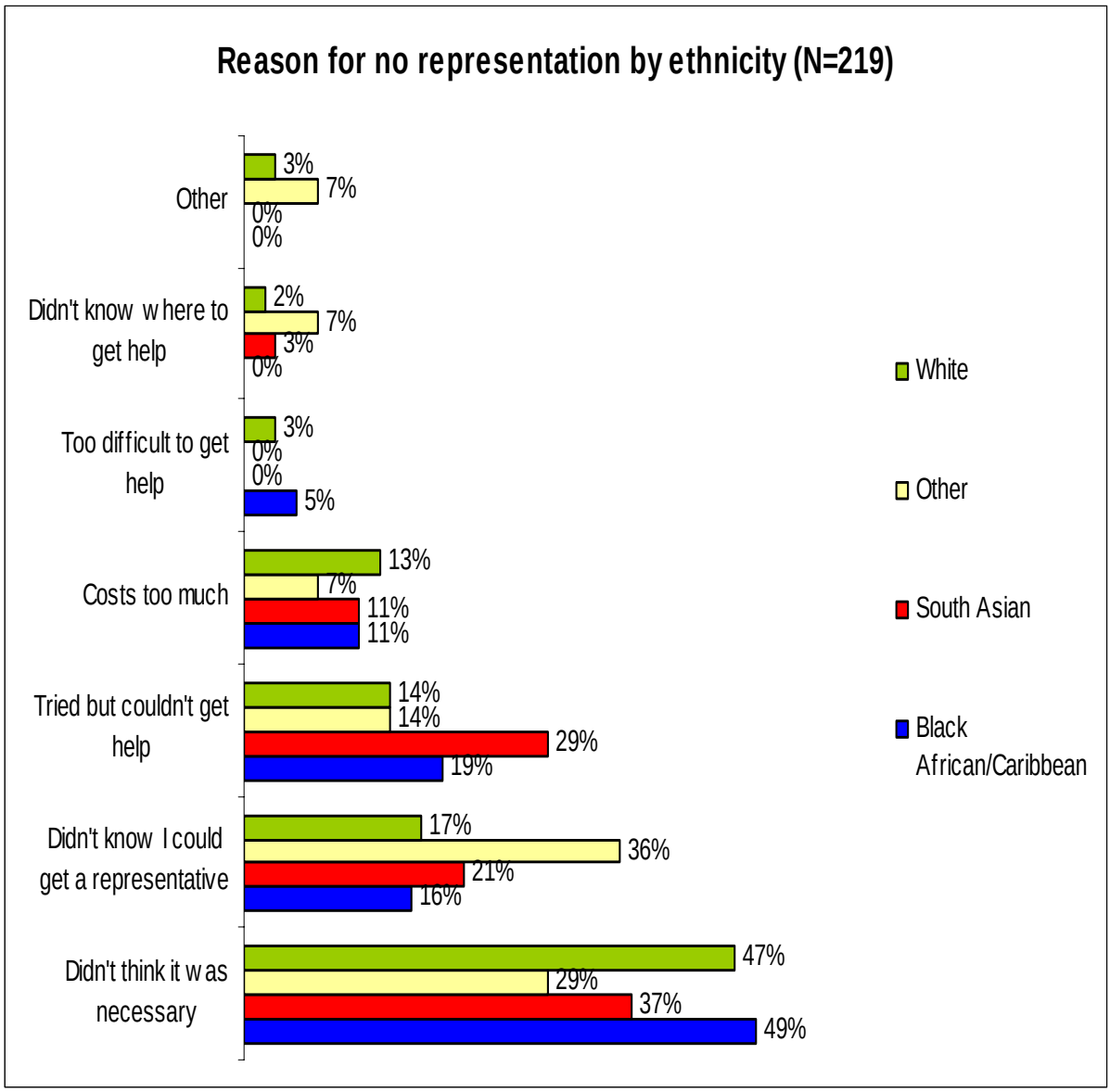
Figure 4.8 Reasons for not having representation in all tribunals (N=218)



Representation and ethnicity

Although there were no statistically significant differences between ethnic groups in the explanation given for not having representation, the distribution of responses nonetheless shows **a higher proportion of minority users giving as their reason that they had tried to obtain representation but failed**. While 14% of White respondents overall said that they had wanted, but could not obtain representation, **some 22% of Minority Ethnic users gave this as their reason, in particular South Asian and "other" Minority Ethnic users** (see Figure 4.9).

Figure 4.9 Reasons given for lack of representation by ethnic group (N=219)



It was not possible within the scope of the hearing-room interviews to probe this issue further and so it is difficult to know how many of these users had been unable to access a source of representation, how many had been declined representation because of insufficient resources on the part of the representation organisation, and how many had not been offered representation on the ground that the claim had little chance of success. It is worth noting at this point, however, that among those respondents who tried and could not obtain representation, the success rate at hearings was around (60%) and that non-White users in this situation had higher success rates at their hearing than White users.[48]

Given the potential significance of representation to users during tribunal hearings, following the user survey, a statistical modelling exercise was undertaken of factors that might predict representation or lack of representation including ethnicity, geographical location and case type. This analysis was carried out using the sample of cases collected for the analysis of tribunal decisions which comprised over 3,000 cases. The results of this analysis, which are discussed in full in chapter seven, reveal that while **case type and geographical location were significant determinants of whether or not users would be represented in the three tribunals, neither ethnicity nor use of an interpreter were significant determinants of representation.**

Expectations of hearing and preparedness

"Will there be two big chairs with judges in them?" [TAS user in waiting room]

Whether or not users obtain some advice about their tribunal case before the hearing, a degree of preparedness and understanding of what is likely to occur during the tribunal hearing is essential if users are to be enabled actively to participate in the hearing and press their case with some degree of efficacy. While detailed knowledge of the law and procedure ought not to be necessary for an unrepresented user to receive a fair hearing in a tribunal, users will be less anxious and better equipped to present their case if they know what is likely to happen and what will be expected of them during the hearing. In order to check on levels of preparedness for hearings users waiting for their hearings were asked a series of questions about their familiarity with legal proceedings of any kind and of

[48] Outcome of hearings is discussed in full in chapter seven.

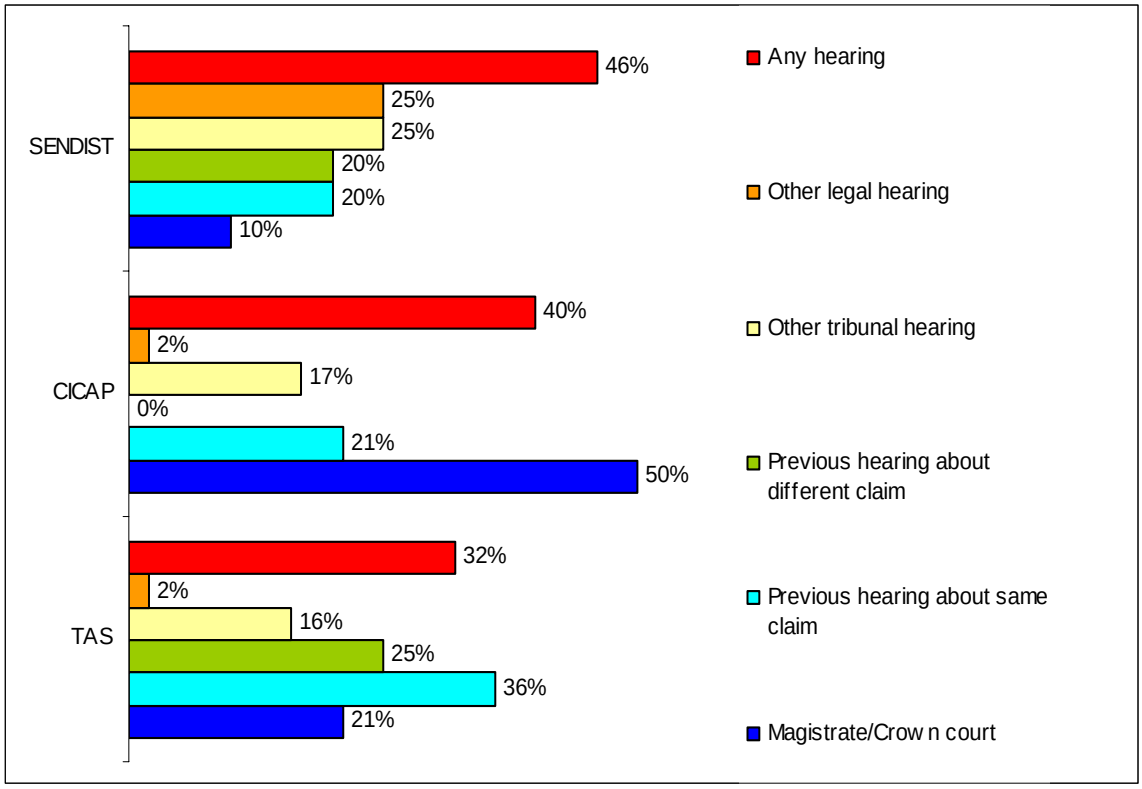
proceedings in the particular tribunal they were attending. They were also asked whether they anticipated being required to do much talking during the tribunal hearing, and whether they imagined that the hearing was likely to be formal or informal.

Previous experience of legal hearings

Most of the users interviewed in tribunal waiting rooms had never been to any kind of hearing before (67%) indicating a relatively low level of prior experience among the sample as a whole. Levels of prior experience varied somewhat between the three tribunals with SENDIST users being more likely than users in the other two tribunals to have had previous experience of some kind of legal hearing (46%) and TAS users being the least likely to have had previous experience of any legal proceedings (32%) (Figure 4.10).

There was a significant difference in the *type* of legal hearings users in the three tribunals had previously attended. Users in CICAP were significantly more likely than other users to have had experience of a hearing in the magistrates' court or crown court. This is unsurprising since, being victims of crime they are highly likely to have appeared as a witness in any criminal proceedings relating to their case. TAS users, on the other hand, were more likely than users in the two other tribunals to have had experience of attending TAS in an earlier hearing of the same case. About one-third of TAS users with previous experience of legal hearings had attended at a previous hearing of the same case and one-quarter had attended the same tribunal about a different case. In fact, in each of the tribunals a minority of users interviewed already had some experience of the tribunal, having attended previously on the same or a different case. Almost one in five TAS users interviewed in tribunal waiting rooms had experience of the procedures of that particular tribunal (19%), about 17% of SENDIST users were already familiar with its procedures, and among all CICAP users interviewed, some 9% had had previous experience of the tribunal itself.

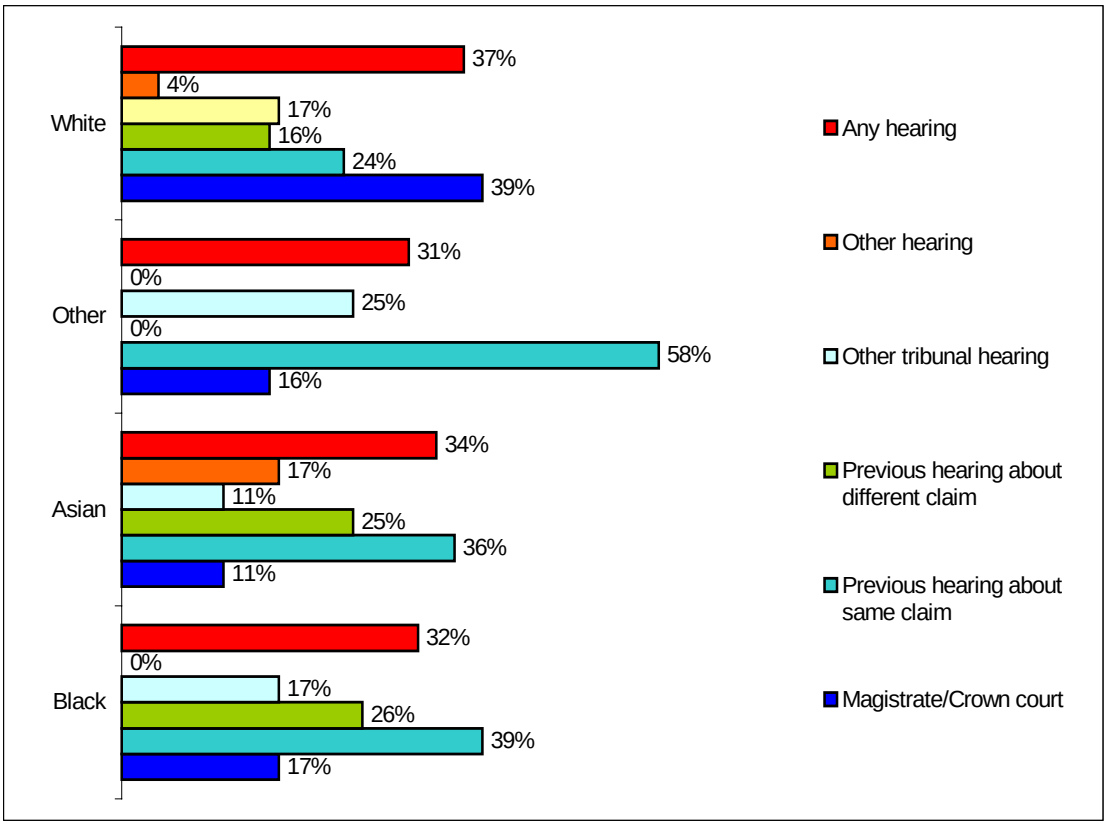
Figure 4.10 Users' prior experience of legal hearings (N=463)



Ethnicity and previous experience of legal hearings

Taking all respondents in the three tribunals together, there was no statistically significant difference between ethnic groups in their prior experience of legal hearings. About 37% of White tribunal users said that they had had some previous experience of legal hearings as compared with 32% of Black users, 34% of South Asian users, and 31% of users of other ethnicities. Thus around two-thirds of tribunal users in all ethnic groups had had no previous experience of involvement in legal hearings. Among those with some prior experience, however, there were some small differences between ethnic groups in the type of hearing previously experienced. For example, White respondents were the most likely to have had some experience of hearings in magistrates' courts (39% of those with any prior experience of legal hearings), while Minority Ethnic users were more likely than White users to have been involved in a previous hearing of their present appeal (Figure 4.11).

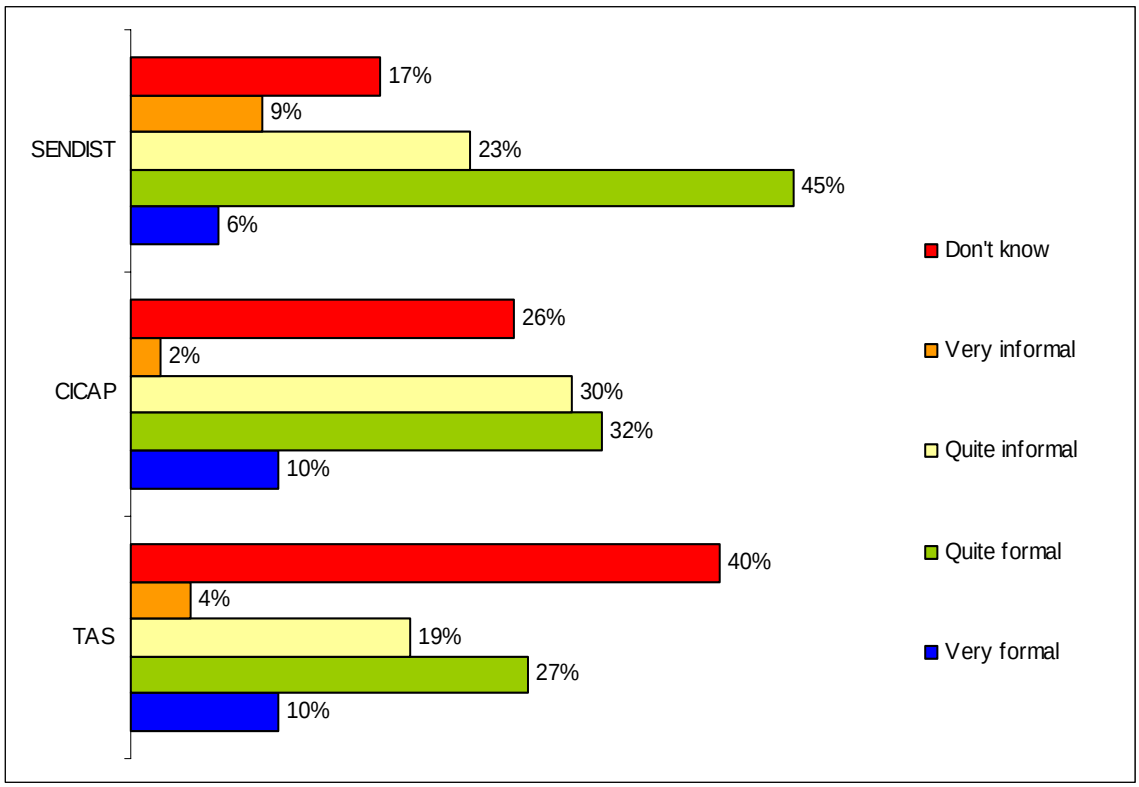
Figure 4.11 Users' previous experience of legal hearings in relation to ethnicity (N=152)



Expectations of formality of hearing

All those attending for hearings were asked whether they expected the hearing to be formal or informal (Figure 4.12). There were significant differences between respondents in the different tribunals in their expectations. Users waiting to attend TAS hearings were the most likely to say that they were not sure what to expect (some 40% of all those interviewed) and about one in four users at CICAP hearings said that they did not know whether the hearing would be formal or informal. Those attending SENDIST hearings were the least likely to say that they did not know (17%) and this lower figure is likely to be a reflection of the fact that SENDIST users receive a video prior to the hearing date which provides information about what will happen at the hearing. Interestingly, **representation made no difference to the likelihood that respondents would say they did not know whether the hearing would be formal or informal**. In all three tribunals, represented users seemed as likely, or more likely, than unrepresented users to answer that they did not know.

Figure 4.12 Users' expectation of formality of hearings in all tribunals (N=444)

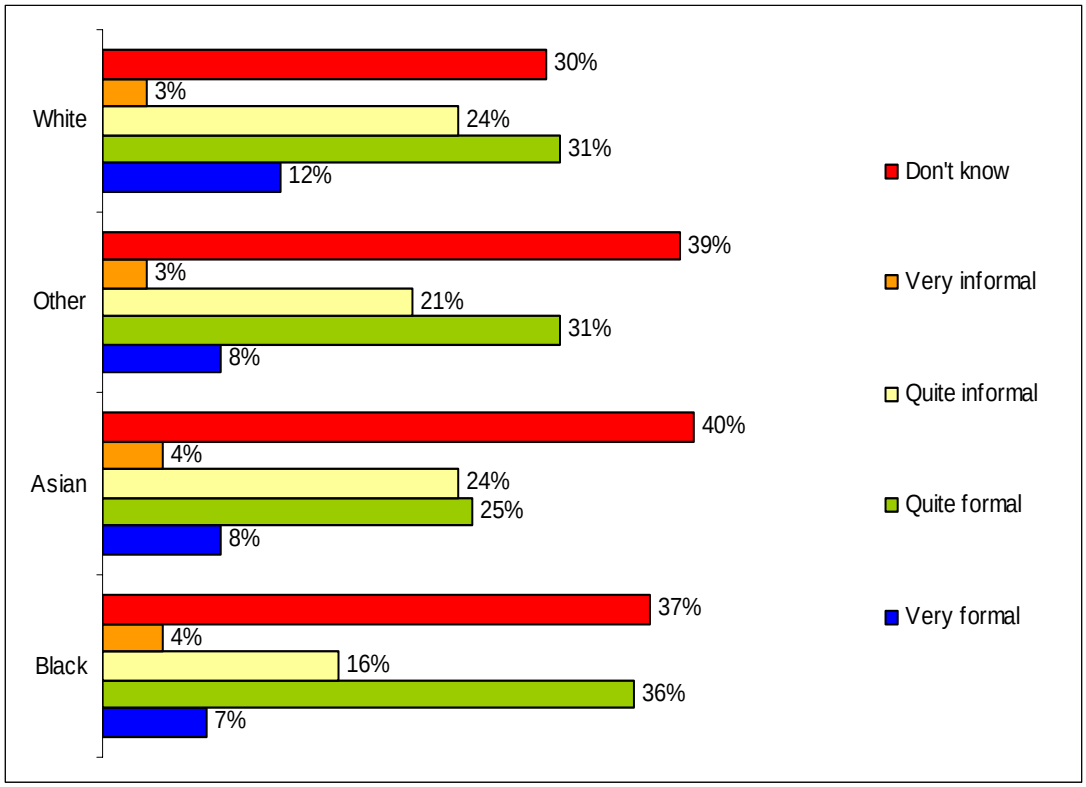


However representation had an important effect on users' expectations about how much talking they would be expected to do at the hearing. Among represented parties, about 30% said that they expected to do no talking and that their representative would speak for them, as compared with 9% of unrepresented users. Among unrepresented users as a whole, about one-third said that they did not know whether they would have to do much talking during the hearing.

Ethnicity and expectations of formality

There were no significant differences overall in expectations of the formality of tribunal hearings in relation to the ethnic background of users. Although White users were slightly less likely than other groups to say that they did not know whether the hearing would be formal or informal, the results for different ethnic groups in general follow the same pattern. **The majority of respondents who were able to visualise the hearing said that they expected the hearings to be formal or very formal** (Figure 4.13).

Figure 4.13 Users' expectation of formality of hearings in relation to ethnicity (N=424)



Expectations of outcome

Users attending hearings demonstrated relatively high levels of optimism about the likely outcome of their appeal. When asked what outcome or decision they were expecting, the majority of users expected complete success in their appeal (61%). About one in five said that they did not know what the outcome was likely to be (22%), about 9% expected a partial overturn of the original decisions and, interestingly about 8% said that they were expecting their appeal to fail.

Tribunal type and expectations of outcome

There was, however, some difference in expectations depending on the tribunal. SENDIST users were the most likely to think that they would win their appeal (78%) and CICAP users were the least likely of users in the three tribunals to think that they would achieve complete success, with only about half saying that they expected to succeed completely. In TAS, a little under two-thirds expected complete success (63%)

Ethnicity and expectations of outcome

There was little difference between ethnic groups in their expectations of success or failure. Black users were the most optimistic with 66% expecting complete success, as compared with 59% of White users and 64% of South Asian users.

Representation and expectations of outcome

Interestingly, there was also no significant difference in expectations of success or failure associated with representation, although a higher proportion of unrepresented parties expected their appeal to fail (11% of unrepresented users as compared with 5% of represented users). Around one in five of both represented and unrepresented parties claimed that they did not know whether or not their claim was likely to succeed.

Expectations and eventual outcomes

A full analysis of outcome in tribunal hearings is presented in chapter seven, but it is worth noting at this point that of those users expecting complete success, about two-thirds eventually succeeded at their appeal hearing. Of those users expecting a partial overturn, about three-quarters succeeded either wholly or in part. Among users who stated before their hearing that they expected the appeal to fail, about half actually succeeded at the tribunal hearing, and among those users who said that they did not know whether they would succeed or fail at the hearing, about half were successful in their appeal. Thus among the most confident users, one-third had their hopes dashed and among the most pessimistic users, about half would have been favourably surprised at their success.

Summary

The waiting room interviews with tribunal users in TAS, CICAP and SENDIST revealed few differences in users' experiences of seeking advice or expectations of hearings associated with ethnic background. Most users attending hearings were appealing against administrative decisions out of a sense of unfairness and this was true across ethnic groups. Users tended to learn about the possibility of redress from material accompanying the initial decision from the Department or Authority, with only a handful having relied on general knowledge. Most of the users interviewed in waiting rooms had received some advice or help prior to attending their hearing and there were few differences in the levels of type of advice obtained related to the ethnic background of users. This reinforces the message of the previous chapter

about the importance of obtaining advice in providing the knowledge and confidence to attend a tribunal hearing. The sources from which advice was obtained varied according to the type of problem being experienced and the type of tribunal, but there was no difference in the sources of advice received related to ethnic background of users.

There were some differences in prior experience of legal hearings, but this tended to be related more to the tribunal rather than to Minority Ethnic group. Users' expectations of the hearing were relatively vague for both TAS and CICAP hearings, with unacceptably high proportions of users interviewed in waiting rooms not knowing what to expect at their hearings. Although a relatively large proportion of users attended hearings with representation, this seemed to make little difference to knowledge of what to expect.

There were no significant differences in the levels of representation associated with ethnicity, although there was some evidence that Minority Ethnic users attending without representation were more likely than White users to say that they had tried and failed to obtain representation. The most common reason given by tribunal users for attending their hearing without representation was that they had not thought representation to be necessary at the hearing. There were significant differences between the three tribunals in the extent and type of representation, with heavy use of solicitors in both CICAP and SENDIST, while users in TAS were accompanied by a wide range of representatives.

The results of the pre-hearing survey tend to support the evidence from the qualitative research, that those members of the public who overcome barriers to bringing appeals tend to be those with a strong sense of purpose, some knowledge of how to proceed or who are fortunate enough to be able to buy or find active and fulsome assistance from representatives.

Chapter 5. Delivering fair hearings: observational study

> *"The responsibility for ensuring equality and fairness of treatment rests on everyone involved in the administration of justice…. If anyone feels hard done by at any stage, it reflects on everyone who represents that system. Unless all parties to proceedings accurately understand the material put before them, and the meaning of the questions asked and answers given during the course of the proceedings, the process of law is at best seriously impeded. At worst, justice may be denied…"* (***Fairness in Courts and Tribunals:*** *Summary of Equal Treatment Bench Book*, Judicial Studies Board)

The purpose of the DCA Courts and Diversity research programme was to obtain evidence about the *existence* and/or *perception* of discrimination against Minority Ethnic groups within the justice system in light of the conclusions and recommendations of the Macpherson Report. A central objective of this study was to ascertain whether there is evidence of direct or indirect discrimination against Minority Ethnic users within the tribunal system, and whether tribunal processes impact differently on minority groups. As discussed in chapter one, direct discrimination occurs when a person is less favourably treated on account of race, gender, age or other personal factor, while indirect discrimination may result from a course of action which, although based on an ostensibly impartial and general rule or practice, has the effect of operating to the detriment of people belonging to some particular group. Indirect discrimination may often be the result of negative stereotypes and assumptions about particular groups.

Questions about the existence of discrimination are essentially objective. While *perceptions* of fair treatment are crucial to public confidence and trust in the justice system, positive perceptions do not guarantee that a system is substantively fair. It is possible for individuals to be content with their treatment while, in fact, being the subject of direct or indirect discrimination. While the next chapter discusses users own perceptions of the conduct and fairness of the hearing, this chapter focuses on more objective assessments of how Minority Ethnic users were dealt with by tribunal judiciary, as compared with White users and the extent to which, within the procedures adopted during hearings, Minority Ethnic users were enabled to participate as effectively as White users. These assessments were made through extensive structured observation of tribunal hearings during which quantitative and

qualitative evidence was collected about the behaviour of tribunal judiciary and indicators of users' ability to participate in hearings.

In observing tribunal hearings, what were observers watching and noting? A starting point was the Macpherson definition of racism which consists of *"conduct or words or practices which advantage or disadvantage people because of their colour, culture or ethnic origin".* He went on to explain that *"institutional racism"* can be seen or detected in "*processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage Minority Ethnic people".* [49]

This definition of institutional racism provided a framework for assessing the treatment of Minority Ethnic users in tribunal hearings. Employing some of the elements in Macpherson's formulation of institutional racism, observation provided evidence on:

- The extent to which tribunal judiciary were providing an appropriate and professional service to all tribunal users regardless of colour, culture or ethnic origin;
- The extent to which there was evidence of disadvantage to Minority Ethnic users through processes, attitudes or behaviour on the part of tribunal judiciary.

Neutrality and equal treatment

In assessing the performance of tribunals in relation to a diverse population of users, it is necessary to have benchmarks or standards in mind. The Leggatt Report emphasised the need for tribunal judiciary to "enable" users to present their cases so that justice might be done. This included understanding the point of view as well as the case of the citizen. He argued that tribunals must be:

> *"alert for factual or legal aspects of the case which appellants may not bring out, adequately or at all, but which have a bearing on the possible outcomes...We are convinced that the tribunal approach must be an enabling one: supporting the parties in ways which give them confidence in their own abilities to participate in the process, and in the tribunal's capacity to compensate for the appellants' lack of skills or knowledge".* (Leggatt paras 7.4-7.5)

Despite this prescription to tribunal judiciary, the job of enabling the user to advocate their case and to compensate for lack of representation, where necessary, is a tall

[49] Macpherson Report 1999, Para 6.34.

order. Other studies of tribunals and courts have discussed the difficulties for the judiciary in dealing with unrepresented parties and the uncertainty that many judges feel about the limits to legitimate assistance and intervention. Anxiety about the 'limits' of judicial intervention expose some of the tensions inherent within the modern adversarial legal system and the problem of reconciling the concept of enabling and responsiveness to the diverse needs of users, with traditional conceptions of judicial neutrality or impartiality. Within the court system, which is experiencing increasing numbers of unrepresented parties, and in tribunals where there has traditionally been a high proportion of unrepresented parties, individual judges have grappled with finding their own personal balance. Inevitably this has varied from person to person and possibly from case to case, the problem being particularly acute when a judge is faced with an imbalance of representation. An earlier study of four tribunals which analysed the effect of representation on the conduct and outcome of tribunal hearings commented on the problem facing tribunals attempting to compensate for lack of representation and divergent views and some uncertainty about the extent to which it was reasonable and appropriate to "enter the arena" [50] to assist a party without representation. More recently, in a study of litigants in person in first instance courts, Moorhead and Sefton have similarly noted levels of uncertainty among the judiciary about how far to "lean over the bench" to assist unrepresented parties[51]. Neither of these studies, however, directly addressed this general "enabling" problem in the context of judicial responsibility toward any particular needs of Minority Ethnic users.

Although tribunal hearings tend to be less adversarial and more interventionist than the traditional model of court proceedings, they nonetheless involve adjudication between two parties, generally the citizen and the State. In seeking to understand how "equal treatment" should be operationalised within the context of a tribunal hearing, it is necessary to go beyond conventional assumptions about the role of the judicial decision-maker as a neutral and impartial umpire. Equal treatment is not about neutrality during judicial proceedings. As Lucy (2005)[52] cogently argues, the

[50] Genn and Genn (1989) op cit.
[51] See most recently Moorhead and Sefton (2005), *Litigants in Person: Unrepresented Litigants in First Instance Proceedings,* DCA Research Series 2/05.
[52] William Lucy, 'The Possibility of Impartiality', *Oxford Journal of Legal Studies*, Vol 25 No 1 (2005) 3-31.

challenge in applying the procedures of judicial decision-making is to ensure that there is *"equality of impact"* of the relevant rules and procedures. The historic emphasis on neutrality and impartiality in legal proceedings requires either that the rules and practices of decision-making should favour neither party, or that they should disadvantage each party equally. The difficulty for judges in ensuring that procedural rules do not unfairly and indirectly discriminate between litigants arises from the real and important differences between court and tribunal users. Lucy argues that procedural rules, intended to be impartial, must therefore be capable of accommodating or mitigating some of the differences between litigants:

> "*So in order to ensure that no disputant is disadvantaged by adjudicative procedures…the rules and practices must, in addition to not directly discriminating against disputants, also take account of significant differences between them."*

Thus, equal treatment or fairness in court and tribunal proceedings requires that disputants are able effectively to participate in proceedings. Genuine involvement or 'participation' requires the opportunity to be heard; accurate information about claims; the opportunity to respond; and an awareness of relevant administrative requirements. From the users' point of view, research evidence suggests also that the opportunity to be heard is only valued in terms of procedural fairness if the user feels that their arguments have been listened to and considered seriously, and that they have been treated with courtesy and respect. These essential elements in users' perceptions of fairness cut across social and ethnic groups.[53]

In treating users from a diverse range of backgrounds "equally" there are both positive and negative obligations on the judiciary, i.e. things that a judge *should not* do and things that he or she *should* do. What the judge should not do is employ stereotypes, and make assumptions about an individual based on presumed characteristics attributed to a group. On the other hand, there is a positive obligation on a judge, so far as possible, to meet any special needs or redress any disadvantage that a user might be experiencing, such as language, unfamiliarity with the environment, disability, lack of fluency or literacy. In the modern world such issues are not addressed in terms of lack of neutrality, but are expressed in terms of the positive requirements of the judiciary in delivering fair hearings for all court and tribunal users. The Judicial Studies Board Equal Treatment Bench Book reflects the twin obligations on the judiciary to refrain from negative assumptions and the corresponding positive duty to assist in order to ameliorate disadvantage:

[53] See the discussion relating to research by Tom Tyler (2000) in chapter six.

> *"The judge or tribunal chair is manager of the hearing and should ensure that everyone who appears before the court or tribunal...has a fair hearing. This involves identifying the difficulties experienced by any party, whether due to lack of representation, ethnic origin, disability, gender, sexual orientation or any other cause, and finding ways to facilitate their passage through the court or tribunal process."*

Equal treatment as a judicial 'competence'

In the tribunal context, expectations about how the ambition of fair treatment for all users is to be achieved has been comprehensively spelled out in a 'Competence Framework' for tribunals developed by the Judicial Studies Board. This document sets out the skills, knowledge and behavioural attributes needed to perform the judicial function in any tribunal jurisdiction *"or indeed, in most regulatory or investigatory bodies that have a disciplinary decision-making role"*. Aside from knowledge of the law and procedure, critical competences that tribunal judiciary should demonstrate are:

- Equal treatment
  - Awareness and respect for cultural and other differences by e.g.
    - Using appropriate language
    - Being sensitive to cultural and other differences
    - Demonstrating an appropriate approach, attitude and non-verbal communication
  - Facilitating participation of all parties to promote equal treatment by e.g.
    - Eliciting the extent of understanding of users
    - Explaining legal, procedural issues in everyday language
    - Maintaining balance between assisting users and impartiality
    - Taking account of all factors that may unfairly discriminate and undermine full and effective participation of parties
    - Making effective use of interpreters
- Communication
  - Asking clear questions which are understood
  - Using active listening skills
  - Appropriate body language
  - Checking understanding of all participants
- Conduct of hearing
  - Maintaining independence and authority
    - Recognising and respecting needs of those appearing without representation
    - Behaving in a measured, calm and non-confrontational manner

    - Managing hearing so as to enable proper participation by all
        - Identifying members of tribunal
        - Explaining procedures
        - Ensuring parties properly heard
        - Explaining what will happen after hearing
- Evidence
    - Conducting the hearing to encompass all relevant issues
        - Asking questions to elicit relevant evidence
        - Encouraging tribunal members to ask appropriate questions

This competence framework provided an important starting point in the research for observations and assessments of tribunal judiciary during hearings. As discussed below, key elements from the framework were included in the schedules completed by observers during tribunal hearings. However, the assessments of tribunals' professionalism must be set against, and understood in relation to, the ability of users to present their cases. **The objective of tribunal hearings should be to deliver legally accurate decisions by means of a process that is demonstrably fair and perceived to be so.** In this context fairness includes not only unbiased application of legal rules, but also enabling tribunal users to participate effectively in hearings. How then, in practice, should assessments of tribunal professionalism and fairness be made? Because the relationship between the tribunal panel and an individual user is interactive and dynamic, the assessments must, in effect, be concerned with the **goodness of fit** between the strategies adopted by the tribunal for enabling user participation and the resources and bundle of personal competences that an individual user brings into the hearing room. There were thus two aspects to the assessments made during hearings, as indeed there are two aspects to the business of the enabling role. First, the behaviours adopted by tribunals in seeking to draw out and test information from users; and second, the extent to which these behaviours appeared to be effective in ensuring that users were able to manage during hearings and present their cases.

Observation method[54]

Observations were conducted by the research team (which comprised of observers from several different ethnic backgrounds and nationalities) in the three tribunals, The Appeals Service (TAS), Criminal Injuries Compensation Appeals Panel (CICAP), and Special Education Needs and Disability Tribunal (SENDIST); and across four localities: London, Birmingham, Manchester and Leeds. Permission to observe TAS and CICAP hearings was requested directly from users immediately prior to their hearing in the tribunal waiting room following the pre-hearing interview. The hearings at SENDIST were significantly longer than TAS or CICAP and often involved numerous participants. As a result, permission to observe SENDIST hearings was obtained in advance of the hearing date. Once agreement to observe hearings had been given by users, observers entered the hearing room with the user and were seated in a location suitable for observing all of the parties and with a view of the user in particular.

At its simplest, structured observation is the systematic recording of behaviour. It requires clarification of what is to be observed, the identification of observable behaviours, and careful recording of field notes. Although observation is inevitably subject to various interpretive biases, it provides a rich and relatively unfiltered source of information about the dynamics of tribunal processes, which does not depend on the 'reported behaviour' of participants. Standardised schedules were therefore developed to record observable aspects of tribunal behaviour and user participation. For tribunals, nine factors were ranked on a five-point scale, including the quality of the introduction and explanation, tribunals' degree of formality, apparent understanding of users' story, use of insensitive language, use of legalistic language, courtesy, assistance or enabling, tribunals' appearance of listening, and tribunals' attempt to involve the users' representative (where present). For users, five factors were ranked on a five-point scale, including users' apparent level of comfort, willingness to speak, understanding of questions, eye contact, and ability to present their case. Brief note was also taken of the performance of representatives when these were present in relation to their clarification of the issues and overall presentation of the case. Observers also recorded a full note of the observations that led them to the particular ranking for each factor, including direct quotations where

[54] See chapter two for a fuller explanation of the observation method and discussion of limitations and advantages of observation as a data collection method.

relevant. The full observation schedule appears at Appendix B. Observers also noted whether any member of the tribunal was of a visible Minority Ethnic background.

A total of 529 interviews were conducted with users in the three tribunals: TAS, CICAP, and SENDIST and across the four locations: London, Birmingham, Manchester and Leeds. Of those interviewed, 411 cases were also observed. Figure 5.1 and Figure 5.2 provide the number of interviews and subsequent observations that took place at each tribunal and each location.

Figure 5.1 Number of interviews conducted with users in different geographical areas

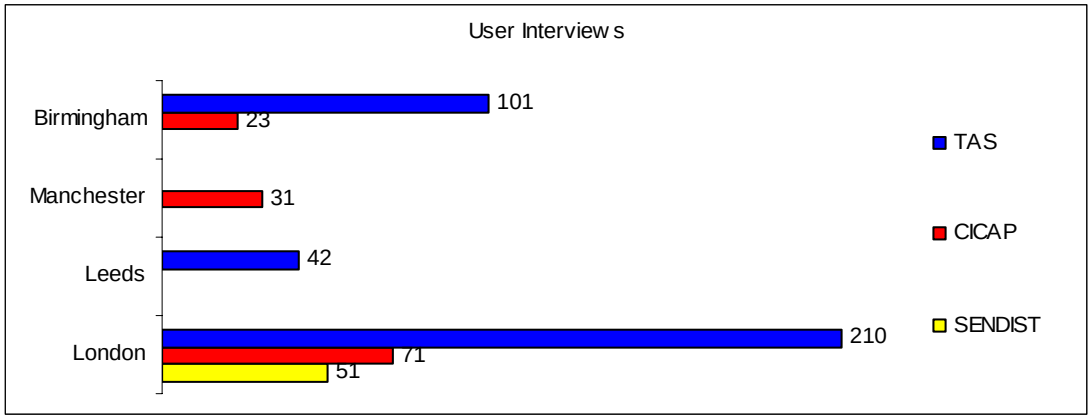
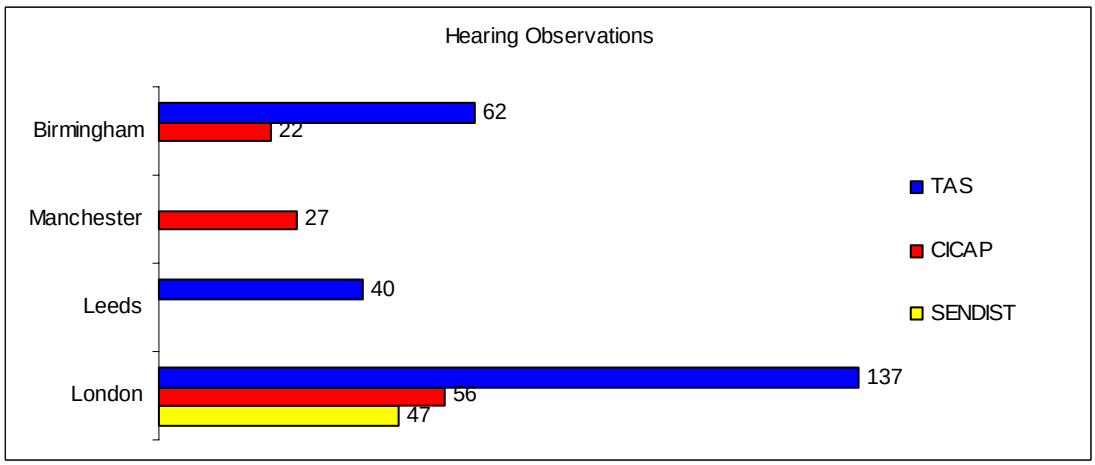


Figure 5.2 Number of observations conducted with users in different geographical areas



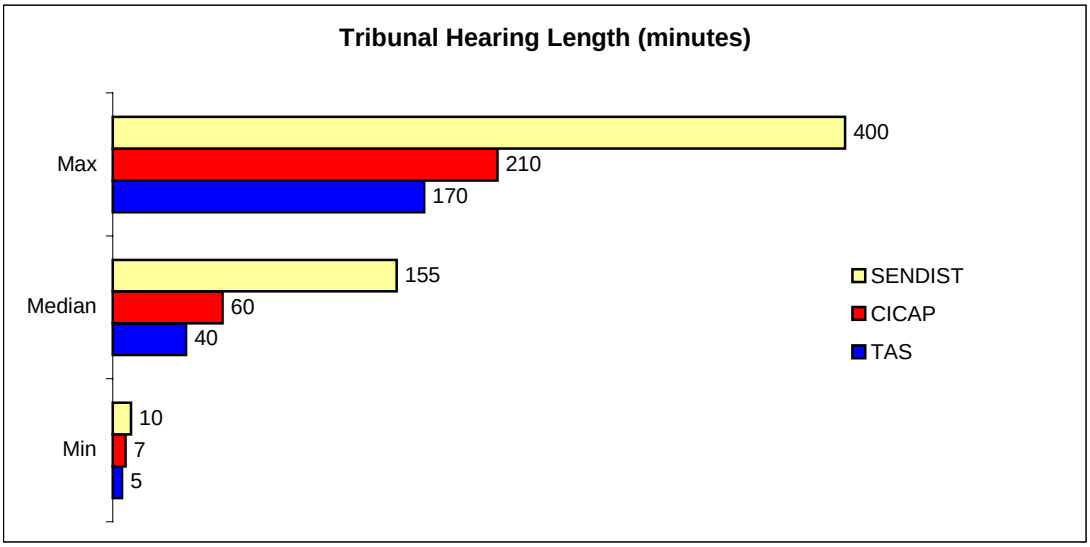
Observations were not carried out in every case where an interview was conducted with a user for a number of reasons: sometimes hearings were adjourned, usually due to the failure of an interpreter to attend, time delays, or an absence of the required evidence. In other cases, there was insufficient time to request permission

from the user to observe their hearing prior to the case commencement, or the observer was already engaged with another interview or observation. In a few cases, the tribunal felt that there were too many participants already in attendance and the presence of an additional observer would lead to overcrowding in the hearing room. Although it was exceptional for users to decline the attendance of an observer during the hearing, in the handful of cases where this occurred, reasons given included the sensitive nature of their case, a feeling that the information was too personal, and feeling the presence of the observer might add to the stress of the situation or make them feel especially nervous or distracted.

Length of hearings

Hearing lengths varied widely across the tribunals, with the shortest hearing lasting five minutes and the longest lasting 400 minutes. Across all tribunals the mean length of hearings was 67 minutes and the median length was 50. However, hearing lengths for individual tribunals vary widely. Figure 5.3 shows that the median length for TAS hearings was 40 minutes, for CICAP 60 minutes and for SENDIST the median hearing length was 155 minutes.

Figure 5.3 Length of tribunal hearings by tribunal



Overall assessments

Each factor observed during the hearing was ranked on a scale from one to five with a larger number indicating a better overall score and similarly a smaller number indicating a worse overall score. Mean scores were calculated for each observed factor in the observation schedule indicating judgements about the quality of the

interaction in relation to particular features of hearings. Tables 5.1 to 5.3 provide the mean scores for all items ranked in relation to user participation, tribunal approach and representatives' contribution. For ease of analysis, each factor was subsequently collapsed into three categories broadly representing a 'good' score (those ranked 5 or 4), an 'average' score (those ranked 3) and a 'poor' score (those ranked 2 or 1). These more concise categories are used in the analysis in the following sections.

Table 5.1 Mean Scores (All Tribunals) – Observation of tribunal approach

	Introduction / explanation	Tribunals' degree of formality	Tribunals' apparent understanding of user's story	Tribunals' use of insensitive language	Tribunals' use of legalistic language
Mean	4.23	3.43	4.34	4.80	4.64
SD	1.07	1.19	0.95	0.54	0.76

	Tribunals' courtesy	Tribunals' assistance or enabling	Tribunals' appearance of listening	Tribunals' attempt to involve rep
Mean	4.39	4.07	4.46	4.20
SD	0.88	0.96	0.89	1.25

Table 5.2 Mean Scores (All Tribunals) – Observations of users in hearings

	Users' level of comfort	Users' willingness to speak	Users' understanding of questions	Users' eye contact	Users' ability to present their case
Mean	3.28	4.10	3.88	4.18	3.24
SD	1.19	1.00	1.14	1.08	1.24

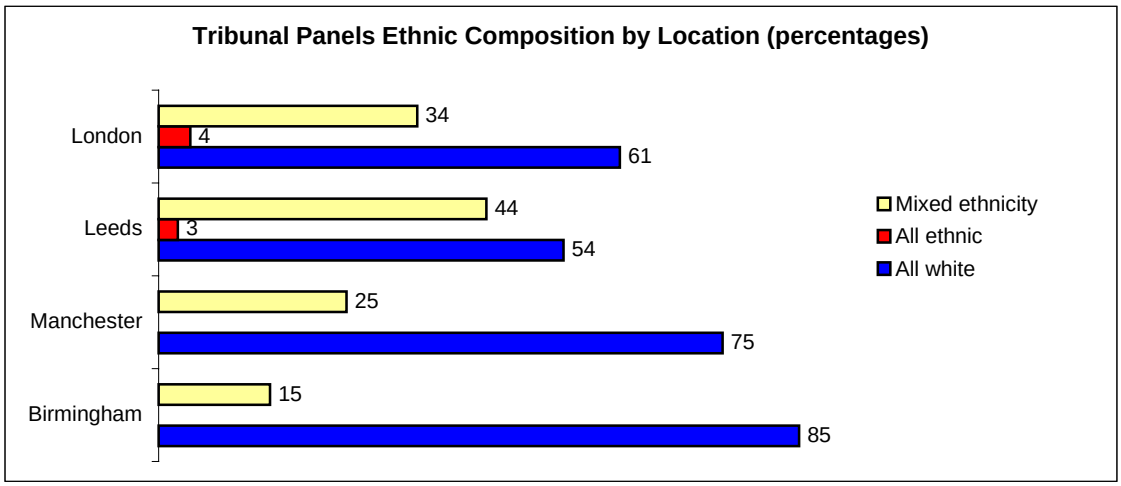
Table 5.3 Mean Scores (All Tribunals) – Performance of representatives

	Representatives' advocacy skills	Representatives' clarification of the case
Mean	3.68	3.66
SD	1.26	1.30

Composition of tribunal panels

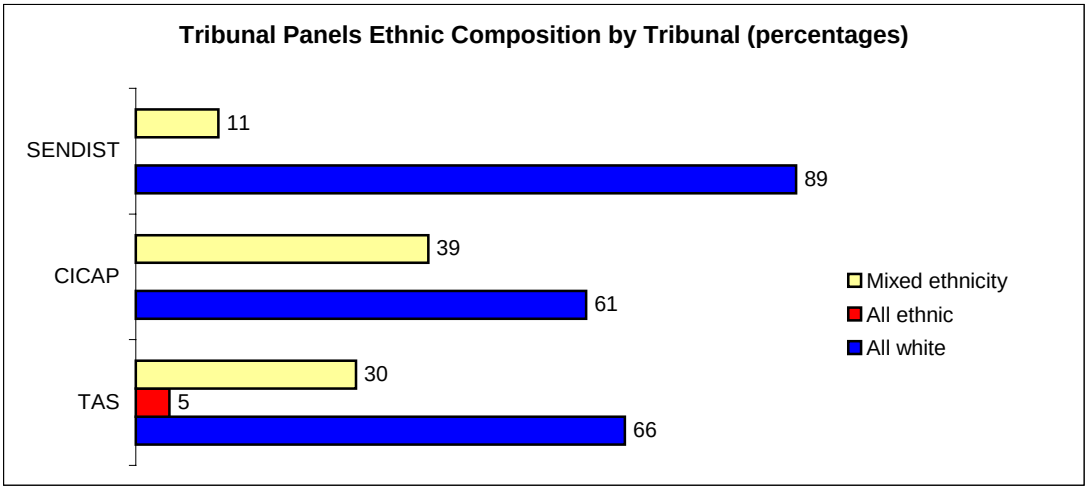
Researchers recorded a note of the gender composition of tribunals and, on the basis of skin tone, whether any of the panel were of Minority Ethnic origin[55]. In this way tribunal panels were categorised as 'all White', 'all ethnic' or 'mixed ethnicity'. Across all tribunals the majority of tribunals were identified as 'all White' (66%). While the composition in Leeds and London was close to the average (54% and 61% respectively), Birmingham had a significantly higher proportion of tribunals identified as 'all White' (85%), and in CICAP in Manchester the figure was also somewhat higher than average (75%). While no tribunals observed in Birmingham or Manchester comprised entirely Minority Ethnic panels, there was a small proportion in both Leeds and London (3% and 4% respectively). The proportion of tribunals comprising 'mixed ethnicity' panels was slightly lower in Birmingham (15%) as compared with Manchester (25%), Leeds (44%) or London (34%) (Figures 5.4 and 5.5). Only a small proportion of hearings in TAS were dealt with by a single tribunal judge (17%), while in CICAP and SENDIST all hearings were dealt with by three-person panels.

Figure 5.4 Tribunal panel's ethnic composition by location (N=411)



[55] In the circumstances of the observations of hearings this crude categorisation was the only way of distinguishing the ethnic mix, if any, of tribunal panels. Although crude, it nonetheless reflects the presentation of the panel to users as they enter the hearing room. As noted in chapter three, being greeted by three White decision-makers might be a different experience for Minority Ethnic users than being greeted by an ethnically diverse panel. Similarly, for women, being greeted by a panel of three men might be a different experience than being dealt with by a mixed gender panel.

Figure 5.5 Tribunal panel's ethnic composition by tribunal (N=411)



As far as gender is concerned, the majority of tribunals involving a panel, rather than a single tribunal judge, were 'mixed gender' (62%) across all tribunals. This proportion was slightly higher in Leeds (72%); and in Manchester, 100% of CICAP panels observed were 'mixed gender'. The proportion of 'all female' tribunals was 17% across all locations compared with 21% that were 'all male'. For those hearings held by a single tribunal judge (exclusively TAS hearings), 62% were male judges and the remaining 38% were female judges.

Tribunal behaviour

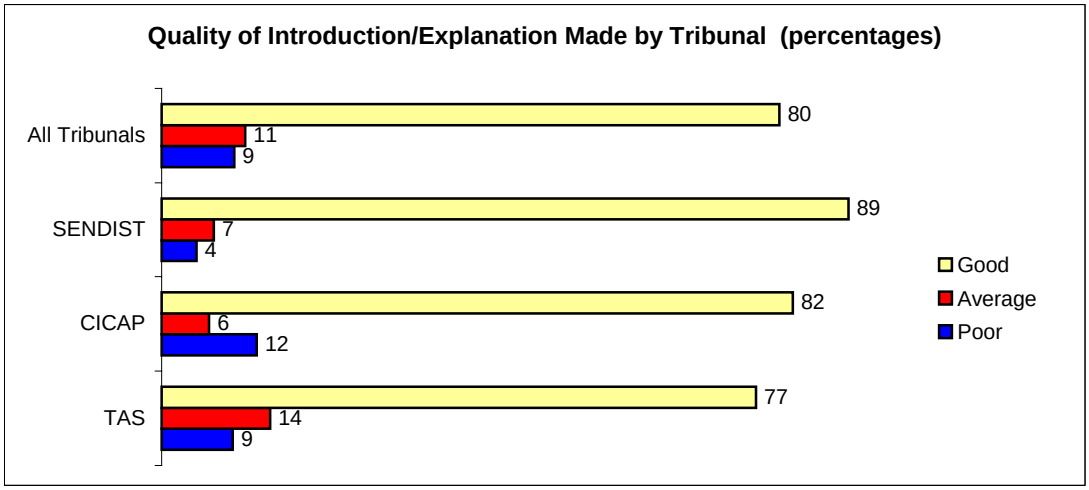
Several factors in relation to the approach of tribunals were observed during the course of a hearing including the quality of the introduction, general disposition of the tribunal, checking the understanding of the user's story, use of legalistic language or insensitive language, courtesy toward the user, appearance of listening, degree of assistance or enabling and the attempt to involve representatives. In all cases these judgments were being made in relation to the situation and needs of the individual user as they were presenting themselves during the tribunal hearing. Assessments were also being made in light of what is known about factors influencing subjective assessments of the fairness of hearings, discussed in the next chapter, such as the opportunity to be listened to and to be heard, degree of trust in the decision-making body, and degree of dignity and respect accorded to the appellant.

Quality of introduction

The beginning of a tribunal hearing is a very important moment for users. It is the time when users are likely to feel most apprehensive as they enter the unfamiliar environment of the hearing room. The evidence discussed in chapter four established that many users were unclear about what to expect from their hearing and were uncertain about what was likely to occur once inside the hearing room. Those expecting a judge and jury are likely to be surprised and relieved. Those expecting a quiet interview with one person might be unnerved by the sight of a panel of three. The introduction given by the tribunal is therefore important in beginning to create the conditions in which users are able to communicate and present their case. The introduction offers the tribunal the opportunity to set the scene and establish the atmosphere of the hearing. Tribunals can take the opportunity to introduce themselves and other people in the room, explain the independence of the tribunal, explain the role of the tribunal, the expectations of the user and the procedures to be followed. The tribunal chair's introduction is therefore part of the enabling function since the introduction has the potential to reduce or increase anxieties depending on the way it is managed. During observation of hearings the quality of the introduction and fullness of explanation given to users was assessed on a five-point scale from 'very full' to 'poor/absent'.

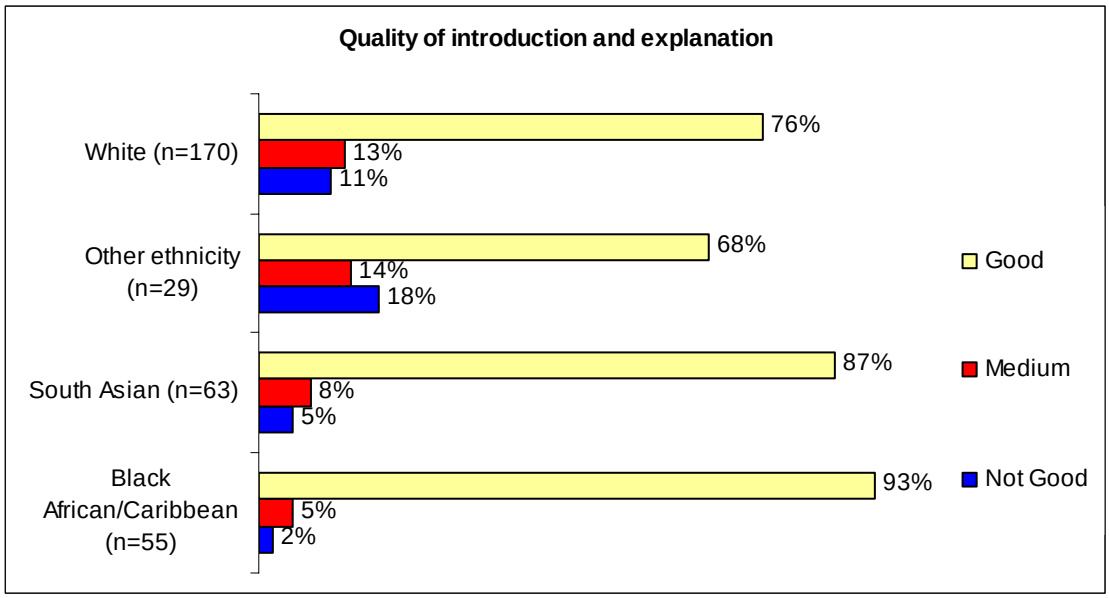
In the vast majority of hearings observed the introduction given by the tribunal chair was assessed as 'very full' or 'full' (80%) (Figure 5.6). In a handful of observed hearings (9%) the introduction was judged to be either 'poor' or 'absent' and in a similar proportion (11%) the quality of introduction was observed as 'neither good nor poor'. Similarly, the quality of explanation of procedure provided during the introduction was observed to be 'very full' or 'full' in the majority of cases (79%) with approximately 10% being observed as 'poor' or 'absent' and 11% as 'neither good nor poor'. There was little difference between the three tribunals in this respect, although generally the introduction to proceedings given in SENDIST hearings tended to be slightly better overall than in the other two tribunals.

Figure 5.6 Quality of introduction and explanation made by tribunal (N=391)



Looking at the quality of introduction in relation to the ethnicity of the user there appeared to be a barely significant difference in quality associated with the ethnicity of the user. As Figure 5.7 shows, taking all observations together, the proportion of cases in which the quality of introduction was judged to be 'full' or 'very full' was highest in hearings involving Black African or African Caribbean users (93% assessed to be full or very full) and lowest in hearings involving users of 'other ethnicities', although the number of people in this category is rather small so the finding must be treated with caution. The quality of the introduction in hearings involving both Black African/Caribbean and South Asian users was on average judged to be slightly better than in hearings involving White users.

Figure 5.7 Quality of introduction and explanation in relation to ethnicity of user



Examples of elements observed to be included in full and helpful introductions included explanations of the role of the different tribunal members, the independence of the tribunal, the procedures that would be followed, the issues to be dealt with during the hearing, the criteria to be satisfied, who would be asking questions, and the tribunal's expectations of the user. Some tribunal chairs were seen to be particularly solicitous toward Minority Ethnic users where there was a possibility of language difficulties and where interpreters were present. Many used the introductory stages to put users at ease. For example, during the introduction of a case in TAS where a user of African Caribbean origin was appealing against a decision in relation to Incapacity Benefit, the tribunal chair said:

> *"You can see we're not very formal like a court. But like a court, we must stick to the law".*

In another case, where an Iraqi man was claiming Disability Living Allowance, the observer noted that the chair's introduction was particularly slow and careful:

> *"I would like to introduce the panel to you… We are completely independent of the Department. We would like to take a fresh look at your case and ask you some questions".*

In a case concerning a claim for Income Support, the chair attempted to reassure a worried user by saying:

> *"You are not on trial, so you can relax. We are here to help you as well".*

In the minority of cases where introductions were judged to be less full and less helpful to users, hearings tended to be characterised by perfunctory preliminaries and a rapid commencement of questioning. Examples of observed features of good and poor introductions are given in Table 5.4.

Table 5.4 Observations of features of good and poor introductions

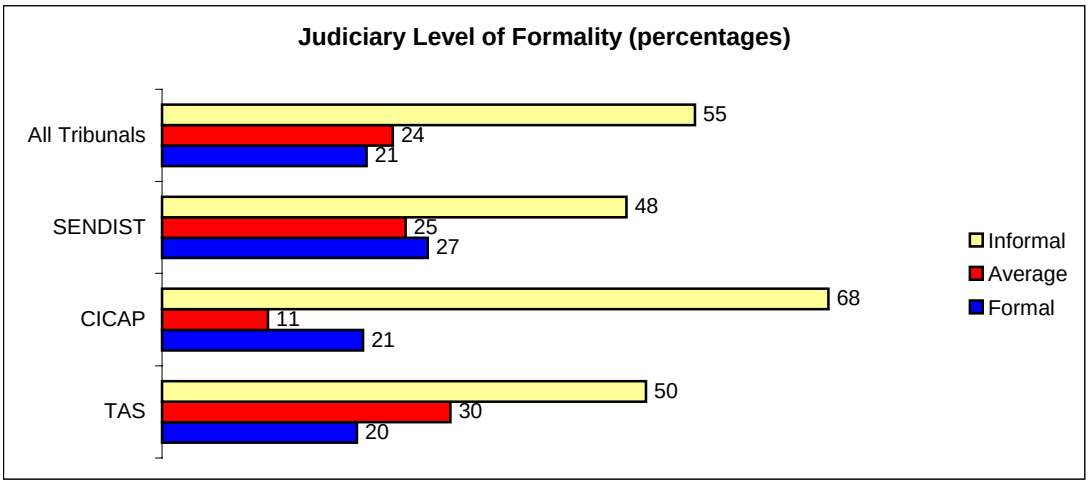
'Very full' to 'Good'	'Poor' or 'Absent'
▪ Names, qualifications and professions (mention appointment by Lord Chancellor) ▪ Introduced other participants in the room (including observer) ▪ Said that tribunals are not as formal as courts and you are not required to give evidence under oath ▪ Explained how decision is made (write it up, call back in to explain) ▪ Explain the issues and the tests to satisfy ▪ Stated independence from Benefits Agency ▪ Will give user the chance to say everything ▪ Information bundles are identical, panel has the same papers ▪ Mention that they will be taking notes ▪ Asked if user wished to speak before they started ▪ Mention role of interpreter ▪ Ensures user has a copy of the information bundle ▪ Asked if user understood English ▪ Makes a real point that the hearing is informal, and that they should aim for a discussion, everyone should feel willing to speak	▪ Does not bother introducing the panel, just says they are impartial and "you can see by our name tags who we are" ▪ No introductions, just dived into questioning ▪ User asked panel what their job is. Chair responds that it is not relevant and "you can look it up on the website if you want" ▪ Did not clarify why claim turned down ▪ Did not state independence ▪ Did not mention informality or that user would be given opportunity to make submissions ▪ Did not check if user brought his bundle ▪ Did not explain procedures or names ▪ Scolds solicitor for being late ▪ Jumped right into a discussion about missing evidence and everyone immediately began riffling through papers

Balancing formality and informality

Hearings within and between the three tribunals were conducted with notably different 'atmospheres'. While this might appear an imprecise and even woolly concept, observers were asked to note features of the atmosphere within the hearing created by the chair and members, particularly in relation to formality and informality (Figure 5.8). The general demeanour, body language, tone of voice, conversational style and choice of words all affect the 'feel' of the proceedings and may impact both positively or negatively on users' participation and ability to communicate, particularly if they had been expecting something rather informal and are met with stiff and legalistic proceedings (see chapter four). Most panels appeared to be relatively informal, comfortable and sometimes even friendly. Others were observed to adopt a serious and sometimes stern manner, creating a formal and occasionally adversarial environment. The results indicate that on the whole tribunal hearings tend toward a relatively high level of informality, with one half (55%) of the hearings observed being assessed as 'very informal' or 'informal', about a quarter of cases (24%) being observed as having an 'average' level of formality and a similar proportion (21%) observed as 'formal' or 'very formal'. The differences between the three tribunal systems were not significant here, although interestingly there were more cases observed at CICAP hearings as 'very informal' or 'informal' (68%) than at either TAS

or SENDIST (50% and 48% respectively). An analysis of formality scores in relation to representation of user showed no association between the presence or absence of representatives and tribunal behaviour in this regard, **nor was there any association between the ethnicity of the user and the level of formality during the hearing**.

Figure 5.8 Level of formality during tribunal hearing (in percentages) (N=391)



Examples of observations leading to judgements about different levels of formality are presented in Table 5.5. The material shows that **many tribunal chairs and members were able to combine professionalism with approachability.** Some clearly preferred to remain more distant. The difficulty of finding the correct balance between formality and informality was illustrated occasionally when observers suggested that jokes made by tribunal members appeared inappropriate or when tribunals appeared to be using language that was too familiar in the circumstances (Table 5.5).

Table 5.5 Observations of tribunal's level of formality

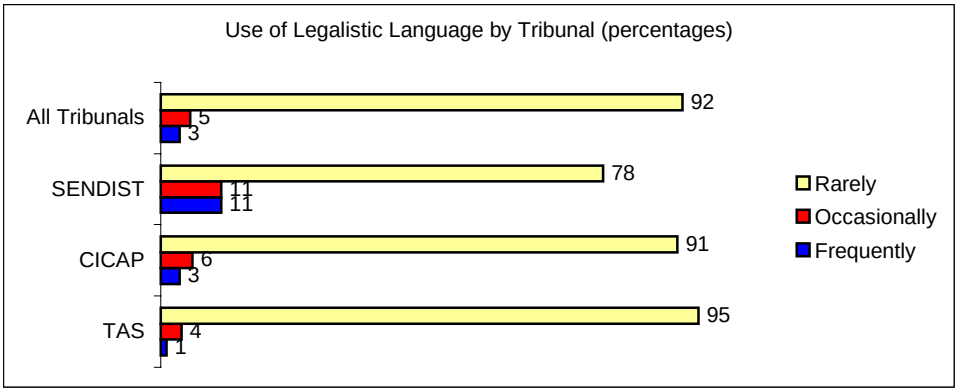
'Very informal' to 'Informal'	'Formal' to 'Very formal'
▪ Friendly but professional ▪ Very sympathetic to the problems present in user's life and gave detailed advice about how these issues would best be addressed ▪ Allowed people to ask questions even after their time to speak was over ▪ Apologised for asking certain sensitive questions ▪ Questions asked in conversational manner, not adversarial ▪ Friendly, joked with user ▪ Friendly and welcoming… as user grew more jumpy, doctor said "just relax, there is nothing heavy going on here" ▪ Even joked with user a little bit, quite informal but still fairly professional ▪ Body posture at beginning was quite formal, but as hearing progressed, panel member sat forward with hands clasped in front of desk leaning in saying "yes, yes" as user spoke – clearly had an impact on appellant, as she then became more comfortable and relaxed ▪ Medical member immediately put user at ease, with body language learning forward and speaking in a friendly tone of voice ▪ Conversational style of questioning ▪ Addressed user directly, not through interpreter ▪ Used positive language, like "that's really helpful" repeatedly, seemed to put the mother at ease ▪ Too informal. Panel disrespectful to user and was patronising because user would not speak English	▪ Polite but quite formal and detached ▪ Not very responsive to user's agitated state ▪ Gave appearance of being sceptical ▪ Possibly more formal due to the need for an interpreter ▪ Quite a serious trio…not much in the way of a soothing smile ▪ Didn't bother with the usual introduction and spoke in a clinical manner ▪ Chair appeared bothered when user asked for clarification, some hostility detected ▪ Very formal and business-like, to the point of sternness ▪ Chair's body language was stiff and formal and user did not appear relaxed when talking to him ▪ Quite a formal atmosphere, expression very serious, especially the chair ▪ Chair is stern and doesn't like user failing to answer any questions properly; chair becomes sterner still and increasingly impatient ▪ Doctor had more formal, interrogative manner ▪ Atmosphere extremely serious and user not put at ease ▪ Quite a formal atmosphere in the room, no smiles, but very serious demeanour ▪ Chair was hostile, repeatedly raising his voice and antagonising the representative

Use of language

Legalistic language

An aspect of tribunals' enabling function and something that tribunals are expected to demonstrate is the use of clear and appropriate language (Figure 5.9). In the overwhelming majority of tribunal hearings observed (92%) there was either no use or rare use of legalistic or technical language that might have been particularly confusing or which most users might not have understood. While legalistic language was rarely used in any of the tribunals, there appeared to be more instances of use of legalistic language during SENDIST hearings than in either TAS or CICAP (22% of cases had at least some significant use of legalistic language compared with 8% across all tribunals). There were very few occasions where legalistic language was used constantly (3%).

Figure 5.9 Use of legalistic language by tribunal (N=391)



Most tribunal judges were observed using straightforward language, explaining procedures very clearly in plain English with little or no legalese. Indeed, in many hearings tribunal judges were at pains to avoid the use of legal terms. During the introduction of a SENDIST hearing, the chair made a point of saying that he would not use legalistic language during the hearing in order to "keep the hearing informal and accessible". In another hearing, the chair asked the specialist member to use more simple language because, although he understood the terms, he could not assume that everyone else did. The chair diligently clarified jargon that was constantly being used by the representative from the LEA. Table 5.6 below gives some examples of the exceptional cases where legalistic language was used.

Table 5.6 Examples of use of legalistic language by tribunal

Appeals Service

- "Burden of proof on a renewal…"
- "Erroneous at law"
- "Incumbent on the tribunal"
- "Cross examination"
- "Submissions"
- Chair used "obiter" a few times and many legal principles as well, such as "reasonableness"

CICAP

- "The burden is on you to convince us on a balance of probabilities"
- "The common law"
- "Make submissions"
- Medical terminology used, to which the user said "You are using language I don't understand"

SENDIST

- "We can accept hearsay evidence"
- "Witness summons can be made in writing"
- "Cross examination of witnesses"
- "I am going to overrule you"
- "I would expect that to come out during the cross examination"
- Reference to certain regulations in discussion with LEA officer
- Reference to statute several times when explaining criteria to parents
- Explained the case law
- Constant use of educational jargon and without explanation of the terms or their significance
- When the tribunal used the words "cross-examination" she explained that it was just questioning

Insensitive language

There were only exceptional cases (3%) where observers judged that insensitive language had been used by the tribunal during the hearing. Most tribunal judges were polite and professional and often very encouraging and respectful. They were also observed often to display sympathy for the user's situation and kindness toward users. In this respect there were no significant differences across tribunal type or location or in relation to the ethnicity of the user. In the rare cases in which observers noted tribunals to have used insensitive language, the comments often seemed to be thoughtless rather than deliberate slights. Occasionally, however, the panel member was clearly attempting to make a point and expressing disapproval. In one case where a White British woman was appealing in order to get Disability Living Allowance reinstated for her daughter, the tribunal chair was observed to say:

> *"So you just sit around all day and don't do anything? What situation do you want to be in?"*

During a case where a White British man was claiming Income Support, a panel member said:

> *"Unless you really can't put one foot in front of the other, you aren't going to get any points."*

In a case where a South Asian man using an interpreter was claiming Disability Living Allowance, the panel was very friendly and achieved high scores in the observations. However, it was noted that one panel member said:

> *"Being unable to speak English is no excuse… he could get someone to accompany him."*

Similarly, in the case of an Indian woman also claiming Disability Living Allowance where the panel generally achieved high scores across almost all elements of behaviour, the observer noted that at one point when the user consulted her accompanying friend a panel member said to the user:

> *"Can you speak English please? English is the language of the tribunal."*

In some instances, it appeared that a member of the tribunal had become irritated by some aspect of the hearing or behaviour of the user and appeared temporarily to have lost composure or control. Examples of one or two instances are given below in Table 5.7 which displays observations of insensitive language in the very few cases where it was used.

Table 5.7 Use of insensitive language by tribunal

Appeals Service

- Spoke only to representative, said to user "these are technical issues"
- "You lead a … limited life. I'm surprised your physiotherapist has not suggested a wheelchair", the word 'limited' was mildly offensive
- Asked user if he had ever been in prison in Iran… seems out of the blue and inappropriate considering the answer is 'no'
- When user got very angry, the tribunal chair said "Well go and tell the newspapers then!"
- Chair was patronising and he cut off interpreter in the midst of translating the user's statement
- Asked user why his finger nails are dirty, if he is really not working
- Chair asked "do you go to mosque during the day?" … seemed presumptuous because the answer was 'no'

CICAP

- Asked user what he was doing to stay out of trouble
- User said he cannot remember to which the chair said "well how can that be…?"
- Chair was rude and appeared to be barking at the user
- Chair said "You are not telling us the truth are you?" to which the user replied "I have no reason to lie"

SENDIST

- Chair said "the use of public money should not be dictated by the feelings of a 12-year old boy"
- There was an aggressive exchange between the user, wife and chair: "could you please stop…no, no, I'm sorry you asked before" in a raised voice, almost shouting… both chair and wife competing to be heard. User slammed his fist on the table and shouted at the chair to stop yelling at his wife. Chair immediately backed down and apologised. "You have managed to get everyone to stop talking by raising your voice like that, but that does not mean you can shout at my wife". The chair then stated that these situations can be stressful for everyone
- When the parents described the child's dangerous fascination with water, the tribunal wing-member smiled and gave a short laugh… this was inappropriate to the situation as the parents were clearly distressed during the explanation of the incidents

Courtesy

Aside from use of language and the possibility that tribunals might use insensitive words, observers also recorded the level of courtesy or lack of courtesy displayed by the tribunal. Courtesy could be observed in words used, as well as consideration for the user more generally. In the majority of cases (86%), tribunals were observed to be either 'very courteous' or 'courteous' toward the user. Very few cases (9%) were observed as displaying an 'average' level of courtesy and even fewer (5%) observed a lack of courtesy. **There were no significant differences according to tribunal or ethnicity.** Observers recorded copious examples of courteous behaviour displayed by tribunal panels. Courtesy was displayed through the use of polite language, sensitive language, consideration for the situation of the user, and checking whether the user might have any physical needs (breaks, drinks). Many tribunals were seen to respect the courtesy of looking at the user while the interpreter was speaking and addressing comments and questions to the user rather than to the interpreter. They were also, on occasion, seen to control the speed of presentation by department representatives so that interpreters could keep pace with their translation. Tribunals

were seen to check the correct pronunciation of names, apologise for delays when they had occurred, and also apologise for having to ask personal and intrusive questions. For example, in a case where a White British woman was appealing against a decision on Income Support, a tribunal wing-member was observed as saying:

> *"I am going to have to ask you some personal questions. It may be intrusive, I apologise, but I really need to have a clear idea of your living arrangements."*

Another case involved a claim for Industrial Injury Benefit by a man of African Caribbean origin, in which the tribunal wing-member was observed as saying:

> *"This is your opportunity to get it right. I want to get this absolutely straight with you… is this what you are saying? I am going through this very carefully because this is how you get points. This is very serious for you. You've got to get this right."*

Although instances of lack of courtesy were relatively rare, as will be seen in the next chapter, a perception of lack of courtesy on the part of users has an important impact on perceptions of the fairness of hearings. Examples of courteous and discourteous behaviour recorded by observers are shown in Table 5.8.

Table 5.8 Courtesy of tribunal

'Very courteous' to 'Courteous'	'Not courteous' to 'Not at all courteous'
▪ Maintains eye contact with user not the interpreter ▪ Spoke slowly and clearly ▪ Ensured they had correct pronunciation of user's and representative's names ▪ Apologised for asking very personal questions ▪ Chair found pages in the bundle where user had trouble ▪ Approached issue of self-harm with sensitivity by asking user if he preferred to sit outside ▪ Explained carefully that if user felt disadvantaged through not having read papers, he was welcome to adjourn the hearing (user elected not to) ▪ Offered glass of water and tissue to dry eyes ▪ Waiting for user to find documents without making him feel rushed ▪ Assured user they would not keep her longer than necessary by going through certain issues again ▪ Stopped hearing halfway to invite user's father to sit with him for moral support, and chair even brought father up to speed on discussion ▪ Appeared to be as gentle and facilitative as possible, the chair especially was unfailingly polite ▪ Apologised to user for addressing his barrister ▪ Assured user that if he did not understand, or if he wanted a break, just to ask and they would help ▪ Chair loaned user his own reading glasses ▪ Asked politely and discreetly to see scarring ▪ Offered a break when user began to cry	▪ Unsympathetic responses to requests for clarification… chair would repeat questions in a harsh, raised tone and very slowly (this came across as condescending) ▪ Constantly interrupting user, questions fired off rapidly in harsh tone of voice ▪ Referred to user as "he/him" even though he was present in the room ▪ Cuts off user rather often, not allowing him to finish answering the questions which the chair had asked ▪ Chair admitted that he had not read the bundle fully but dismissed this as unimportant ▪ Chair interrupts constantly ▪ On a few occasions when the parents attempted to make a point, they were spoken over and their contribution was not acknowledged ▪ As the chair did not invite individuals to speak, the mother resorted to putting up her hand whenever she wished to say something ▪ When the mother started crying, the panel just carried on; they did not ask if she was okay or if she needed a minute, just ignored her

Enabling

Although many of the features of tribunal behaviour already discussed are aspects of the broad enabling approach that tribunals are encouraged to adopt during hearings, observers noted specifically the extent to which tribunals were seen actively to assist users in presenting their case. Most tribunal judges were assessed by observers as being 'very helpful' or 'helpful' in their degree of assisting or enabling (75%). There were a number of cases (18%) where the tribunal was observed to be 'neither helpful nor unhelpful' and a handful of cases where tribunals were judged to have been positively 'unhelpful' (7%). Again there were no significant differences between the three tribunals in this respect.

Common examples noted of the type of assistance given to users involved trying to improve communication by coaxing more detailed responses through careful questioning, explaining words and definitions that might not be immediately comprehensible, repeating and paraphrasing questions, explaining the purpose of the question, and using easily recognisable examples so that the user was better able to comprehend the nature of the information being sought. Another strategy observed was to offer the user time to think through their answer before responding on a key issue. Where representatives of the Department were present, tribunals were seen to assist unrepresented users putting questions to the other side. For example, in a CICAP hearing the chair stepped in when the user struggled to make effective use of the opportunity to question the police officer present at the hearing. The chair said:

> *"Mr (X), if you will, I think what you are trying to say in terms of a question form is…. These are only questions that if a representative was present, you would obviously ask"*

Another TAS chair was observed to be extremely helpful in clarifying questions. For example, when the user struggled to envisage a distance of 300 metres, the chair compared it to a football field so that the user could understand the distance.

In another CICAP hearing the chair summarised the police view for the user and then offered her the opportunity to comment or to ask any questions of the police officer.

These are all examples of the extent to which tribunals are prepared to 'enter into the arena' or 'lean over the bench'. There was clearly some variation between panels in how far they were prepared to go in enabling users, but overall observation revealed

a high level of active assistance to users. The impact of this enabling activity in terms of the outcome for unrepresented parties is discussed in detail in chapter seven.

There were also circumstances when tribunals clearly felt that users needed more help than they were able to offer and cases were observed when the tribunal chair advised the user to seek advice and offered an adjournment so that this could be done. For example, in a case of a claim for Working Tax Credit by a retired couple who had taken guardianship of their granddaughter, the chair was observed as offering the following advice:

> *"If you are not working you cannot claim Working Tax Credit. I am not an expert so I can't really advise you. You should go and see a specialist unit at your local Citizen's Advice Bureau; they are really trained in all aspects of these kinds of things. You need to discuss a whole host of questions with a solicitor, but I can't help you in my capacity here today."*

In another case where a White British man was appealing for Industrial Injury Benefits, the chair said:

> *"Your disease is not asthma… it just isn't… your appeal is bound to fail. You've come on the wrong grounds, you've had bad advice. What you should do is go back to the […] Law Centre on the basis of what you are suffering from. You need to make a claim on proper grounds."*

Similarly in another TAS case the chair rescheduled the hearing and made a number of recommendations to the user about what they needed to do in the mean time, including obtaining psychiatric reports, and seeking legal advice and representation. Further examples of enabling behaviour are provided in Table 5.9.

Table 5.9 Examples of assistance or enabling

'Very helpful' to 'Helpful'	'Not very helpful' to 'Unhelpful'
▪ Established common definitions for things such as "fall" versus "losing balance" ▪ Took time to repeat and rephrase questions ▪ Chair had representative go through introduction again so that it could be interpreted for user… chair assured everything would be interpreted and that at each stage user would know what was happening ▪ Where user appeared to struggle with a question, panel quickly followed up with paraphrased question or explanation ▪ Asked questions using recognisable examples, such as how many bags of potatoes or shopping bags can you lift? ▪ Asking if user understood and emphasised that he should take a few moments to think it through ▪ On numerous occasions, sought to clarify and consolidate the information given ▪ Open-ended questions allowed user to give full explanation ▪ Chair always made a point of giving the user the opportunity to have the last word ▪ Provided user plenty of opportunity to make his case, explaining the process clearly and checking to ensure user understood ▪ Chair helps structure the questions and teases out appropriate details (when user tends to go off on tangents) ▪ Explained many terms in the scheme so that user could say exactly where he thinks he fits in ▪ Invited user to look at the tariff scheme so that he understands fully how they make their decisions ▪ When user got stuck panel offered appropriate prompts ▪ Very good at trying to come to balanced decisions with party participation, almost mediating to a certain extent ▪ Before moving on from point to point, the chair pauses and asks both sides if they are happy to continue ▪ Gives breaks for users to gather and reflect on the evidence given by authority	▪ Chair would repeat questions but not paraphrase or explain them very well and user had to paraphrase for himself and ask chair if he had understood it correctly, chair would affirm ▪ Specialist sometimes stopped user mid-sentence and finish off his point, sometimes incorrectly! User would have to say "no, let me re-explain" ▪ Did not facilitate a discussion of his injuries which the user seemed keen to do ▪ Keeps stressing for the user to be brief ▪ Won't let people interrupt in the beginning but then cuts off user mid-sentence which makes her appear less confident in speaking later ▪ When parents struggled to make a salient point, the panel should have used prompts to encourage them to elaborate ▪ Do not invite parents to contribute or offer personal views on the education provision

Active listening

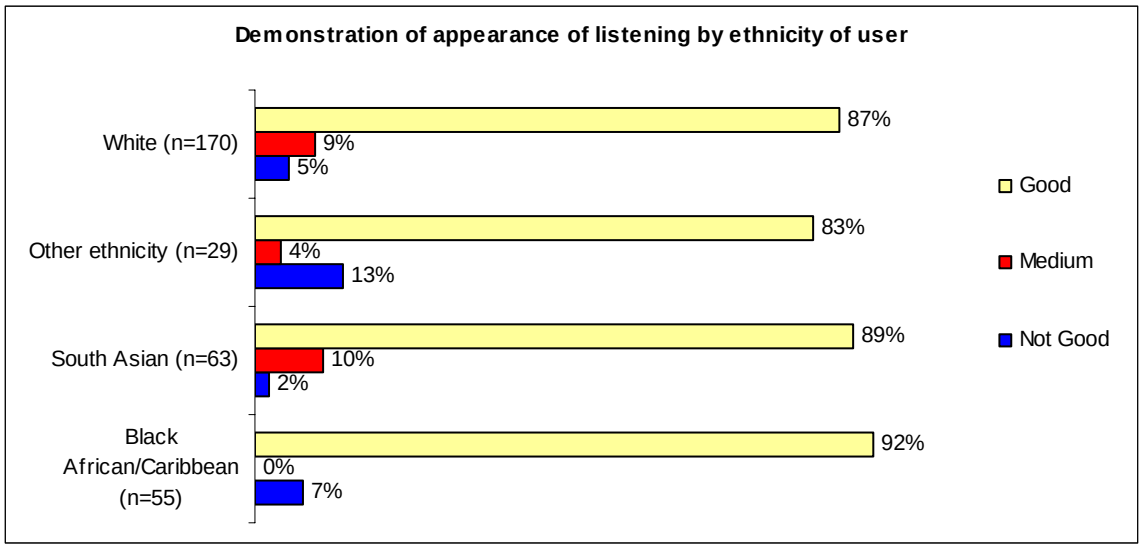
Active listening is a structured form of listening and responding that focuses the listener's attention on the speaker. To be listening actively, the listener must take care to attend to the speaker fully, and then repeat, in the listener's own words, what he or she thinks the speaker has said. There are thus two key elements: paying attention and then reflecting back to check understanding of what has been said.

Reflecting back achieves two objectives: ensuring that the tribunal has gained an accurate impression of the information and communicating to the user that the tribunal is listening to their account and taking it seriously. This aspect of tribunal behaviour is important in enabling users to put their case. It is also crucial in influencing users' perceptions of the fairness of hearings (see chapter six). Observers therefore recorded the extent to which tribunals demonstrated the appearance of listening and the extent to which they checked their understanding of what they were told by users.

Appearance of listening

Observers noted that the great majority of tribunals demonstrated good listening skills during hearings, with the majority being assessed as listening very well (87%) and only a small minority listening not very well (5%). There were no significant differences between the three tribunals in this respect **nor was there any significant variation in the extent to which tribunals demonstrated the appearance of listening to users of different ethnic groups** (Figure 5.10).

Figure 5.10 Tribunals' appearance of listening in relation to ethnicity of user



There were many instances of good listening skills noted by observers, although the range of behaviours identified as demonstrating attention to the user was relatively narrow and limited largely to body language – such as maintaining eye contact, leaning forward when the user was speaking, nodding to indicate listening, and occasional interjections such as "Yes" or "I see". On the other hand, there appears to

be an extensive repertoire of behaviours through which it is possible for tribunals to communicate that they are not listening or, worse, that they are bored – whether or not this is the case. As indicated in Table 5.10 below, this may include such things as not looking at the user, yawning, fiddling with papers, staring out of the window, slumping in the chair and, apparently, jingling small change. Such cases were uncommon and the examples might have represented the behaviour of only one member of a panel of three. Nonetheless, from the point of view of the user for whom this is the **only** case, and about which they are concerned or even agitated, it is disconcerting to sense that even one member of the panel about to decide your case is not listening. Such perceptions may well influence the user's trust that the case is being taken seriously and that the panel has an open mind. As discussed in the next chapter, these matters are fundamental to overall perceptions of the fairness of the process. Some examples of behaviour demonstrating good and poor listening skills, as noted by observers, is presented in Table 5.10.

Table 5.10 Appearance of listening

'Very good' to 'Good'	'Not good' to 'Not good at all'
▪ Very attentive throughout hearing ▪ Active listening, nodding, encouraging ▪ Nodding, smiling and good eye contact ▪ Appeared interested in what applicant was saying. Direct eye contact ▪ Very engaged, good eye contact ▪ Whenever mother is speaking the panel lean forward slightly and listen attentively ▪ One member asks a lot of very pertinent questions which shows she is listening carefully	▪ One panel member, when not asking questions, was flipping through papers and making notes ▪ Doctor seemed bored after an hour and a half ▪ Doctor did not acknowledge applicant's points ▪ Chair couldn't listen as she didn't stop talking ▪ After asking questions, doctor spent rest of time playing with her necklace and sighing loudly ▪ Doctor was wearing dark glasses so it was difficult to tell if he was listening ▪ Member loudly jingling the change in his pocket – it was very distracting, he didn't seem to notice – he was slouching in his chair with his elbow on the table ▪ Did not visibly show signs of listening, looked down and took notes for majority of the hearing ▪ Near end of hearing, doctor appears to not be listening, as if he has already made up his mind ▪ Interrupted several times, seemed uninterested in anything but the information he was looking for ▪ When the representative was speaking there was no eye contact, shuffling papers, writing notes ▪ For about one-third of the hearing, one panel member stopped taking notes, stared out of the window and did not appear to be listening ▪ Applicant is constantly interrupted by the chair ▪ Many notes were taken but chair seldom looked up from writing to engage with user ▪ Other panel members were not looking at the relevant pages in the bundle at times

Checking understanding

Checking understanding or 'reflecting back' is an important way for the tribunal to satisfy itself that it has understood the information being communicated by the user. It is also an important way for the tribunal panel to communicate **to** the user that they are listening, that the information being provided by the user is important, and that it is being taken seriously by the panel. The majority of tribunals (85%) appeared to be very good at checking the understanding of the user's story. In only a very few cases (5%) it was observed that tribunal judges rarely checked, if at all, their understanding of the information being given by users. As with the appearance of listening, there were again no significant differences between tribunals, or differences associated with the ethnicity of the user.

An example was noted during a case in which a South Asian user was appealing to have her Incapacity Benefit reinstated. The tribunal chair immediately noticed when the user missed the focus of the question and rephrased the question demonstrating that she was listening to the user, was aware of the significance of the user's answer and concerned to ensure that the user herself understood the point of the question. Similarly, in a case where a woman of Indian origin was claiming Disability Living Allowance, the tribunal chair was observed checking her understanding by saying: *"Is that right? Am I correct in understanding…?"*. In a case involving a man of African origin claiming Disability Living Allowance, a tribunal judge was observed as saying: *"I know you've said it already, I'm just trying to recap".* Table 5.11 provides some further examples of strategies adopted by tribunal judges to check their understanding of the user's case. There are also examples of situations noted when the tribunal appeared rarely to check with the user that their understanding was correct.

Table 5.11 Checking understanding of users' story by tribunal

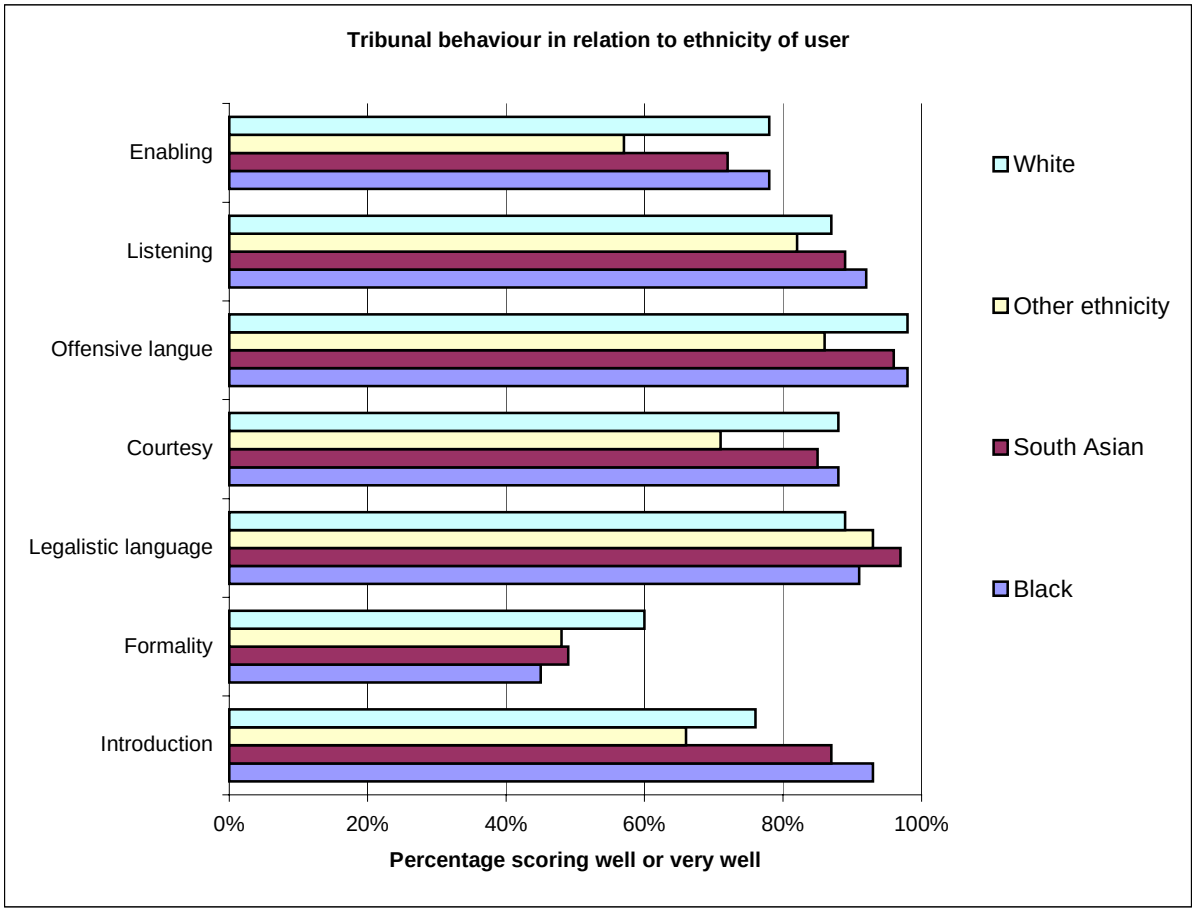
'Very Frequent' to 'Frequent'	'Rarely' to 'Not at all'
▪ Reflected answers back to applicant ▪ Repeating points of the response ▪ Chair repeating what she had written in her notes to ensure full understanding ▪ Restating answers to ensure understanding ▪ Checking details and facts ▪ Regular summaries made ▪ Recounting what was said ▪ Summarising user's story ▪ Clarifying pertinent points ▪ Follow-up questions asked ▪ Double checked answers with representative or companion present ▪ Engaged and responsive to the story ▪ Summarised answers given by user to check accurate understanding of the situation ▪ Rephrasing the answers in question form ▪ Picked out relevant details from user's statement ▪ Summarises points made by parents and then confirming they understand it correctly ▪ Regular summaries provided ▪ Repeated answers at times to confirm understanding	▪ Did not engage with user and only asked questions, directed at the interpreter ▪ At certain points they check the facts but mostly they just let the user speak ▪ Checked frequently with LEA and school representatives but did not check with user often ▪ Chair said that she understood where each party came from, but when she summarised the father's position, she got it wrong (father corrected) ▪ Did not check the user's story either by summarising a sequence of answers or by asking 'check-up' questions ▪ User did not give her story

Tribunal behaviour and ethnicity of user

For each aspect of behaviour discussed in the previous sections an analysis was conducted of tribunal scores in relation to the ethnicity of the tribunal user. With the exception of the fullness of the introduction to the hearing which was slightly suggestive of less full introductions being given in hearings involving users of 'other ethnicity', **not a single analysis revealed any significant association between the scores given by observers to the different aspects of tribunal behaviour and the ethnic origin of the user**. Figure 5.11 below presents a summary of the observer assessments on each measure in relation to ethnicity and it demonstrates clearly that **observations made by nine different observers from a range of ethnic backgrounds, making detailed notes, and sensitive to the objectives of the study, found no systematic difference in tribunals' behaviour towards Minority Ethnic users as compared with White users that might disadvantage Minority Ethnic users during hearings, nor any significant difference in treatment between Minority Ethnic users from different ethnic backgrounds**. This does not mean that tribunals treated each person identically. It means that most

users were treated with professionalism and courtesy and that where this varied the variation was not associated with the ethnicity of the user. It also means that where tribunals made extra efforts to enable users to participate, this was in response to the need demonstrated by the user as a result of language or comprehension difficulties and this was as true for White British users as for Minority Ethnic users.

Figure 5.11 Summary of tribunal behaviour in relation to ethnicity of user (N=329)



User participation

During hearings in which tribunal behaviour was being assessed, observers also assessed a number of indicators of users' ability to participate in hearings, including their apparent level of comfort, willingness to speak and ability to present their case. In common with assessments of tribunal behaviour, each indicator of the user's ability to participate was scored on a scale from 5 (very good) to 1 (not good at all). These scores were then combined to produce summary assessments of 'good' (scores of 5 or 4), 'average' (scores of 3), and 'not good' (scores of 2 or 1). These observations were made whether or not the user was accompanied by a representative during the

hearing. The purpose of the observations was to make an overall assessment of users' apparent ability to participate in hearings in the context of the enabling activity of tribunal panels and users' personal resources. The assessments have been analysed in relation to the ethnic origin of users in order to reveal any significant differences in ability to participate related to ethnicity and, in particular, any evident disadvantage in hearings associated with ethnic group.

Ethnic composition of sample

Just under half of the sample of users observed during hearings defined themselves as being from Minority Ethnic groups, with 18% of the sample being of Black African or African Caribbean origin, 20% of South Asian origin, and 7% from an other non-European ethnic group. The remaining 56% of observed users defined themselves as White and of European background. Most users[56] were asked during pre-hearing interviews whether they had been born in the UK and, if not, for how many years they had been resident in the UK. A little over half of users had been born in the UK (56%) and of the remainder the vast majority had been resident for more than ten years. Analysing this information by ethnic group, Figure 5.12 reveals significant differences between ethnic groups in the extent to which users had been born in the UK and, if not, their length of residence. Among users categorised as Black African/Caribbean over one in four had been born in the UK and 44% had been resident for more than 10 years. No users observed at hearings of Black African or African Caribbean origin had been resident for less than one year, although about one in five had been resident for between two and five years.

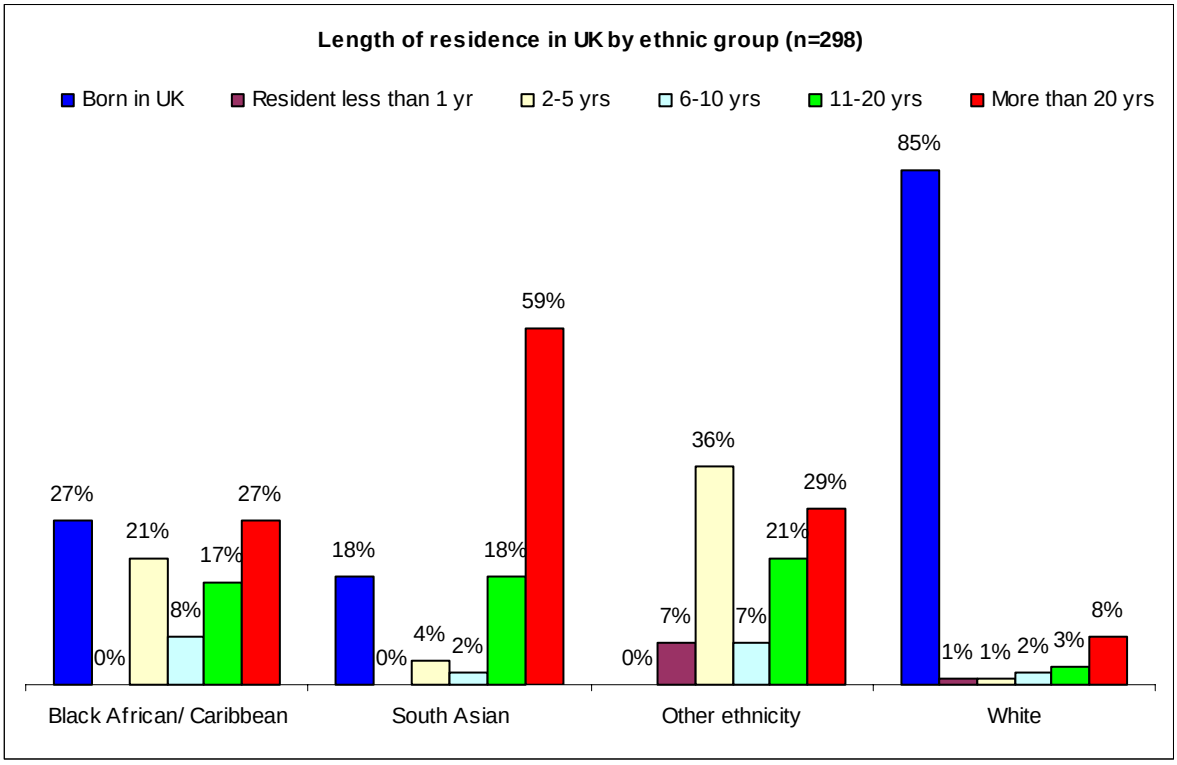
In contrast, Figure 5.12 shows that users of South Asian origin were slightly less likely than Black African/Caribbean users to have been born in the UK, but significantly more likely to have been resident for more than 20 years. Indeed among the sample of South Asian users observed during hearings, although only 18% had been born in the UK almost six in ten had been resident in the UK for more than 20 years (59%).

Among users of other ethnic origin observed during hearings, none had been born in the UK and significantly more than in other ethnic groups had been resident in the

[56] This question was not included in the original questionnaire and was added after a number of interviews and observations had already been conducted. Information on ethnicity, birth and residence in UK is therefore available for only 298 of the 391 observations conducted.

UK for a relatively short period. Some 7% had been resident in the UK for less than one year and over one in three had been resident for between two and five years (36%). White users unsurprisingly had overwhelmingly been born in the UK, although some 15% had been born elsewhere and a few were relatively recent arrivals to the UK.

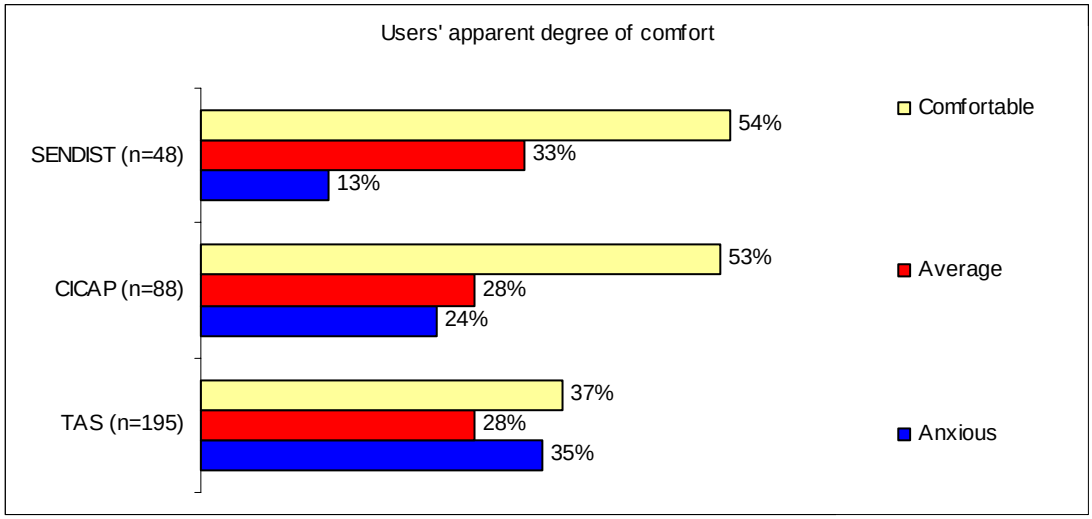
Figure 5.12 Birth or length of residence in UK by ethnic group (N=298)



Appearance of comfort

Taking the sample as a whole, some 44% of users were assessed as appearing either 'comfortable' or 'somewhat comfortable', around one-quarter (27%) appeared neither 'comfortable' nor 'anxious', and a little under one-third (29%) appeared to observers to be 'somewhat' or 'very anxious'. Levels of apparent comfort did not vary according to whether or not the user was represented at the hearing, but there were significant differences in the assessment of users' apparent level of comfort between the three tribunals, with users in TAS displaying higher levels of anxiety and lower levels of comfort than in the other two tribunals (Figure 5.13).

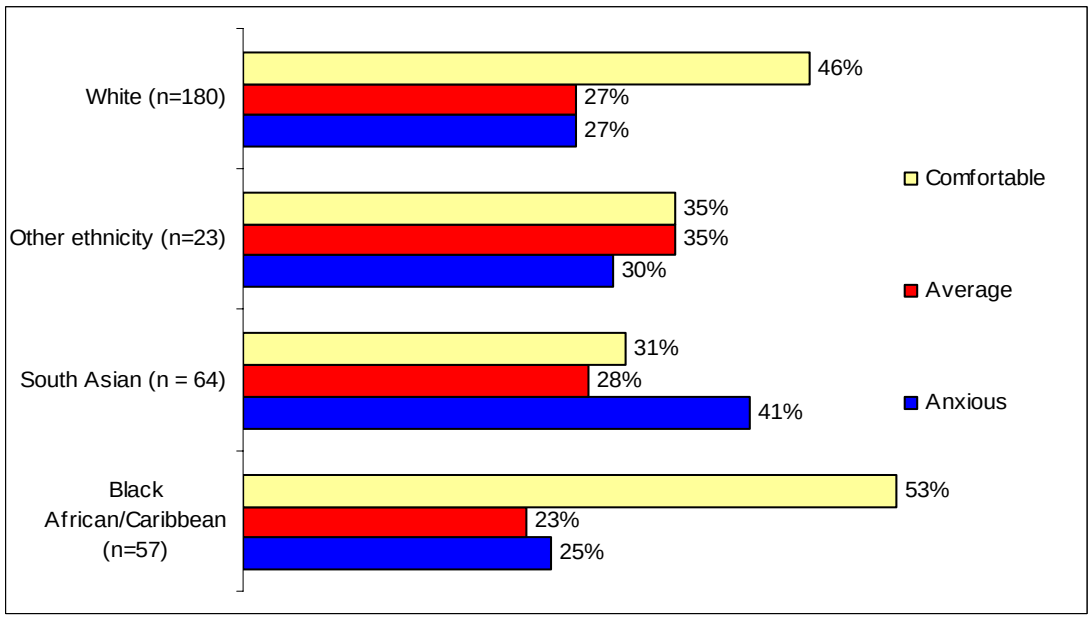
Figure 5.13 Users' apparent level of comfort by tribunal (N=391)



P=.008

Users from different ethnic groups were not judged to display significantly different levels of comfort during hearings, although South Asian and users of "other" ethnicities displayed somewhat higher levels of apparent anxiety during hearings than Whites, while Black African and Caribbean users displayed the greatest levels of apparent comfort (Figure 5.14).

Figure 5.14 Users' apparent level of comfort by ethnicity



Evidence recorded as indicators of users' level of comfort during the hearing included, general composure, body language, and facial expressions, as well as delivery of speech and confidence or hesitancy when speaking. In some cases agitation turned to anger and some users were abusive during the course of the hearing. The relationship between observers' assessments of users' level of comfort in the hearing and users' own accounts given after the end of the hearing are discussed in the next chapter. Specific examples of observations supporting judgements about users' level of comfort are shown in Table 5.12. As the Table demonstrates, similar types of behaviour were demonstrated across ethnic groups and were recorded consistently as indicators of comfort or lack of comfort across ethnic groups.

Table 5.12 Indicators of users' level of comfort by ethnic group

'Comfortable' to 'Somewhat comfortable'	'Anxious' to 'Somewhat anxious'
White Users	
▪ Composed, polite and friendly ▪ Nervous at beginning but confidence increased as the hearing progressed ▪ Confident with open posture ▪ Comfortable with arm laid on adjacent chair ▪ Light humour with panel members ▪ Volume of voice is calm and normal ▪ Seems very comfortable, sits in an attentive manner, confidently ▪ Was quite nervous in the waiting room but during the hearing, was able to speak out, be articulate and appeared very determined and confident ▪ Appeared calm and at ease, sat on edge of chair leaning slightly forward ▪ Comfortable enough to make their case in a professional manner ▪ Became noticeably confident after about 20 minutes	▪ Uneasy, tense, nervous ▪ Defensive and wide-eyed ▪ Seemed quite nervous, talking quite loudly, drinking a lot of water ▪ Verbally abusive when becoming agitated ▪ Voice quivering and barely audible ▪ Appeared quite anxious: red face, anxious expression, tripping over words ▪ Fidgeted with his bundle in hand the entire time ▪ In some discomfort, constantly fidgeting ▪ Looked sad, bereaved, emotional and rarely spoke ▪ Admitted nervousness, looked to rep for support ▪ Sighing and using a lot of hand gestures while getting quite emotional ▪ Sighing, holding her head with her hands and covering her mouth with her hands, a lot of frustrated body language
Black Users	
▪ Appeared relaxed and comfortable ▪ Sitting upright, seemed very relaxed and comfortable ▪ Relaxed and did not appear anxious or uneasy ▪ Waits for panel to stop writing before he continues speaking ▪ Confidently addresses the panel ▪ Seemed relaxed and spoke very clearly ▪ Appeared engaged, sat leaning forward with attentive eye contact with whoever was speaking ▪ Appeared calm, confident, relaxed and in control, even smiling	▪ Completely unresponsive, slumped in chair, hostile body language and not looking at anyone ▪ Emotionally choked when describing how hard things were for her ▪ Covering face with hand ▪ Appeared nervous, tense and anxious and voice often quivers ▪ Crying, laboured breathing, collapsed into tears ▪ Gradually gets more distressed, increasingly emotional, shaking hands, begins to look quite ill, head in hands, tissues to dab tears from her eyes

South Asian Users	
▪ Nervous but eager to assist, tell his story, and answer questions ▪ Appears at ease, listening carefully and speaking clearly ▪ Seemed relaxed and spoke clearly ▪ User is calm and relaxed ▪ Parents were very willing to speak – they spoke clearly and confidently and addressed the panel directly and gave succinct explanations. ▪ The father was calm, addressed the panel confidently and remained attentive throughout the hearing	▪ Quite nervous, became upset during the hearing ▪ Getting very impatient and not giving the chair any time to speak, but telling them what they should be doing, appears very anxious ▪ Seemed fine at the beginning but became agitated after a long series of questioning ▪ Sitting far back away from the table, very distant, kept all papers in lap and did not use table – they seemed to want some distance from the panel ▪ Wringing hands in her lap, closed body language ▪ Unhappy or uncomfortable ▪ Generally looked uneasy and unhappy ▪ Appeared uneasy and uncomfortable
Other Ethnicity Users	
▪ Sat back in chair and appears at ease, kept her hand on the walking stick ▪ Listening keenly and smiling ▪ Relaxed, calm and collected, not stressed	▪ Rocking back and forth ▪ Raised tone of voice when speaking to chair, and sounded exasperated, repeating the same points ▪ Difficulty breathing, looking ill, crying when adjournment was announced ▪ Fidgeting with hands ▪ Sighing heavily, visibly agitated ▪ Does not seem anxious in the beginning but as the hearing progressed he appeared more nervous and became unable to answer questions easily in English

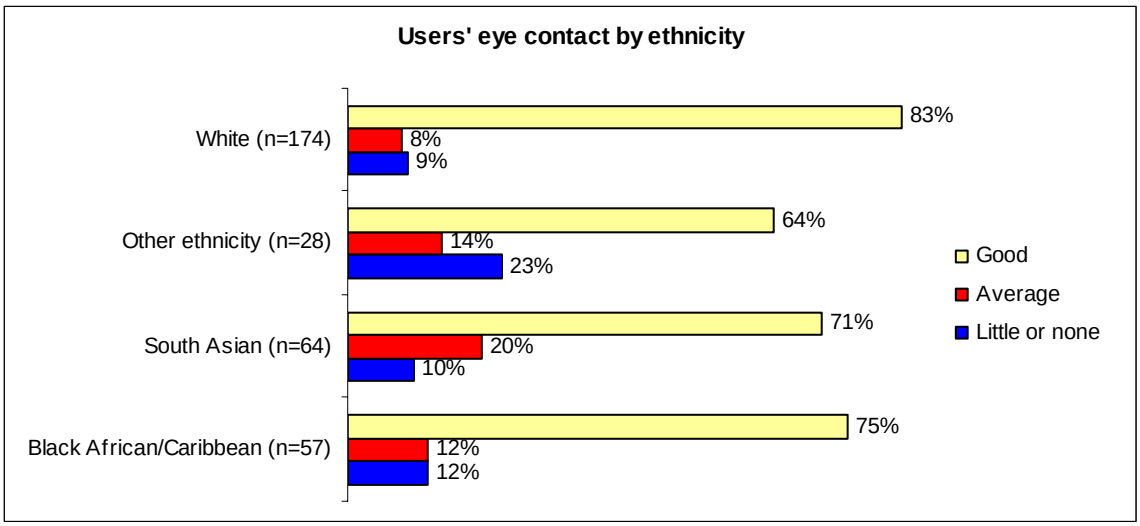
It was observed that often users entered the hearing room appearing particularly nervous, but as the hearing progressed and as they engaged with the panel, users became noticeably more comfortable. In a TAS case, where a user of Irish origin was appealing against a reduction in his Disability Living Allowance, it was observed:

> *"Before entering the hearing room, the user was very hostile and aggressive towards the system, threatening to take numerous people to court. But as soon as he entered the hearing room he became very nice and responsive to the questions asked."*

Another feature of user behaviour that was noted during observations was use of eye contact. Although it is generally argued that there are cultural differences in use of eye contact, observers were nonetheless asked to note the degree of eye contact between users and tribunal panels. Most users (78%) were observed to make 'very good' use of eye contact. Examining use of eye contact in relation to ethnicity showed that although the majority in all groups made good eye contact there were, in fact, some differences between ethnic groups, although this difference was not statistically significant. Those users most likely to have been seen to make good eye contact

were White and Black African or Caribbean users. Those groups most likely to have appeared to make poor eye contact were 'other' ethnic users, although the number of observations of users in this ethnic category was rather small (Figure 5.15).

Figure 5.15 Users' eye contact by ethnicity



Examples of some of the observations made during hearings about users' eye contact leading to overall judgements about the nature of eye contact are provided in Table 5.13.

Table 5.13 Observations of users' eye contact

'Good'	'None'
White Users	
▪ Continual eye contact ▪ Nodding often, signalling responsiveness ▪ Even when chair is offensive she continues to sit straight and maintain eye contact ▪ Engaged, good eye contact and body language ▪ Good eye contact when speaking or spoken to ▪ Good eye contact, particularly with female panel member ▪ Watching the chair when others are speaking, almost staring ▪ Concentrates on one panel member when speaking rather than addressing them all; will look at who has asked the question	▪ Did not look at panel when spoken to ▪ Only when answering questions ▪ Never faced the panel, looked at the floor ▪ Looking at hands on table, clasped hands ▪ Avoided eye contact with everyone, except the medical member of the panel ▪ Covering face with hands, looking away from panel when upset and crying ▪ Flipping through papers when others are speaking, did not appear to be listening with head bent down ▪ Always directs himself to the two White panel members; he is physically facing away from the Black panel member and only addressing them when they question the user directly ▪ Mostly looking at table, solicitor doing the talking ▪ Only makes eye contact when spoken to

Black Users	
▪ Very good eye contact, very engaged ▪ Looked at whoever was speaking ▪ Looks to re-establish eye contact with panel before he continues speaking… he waits until panel looks up from taking notes before he will continue his statement ▪ Looks to whoever is addressing him at the time ▪ Good eye contact, was engaged when responding to questions	▪ Kept her eyes on the translator rather than make eye contact with the panel ▪ Tired and dizzy looking, looked at interpreter only ▪ Most of the time staring downwards, to papers and documents and to the floor ▪ Looking at the table and the floor ▪ Applicant was 'switched off' during the hearing and gazed around the room.
South Asian Users	
▪ Good eye contact with chair when responding to questions, but looked at table otherwise ▪ Looked at whoever was speaking to him ▪ Maintains good eye contact	▪ Looked mostly at the interpreter, as he does not understand English ▪ Failed to address the panel directly and looked down toward the floor ▪ No eye contact, mostly staring into the distance or looking down at the floor ▪ Blank expression, very little eye contact
Other Ethnicity Users	
▪ Directly looking at panel when answering ▪ Always looked at chair and seemed comfortable ▪ Looked directly at panel, did not appear intimidated ▪ Looking directly at who was speaking to him ▪ Makes good eye contact with panel members and department officer	▪ Refuses to look at panel ▪ Less and less eye contact as hearing progressed ▪ Discernable difference in eye contact when looking at panel member versus the chair (able to look at panel member, fidgeting less, sounding confident, but with chair applicant looks down at desk and shifts uncomfortably in seat)

Ability to participate

To assess the ability of users to participate effectively during tribunal hearings a number of factors were noted. Assessments were made of users' willingness to speak, the degree of understanding questions, and the ability to present their case.

Willingness to speak

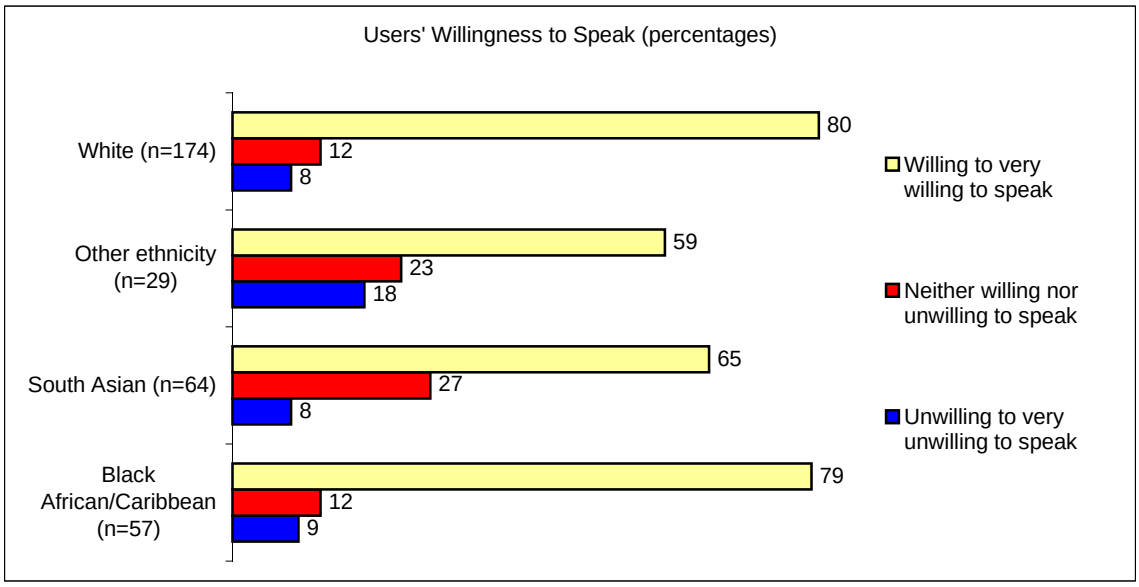
Most users were observed as either 'willing' or 'very willing' to speak (76%) while few (9%) barely spoke, if at all. Some users (15%) were 'neither willing nor unwilling' to speak and mainly participated to the extent of answering the panel's questions but not elaborating on points or offering additional information.

Examining users' willingness to speak in relation to whether or not they were represented indicated a significant difference, with a significantly higher proportion of represented users appearing to be reluctant to speak (15% as compared with 4% of unrepresented users). This finding was consistent across all three tribunals and it

seems clear that those users who attended hearings wanted and expected their representatives to do the talking for them, even when invited or encouraged by tribunals to speak.

While in general users scored relatively highly in their willingness to speak, some differences were observed when results were analysed in relation to ethnicity. 'South Asian' and 'Other' ethnic groups were less often observed to be 'very willing' or 'willing' to speak as compared with 'Black African/Caribbean' and 'White' respondents (Figure 5.16).

Figure 5.16 Users' willingness to speak by ethnicity



Examples of some of the observations made during hearings about users' willingness to speak are shown in Table 5.14 below.

Table 5.14 Observations of users' willingness to speak

'Very willing' to 'Willing'	'Not willing' to 'Not willing at all'
White Users	
▪ Answers are direct and specific ▪ Gave full confident responses ▪ More willing to speak as hearing progresses, answers become fuller and longer ▪ Jumped in to clarify details ▪ Needs no encouragement in speaking or giving a full and detailed account ▪ No hesitation in answering questions or recalling events ▪ Often providing lots of extra details ▪ Giving extremely descriptive accounts ▪ Eager to interject and make their case ▪ Willing to interject (politely) to clarify details and answer questions ▪ After initial nerves settled she was able to speak fluently and in detail, jumped in to clarify some points made by the authority ▪ Made a final closing statement at the end of the hearing and quoted legislation	▪ Deferred to friend/relative to speak on their behalf ▪ Struggling to give complete answers, relied on friend/relative to recall dates/events ▪ Hardly spoke at all, only direct responses, no elaboration ▪ Quick and indirect answers ▪ Only gave simple yes or no answers ▪ Some hesitation in answering questions, struggled to answer some or answered with "I don't know" or "I can't remember" ▪ Did not speak but left case entirely to representative ▪ Rarely interject or add points to their solicitor's statement ▪ Raises his hand when he wants to speak to make it known that he wants to speak… sometimes this is not acknowledged and he never actually gets to say anything
Black Users	
▪ Eager to add facts and clarify the story ▪ Giving a lot of information, very emotionally ▪ Took the opportunity to make a final submission ▪ No apprehension or hesitation ▪ Willing to speak and give examples	▪ Unwilling to speak, refused to engage with panel; one word answers directed at representative in a murmur (spoke more easily when facilitated with prompts by the chair)
South Asian Users	
▪ So keen to reply that she keeps forgetting to use the interpreter (user understood most English) ▪ Happy to speak even though English is poor ▪ Offered information where he could ▪ Very responsive to the questions asked ▪ Speaks fluently and articulately ▪ Gave lots of extra details at the end of her case ▪ Answers in great detail without prompting ▪ Gave full, pertinent and detailed answers, more than simple yes/no ▪ Willing to speak using an interpreter (sometimes in English) ▪ No problems speaking and explaining herself ▪ Appears keen to speak and present his case	▪ Did not volunteer anything, but just responded to questions ▪ Panel often had to bring the user back to the specific point of the question ▪ Willing to answer questions but mostly just doesn't understand English well enough ▪ Limited vocabulary does not help her put forward the case well ▪ While willing to speak he was not coherent at times and had to be asked to repeat himself ▪ Not really willing to speak and often spoke softly and strayed from the point ▪ Sometimes just shakes his head 'no' ▪ Did not speak clearly or confidently ▪ Many answers given were incomplete and user would trail off into a silent pause ▪ Only basic facts came through interpreter

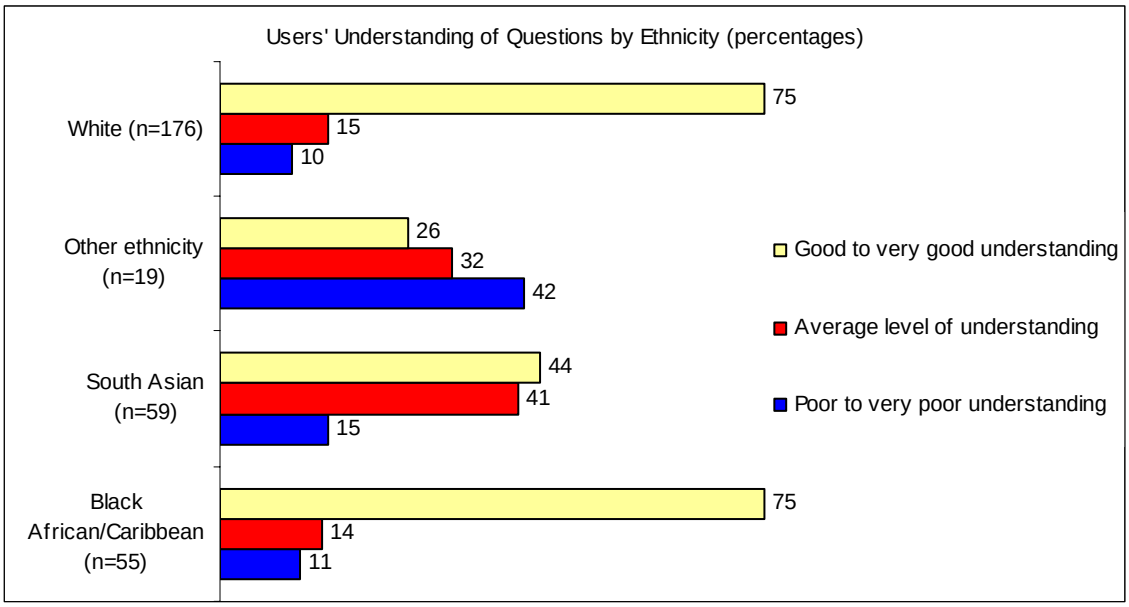
Other Ethnicity Users	
▪ No hesitation in responding ▪ Answers every question with considerable gusto ▪ Elaborates on questions asked ▪ As hearing progressed, appeared more relaxed and willing to clarify issues ▪ No hesitation or apprehension whatsoever in making their point or raising issues of concern	▪ Speaks incredibly quietly, looking at the floor or occasionally at the interpreter at best; mumbles very brief answers and not asserting herself at all ▪ Overall did not appear confident in answering the questions ▪ Not willing to answer questions, he keeps glancing at his solicitor expecting the solicitor to speak for him…he even tells the panel that he has told his solicitor everything, indicating that he is expecting the solicitor to do the talking ▪ Did not want to speak much and offered no additional information

Understanding questions

On the whole about two-thirds of users appeared to understand questions put to them well or very well. There was, however, some variation between tribunals, with the poorest levels of understanding being demonstrated at TAS hearings, where only a little over a half of users were judged to have understood the questions put to them well or very well (59%) as compared with around three-quarters of users at CICAP (72%) and 81% at SENDIST.

Users' apparent understanding of questions did appear to vary between different ethnic groups. 'South Asian' and 'Other' ethnic groups were less likely to be judged by observers to have understood questions 'well' or 'very well' as compared with 'Black African/Caribbean' and 'White' users (Figure 5.7). Examples of difficulties noted by observers included constant requests for clarification, for the question to be repeated, misunderstanding of relatively simple words and phrases within the questions asked, and responses that demonstrated that the user had missed the point or was not able to provide information that was relevant to the question asked. The differences between ethnic groups in this respect were statistically significant and these findings may constitute part of the explanation for the analysis of outcomes discussed in chapter seven which shows that in TAS, at least, some non-White users appear to be less successful at hearings than White users. It also suggests that there is more to be done as far as tribunals' enabling efforts are concerned and that particular attention needs to be paid to how comprehension can be improved, if at all, when interpreters are being used in hearings (see further discussion of interpreters below), although the results show that **understanding of questions by South Asian and other ethnic users was judged to have been significantly worse than by White or Black African/Caribbean users, even when no interpreter was present**.

Figure 5.17 Users' understanding of the questions by ethnicity



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Examples of observations supporting assessments of users' understanding of questions put by the tribunal are shown in Table 5.15.

Table 5.15 Observations of users' understanding of questions

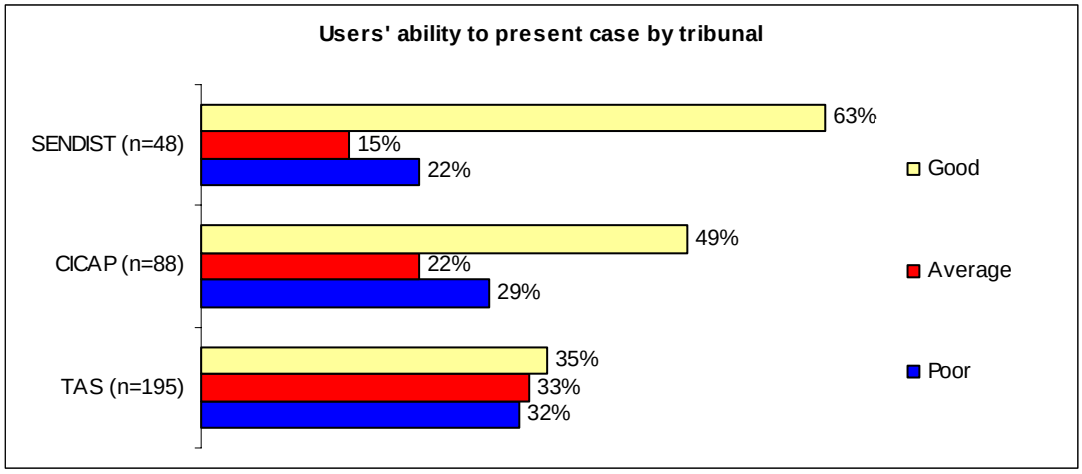
'Very good' to 'Good'	'Not good' to 'Not good at all'
White Users	
▪ Answers directly and succinctly, with relevant information ▪ Does not stray from the question ▪ No repeating of questions necessary ▪ Answers were appropriate to the question asked ▪ Although memory and details were fading, he did not miss the point of the questions at all ▪ Understands questions, gets the point right away ▪ She understands questions and gave good illustrations to prove her point	▪ Questions repeated numerous times ▪ Not answering questions, presented case instead ▪ Not understanding why questions being asked ▪ Did not have answers for most questions ▪ Difficulty understanding simple terms such as "prosecution" or "conviction" even when explained ▪ Just seemed unwilling to answer questions ▪ Mother consistently misunderstood questions
Black Users	
▪ Had no difficulty understanding questions ▪ Answers directly without straying from the point ▪ Lots of confirmation that he understands the questions, constantly saying "Yes, yes, yes" ▪ Understood fine and answered directly ▪ Had interpreter interpret certain portions of the conversation but understood for the most part what was going on ▪ Understood questions very well and was able to answer with high degree of clarity and specificity	▪ Did not respond, sometimes she just shrugged or shook her head. When she did, most responses were "I don't know" or "I can't remember" ▪ Problems understanding medical questions and medical terminology ▪ Panel has to rephrase questions a few times ▪ Questions sometimes had to be explained or answered by the representative ▪ Often looked confused by questions

South Asian Users	
▪ With assistance of daughter and some paraphrasing by the panel, user was able to achieve an understanding of the question and answer accordingly ▪ Able to understand and answer questions ▪ Once interpreter explained, she understood easily	▪ Understood basic questions through the interpreter but some of the finer parts of the question were lost ▪ Sometimes questions were repeated or user answered the wrong question ▪ Asked for questions to be asked slowly because English was not their first language ▪ Not understanding relevance of hypothetical questions ▪ Failed to address the issues requested ▪ User still had difficulty even when questions were paraphrased and further explained ▪ Often missed the focus and started to answer but digressed on to issues that lacked any pertinence ▪ A few questions completely missed the point, and even after repeating it twice failed to answer properly
Other Ethnicity Users	
▪ With panel's assistance could answer effectively ▪ He answered the very few questions directed at him – only once did the panel have to repeat or rephrase the question	▪ Some questions need repeating ▪ Answers not suited to the question, interpreter had to rephrase the question ▪ Did not appear to understand specificity of the questions asked – he answered very abstractly ▪ Level of understanding depended on length of question (short versus open-ended) ▪ Based on his answers he did not seem to understand the questions very well ▪ Often failed to answer the questions put to them

Ability to present case

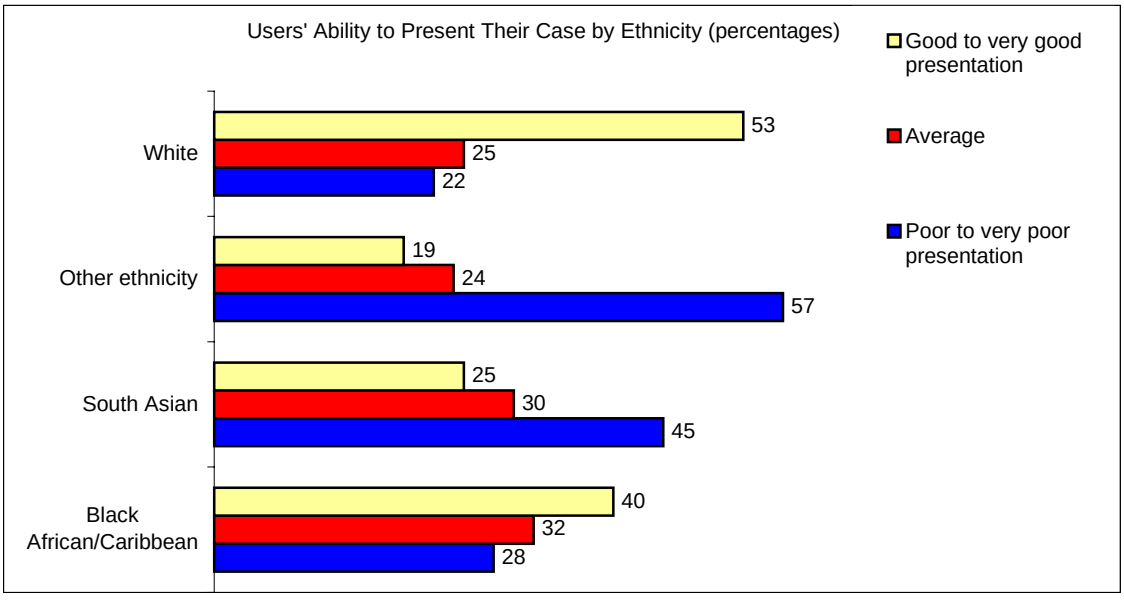
Overall assessments of users' ability to present their cases were based on a range of indicators such as clarity of explanation, relevance of information provided to the questions being asked, level of detail offered, and apparent usefulness of information. On this basis it appeared that there was considerable variation in how well users were able to present their cases. Less than half of users were judged to have presented their case well (43%) and about one-third (30%) were assessed by observers to have presented their cases rather poorly. In this respect there was a significant difference between tribunals, with users in SENDIST hearings being significantly judged to be better able to present their cases than those in either CICAP or TAS. Almost two-thirds of SENDIST users were seen to have presented their cases well or very well as compared with just about half of users at CICAP hearings, and only about one-third of users at TAS hearings.

Figure 5.18 Users' ability to present case by tribunal



There was also a significant difference in assessments of users' ability to present their case associated with ethnicity, with Black African/Caribbean and White users overall more likely have been judged to have presented their cases well or very well as compared with South Asian and other ethnic users. **Although use of interpreters contributed to this difference, South Asian and users of 'other' non-European ethnicity were more likely to have been judged to have presented their cases poorly whether or not they were assisted by an interpreter** (see further below).

Figure 5.19 Users' ability to present their case by ethnicity



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Examples of evidence supporting assessments of users' ability to present their case are displayed in Table 5.16.

Table 5.16 Observations of users' ability to present their case

'Very good' to 'Good'	'Not good' to 'Not good at all'
White Users	
▪ Good presentation of problems, abilities, lifestyle changes to improve health, and desire to work ▪ Presented case confidently with good grasp of facts, articulate (explains that doctor's examination was cursory and he is unable to judge her walking ability, capacity to get out of bed or her drive) ▪ Final submission opportunity utilised ▪ Good history of physical and emotional state ▪ Very good at recalling dates and people ▪ Able to see and refute points made by panel that might undermine her case ▪ Presented case effectively: succinct, pertinent answers, gave demonstration of injuries, and explained how he had followed physiotherapist's advice ▪ Gave useful, positive information without needing prompting ▪ Highlighted plausible explanations	▪ Lacked detail and answered questions on the defensive without any eye contact ▪ Required assistance from the panel to break down questions into simpler ones applicant could answer ▪ Difficulty in recalling events from many years ago ▪ Unwilling to make case, got very emotional ▪ Does not always answer questions, goes off on tangents ▪ Appears to use evidence unrelated to the claim and scheme ▪ Some difficulty recalling certain events ▪ Too many answers are "I don't know" or "I can't remember" ▪ Applicant not articulate enough to be able to defend himself against the line of questioning ▪ Answers not specific enough ▪ Not giving relevant information
Black Users	
▪ Lots of detail and animation ▪ Very relaxed and comfortable and able to answer questions easily ▪ Good presentation of case through the questions asked ▪ Very precise and relevant detail given ▪ Makes reference to appropriate evidence in the bundle ▪ Spoke very slowly in order to allow his statements to be fully heard and written down by panel	▪ Often strayed off topic ▪ Did not present case, just answered questions ▪ Did not seem to be aware of what was going on, unable to focus on proceedings ▪ Unable to express self fully due to poor English ▪ Could not recall many details of events ▪ Made defensive comments: "I am here because I am unwell not because I am pretending" ▪ Presented injuries and the subsequent effect on his employment and life, but without documentation or evidence, very weak presentation of his case
South Asian Users	
▪ Difficult to present case due to interpreter, but effectively presented case by answering the questions from the panel ▪ User is very articulate and clearly describes every detail of his disability and its effects on his life ▪ Went into history of physical and emotional state ▪ Good chronological explanation of events, with relevant details (action taken, dates, what was said and by whom) ▪ Answers were focused and to-the-point	▪ Language was a barrier (relied on representative) ▪ Difficult to present case because of language ▪ Unable to clearly state case due to limited English ▪ Needs prompting to add details ▪ Digressed from points to argue other things ▪ English is functional, not good at making case ▪ Difficult because of having to use interpreter ▪ Not listening, not even to interpreter

Other Ethnicity Users	
▪ Answers effectively showing real determination ▪ Very descriptive with full details	▪ Answers are mumbled and not forthcoming ▪ Does not go beyond the question asked often enough, does not take opportunity to elaborate ▪ Representative did not have necessary documents and therefore they could not make their case ▪ Inconsistent presentation, seems to be making things up as he speaks ▪ Giving irrelevant information and details ▪ Completely incapable of giving answers required to support his case ▪ Cannot speak English well enough to make a proper sentence ▪ Could not verify certain claims made

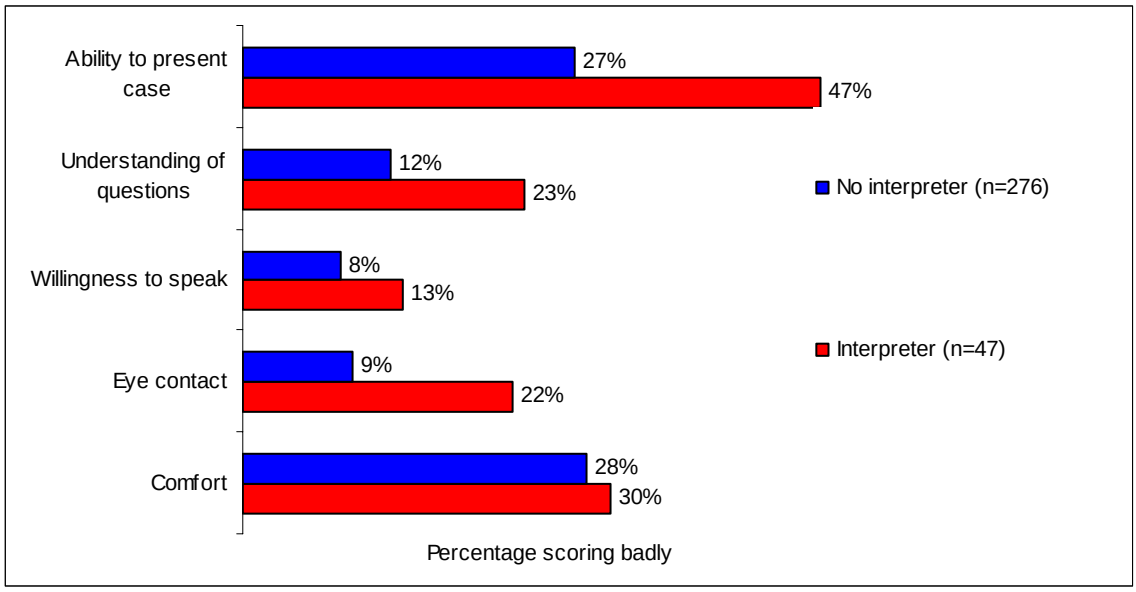
In one case a user of African Caribbean origin was appealing against the termination of his Industrial Injuries Benefit. He described his condition with some eloquence as follows:

> *"I used to be very active in sports, playing with my son, and also with my hobby gardening. Now I can't do that anymore. Now my garden looks like a forest. Also I can't sleep because my arm is awkward at night. I can't wear a tie because I can no longer tie it and I don't wear shoelaces either".*

Interpreters

An analysis of aspects of users' participation was carried out in relation to use of interpreters. On most of the measures of user participation, users who were accompanied by interpreters scored significantly **less** well on matters such as willingness to speak, understanding of questions, and overall ability to put their case. This is unsurprising. Although tribunals were often seen to be making concerted efforts to assist users needing interpretation services to present their case, it is clear that they appear to be at a disadvantage in terms of their levels of participation. The challenges presented to tribunals in managing hearings involving interpreters is raised again in chapter seven in relation to outcome and in chapter eight, which presents the views of tribunal judiciary.

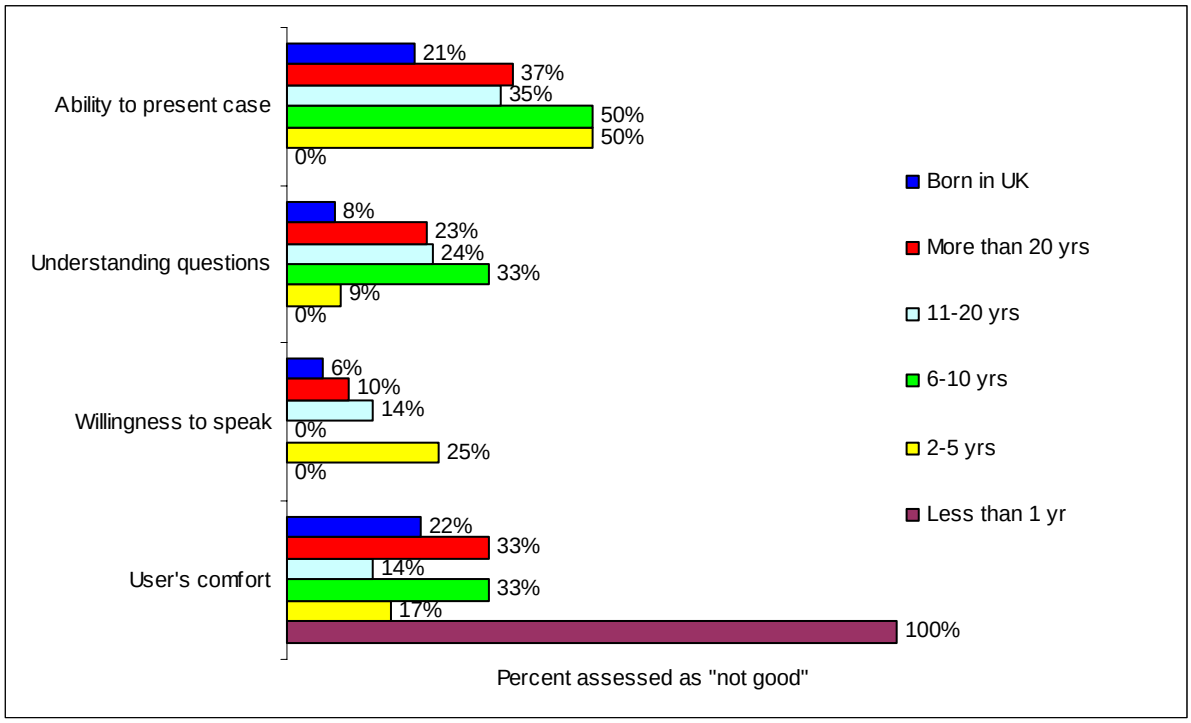
Figure 5.20 Users' participation in hearings in relation to use of interpreter



Length of residence in UK

In order to explore more fully differences between groups in their ability to participate in hearings, observers' assessments of indicators of user participation were analysed in relation to users' length of residence in the UK. The results are indicative of a pattern although few of the associations were statistically significant. Clearly users born in the UK appear to have somewhat fewer problems than immigrants in willingness to speak, understanding of questions and in ability to present their case, **and this holds true within ethnic groups,** although the numbers of very recent arrivals in some ethnic categories are too small for confident analysis. **The emerging pattern overall is for difficulties in participation to be greatest for more recent arrivals** and for difficulties to be somewhat less severe the longer the user had been resident in the UK. On the other hand, around one-quarter of users resident for 11-20 years and more than 20 years were judged to have had a poor understanding of questions put to them and the situation appeared to be worse for assessments of ability to present case, with over one-third of users resident for over 10 years being judged to have a poor ability to present their case (Figure 5.21).

Figure 5.21 Poor participation by length of residence (N=230)



These findings tend to support the findings of chapter three that **language, culture, and engagement with the institutions of the country are more helpful in explaining difference, where it exists, than the simple and misleading factor of skin tone.** Although the number of cases in some categories is rather small, **the relatively poorer scores for South Asian and 'other' ethnic groups persists irrespective of the length of residence in the country** to the extent that understanding and ability to present their case is less good than Black or White users. Thus while South Asian users resident for more than 20 years in the UK were assessed generally as participating better than those resident for a shorter period of time, the quality of their ability to participate remained depressed as compared with Black African, Caribbean and White users. These findings in relation to the ability of Minority Ethnic users to participate are consistent with users' own perceptions of their ability to participate in hearings, discussed in the next chapter and, indeed, with some of the findings of chapter seven, which analyses substantive outcome in relation to the ethnic background of users.

Summary

Observation of tribunal panels during hearings revealed generally high levels of professionalism and care on the part of tribunal judiciary in all three tribunals. On the whole, tribunal chairs offered comprehensive introductions to hearings and were able to conduct their hearings in a way that combined authority with approachability and minimised the use of legalistic language. There were few examples of tribunals using insensitive language during hearings and again, with only a few exceptions, tribunal panels were seen to treat users with courtesy and respect. Tribunal judiciary assisted tribunal users in putting their case through coaxing, careful questioning, and explanations. Tribunals also on the whole demonstrated active listening skills by communicating that they were listening and checking that they had understood the information being given by the user (although there were instances where individual panel members gave the appearance of not listening and signalled this by a wide range of behaviours such as yawning, fiddling with papers and staring out of the window).

All aspects of tribunal behaviour were analysed in relation to the ethnicity of tribunal users. Not a single analysis revealed any significant association between tribunal behaviour and the ethnic origin of users. Observations made by nine different observers from a range of ethnic backgrounds, making detailed notes, and sensitive to the objectives of the study, found no systematic difference in the behaviour of tribunal judiciary towards Minority Ethnic users as compared with White users. There was no evidence of behaviour that might disadvantage Minority Ethnic users during hearings, nor any significant difference in treatment between Minority Ethnic users from different ethnic backgrounds. There were no instances of language or overt behaviour that indicated direct discrimination or indirect discrimination against Minority Ethnic users.

Observers' assessments of users' ability to participate in proceedings indicated that on the whole, with the assistance of tribunals, users were able to present their cases reasonably well and generally managed to display acceptable levels of comfort during the hearings, although about a third of users seemed to remain anxious throughout proceedings. Users in TAS hearings were generally the least comfortable while those in SENDIST tended to appear to be the most comfortable. There were also differences between the three tribunals in users' ability to present their case with TAS users demonstrating more difficulties than those in SENDIST. However, looking

at user participation in relation to the ethnicity of the user revealed some significant differences. South Asian users and those from 'other' non-European ethnic groups were consistently judged to be significantly less likely to understand questions put to them than White or Black African/Caribbean users, whether or not an interpreter was being used at the hearing. South Asian and 'other' ethnic users were also more likely to have been judged to have presented their cases poorly whether or not they were assisted by an interpreter. Moreover, the relatively weaker ability to present their case, despite the enabling efforts of tribunal panels, persists for South Asian users even among those who have been resident in the UK for over 20 years. These findings support the conclusion of chapter three that language, culture, and engagement with formal institutions are more helpful in explaining difference, where it exists, than the simple and misleading factor of skin tone. It also presents a challenge for tribunals to consider whether there are additional strategies that could be adopted to assist users with language difficulties both when an interpreter is present and when the user attempts to communicate without the help of an interpreter.

While observation of tribunal hearings reveals the extent to which tribunals appear to have developed the competences necessary to conduct hearings which offer a fair opportunity for users to present their cases, they also reveal, perhaps more significantly, the importance of language, education and culture in equipping users with the bundle of competences that **they** need in order not merely to present their case, but to make the best of their case and to provide the tribunal with the information that they need. There are limits to the enabling role. If tribunals are seeking to ensure 'equality of impact' of procedures, there are some differences between users that are so significant that a tribunal cannot realistically be expected to compensate entirely and where an advocate is not merely helpful, but is necessary to the requirements of procedural fairness. As will be seen in chapter seven, in TAS at least – where perhaps the most disadvantaged users appear – advocacy is also crucial to substantive outcome. These differences in ability do not correspond to ethnic categorisation since poor language and literacy skills traverse ethnic boundaries. On the other hand, the relationship between ethnicity and social exclusion suggests that lower levels of ability will be more common among certain Minority Ethnic groups.

Chapter 6. Users' assessments of hearing and outcome: post-hearing survey

This chapter focuses on users' reactions to the tribunal hearing, their perceptions of the fairness of the process and of the outcome. Those interested in behavioural aspects of legal process, most notably North American social psychologists, have produced a substantial body of research exploring the influences on people's judgements about whether legal procedures and other social processes are just and fair and the extent to which those judgements are influenced by outcome. It has been noted that there are often situations where people receive outcomes that are favourable, but they nonetheless remain dissatisfied. Such dissatisfaction is difficult to understand if one assumes that people are solely concerned with substantive outcome. Considerable research effort has therefore been expended on developing models that would explain what determines how satisfied litigants feel with dispute resolution forums used to settle their problems. What do people want from legal decision-makers and third party neutrals and how do they evaluate them?

These questions are not matters merely of academic interest, but go to the heart of social, political and legal processes. The legitimacy and acceptability of policies or decisions will be enhanced if they are reached by demonstrably fair processes. The question is what procedures will be viewed as fair? Research to date suggests that the factors that appear to be important in lay judgements of procedural justice are sometimes quite different from those that are of greatest concern to scholars and policymakers. *"Citizens care about procedural fairness, but they often define it quite differently than do experts."*[57] Procedural justice involves more than simply the way in which decisions are made, but includes questions of how people are treated by authorities and other parties. In the legal arena it has been argued that citizen reactions to court decisions should be seen as responsive to the experience of legal procedures, as well as to whether a litigant wins or loses his or her case, and that people will evaluate lawyers and judges more positively after losing their case if their case is resolved in a way that they view as fair.[58]

[57] A Lind and T Tyler, *The Social Psychology of Procedural Justice*, Plenum, 1988, p 220.
[58] Tom R Tyler, 'Social Justice: Outcome and Procedure', *International Journal of Psychology*, 2000, 35 (2) 117-125. See also the review of procedural justice literature by Tom Tyler in 'Procedural Justice', chapter 23 in A Sarat (ed), *The Blackwell Companion to Law and Society*, Blackwell, 2004

What contributes to perceptions of fairness?

Social-psychological research aimed at identifying the characteristics of legal procedures that contribute to assessments of fairness have routinely isolated around seven or eight factors that appear to be important in users' assessments. However, of these there are four elements of procedure that are said to be the 'primary factors' that contribute to evaluations of fairness[59]. According to Tyler these are:

> *"opportunities for participation (voice), the neutrality of the forum, the trustworthiness of the authorities, and the degree to which people receive treatment with dignity and respect*". [60]

Thus people feel more fairly treated if they are given an opportunity to present their case. Their perceptions of fairness are also influenced by judgements about the honesty, impartiality, and objectivity of the decision-maker or authority with whom they are dealing. **Trust in the decision-maker** is, however, the primary factor shaping evaluations of fairness of procedures. For example, people only appear to value the opportunity to speak if they believe that their arguments have been considered seriously. In legal proceedings, therefore, people want to feel that the judge genuinely considered their arguments – even if those arguments were ultimately rejected. The opportunity to present a case will not in itself lead to a perception of fairness unless the tribunal communicates that they have considered the arguments seriously and this is understood by the user. This, naturally, leads to the question of how tribunals and other legal decision-makers can communicate that they are trying to be fair. Tyler argues that a key antecedent to trust is **justification**. Tribunals must make clear that they have listened to and considered the arguments made. This can be done by reflecting back to users the arguments they have made, summarising their understanding of the users' position, explaining how their arguments and the opposing arguments have been considered and why they have been accepted or rejected.

Finally, research indicates that users place great weight on being treated politely and having respect shown for their rights and for themselves as people. Treating users

[59] There is not a well-developed British literature on litigants' evaluations of procedural justice, although a number of studies have addressed these issues. Examples are Baldwin's research on litigants' experiences of small claims procedures which suggests that litigants may be prepared to accept a relatively rough form of justice if it can be achieved swiftly and at low cost, although the study did not probe evaluations of fair process (John Baldwin, *Lay and Judicial Perspectives on the Expansion of the Small Claims Regime* DCA Research Series, 8/02). Genn and Genn (1989 op cit) report on the experiences of tribunal users in different types of tribunals, and Genn 1998 (*Central London County Court Mediation Scheme*, DCA Research Series 5/98) reports on aspects of fairness in mediation of civil cases.

[60] Tom R Tyler, 200 op cit, p 121.

with dignity and respect should be straightforward and achievable for any court or tribunal.

Despite the evidence that users of the justice system are able to distinguish between process and outcome, it is also clear that people feel more fairly treated if they receive a favourable outcome. Thus procedural issues are not independent of outcome issues, but the two are generally considered to be highly interrelated.

Culture and perceptions of fair process

Does cultural background influence the value of procedural fairness or the factors that are important in assessment of fairness? In a major study of the influence of experience, race and ethnicity on perceptions of courts, Rottman et al (2003) argue that African-Americans tended to have lower evaluations than Whites of the performance, trustworthiness and fairness of courts[61]. In general, however, procedural justice considerations dominated the evaluations that citizens made of courts. There is evidence that White and African-American litigants are particularly attentive to issues of respect and trust, while litigants of Latin-American origin rely particularly on indicators of neutrality in reaching evaluations of the courts, in the sense of a lack of bias on the part of the decision-maker.[62]

However, in looking specifically at values and perceptions of fairness, Tyler suggests that little difference is found in the importance placed upon procedural justice by the members of different ethnic groups. Both Whites and minorities appear to be more influenced by the fairness of the procedures they experience than they are by the fairness of the outcomes they receive[63]. In addition, other studies appear to demonstrate that Whites and minorities define the meaning of procedural fairness in the same way. Tyler therefore argues that the findings are "*fairly optimistic about the ability of procedures to be robust across differences in ethnicity*". He concludes that "*there is little evidence of differences linked to ethnicity or gender*".[64]

[61] David B. Rottman, Randall Hansen, Nicole Mott, Lynn Grimes, *Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity, Final Report* - National Center for State Courts, 2003.
[62] Tom R Tyler, 'Public trust and confidence in legal authorities: What do majority and minority group members want from the law and legal authorities?', *Behavioral Science and the Law*, 19, 2000, 215-235, p 232.
[63] Tom R Tyler, A Lind, and Y Huo, 'Cultural values and authority relations', *Psychology, Public Policy, and Law*, 6(4), 2000, 1138-1163.
[64] Tom R Tyler, Multiculturalism and the willingness of citizens to defer to law and to legal authorities, *Law and Social Inquiry*, 25 (3), 2000, 983-1019.

Users' experiences of tribunal hearings

To complement the observational evidence about hearings discussed in the previous chapter, users were interviewed about their own assessment of their ability to participate effectively in tribunal hearings and of their treatment by the tribunal responsible for deciding their case. Interviews were conducted with 374 users after their tribunal hearings and before they had received their decision in the three tribunals. 236 interviews were carried out with users in TAS, 94 with users in CICAP, and 44 with users in SENDIST hearings. Among the 359 respondents to the survey whose ethnic background was identified, 204 were White, 67 were of Pakistani, Bangladeshi, Indian or other South Asian backgrounds, 66 were of Black African or African Caribbean background, and 22 were from 'other' non-European backgrounds[65]. In analysing users' experiences of hearings and their perceptions of fairness of process and outcome, an attempt has been made to indicate both common experiences and any differences that appear to be associated with ethnic background.

The evidence used in this analysis is drawn from interviews conducted **immediately after the end of tribunal hearings and before decisions were received.** Given the interrelationship between perceptions of fairness and substantive outcome, it was regarded as important to obtain from users their evaluations of the quality and fairness of their tribunal hearings without being influenced by knowledge of the outcome of the case. In 261 cases, TAS and CICAP users were also interviewed again after having received their decision in order to assess perceptions of the fairness of their decision and to gauge the extent to which the decision might then influence their assessment of what had gone before during the hearing. It was not possible to conduct post-decision interviews with users in SENDIST because the decisions were never delivered on the day but sent by post to users some time after the hearing.

Consistent with the factors identified in previous research to be important in users' evaluations of fairness, the post-hearing survey questionnaire posed a number of questions to gauge how comfortable users had felt during their hearing, the extent to which they felt that they had understood procedures and questioning, and the extent to which they felt they had had a fair opportunity to participate and to put their case **(participation/voice).** Users were asked how well they felt the tribunal had understood

[65] See chapter two for full breakdown of ethnic origin of users.

their case and whether they felt that the tribunal had been listening to what they had said **(trust),** and whether the tribunal had been listening equally to all those who spoke during the tribunal hearing **(neutrality).** Users were also asked whether anything had happened during the course of the hearing that made them feel they had been treated unfairly or without respect **(neutrality/respect/dignity).** In order to provide opportunities to Minority Ethnic users to raise sensitive issues, they were deliberately asked whether they felt that anything that had happened to them during the hearing was related to the fact that they were from an Ethnic Minority. All respondents to the user survey were asked these questions whether or not they had been represented at the hearing and where there were differences in responses between represented and unrepresented users this is indicated in the discussion.

Feeling comfortable in the tribunal hearing

All users were asked whether they had felt comfortable during the tribunal hearings. Of the 374 users asked this question, just under three-quarters said that they had felt comfortable (72%) and a little over one-quarter (29%) answered negatively.

All of those who answered negatively were asked what it was that had made them feel uncomfortable during the hearing. Quite a wide range of matters was mentioned here. By far the most common related to feeling under pressure, nervous or intimidated (25% of features mentioned making users feel uncomfortable), questioning by the tribunal (20% of features making users feel uncomfortable), being made to “feel like a criminal” (9%), the panel showing indifference or not listening (7%), a panel member being aggressive or rude (7%), and unwanted confrontation (5%). Other matters mentioned infrequently included not being given a chance to speak, the behaviour of doctors in TAS, and the strangeness of the environment. Examples of sources of discomfort mentioned by users are given in Table 6.1.

Table 6.1 Examples of sources of discomfort during hearings

TAS	CICAP	SENDIST
"They tell you it is informal but there are still three people on one side of the table looking at you." "The system is stacked against the person. I feel like a victim…at the interview I had my rights read to me and I felt like a criminal. All the way through they are basically saying you are guilty even if you put an appeal in…seems as though they have more powers than the police." "People like that shouldn't be on a panel; should be people like social workers, not lawyers. They were friendly, but were a bit snotty. No handshake. No being nice. I thought they were quite ignorant. They made their decision before I walked in the room." "The member was not looking at me directly. The GP was sitting there drawing smiley faces." "Felt pressured. They don't understand my sickness." "Irony, sarcasm, their tone. They were unhelpful." "The chair thought it was a joke." "They didn't give me enough information beforehand so I could prepare." "I was spoken down to. It showed a lack of respect." "The questions came across as biased. They thought I could do more than I can."	"It was an alien environment. I really didn't feel comfortable, I really felt I didn't make a good impression." "You feel like you're the villain. The way they ask the questions makes you feel you are in the wrong. They pick up certain points and wrestle. It is certainly not informal." "There was a geezer with White hair and dirty looks…He made me feel he didn't want me in there and didn't believe anything I said." "I felt that the chairman had his decision made in his head before the hearing." "It's my first time and the way they were questioning me, I felt like a criminal." "It is difficult to argue with five people when you are on your own."	"It felt like a court – all they talked about was money and I thought it was disgusting. I don't think we'll win." "It's not informal and the chairperson is not making it a pleasant experience for the parents.. The chair, god help you if you interrupt her… Last time the chair allowed both sides to speak." "Nit picking, wrangling. It gave me additional stress – they should have limited this. I felt intimidated. It was a cold and sterile environment."

Tribunal type

There was little difference between the three tribunals in the responses given by users to being asked whether they had felt comfortable in the tribunal hearing, with 72% and 73% of users in TAS and SENDIST respectively saying that they had felt comfortable in the tribunal hearing as compared with 67% saying they had felt comfortable in CICAP. These findings indicate that, whatever the level of apprehension prior to a tribunal hearing, the majority of users by the end of the hearing appeared to have felt comfortable and, presumably, reasonably positive about the experience.

Representation

Perhaps somewhat surprisingly, representation appeared to have little effect on whether or not users said that they had felt comfortable in the tribunal. Some 69% of represented users and 72% of unrepresented users when questioned after the end of the hearing said that they had felt comfortable during the hearing.

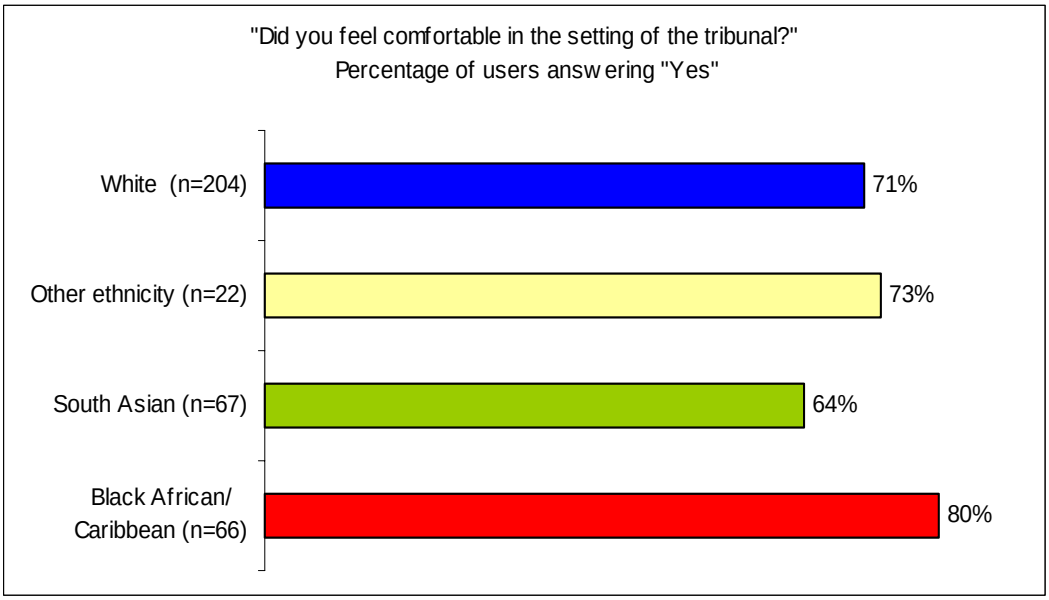
Gender

There was also no association between gender and feelings of comfort, with men and women declaring themselves to feel equally comfortable in the tribunal setting.

Ethnicity

As far as ethnicity is concerned, however, there was some evidence of a slightly lower level of comfort felt by South Asian users as compared with that felt by White and Black African/Caribbean users (Figure 6.1). **Although the difference is not statistically significant here, it is consistent with the assessments made during observations (discussed in the previous chapter) and with the analysis of tribunal outcomes in relation to ethnicity discussed in the following chapter.**

Figure 6.1 Feeling comfortable in the tribunal setting by ethnic group (N=359)



Although the numbers in individual categories become rather small, it is worth dissecting the figures a little further to identify whether the aggregated ethnic groupings such as 'South Asian' and 'Black African/Caribbean' mask notable differences between the constituent sub-groups. Disaggregating groups in this way reveals that 90% of Black Caribbean and 84% of Black African users said that they felt comfortable in the tribunal setting, as compared with 56% of Indian users and 80% of Pakistani users. Looking at these groups within tribunals it seems that although there is a generally lower level of comfort within CICAP, the pattern of response among the different ethnic groups is similar to that for the sample as a whole.

Ability to present case (participation/voice)

> ***"A written application is not enough to give the full story. This can only be done when you are seen in person. So it's good to have the opportunity."*** **[TAS user]**

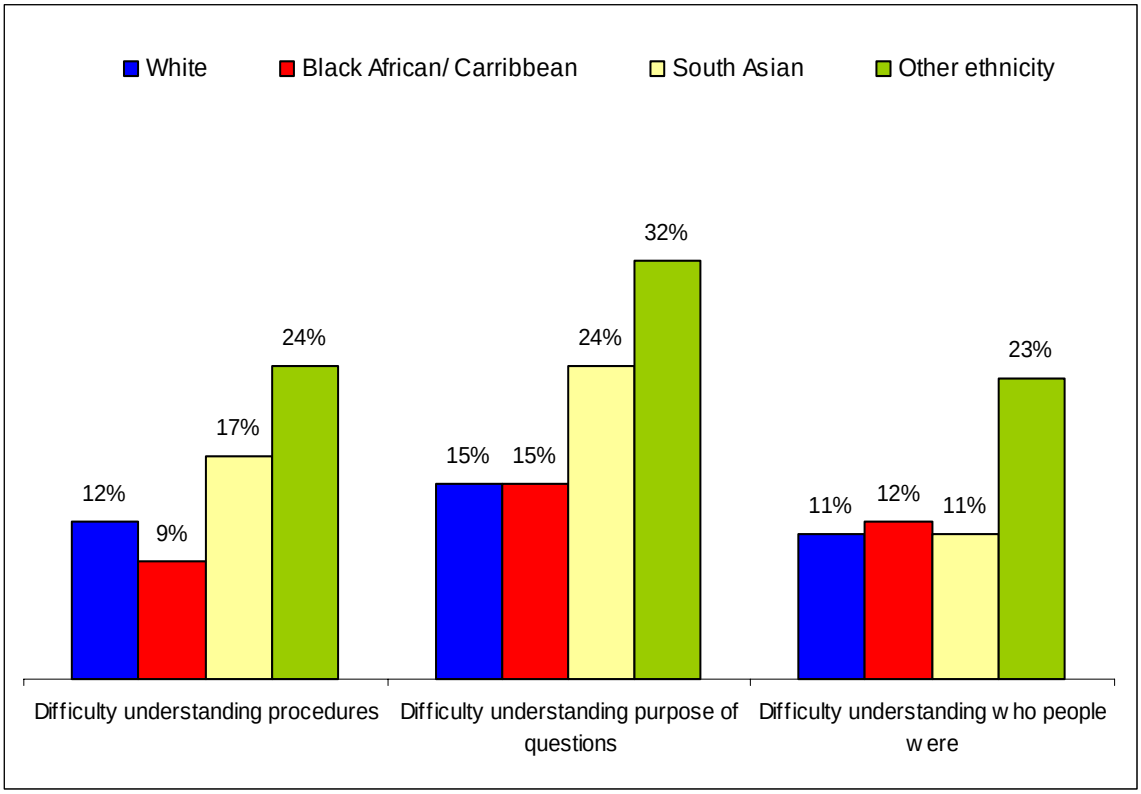
Given the importance of participation to users' perceptions of the fairness of legal processes, all users who were interviewed after their hearing were asked a series of questions about how well they felt they had managed during their hearing. Users

were asked whether they had had any difficulties in understanding tribunal procedures, why particular questions were being asked by the tribunal, or who various people at the hearing were.

Understanding procedures and questions

On the whole users tended to report that they had not experienced difficulty in understanding procedures, questions or personnel, with only a little over one in ten of the sample as a whole declaring that they had experienced some difficulty. The responses to these three questions were relatively consistent, although there were some small differences between Minority Ethnic groups (Figure 6.2). In particular, South Asian and "other" Minority Ethnic users were consistently more likely to say that they had experienced difficulty with some aspect of the hearing about which they were asked. While the responses of White and Black African/ Caribbean users were almost identical, about one in four South Asian users and one in three users from "other" ethnic backgrounds, felt that they had not understood the purpose of questions put to them (Figure 6.2). These responses confirm the assessments made during observations of tribunals, discussed in the previous chapter, indicating that these two groups appeared to be somewhat less able to put their cases than Black African/Caribbean or White users. These findings also have some bearing on the outcome results reported in the next chapter which suggest a small disadvantage for minority users, in terms of outcome, particularly in TAS appeals.

Figure 6.2 Experience of difficulties with aspects of the hearing by ethnic group (N=354)



Opportunities to speak

Users were also asked whether they felt that they had had an opportunity to say everything they had wanted to say during the hearing. This is again an indicator of degree of participation and important to users' assessments of the fairness of hearings. Across the sample as a whole, over 80% of users said that they had had the opportunity to say all or most of what they wanted to say (50% "all" and 32% "most"). About one in ten users reported that they had had the opportunity to say very little or none of what they wanted to say during the hearing. This question was analysed in relation to tribunal type, gender of user, ethnic background of user and whether or not the user attended the tribunal with a representative.

Tribunal type

There were some slight differences between the three tribunals in the extent to which users felt that they had had the opportunity to say all of what they had wanted to say. Users in TAS and CICAP were more likely than those in SENDIST to feel that they had had the opportunity to say everything that they had wanted to say, with about

half of those in TAS and CICAP feeling that they had been given the opportunity to say everything that they wanted to say, as compared with about 40% of users interviewed in SENDIST. The differences were not, however, statistically significant.

Gender

There was no significant difference between men and women in the extent to which users felt that they had had the opportunity to say all that they wanted to say.

Ethnicity

As has been seen, the vast majority of users reported that they had had the opportunity to say all or most of what they had wanted to say during tribunal hearings. A comparison of users from different ethnic backgrounds in response to this question revealed little in the way of consistent variation. Black African and African Caribbean users were the most likely to report that they had had an opportunity to say all that they wanted to say (57%) and about half of White users (49%) reported that they had had the opportunity to say all of what they wanted to say. Minority users from "other" ethnic groups were the least likely of all ethnic groups to feel that they had had the opportunity in hearings to say all that they had wanted to say (30%), and the most likely to report that they had said very little or none of what they had wanted to say during the tribunal hearing (22%). Those users who reported that they had not been given sufficient opportunity to speak were asked what had caused them to feel this. The reasons given tended to focus on a perception that the decision had already been made, lack of English skills, being given less opportunity to speak than others at the hearing, or a sense that the panel had already made up its mind. Some examples of how these concerns were expressed are given in Table 6.2.

Table 6.2 Examples why users felt they did not have sufficient opportunity to speak

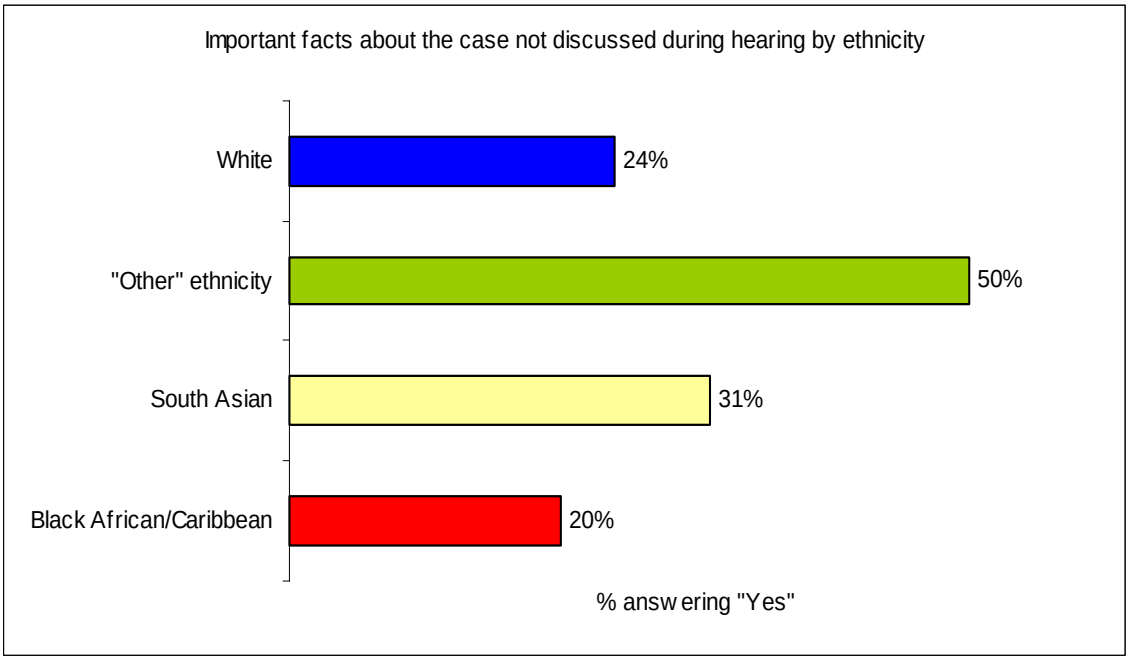
TAS	CICAP	SENDIST
"I felt the decision was already made. They didn't even listen." "It was difficult to explain to the panel the full situation given my English skills." "I felt that the panel were not concerned with my emotional state regarding the claim" "The decision is based only on medical evidence. Could have been more inquisitive." "It's not a fair hearing if they are rushing you."	"I felt like I was on trial." "I could have said a bit more but I felt they wanted to go to lunch."	"Definitely not. I felt we were not getting a fair hearing, because she let others interrupt, then didn't deal with what I want to say."

Facts not discussed

Despite the relatively high proportion of users stating that they had had a good opportunity to say what they had wanted to say, **more than one in four users interviewed after their hearing stated that, nonetheless, important facts about their case had not been discussed at the hearing.**

There was no difference in response to this question associated with type of tribunal or gender, or whether the user attended the tribunal with a representative. However, again, there were some differences associated with ethnic group. **Users of South Asian and "other" Minority Ethnic backgrounds were more likely to feel that important facts had not been discussed than either Black African/Caribbean users or White users.** One-third of South Asian users and half of "other" ethnic users interviewed gave this reply as compared with one-quarter of White users and one-fifth of Black users. The differences here just about reached statistical significance.

Figure 6.3 Important facts not discussed during hearing by ethnic group (N=340)



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When asked what facts failed to be discussed, most users gave very specific examples of matters to do with their case. On the whole, however, the complaints tended to centre on the inadequacy of the reports that tribunals were using to reach decisions, or that there had not been sufficient time for the user to explain the details of their condition and claim to the tribunal. Some examples of these responses are provided in Table 6.3 below.

Table 6.3 Examples of "important facts" not discussed in three tribunals

TAS	CICAP	SENDIST
"The decision was already made. They didn't listen." "They were not concerned with my emotional state". "The whole case. They just talked about papers." "There was a poor GP examination, which was inaccurate and incomplete." "The GP report does not accurately describe degree of improvement." "Poor quality of doctor's report." "There was too much emphasis on the physical aspects of my situation and not enough on the mental aspects." "Things were not tested. It was all too quick." "There were not enough questions about my overall problems." "They didn't look at my foot, they were not allowed." "I forgot some things. I have a bad memory because of depression." "It finished abruptly. I would have liked to sum up at the end." "About her condition since the accident. They rushed me too much."	"I wanted to give the complete picture. There was confusion over dates." "There were so many of them and they did not listen to me." "I would have liked to show them my injuries." "About my flashbacks and depression." "The police statement and the solicitor's report." "They must look at my whole life not just before the death." "My condition, medication and counselling." "The wrong officers were present." "It is difficult to explain day to day experiences." "I wanted to say more about difficulties with work opportunities." "They should have had more details of occurrences after the event."	"The conditions of the child and about the school we prefer." "We didn't get to question the other side and their witnesses." "The issues have been addressed but they needed more detail." "The panel should have asked more questions." "The child's tape was not taken as evidence." "Some evidence was submitted 20 min late...it would have helped the case reports."

Tribunal listening and understanding of case (trust)

> ***"She tried to give us advice… she gave us more than she needed to in her role today… she really tried to help us."*** **[TAS user]**
>
> ***"The chair is arrogant, he's not here to listen, he's here to listen to his own voice."*** **[TAS user]**

In order to test users' levels of trust in tribunals, those interviewed after their hearing were asked whether they felt that the tribunal or panel had been listening to everything that the user had said, and how well they thought that the tribunal or panel had understood their case.

Again the vast majority of users interviewed after their hearing demonstrated high levels of trust in the tribunal, with almost 90% of users feeling that the tribunal had listened to everything that the user had said. The users most likely to answer "no" to this question were those of Black African or African Caribbean origin, among whom about 17% answered "no" to the question as compared with 14% of South Asian users and 9% of White users.

The majority of users interviewed after hearings also seemed to feel that the tribunal had understood their case, with 39% overall reporting that the tribunal had understood the case very well and 44% saying the case had been understood fairly well. About 17% of users felt that the tribunal had not understood the case very well (12%) and a handful (5%) felt that the tribunal had not understood their case at all. These findings again indicate generally positive experiences of hearings and relatively high levels of satisfaction with processes.

Among those expressing dissatisfaction, the kinds of concerns raised by users after their hearing and *before* receiving their decision, covered issues such as tribunal judiciary not appearing to listen to the user's case, having already made up their mind, focusing on the law rather than the individual, and not giving sufficient opportunity to speak. Although these complaints were in the minority, the nature of the complaints – often focusing on body language – **reinforces the need for tribunal judiciary to *convey* to users that they are being listened to and heard, and that their arguments are being taken seriously.**

There were few differences between users in the three tribunals in this respect, although users in SENDIST hearings were more likely than the other two tribunals to feel that the panel had understood their case very well (55% of those interviewed in SENDIST compared with around one-third in the other two tribunals).

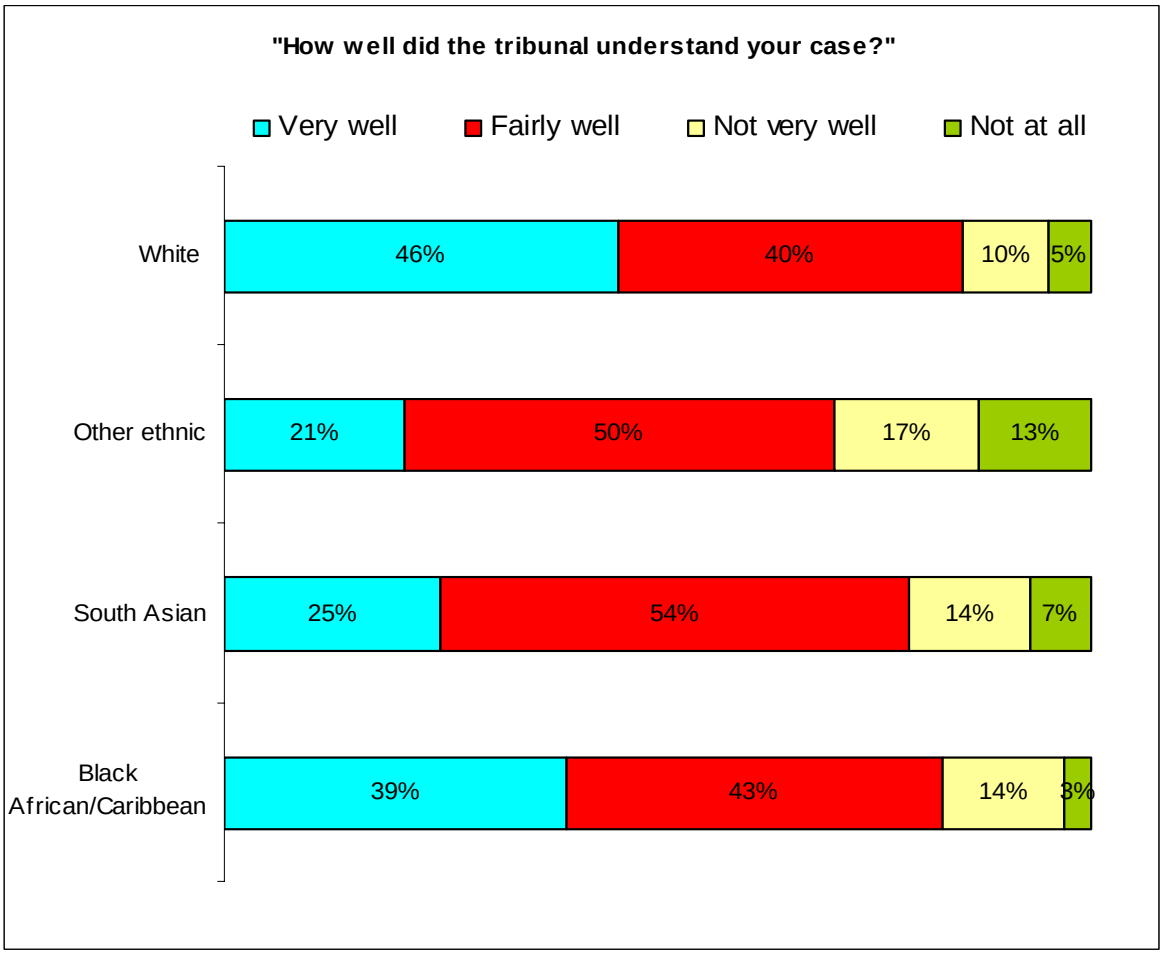
Table 6.4 Concerns about whether the tribunal was listening or understanding

TAS	CICAP	SENDIST
"The Chairman was not understanding, just writing notes." "They did not seem sympathetic." "They don't look at the whole picture, only the law." "We were going around in circles." "The GP was unsure of my medical condition. He didn't appreciate the severity." "They kept cutting me off." "They only looked at the medical evidence, they don't really know you." "There was no chance for them to listen." "I was not comfortable… my story didn't come across." "They weren't interested in the truth." "They didn't understand different cultures." "The panel did not understand my information." "There was so much they did not ask about, only a few questions." "They were harsh (except the doctor)."	"They had already made up their mind.. they went through it only to appease us." "They did not like me. They didn't give me a chance to speak. There was no justice." "The lady only wanted me to say yes to her questions. How can I do that?" "I would like to know what they do for a living, if they are qualified." "There was much missing." "The panel was confused about dates." "They are a body trying to play God." "They did not want to listen to me at all." "They think it's minor but I've lost quite a bit." "There were three incorrect witness statements that cannot be believed." "We were only 10 minutes. It wasn't enough time."	"They looked bored, just making notes." "Emphasis on unimportant points." "Some relevant issues just brushed under the carpet." "Too detached from needs of children, like all government bodies."

Ethnicity

Although the majority of users interviewed felt that the tribunal had understood their case very well or well, when the responses to this question were analysed in relation to ethnic group, the users most likely to feel that the tribunal had understood their case very well were White users. South Asian users and 'other' ethnic users were the least likely to say that the tribunal had understood their case very well and the most likely to feel that the tribunal had not understood their case (Figure 6.4).

Figure 6.4 Users' perception of tribunal's understanding of case by ethnic group (N=312)



Neutrality

To explore perceptions of the neutrality of tribunal panels, users were asked whether they had felt that the tribunal had been listening to everyone equally in the hearing. The majority of users interviewed after their hearings answered the question positively, although about three in ten users overall gave a negative reply to the question. There were no significant differences between ethnic groups in answer to this question, although South Asian users were again more likely than White users or 'other' ethnic groups to feel that the tribunal had not been even-handed. Although users were not invited to expand on their answer, a few did so. The kind of complaints made related to a perception of being given less opportunity to speak than the other side, or being cut off during explanation, or that the tribunal showed apparent sympathy with the other side during the hearing.

> *"They listened and took more notice of the other side more. It was just their attitude to us – just asked us questions but with them, they asked the questions and then went into more depth."* [SENDIST]
>
> *"A lot of times when we and our representative tried to respond to points, we couldn't. The panel were defending and siding with LEA – I thought they were supposed to be impartial."* [SENDIST]
>
> *"They stopped me half way through my sentences and didn't let me talk. They had the questions pre-determined.*" [TAS user]
>
> *"They were all for the authority… 'There's a criminal trying to claim compensation'."* [CICAP User]

Assessments of the formality of hearing

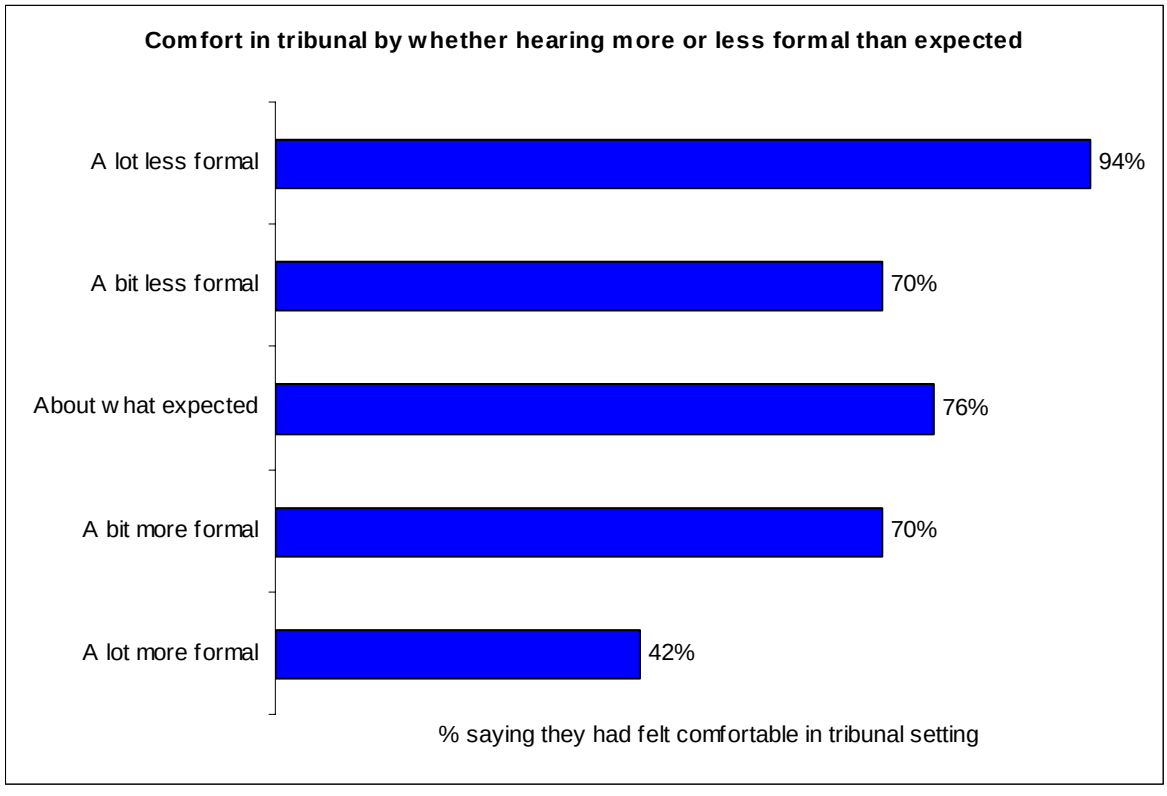
Prior to the tribunal hearing, all users had been asked in their pre-hearing interviews about their expectations of the hearing. As discussed in chapter four, a significant proportion of users in all three tribunals appeared to be unsure about what to expect at the hearing. When interviewed after their hearing, **about one-quarter of users said that the hearing had been *more* formal than they had expected and a slightly higher proportion thought that the hearing had been *less* formal than they had expected.** There were no significant differences in responses to this question depending on type of tribunal, ethnic group, or, interestingly, representation. Thus of around 350 tribunal users interviewed after their hearing, about half said that the formality of the hearing was roughly what they expected. However, for the other half of users the hearing was either more or less formal than expected. Thus **about one-quarter of users were perhaps anticipating something more difficult, while one-quarter were perhaps surprised by the level of formality.** There is clearly a challenge here for tribunals and the new Tribunal Service in helping to frame the expectations of prospective users, since inaccurate expectations have a number of consequences. *Overestimating* the formality and demands of the hearing may deter potential users from lodging an appeal or from attending their hearing, and may increase levels of anxiety prior to entering the hearing thus affecting users' ability to present their case. On the other hand, *underestimating* the formality and demands of the hearing may lead people to attend without sufficient preparation or understanding of what will be required of them. The ability to participate effectively in hearings is to some extent dependent on being prepared – knowing what to expect, what will be asked of you, what you might be required to bring to the tribunal, and what you may need to establish once you are in the hearing and being questioned by the tribunal. Some of these difficulties were confirmed during interviews by tribunal judges and the

views of tribunal judiciary about users' levels of preparedness are discussed in chapter eight.

It is perhaps surprising that the presence or absence of a representative was not significantly associated with the extent to which users' expectations had been reasonably accurate. Clearly, representatives have more work to do in helping tribunal users to anticipate what will happen during the course of the hearing and how it is likely to be conducted by the tribunal panel.

The importance of framing expectations is further underlined by the finding that those users who felt that the hearing had been *more* formal than they were expecting tended to give more negative answers on questions relating to their ability to participate in the hearing and their perceptions of whether the tribunal had understood their case. For example, on the question of whether or not users felt comfortable in the tribunal setting, **those who had found the hearing more formal than expected were significantly less likely to feel comfortable in the hearing than those whose expectations were met or those who found the hearing less formal than expected** (Figure 6.5).

Figure 6.5 Comfort in tribunal hearing by whether the hearing was more or less formal than expected (N=350)

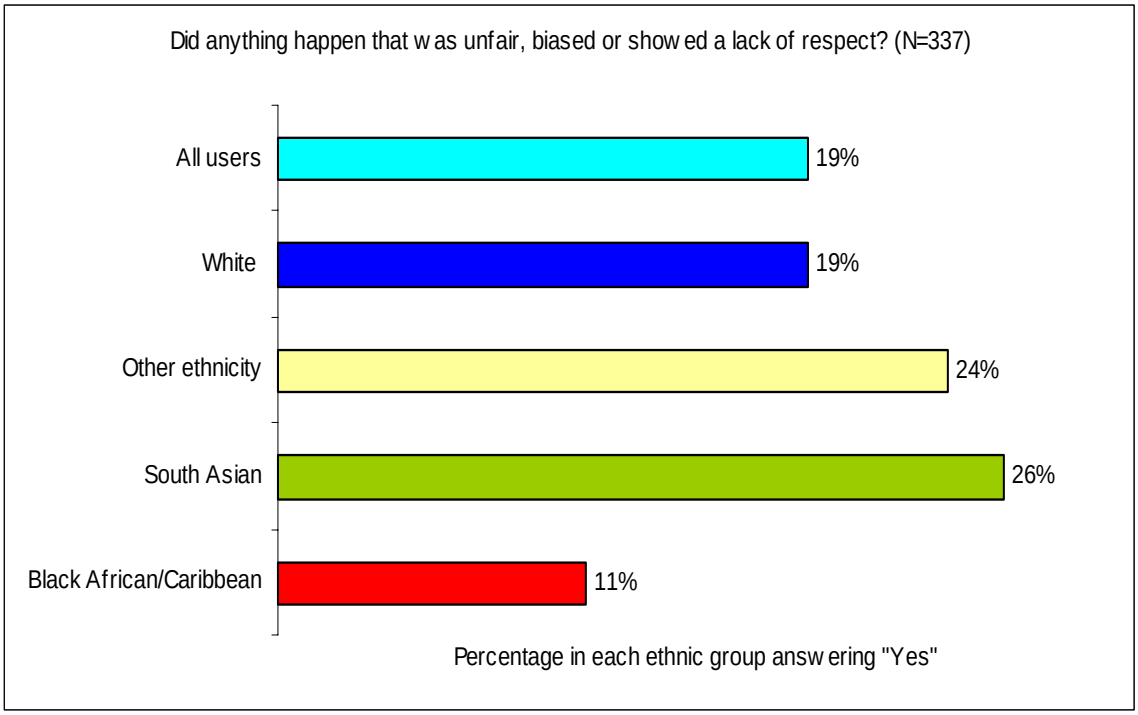


Perception of unfairness

In addition to asking questions about participation, trust, and neutrality, users were also asked a direct question offering the opportunity to raise matters of unfairness, bias, or lack of respect[66]. In answer to this question about one in five users mentioned something that had occurred during the hearing that they had felt was unfair or showed lack of respect, and there was *no difference* between the three tribunals in the proportion of users alleging some unfairness or disrespect. There was, however, a small difference in response between users from different ethnic backgrounds (Figure 6.6) although the difference was not statistically significant. Black African/Caribbean users were the *least* likely to perceive unfairness or lack of respect, while **users of South Asian origin and "other" ethnic groups were the *most* likely of all groups to perceive unfairness with about one in four of users in these two categories mentioning that some unfairness had occurred during the hearing.** About one in five White users mentioned some kind of unfairness in the procedure. Again, although the numbers in sub-groups become rather small, it is worth looking more closely at these figures since a positive answer to this question represents a key indicator of users' overall perceptions of the fairness of hearings prior to receiving their decision. Disaggregating the broader ethnic groupings shows that the users least likely to say that anything had occurred during their hearing that was unfair or showed a lack of respect were Black African users, among whom only 9% answered positively to this question. This can be compared with 17% of Black Caribbean users, 25% of Indian users, 22% of Pakistani users, and 29% of the "other" ethnic group, within which most users were from countries such as Iraq, Iran, Egypt, and Lebanon. Only nine Bangladeshi users were asked this question, but four of the nine answered that some unfairness had occurred during their hearing. The variation in response to this key question revealed by disaggregating standard ethnic grouping demonstrates the extent to which combining different ethnic groups masks real disparities in experiences and perceptions and the need, whenever possible, to utilise finer ethnic categorisation for exploring experiences and perceptions of different Minority Ethnic groups.

[66] The question was deliberately taken from the study by Roger Hood, Stephen Shute and Florence Seemungal, *Ethnic Minorities in the Criminal Courts: Perceptions of Fairness and Equality of Treatment*, DCA Research Series 2/03, March 2003. The text of the question was: "*Did anything happen at the hearing that made you feel that you had been treated in a way that was unfair, was biased, or which showed you lack of respect?"*

Figure 6.6 Perception of instance of unfairness during tribunal hearing by ethnic group (N=337)



Those users who reported that something unfair had occurred during their hearing were asked to describe what had happened that they had considered to be unfair. Although a number of users referred to specific factors relating to their case, most complaints fell into several broad categories. For example, many complained of panel behaviour – not appearing to listen or take the problem seriously; asking questions that were interpreted as biased or hostile; and tribunal judiciary who appeared to have made up their minds. There were also some complaints about aggressive behaviour from presenting officers, and practical issues about being kept waiting or the hearing being adjourned. There were also some complaints about lack of time during the hearing to deal with the case thoroughly.

Table 6.5 provides examples of the kind of complaints made about hearings. The number of quotations presented reflects the larger number of interviews conducted among TAS users as compared with CICAP and SENDIST.

Table 6.5 "Did anything happen at the hearing that made you feel that you had been treated in a way that was unfair, biased or showed a lack of respect?"

TAS
"The chair was not looking directly at me. They were not listening. They had already decided. They showed no respect."
"The chair was not listening. I did not get heard or listened to."
"The Department rep gave the panel false information, which had to be corrected at outset."
"They did not look at the matter properly. There was not enough time."
"They didn't understand me. The panel are old. I would have preferred a younger panel. I needed a doctor with me."
"The disability specialist was insensitive. I felt tricked a bit."
"I disagree with the medical report."
"The doctor's assessment was inaccurate. The doctor asked few questions, but wrote a lot."
"The doctor was smiling at the medical report. The doctor seemed sarcastic."
"Doctor was smiling. I felt laughed at."
"I felt I was rushed. I couldn't say what I wanted to. They didn't get through everything. It was not a fair hearing."
"I felt like I was on trial. It's too formal. You can't talk to them."
"I felt like they were trying to 'catch' me. They could have used common sense."
"I felt the questions asked were weighted against me."
"I was spoken down to and shown a lack of respect."
"If I was White, the questions would have been directed at me. There was a lack of understanding of my case."
"The irony, sarcasm, and tone. They were unhelpful."
"I had over 1 hour to wait. The panel member was difficult. The office closed so the case was adjourned. I had been waiting for months and had done everything I was supposed to do."
"The Panel did not let my representative talk."
"The Panel was generalising about how children act."
"I felt pressured. They don't understand my sickness. They tried to make me look like a liar."
"Their questions came across as biased – they thought I could do more than I can."
"They questioned about my fingernails being dirty. If I was scamming them I would have cleaned my hands."
"They were slightly biased towards the Benefits Agency."
"There was some bias. They dwelt on some matters more than others, and focused on weakness."
"The chair thought it was a joke. It was insulting."
"The way I was spoken to. It seemed likely she (tribunal chair) had already made a decision."
"The whole thing is horrible. You have to think too fast."
"They asked stupid questions. It was a joke to them. They question an user with a disability like it is a joke."
"They didn't give me enough information beforehand so I could prepare."
"Too difficult to remember history. I am in so much pain. The lady was not helpful. I was so nervous."
"It was unfair when they asked me to do the walking. They did not understand my condition. I am a proud person."

CICAP

"I felt as though I was an offender, not the injured victim."
"They showed a lack of respect. They were not interested in my evidence."
"The lady said I was mentally disturbed. She doesn't know anything. You can't just call someone mental."
"The paper work is incorrect. There is something dodgy going on."
"The police officer showed a lack of respect."
"The police statement was what I wanted to discuss, not the statement I gave."
"The questioning. I think they judged me based on my past criminal record."
"She doesn't like my skin. She was not listening. She was only attacking me."
"The way she spoke to me, she was biased. She was so against me. What was her problem?"
"They don't appreciate the 'Asian' environment."
"They were biased. They did not want to listen to me. The Chair did not like me."
"I felt like the guilty party. It was like being on trial."
"Things were brought up that were not presented at the time by the authority."
"They were trying to fit me into stereotypes and construct a certain picture."
"They wanted to believe assailants because then they won't have to pay me. They take the easy route."
"This was the second time the police didn't attend. The first hearing was cancelled because of their failure to attend."
"They were biased."

SENDIST

"They accepted the LEA story more readily. I felt they were on the LEA's side. They were constantly questioning and arguing against our points."
"The chair was defending the LEA and preventing me from saying what I wanted to say. When the chair began shouting at our representative, I thought 'that's it we're buggered, we've lost this'."
"I was annoyed that the hearing was adjourned - the other side were not fully prepared. If they had been prepared we could have finished today."
"The Chair was defending LEA and not listening to me."
"The LEA fabricated evidence. I was surprised that panel did not protect me."
"The LEA presented late evidence."
"The LEA were aggressive."
"The LEA rep was contradicting and belittling my evidence. They were trying to make me look silly."
"I think the LEA tells lies."

Attributing unfairness to ethnic bias

Tribunal users from Minority Ethnic backgrounds who had reported some unfairness during the proceedings were asked specifically whether they thought that what had happened to them could be attributed to their ethnicity. This question was asked of only 64 users from Minority Ethnic groups who reported that some unfairness had occurred, among whom about one in three attributed the unfairness, at least in part, to their ethnic origin. Those who answered "yes" to the question were asked why

they thought that the unfair treatment had something to do with their ethnicity. The responses offered, some of which are extracted below in Table 6.6, were a mixture of rather unspecific feelings that the panel had been prejudiced against them because of skin tone or because they were an immigrant, or the assumption that some negative behaviour on the part of the tribunal must have been motivated by racist or prejudiced beliefs**. In no case was specific evidence given of a particular comment or action by the tribunal, but rather the interpretation that disrespectful or mistrustful behaviour on the part of the tribunal was inspired by prejudice against the user or lack of understanding.** This tends to support and reinforce the findings of the qualitative research reported in chapter three, stressing the extent to which Minority Ethnic users may carry with them to the tribunal an apprehension of unfair treatment based on memories of prejudicial treatment in other areas of their life. Thus tribunal behaviour experienced as negative treatment by Minority Ethnic users is read as being motivated by race prejudice. While it is unrealistic to expect tribunals to be able fully to overcome the personal histories of users appearing before them, it is important for all tribunal judiciary to appreciate the likely existence of such apprehensions and to take care not to reinforce fears of unfair treatment and negative stereotyping.

Table 6.6 "Do you think that what happened had anything to do with the fact that you are from an Ethnic Minority? Why do you think that?"

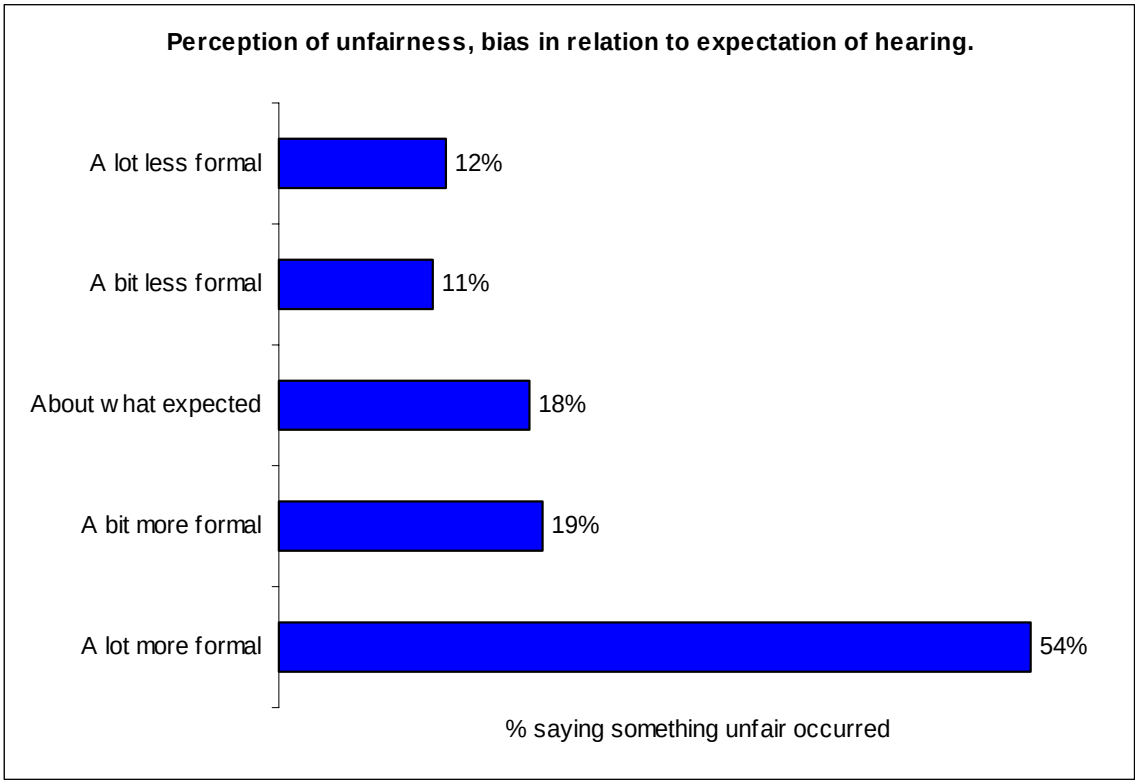
TAS	CICAP	SENDIST
"Panel felt 'Oh, just another one' (i.e. not English)." "Ethnicity may have had effect on panel." "Throughout the application and appeal process I thought I was victimised. I was given misleading information by the Benefits Agency and Job Centre." "Very different from Portugal." "They don't like Asians or Blacks." "Just the way I was spoken to." "It was a racist panel. I have a UK passport." "Always in every part of England [there is racism]." "Not getting proper services because I am not from here."	"The way she spoke to me…and the way she was telling me that I was lying and she was the one telling the truth." "I was intimidated by the chair – he is a Gujarati, he was not independent." "More willing to listen to police than me." "I got no attention at all at the hospital."	"Everything they have requested we have provided but the LEA is allowed to delay and the tribunal allows them to get away with that. But we are strictly subjected to the time constraints. I actually complained about that. We also had to chase the listings team for a date; on three occasions when we enquired we were ignored. Didn't even tell me that they had mucked up, when no one had given us a date." "Procedures in the Code of Practice were breached and questions were never asked why. I feel, to a certain degree, that it may have to do with the fact that I am Black. Muhammed is a name that is an irritant on people's minds, and people have preconceived ideas. We are treated as irritants by the school." "Yes definitely. Mainly from LEA. LEA said 'a girl like [child] wouldn't be sent to a school [mother] wants'. She lives in an area with very few ethnic minorities. I think panel was trying hard not to be prejudiced but because they were all White they wouldn't understand. Institutional racism – unelected tactics. Also, they haven't understood my health and single parent status. No help from LEA."

General fairness question

This general question put to users asking for their perception of any unfairness, bias or lack of respect during the hearing appeared to be helpful for the purpose of assessing users' overall feelings about the fairness of hearings since it matched well with many of the other questions asked about experiences of the hearing. So, for example, the response to the question of whether anything unfair or disrespectful had occurred during the hearing (which was asked towards the end of the post-hearing interview) was significantly associated with users' assessment of whether they had felt comfortable during the hearing, whether the hearing was more or less formal than they had expected, whether they felt they had been given the chance to say all that they wanted to say during the hearing, whether any important facts had been missed during the hearing, whether the panel listened equally to all sides during the hearing, and how well the tribunal had understood their case.

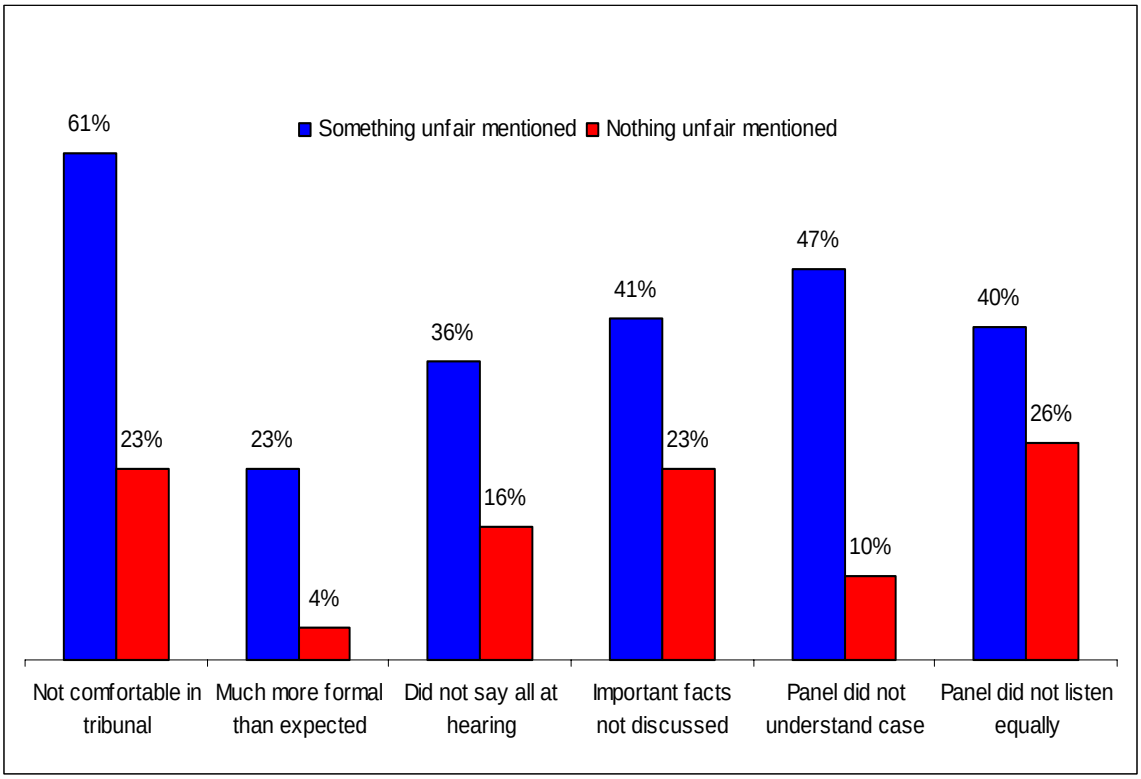
Those users who said that something unfair had occurred during the hearing were significantly more likely to have felt **uncomfortable** during the hearing (61% feeling uncomfortable compared with 23% of those who did not mention any unfairness), and to have felt that the hearing was a lot **more formal** than expected (23% as compared with only 4% of those who did not mention any unfairness) (see above Figure 6.5). This finding is interesting given that users were asked the question about formality *before* they were asked the question about whether anything had happened that had made them feel that they had been treated unfairly. It suggests that **where users are taken by surprise by the formality of the hearing and perhaps feel unprepared, this affects their perception of their ability to participate and, indeed, their perception of the fairness of the hearing in general.**

Figure 6.7 "Did anything happen at the hearing that made you feel that you had been treated in a way that was unfair etc.?" in relation to whether the hearing was more or less formal than expected (N=327)



Those users who mentioned some unfairness during the hearing were also significantly more likely to say that they had **not been given the chance to say all that they wanted to say** during the hearing (36% as compared with 16% of those who did not mention any unfairness) and significantly more likely to say that **important facts about their case had not been discussed** at the hearing (41% as compared with 23% of those who did not mention any unfairness). Finally, those users who said that something unfair had happened during the hearing were significantly more likely to feel that the **panel had been biased** (40% saying the panel had not listened equally to all parties in the hearing as compared with 26% of those who did not mention any unfairness) and significantly more likely to feel that the **panel had not understood** their case, with some 47% saying that the tribunal had not understood their case very well or at all, compared with 10% of those who did not mention any unfairness.

Figure 6.8 Summary of perception of some unfairness in relation to aspects of hearing (N=342)



These findings suggest several things. First that the various aspects of participation in hearings about which users were questioned clearly build towards overall perceptions of the fairness of hearings. Second that lack of prior information about what to expect at hearings may lead to users being uncomfortable in hearings and aggrieved about their lack of ability to prepare, thus leading to a feeling of unfairness about procedures. Finally, the relationship between the general fairness question and individual questions about degree of participation and voice, trust, and neutrality suggests that it is a useful summary question for gauging users' overall response to the fairness of hearings.

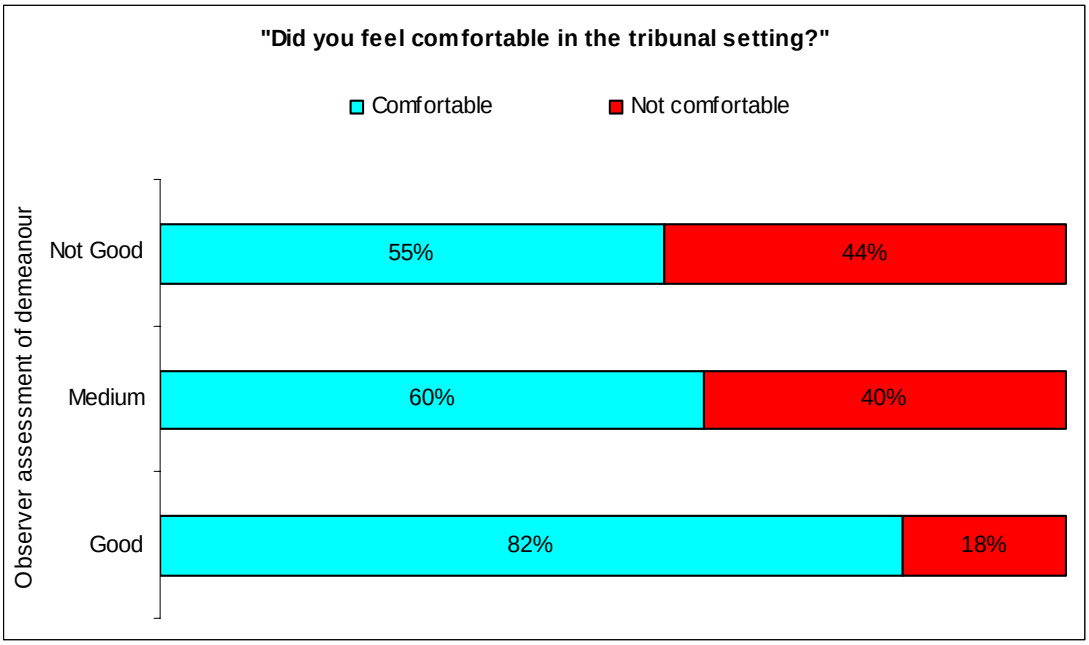
Comparison of users' experiences with research observations

Users' experience

Having observed tribunal users during their hearings (discussed in the previous chapter) and then asked users about their own experiences of the hearing, it is instructive to compare the assessments made by researchers of users' apparent levels of comfort and ability to participate with users' own perceptions.

During observations researchers assessed users' apparent level of comfort on a scale from 1 to 5 and these scores were then reduced to three categories of 'Good' (scores 4 or 5) 'Medium' (score 3) and 'Not Good' (scores 1 or 2). Comparing these assessments of users' apparent level of comfort in the tribunal hearing with their own assessments, it was found that the two variables were significantly associated, with a large measure of agreement, at least in relation to observer and user assessment of a high level of comfort. Where users were judged to be 'not comfortable' by observers, almost half of those users stated in interviews after the hearing that they had not felt comfortable in the tribunal setting. It is clear, however, that the fit between objective and subjective assessments was not perfect, with observers assuming a higher level of discomfort than that declared by users themselves.

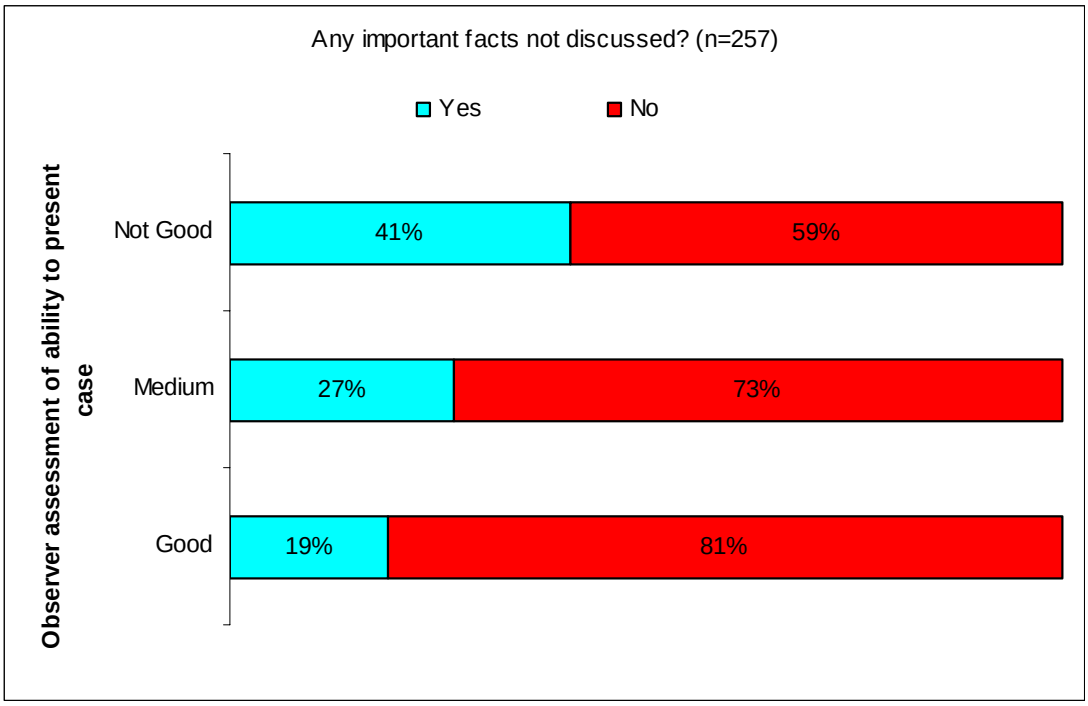
Figure 6.9 "Did you feel comfortable in the tribunal setting?" in relation to observer assessments of users' demeanour (N=280)



Similarly, comparing observers' assessments with users' assessments of their experience immediately after the hearing, it seems that assessments of how well users were able to present their case were consistent with some aspects of users' own assessments. On the questions framed "Did you have any difficulties understanding what was going on at the hearing, for example the tribunal procedures?"; "Why particular questions were being asked?"; "Who the various people at the hearing were?", the match between observer's assessments of users' comfort and ability to present case, and users' own answers to these questions, was

no better than chance. However, on the question of "Do you feel that you had an opportunity to say what you wanted to say at the hearing?" the fit was considerably better, and on the question "Were there any important facts about your case which you feel did not get discussed at the hearing?" the match with observer assessment of ability to present case was statistically significant. **This suggests that in assessing users' experiences of legal proceedings, questions framed in terms of users' comfort and understanding, which require the user to admit what might feel like a failing on their part, are less helpful than questions framed in more neutral terms where shortcoming are attributed to neither side or at least to the processes or the decision-maker rather than the user.**

Figure 6.10 Observer assessment of users' ability to present case in relation to users' perception of whether important facts were not discussed (N=257)



Tribunal behaviour

Comparisons were also made between observers' evaluations of tribunal behaviour and users' assessments of the tribunal's behaviour. Users had been asked how well they felt the tribunal had understood their case, and whether the tribunal had listened to everything that they had said. Responses to these questions were compared with observers' assessments of tribunal demeanour, the tribunal's understanding of the user's case, the use by the tribunal of legalistic language, the tribunal's courtesy towards the user, and the extent to which the panel had assisted the user to put their

case. The comparison indicated a significant consistency between user and observer perceptions of the tribunal's understanding of the case. There was also a significant association between observer assessments of the tribunal's courteousness toward users and users' perception of the understanding of the case.

Thus on the relatively rare occasions when the panel was seen to be less than courteous, users were more likely to say that the panel had not understood their case well or at all. Similarly, when the panel was judged to be less than courteous, users were more likely to say that the panel had not been listening to everything that they had said (39% of users said the panel had not been listening as compared with 9% of users in situations when the panel had been judged courteous). This tends to suggest both that observer and user assessments were fairly consistent and that the various aspects of process that have been argued to contribute to a perception of fairness may to some extent become interrelated. Thus being listened to during a judicial hearing is important in its own right, but that being treated without courtesy may itself lead to a sense or perception of not being listened to. Indeed, it seems as though observers' judgement about tribunal courtesy is significantly associated both with users' perception of whether the tribunal was listening to them and whether they understood their case. As was discussed earlier in the chapter, it is clear that users who felt they had not been understood and/or listened to were significantly more likely than other users to perceive some unfairness during the course of the tribunal hearing.

Tribunal composition

"There was only one person sitting…how can it be unanimous?" **[TAS user]**

In all CICAP and SENDIST hearings observed, the tribunals sat in panels of three. Among TAS hearings, however, about 18% were SSAT hearings where a tribunal chairman sat alone. As reported in the previous chapter, during observations the ethnicity and gender of tribunals was noted. There were significant differences between tribunals in the ethnic composition of tribunal panels. Two-thirds of TAS panels and 60% of CICAP panels were all White, while 90% of SENDIST panels were all White. As far as gender was concerned, a little over one-quarter of TAS hearings were dealt with by a single male or all male panel, as compared with 16% all male panels within CICAP and 4% all male panels in SENDIST. Of the three tribunals, CICAP was the most likely to provide mixed gender and mixed ethnicity panels.

Tribunal users were asked after their hearings whether they had been happy with the composition – the make up – of the panel that dealt with their case. Responses to this question were very positive, with 90% of users interviewed saying that they had been happy with the tribunal composition. Interestingly, there were no significant differences in satisfaction levels depending on the tribunal, the gender or ethnic composition of the tribunal, or the gender or ethnicity of the user in relation to that of the tribunal. Nor was there significant dissatisfaction expressed with single tribunal chairs in SSAT hearings.

Comparing user gender and ethnicity with that of panels we find that in around one-third of cases White users were dealt with by mixed ethnicity panels and in a similar proportion of cases users from ethnic minorities were dealt with by mixed ethnicity panels.

In the handful of cases where some concern was expressed about the panel, occasional complaints were made about lone decision-makers, the absence of a lay person on the panel, the absence of a woman on the panel, and the absence of a Minority Ethnic member. Examples of these concerns are presented in Table 6.7.

Table 6.7 Complaints about tribunal composition

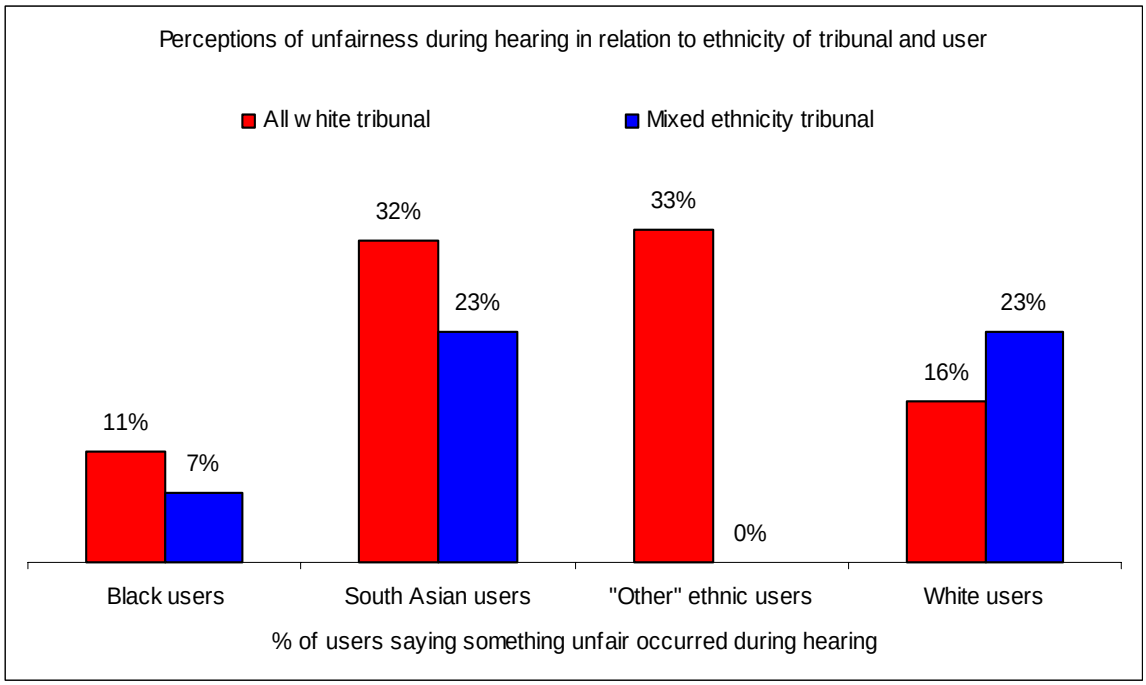
TAS	CICAP	SENDIST
"Should have a member of the public on the panel. Someone from outside the system." "There should be a lay person on the panel, someone who comes from the same ignorance." "Having a lay person in the panel may not make it any fairer, but it would give the applicant a perception of fairness." "The panel was not representative of society, there should be at least one lay person."	"The other two members never even spoke." "The chair did not like me. He was against me. He did not give me a chance to give my full story."	"It is not fair representation on the panel. I don't think they carefully understand the needs. If you have a White panel, you cannot challenge racism. Would a White panel understand what racism felt like? Where an Ethnic Minority applicant comes in they should automatically have an Ethnic Minority panel member. What they are doing at the moment for equal opportunity sake is having an Asian clerk. It gives the appearance of being non-racist, whereas the panel is an all White panel." [Indian]

TAS	CICAP	SENDIST
There should have been more than one person on the panel. That could have made it more fair." "It would have been better if there had been women on the panel – women are nicer, they understand." [Black African female user] "The Asian doctor…I would have preferred an all-White panel." [Comment made by Indian user] "There should be a psychologist on the panel, to assess if you are a liar or not." "They were conservative. The doctor was incredibly patronising." "The carer had a bad manner/attitude. They needed an independent note taker." "The Benefits Agency representative wasn't there. The panel could not understand from the forms only." "It would have been better if there were more people." "The gender of the GP is the determining factor of the panel's attitude." "There should be a social worker, GP, lay person, not strangers." "There could have been one more. A man who understood my line of work." "One man is not a tribunal." "It would be better if one person panel was a woman, especially a care advisor."		"Because they were all White I didn't feel comfortable. There is no hope now that my case will be successful… and this has added to my health problems." [Black user – case partially successful] "They did not tell us their qualifications." "Wanted to know more about their professional backgrounds."

Tribunal composition and perceptions of fairness

In order to ascertain whether the ethnic composition of tribunals was associated with perceptions of fairness among different Minority Ethnic groups, the general question about whether anything unfair had occurred during proceedings was analysed in relation to the ethnic group of the user and the ethnic composition of the tribunal. The numbers available for analysis were relatively small in some categories, and the results did not show a significant relationship between perceptions of fairness and ethnic composition of the tribunal, although there were some differences in response worth noting. Figure 6.11 shows that **both South Asian and "other" Minority Ethnic users overall were *less* likely to perceive some unfairness during their hearing when the tribunal itself was ethnically diverse.** While the ethnicity of the panel did not appear to make very much difference to the likelihood that some unfairness would be perceived on the part of Black African/Caribbean users, nonetheless the small difference in response is consistent with that of South Asian and other ethnic users. **These findings, although only indicative, suggest that increasing the ethnic diversity of tribunal panels might have a positive effect on perceptions of fairness among Minority Ethnic tribunal users.** Figure 6.11 also shows, however, that White users appeared to be slightly *more* likely overall to report that some unfairness had occurred at their hearing when the tribunal was ethnically mixed. This finding reinforces the importance of tribunal panels – whatever their ethnic composition – ensuring that hearings are conducted in such a way as to promote confidence and a sense of fairness among all users.

Figure 6.11 Perceptions of unfairness during hearing in relation to ethnicity of tribunal and user (N=206)



Representation

A full statistical analysis of representation rates within the three tribunals and their impact on outcome is discussed in the next chapter, based on a sample of around 3,500 cases drawn from tribunal databases. That analysis indicates that the overall rate of representation among the TAS sample was 49%, as compared with 64% in CICAP and 56% in SENDIST. Among users who were interviewed at TAS hearings, 45% were represented, while at CICAP hearings 63% of interviewees were represented. These figures are consistent with representation rates in general in those tribunals. At SENDIST hearings, however, 77% of users who were interviewed for the study were represented and this is a higher proportion than the general representation rate in that tribunal. The higher than average presence of representation among SENDIST interviewees reflects the difficulty of conducting fieldwork within SENDIST because of the high pre-hearing settlement rate, the length of hearings, and the fact that hearings were not public so that special arrangements had to be made to attend.

As the next chapter indicates, there were no significant differences between Minority Ethnic groups in relation to representation rates. Minority users were as likely as White users to attend their hearing with representation. Among users interviewed at hearings during the research, a substantial minority were accompanied by a Minority

Ethnic representative. Those most likely to have been represented by someone from an Ethnic Minority were South Asian users, with 45% of users in this minority group saying that their representative was from an Ethnic Minority, as compared with one-quarter of Black users and 15% of White users.

Users demonstrated very high levels of satisfaction with their representatives. When asked how happy they were with the way that their representative had handled their case, not a single user claimed to have been dissatisfied. Similarly, when asked whether the representative had said everything that could have been said in the user's favour, only eight users felt that more could have been said. The explanations in these cases tended to lay the blame for the problem less with the representative than with the tribunal members, who were thought to have rushed proceedings or cut off the representative.

Unrepresented users

Those users who came to their hearing without representation were asked after their hearing whether, on reflection, they wished that they had been represented at the hearing and some two-thirds of unrepresented users answered positively to the question. There was little difference between users in the three tribunals in the response to this question, although users in TAS and CICAP hearings were more likely to say that they would have preferred to have been represented than the very small number of unrepresented parties in SENDIST.

Ethnicity

There was, however, a significant difference in response to this question associated with ethnic background. **While users from Minority Ethnic backgrounds were as likely to be represented as White users, unrepresented Black and Minority Ethnic users were significantly *more* likely to say after the hearing that they wished they had been represented.** While 30% of unrepresented White users said that they wished they had been represented, 33% of Black users, 49% of South Asian users, and 53% of other Minority Ethnic users said that they wished they had been represented at the hearing.

Among those who felt that they would have preferred to have had a representative with them to put their case at the hearing, a number of assumed advantages were mentioned. These were broadly that the user would have had more confidence; that

a representative would have been better able to explain the case and the user's situation; that a representative would have known the law/rules and procedure, could have explained procedures, and that a representative would have known how to answer the questions asked by the tribunal. Some of the responses are presented below in Table 6.8.

Table 6.8 "What aspects of the hearing would have been better if you had been represented?"

Ability to advocate:
"Advice on how to answer questions and approach questions." "Better explanation of events, symptoms." "Better way to give the required information and present case better." "Communicate points better, know the process better." "Done more talking, I was too nervous." "Explain better, read documents, present the case." "Explain the case better and explain the procedures to me." "Fully explain what was needing explanation." "Get points across better and increased confidence." "Help with questions and bring up relevant points." "Made a better case. I hadn't read the bundle properly." "Picked up points and got witnesses." "Presented better in English." "Put case more clearly without emotions involved." "Raise more points and questions." "Rep would have presented case more confidently." "Speak about mental/physical condition." "Speak better, brought evidence, advised before." "Speak in concise professional manner." "Things you forget, difficult questions."
Knowledge of law or procedure:
"Certain points of law could have been explained by a representative." "Know procedure and law, can explain missed points." "Know the rules, argue better." "Knowledge of procedure and presenting information." "More familiar with tribunal procedures, legal rights." "Solicitor understands procedures better." "To explain legal requirements. I didn't know chair was legally qualified." "Understanding legal jargon." "Understand case better. Present it how the panel understands."
More authority/command more respect:
"I would have been given more respect, listened to, more accessible." "They might have listened better." "Independence and objectivity. A third party carries weight."

The concerns expressed by users between the hearing and receiving their decision about their ability to advocate their case echoes, to some extent, the findings of other research on the perceived value of representation for parties in legal hearings. In a study of the impact of representation in four tribunals Genn and Genn concluded that:

> *"The experience of unrepresented users 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."*[67]

More recently, in a study of unrepresented parties in court litigation, Moorhead and Sefton[68] conclude that unrepresented parties have difficulties in translating disputes into a legal form and struggle to identify which legally relevant issues are in dispute. On the other hand, the analysis in the present study offers some counter information. For example, although two-thirds of those who appeared unrepresented at tribunal hearings stated that they would have preferred to have been represented, the presence or absence of a representative was **not** related to whether or not users perceived that there had been any unfairness at the hearing and this was true for both White and Minority Ethnic users. Moreover, as is discussed later in the chapter, representation also had only a modest impact on perceptions of the fairness of the decision.

Thus it seems that although users in TAS, CICAP and SENDIST may have *felt* that they would have fared better with a representative, and in TAS, at least, the evidence suggests that having a representative did increase the chances of succeeding at a hearing, representation may be less important to a sense of fairness in proceedings than the behaviour of the tribunal judiciary in terms of their courtesy, their neutrality, and their communication of attention to the user's case. The issue of the value of representation in tribunal hearings to users' perceptions of fairness is worthy of further investigation. An analysis of the impact of representation on outcome is discussed at length in the next chapter.

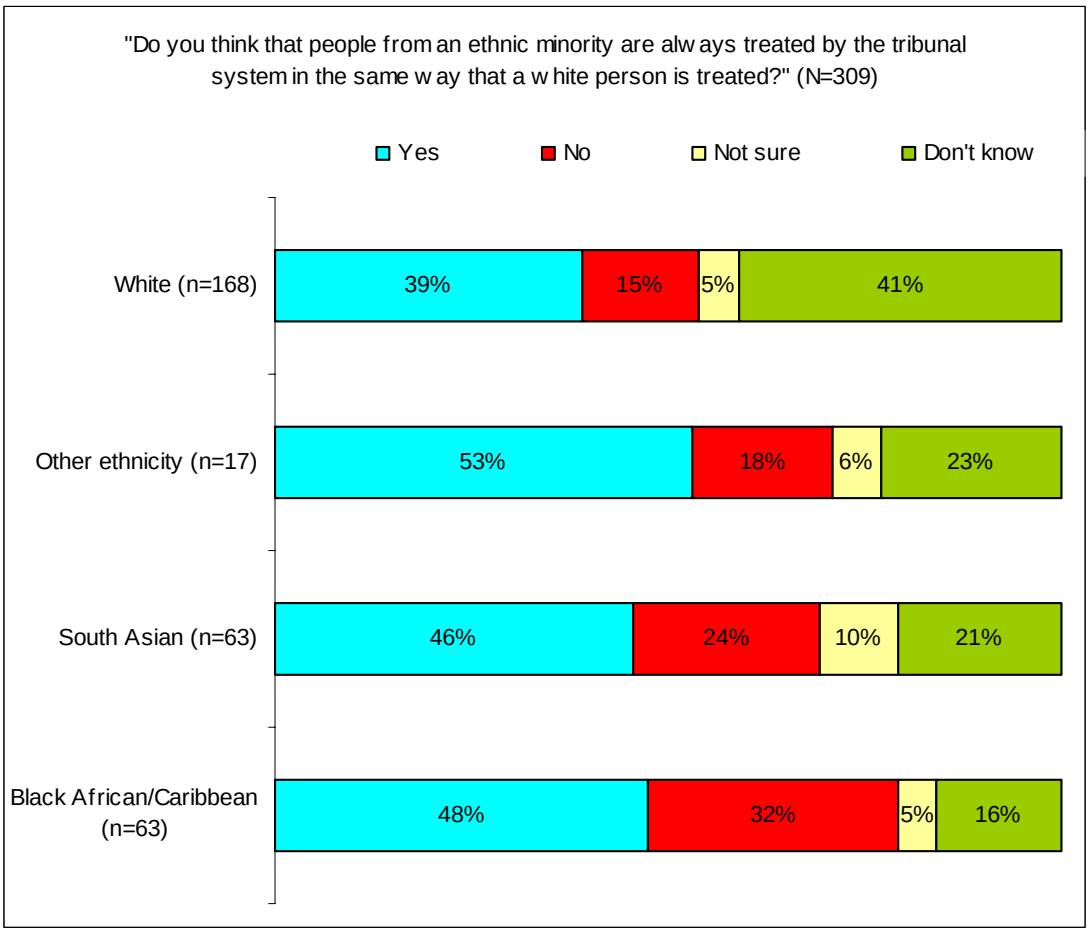
[67] 1989, op cit, p 241.
[68] 2005, op cit.

Equal treatment?

In an attempt to tap general feelings of confidence about tribunals and the legal system and any possible anxiety about disadvantage based on ethnicity, all users were asked whether they thought that *"people from an Ethnic Minority are always treated by the tribunal system in the same way that a White person is treated?"*. Those who said "no" or who said that they were "not sure" were asked whether their view was based on personal treatment, hearsay from other people or "common knowledge". There were interesting and statistically significant responses between groups from different backgrounds. While a majority of users in all Minority Ethnic groups were prepared to answer either "yes" or "no" to the question, White users were much more likely to say that they "didn't know". Figure 6.12 shows that fewer than half of Black and South Asian users answered "yes" to the question. Although over half of the users from 'other' ethnic groups answered "yes" to the question, the number in this category was quite small. White users were much less likely to offer a view, with almost half saying that they did not know or were not sure whether minorities were always treated the same, and only a little over one-third saying "yes". Those users most likely to say that minorities were not always treated the same as a White person, were Black African/ Caribbean users with almost one-third saying "no" as compared with 24% of South Asian users and 15% of White users.

Disaggregating the broad ethnic groupings used in the main analyses again reveals some notable and statistically significant differences between ethnic groups. Although the numbers in the disaggregated ethnic groups are rather small, African Caribbean users were the **most** likely of all ethnic groups to answer that they did not think that minority users were treated the same as White users (58% as compared with 17% of Black African users, 33% of Indian users and 19% of Pakistani users).

Figure 6.12 Views on different treatment for Minority Ethnic and White users (N=309)



When asked their reason for saying that they did not think or were not sure that all Minority Ethnic groups were treated the same as White users, the most common reason given was that it was “common knowledge” with 83% of users saying this was their reason, although two-thirds of users said that their perception was based on personal treatment. Black African and Caribbean users were more likely to say that their perception was based on common knowledge than other groups, while South Asian users were more likely than other groups to say that their perception was based on personal experience. White users who answered negatively to the question were also likely to say that their view was a reflection of “common knowledge”. However, among White users some indicated that their belief was that the tribunal system embodied an *advantage* for minorities rather than any possible disadvantage, and this reflects some of the findings from the qualitative research discussed in chapter three.

Table 6.9 Examples of reasons given for thinking that Ethnic Minorities are not always treated by the tribunal system in the same way as a White person

WHITE USERS

"My kids are mixed race. My partner has had bad experiences."
"My son is mixed race. He is unfairly treated at school."
"My son is (mixed race). He has been stopped and searched six times."
"The fact that everything is in English. The forms contain important information that should be in other languages. A Bengali elder won't know what to do with a copy of the bundle…they should find out the preferred language and send correspondence in that language. People should be allowed to submit evidence in their own language to avoid confusion or have it translated as well."
"I have a friend who has been treated differently by the police."
"I have not witnessed it, but it still happens."
"I am from an Irish background. I have dealt with racist remarks."
"If I was treated so poorly, I can imagine what others go through."
"Social services give more help to asylum seekers."
"There is positive discrimination in favour of ethnic minorities."
"I think a person from an Ethnic Minority would be given representation."
"Minorities possibly get treated better because there is always doubt that they are perhaps being racist…so they take to the other extreme."

BLACK USERS

"White people never end up at this tribunal because they always get what they want straight away; it is only Blacks and other groups coming to appeals all the time."
"I know of a White person who is not in as bad a condition as I am, but they are still receiving the allowance; and they can still work."
"I've worked for the NHS for 21 years…what I see tells me what is going on. If there are two people, a Black and a White, with the same condition, the Black will suffer unnecessarily and the White will get treatment. This is my experience with the public sector for 21 years."
"They were more willing to listen to the police than me."
"It is common knowledge that Black people are always treated badly at things like this."
"I felt they made me out to be a liar."
"Procedures in the Code of Practice were breached and questions were never asked why. I feel, to a certain degree, that it may have to do with the fact that I am Black. Muhammed is a name that is an irritant on people's minds, and people have pre-conceived ideas. We are treated as irritants by the school."
"A lot of stereotyping is done. It has been a fight and the LEA tried to strike the case out. I've heard this happens to ethnic minorities and not Whites. Where that happens some people may not pursue it. We have been called vexatious and frivolous, that we don't want the best interests of our child. Accused of abusing our child in the middle of a meeting; that's where the institutional racism comes from."
"Because I am West Indian they think my intelligence is low."

SOUTH ASIAN USERS

"They put someone from an Ethnic Minority in charge of my tribunal for the obvious reason that I would have complained if a White man hadn't supported my appeal."
"On the face they are happy to show 'equality' but internally they are not like that. It shows by the way they ask questions, they only like the other side."
"Look at how I was treated. I don't think she liked my colour…she did not want to believe what I said but only wanted me to listen to her."
"The way she spoke to me…and the way she was telling me that I was lying and she was the one telling the truth."
"People from minorities do get treated differently…it's common knowledge."
"I was intimidated by the chair – he is a Gujarati, he was not independent."
"I didn't believe racism existed until this hearing."

Treatment by other personnel

Where a presenting officer appeared at the hearing on behalf of a Department or authority, users were asked whether they had felt that there had been anything unfair or disrespectful about the way that they had been questioned by the presenting officer during the hearing. Of the 130 cases in which users were questioned about the behaviour of presenting officers, users at SENDIST hearings were the most likely to make some complaint about the questioning by the LEA's presenting officer. Almost one in three SENDIST users made this complaint (29%) as compared with 11% of CICAP users and 7% of TAS users. Although there were too few cases involving Minority Ethnic users to undertake any reliable analysis on this question, it is nonetheless notable that 23% of minority users made a complaint about presenting officers as compared with 13% of White users.

Generally high levels of satisfaction were expressed in relation to the behaviour of tribunal staff, including receptionists and clerks, with about 98% of users overall saying that they were satisfied or very satisfied with the behaviour of the tribunal staff with whom they had had contact. There was no difference between tribunals in the response to this question and no notable differences in perception associated with the ethnic origin of users.

Post-decision assessments

"Legally it's fair, but from no other point of view is it fair." **[TAS user]**

"Justice has been done…Even if the decision was against me, as long as it was done fairly and squarely, justice has been done." **[TAS user]**

In addition to interviewing users before and after their tribunal hearings, interviews were also conducted, where possible, with users after they had received their decision. Post-decision interviews were only possible with TAS and CICAP users because SENDIST decisions were never delivered to users on the day of the hearing, but sent by post some time later. It was not always possible to conduct a post-decision interview since some cases were adjourned (33% of cases where no post-decision interview conducted) or because the decision was to be sent by post (22% of cases where no post-decision interview conducted). Occasionally users hurried away, or were too upset to want to give an interview. In the event, 264 post-decision interviews were conducted with users, 177 of these with TAS users and 87

with CICAP users. Among those users interviewed 28% had been unsuccessful at their hearing, about 10% had succeeded in part, and about 58% had been completely successful, the remainder having been adjourned at the hearing. For the purposes of analysis, partly successful cases were combined with fully successful cases to produce a binary outcome variable of successful/unsuccessful. A full analysis of outcome in relation to a wide range of predictor variables is discussed in the next chapter.

Perceptions of fairness of the decision

Understanding reasons for decision

Users were asked first whether they had understood the reasons given for their decision. The vast majority of users said that they had understood the reason for the decision (83%), although there was some difference in response depending on whether or not the user had been successful at the hearing. Where the appeal was unsuccessful, a larger proportion of users said that they had *not* understood the decision (26% of unsuccessful users saying they did not understand the reasons compared with 14% of successful or part-successful users saying they did not understand the reasons for the decision).

When asked why they had not understood the reasons for the decision, the most common response given by users was that they had not been given a reason or an explanation for the decision by the tribunal. During observations of hearings, observers noted whether or not explanations for decisions were given. This showed that in general tribunals did give users an explanation of their decision. However, a comparison of observers' assessments with users' accounts of whether an explanation had been given by the tribunal shows virtually complete consistency between observer and user accounts. In 16% of TAS cases where observers were present for the decision it was recorded that no explanation was given. The comparable figure in CICAP hearings was 6%.

Understanding and ethnicity

Where an explanation for the decision had been given by the tribunal, there were differences between White users and Minority Ethnic users in the extent to which they felt they had understood the reasons for the tribunal's decision. White users were more likely than Minority Ethnic users to say that they had understood the reason for their decision. **Only 12% of White users said that they had not understood the reason for the decision, as compared with one in five Black**

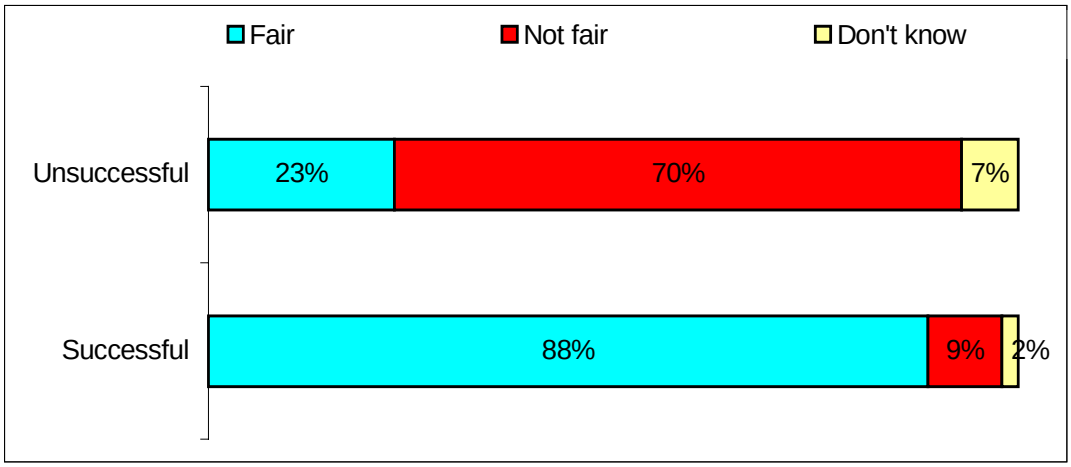
users, one in four South Asian users, and one in three users from 'other' ethnic groups.

Although the number of unsuccessful Minority Ethnic users for which this information is available is rather small, the difference in comprehension in relation to ethnicity appears to hold irrespective of outcome. **Thus unsuccessful White users were significantly more likely to say that they understood the reason for their decision than unsuccessful Black or Minority Ethnic users.** Whether the responses to this question reflect genuine lack of understanding or whether they tend more to represent an expression of disappointment, the difference between ethnic groups is notable. Given the theoretical significance of "justification" to users' perceptions of fairness, this finding may have implications for future confidence in systems of redress among Minority Ethnic tribunal users.

Was the decision fair?

All users interviewed after their decision were asked whether *"In the circumstances do you think that the decision was fair?"*. Although the majority of users gave a positive answer to the question, perceptions of the fairness of decisions was clearly and significantly related to outcome (Figure 6.13). Thus, among those users whose appeals were completely or partially successful, 88% said that the decision was fair. Among those who were unsuccessful only 23% were prepared to say that the decision was fair, although it is notable that almost one in four unsuccessful users were prepared to accept that the decision was fair.

Figure 6.13 "In the circumstances do you think the decision was fair?" (N=248)



When asked what was unfair about the decision, users' answers generally fell into several broad categories. The most common reasons given for unfairness were that the tribunal had not understood the user's situation, that the tribunal had not listened to what the user had been saying, that they had not believed the user, that they had not considered the evidence properly, and that the tribunal had already made up its mind.

There were 16 users who had been unsuccessful at their hearing, but who said that they felt the decision was fair. All but four were users in TAS, mainly White and split fairly evenly between male and female. All but two were unrepresented at the hearing.

> *"Although it is an unfair decision, I understand the reasons for the decision, and that it was not an attack on the credibility of my case or my suffering."* [CICAP user]
>
> *"The unfairness I feel is not the tribunal, they were very fair."* [CICAP user]

Among the small group of successful users who said that they felt the decision had been unfair, all but one said that the sense of unfairness was caused by the fact that although they had been successful, they had received less than they had been hoping for.

Fairness of decision in relation to perception of hearing

Despite the clear relationship between outcome and perceptions of fairness of the decision, an analysis was conducted to explore the relationship between preparedness for hearings, ability to participate, and perceptions of the fairness of hearings with assessments of the fairness of decisions among losing users.

There was no significant association between unsuccessful users' expectations of the likely formality of hearings and their perception of the fairness of the decision.

Those who said that they did not feel comfortable in the hearing were more likely than those who had felt comfortable to say that the decision was unfair when they lost. About 60% of losers who had felt comfortable in the tribunal setting said that the decision was unfair as compared with 80% of losers who had not felt comfortable.

Those losing users who had perceived that something unfair had occurred during their hearing were somewhat more likely than those who had not mentioned any procedural unfairness to say that the decision was unfair, although the difference was not statistically significant.

Among successful parties, only a small minority had felt that the tribunal decision had been unfair. **Successful users were more likely to say that the decision was unfair if they had felt uncomfortable during the hearing and if they had felt that they had not had the opportunity to say all that they had wanted to say during the hearing.** This suggests that a perception of discomfort and impaired opportunities for participation may make it more difficult for successful parties to accept the decision where they have not achieved all they had hoped for at the hearing.

Ethnic bias?

All users from a Minority Ethnic background were asked whether they thought that their ethnicity had affected the tribunal's decision in any way. About 16% of users said "yes" and a further 8% said that they "didn't know". Most of these potentially negative or uncertain responses were made by users who had been unsuccessful at their hearing. **Indeed, among unsuccessful users from Minority Ethnic backgrounds one-third said that they thought the tribunal's decision had been influenced by ethnicity.** Although the numbers are too small for reliable inferences to be drawn (101 Minority Ethnic users responding to this question, 34 of whom had been unsuccessful) this is a potentially disquieting finding and poses a challenge for tribunals in reassuring parties that decisions are not the result of conscious or unconscious bias. Examples of some of the comments made in relation to this question are as follows:

> *"They questioned why a 15 year old would stay with me, but it is an accepted cultural practice in the West Indian community…it would have been nice if there had been a Black person on the panel."* [TAS user]
>
> *"Some foreigners come over and take the piss, and therefore genuine foreigners are disadvantaged."* [TAS user]
>
> *"The lady was rude, her tone was very harsh, they made me feel nervous…except the doctor who was nice. They were biased. They did not like me. The lady was biased. She hates Asians and Blacks."* [TAS user]

Predicting perceptions of unfairness of decisions

In order to explore in more detail factors related to perceptions of the unfairness of decisions, as opposed to any procedural unfairness, a regression analysis was conducted examining the likelihood of users perceiving their decisions as unfair in relation to four predictor variables: ethnicity, whether an interpreter was used, case outcome and whether or not users were represented at the hearing. Of 255 valid cases, 183 users felt the decision was fair (72%) and 72 felt the decision was unfair (28%). The result of the analysis[69] of the combined sample of TAS and CICAP users demonstrated that **outcome was the only influential predictor of fairness**, although **representation, use of an interpreter and ethnicity had some influence on perceptions of the fairness of tribunal decisions**. Where the outcome was unsuccessful users were far more likely to feel that the decision was unfair. Where the outcome was unsuccessful around 25% of users felt that the decision was fair. Where the outcome was successful over 90% of users felt that the decision was fair.

Representation made a small impact on users' perceptions of fairness of decisions, with those who were represented being somewhat more likely to feel that the decision was *unfair* (this suggests that expectations might have been raised by representatives). Those users who used an interpreter were marginally more likely to feel that the decision was unfair.

There were, however, some differences in the results of the analysis within TAS and CICAP. Within TAS, while outcome was the only influential predictor of perception of fairness of the decision, represented users were somewhat more likely to feel that the decision was unfair, although this difference did not reach statistical significance. Those using an interpreter in TAS hearings were also more likely to perceive the decision as unfair, and Black and Minority Ethnic users were marginally more likely to feel that decisions were unfair (around 27% of minority users compared with 16% of White users). When users were successful around 94% of users perceived the decision as fair. Among unsuccessful users around 30% felt the decision was fair.

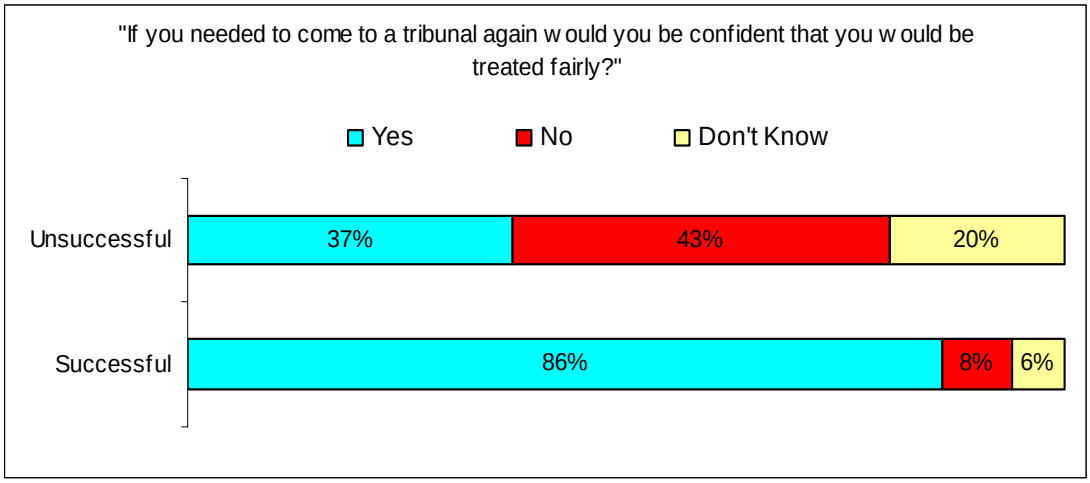
In CICAP, on the other hand, neither representation nor ethnicity had any impact on whether users felt their case outcome was fair or not. Outcome was by far the most influential and only significant predictor of users' perception of fairness of CICAP appeal decisions.

[69] See Appendix A for full results of binary logistic regression model.

Future confidence

All users interviewed after their decision were asked whether they would be confident of being treated fairly if they were to come to a tribunal again. About three-quarters of users said that they were confident that they would be treated fairly in the future, which represents a solid base of confidence in the tribunals. About 16% said that they were not confident that they would be treated fairly in the future and a further 9% said that they didn't know whether they would be treated fairly or not. There was, however, a significant difference in response to this question depending on whether or not users had been successful at their hearing. Among those users who had been successful at the hearing, overall almost nine out of ten said that they would be confident and only 8% said that they would not be confident of being treated fairly in the future. Among those who had been unsuccessful, a little over one-third were confident that they would be treated fairly on a future occasion and 43% said they were not confident. About one in five said that they did not know whether or not they would be treated fairly (Figure 6.14).

Figure 6.14 Confidence in being treated fairly by a tribunal on a future occasion (N=295)



Those who said that they were not confident or were not sure whether they would be treated fairly in the future were asked what their reservations were. On the whole the answers related to a sense that the decision had been unfair or that the user had been treated unfairly during the hearing. Otherwise, responses tended to amount to general expressions of unhappiness with the experience, as illustrated in Table 6.10.

Table 6.10 "Why do you feel you would not be treated fairly in the future?"
TAS
"The decision was unfair. The panel was disrespectful." "Because of this decision being unfair." "They did not treat me fairly." "I've been caught up in this since February. I am disillusioned." "After today...it will be the same." "I won't come back again." "Disabled are treated poorly. It depends on panel composition." "It was an unfriendly experience. They don't care and hear what they want." "I would bring a solicitor next time." "Because I am not happy with today." "I will never trust them again." "I have answered all their questions." "If it is unfair once, it will happen again." "They wouldn't listen. I've been three times already." "They are biased against my illness." "I'm not coming back."
CICAP
"I felt they had made their decision before we arrived." "They don't want to hear my evidence because it is verbal." "It was a waste of time." "Not after this experience." "Just look at how I was treated today." "After today, there is no justice." "Taking the police word as the law is not fair." "The panel was not representative." "There was no flexibility." "The system makes you feel you've been given justice, but you haven't."

Increasing confidence in tribunals

Finally, all users were asked whether there was anything that could be done to increase their confidence in the tribunal system. Just under one-third (31%) said that there was, a little over half (56%) thought that there was nothing that could be done to increase confidence, and 13% could not say whether or not anything could be done to increase confidence. **Interestingly, the responses to this question were completely unrelated to the outcome of the tribunal hearing so that almost identical proportions of successful and unsuccessful users felt that there were or were not things that could be done to improve confidence**. Similarly there was no difference between tribunals in the extent to which users felt that there were things that could be done to improve confidence.

However, there was a barely significant difference between broad ethnic groups in the response to this question, with White users being more likely to say that nothing could be done to improve confidence while Minority Ethnic users were more likely

than Whites to say that they did not know if anything could be done to improve their confidence in the tribunal system.

Among those who felt that there were things that could be done to improve confidence, the most common measures mentioned were **better access to advice and representation**, better **information about the tribunal** and what to expect at the hearing, **improvement in panel composition** or **panel behaviour**, and improvement in tribunal procedure. A handful of users mentioned improvements to tribunal facilities. Examples of suggested improvements are listed in Table 6.11.

Table 6.11 Ways in which confidence in the tribunal system could be increased

Advice and Representation
"Access to representation."
"Assisted funding for legal representative."
"Automatic representation."
"Having a representative. Knowing panel backgrounds."
"If I could get the right advice - better advice."
"If a representative could have spoken on my behalf and I had had more information upfront."
"If representation had been offered earlier, it would have boosted my confidence."
"A lawyer would give confidence and would know what the panel was talking about."
"Legal Aid. Employ professional help. Penalise LEA failures."
"It took too long to arrange. I had no idea how to get advice or representation."
"I needed more information and understanding. I wish I had been told I could have a representative."
"There should be a person giving advice at the tribunal and to explain the outcome."
"They should provide help for legal advice because it is costly."
"They should provide representation more easily."
"Representation is necessary for best results."
"Representative should be given the opportunity to speak on my behalf."
"You should be told how to win the appeal beforehand to allow preparation."
Better information about tribunal and what to expect
"It is fear of the unknown. They should provide videos to set expectations."
"Need a good explanation of scheme."
"Having someone to talk to before you go in (like the research interviewer)."
"It is hard to find and access."
"Need information given prior to the hearing. There should be a clear procedures leaflet."
"They need to inform people more."
"Need more explanation of what to expect."
"More information about how to get advice, fill in forms, present evidence."
"More information about the panel (e.g. that they are not a court, that they are independent)."
"People need more information before the hearing."
"The procedures need to be explained before you arrive."

Improvement in panel composition or behaviour
"They should appoint better chairs, not this idiot." "Clear, comprehensive decision. They should be more representative." "The medical member should be more specialist." "They should have a mixed ethnic panel and listen to human rights." "More care needed to avoid misunderstanding between applicant and the court." "There should be a lay person on the panel, to 'appear' fair." "There should be more lay people on the panel." "There should have been more time by the panel explaining our case." "There should be a panel member from a minority group. They should represent all walks of life." "The panel should be more understanding to people's needs/situation." "They should put more fair people on the panel." "The panel should be taught how to deal with people. Not to look down on people."
Improvement in tribunal procedure
"There should be adequate investigations of facts." "It was adversarial, courtroom style. They should come to the house if disabled." "All documents should be produced." "They should deal with all appeals at once." "There should be more training for the Department and linkages between departments." "The Doctor's assessment was sent direct to AS automatically." "Don't interview the police with users in the same room." "The GP should also attend the hearing." "They should listen more to people and their needs." "They should listen to personal GP rather than just another practitioner." "They should listen to victims and make consistent decisions." "They should make sure the panel liaises with the representative, especially when there is a hearing impaired user." "Make sure we can finish the case in one day." "More detailed look at the case would be more fair." "A new issue was raised two weeks ago and again today. That's not right." "It would be better if it was more casual." "Should have all medical reports before asking questions." "Should be able to add accumulation of evidence." "Speedier process, shorter timeline." "System that is flexible."
Improvement in physical surroundings
"Coffee machine." "Travel distance hard with condition." "Waiting room intimidating. Fear of coming into 'court'."

Summary

Most users interviewed after the end of their hearing and before receiving their decision claimed to have felt comfortable during tribunal hearings, although there was some evidence of a slightly lower level of comfort expressed by South Asian users consistent with the findings of the previous chapter. On the whole users did not report many difficulties in understanding procedures or questions, although again South Asian and 'other' non-European Minority Ethnic users expressed greater levels

of difficulty than Black or White users. The overwhelming majority of users felt that they had had a good opportunity to speak during the hearing, but on the other hand more than one in four users interviewed said that important facts about their case had not been discussed. South Asian and 'other' Minority Ethnic users were more likely to feel this than either Black or White users.

The vast majority of users demonstrated high levels of trust in the tribunal with almost 90% feeling that the tribunal had listened to everything that they had said and a similar proportion feeling that the case had been understood well or very well by the tribunal. Where dissatisfaction was expressed it tended to focus on a belief that the tribunal was not listening or had already made up its mind and this tended to be based on the body language of the tribunal. This reinforces the need for tribunal judiciary to convey to users that they are being listened to and heard and that their cases are being taken seriously. South Asian and 'other' Minority Ethnic users were the least likely to feel that the tribunal had understood their case.

Users were frequently surprised either by the formality or lack of formality of the hearing suggesting a challenge for the new Tribunal Service in helping to frame the expectations of prospective users since those who had found the hearing more formal than expected were significantly less likely to feel comfortable in the hearing than those whose expectations were met or who found the hearing less formal than expected.

About one in five users at the end of the hearing and before their decision mentioned concerns about some unfairness or lack of respect shown during the hearing and, again, South Asian and 'other' Minority Ethnic users were the most likely to perceive some unfairness. Complaints tended to relate to the tribunal failing to listen, asking questions that were interpreted as hostile, or appearing to have made up their mind before the hearing. Users from Minority Ethnic backgrounds were asked whether they attributed such unfairness to their ethnicity and about one in three answered positively. However, when asked to explain further, no specific examples were given of potentially discriminatory comments or behaviour by the tribunal. Rather tribunal behaviour experienced as negative or hostile was being read as motivated by race prejudice. This is a manifestation of the extent to which Minority Ethnic users may carry with them an apprehension of unfair treatment based on memories of previous prejudicial treatment in other areas of their life and underlines the need for tribunal

judiciary to appreciate the existence of such apprehensions and to take care not to reinforce such fears.

Importantly, there was some evidence that South Asian and 'other' Minority Ethnic users were less likely to perceive some unfairness during their hearing when the tribunal itself was ethnically diverse, suggesting that increasing the ethnic diversity of tribunal panels might have a positive effect on perceptions of fairness among minorities.

Black and Minority Ethnic users were as likely to be represented at hearings as White users, but when unrepresented were significantly more likely than White users to say after the hearing that they would have preferred to have been represented. They argued that they would have had more confidence, and that a representative would have been better able to explain their case.

Views were divided on whether minority users would always be treated the same as White users in tribunals. Fewer than half of Black and South Asian respondents answered positively, indicating considerable apprehension or at least unwillingness to be optimistic. This negativity was based on "common knowledge" and general life experience.

Post-decision interviews indicated that about one-quarter of those users who were unsuccessful at their hearings had not understood the reason for the decision and Minority Ethnic users were more likely than White users to say that they had not understood the reason for the decision. This presents a significant challenge to tribunals. Since the acceptability of losing and users' perceptions of fairness are influenced by understanding of the justification for the decision, it is arguable that satisfaction with proceedings could be improved by tribunals taking greater care to communicate the reasons for their decision.

Perceptions of the fairness of decisions were significantly associated with winning and losing. Those users who succeeded wholly or partly at the hearing were likely to say the decision was fair while those who were unsuccessful were very likely to say that the decision was unfair. Interestingly, however, almost one in four unsuccessful users in TAS was prepared to say that the decision was fair. Those users who had felt uncomfortable in the hearing room were more likely to feel that the decision was unfair when they lost.

Another important challenge for tribunals arises from the fact that among unsuccessful Minority Ethnic users about one-third said that they thought the tribunal's decision had been influenced by their ethnicity.

A regression analysis designed to identify factors associated with perceptions of fairness of outcome indicated that outcome was the only significant factor predicting perceptions of fairness. However, represented parties were slightly more likely to feel that the decision was unfair and users who had been helped by an interpreter were also marginally more likely to feel that the decision was unfair. Outcome was also associated with future confidence about being treated fairly in the future with those who succeeded at their hearing being significantly more likely to say that they would expect to be treated fairly in the future and there was no difference here between Minority Ethnic groups.

Users felt that confidence in tribunals could be increased in the future by better access to advice and representation, better information about the tribunal and procedures, and improvements in panel composition.

Chapter 7. The outcome of tribunal hearings

The user survey reported in chapters four and six has provided important evidence about users' expectations and preparedness for hearings, their own perceptions of their performance during hearings, their treatment by tribunals, and their perceptions of the fairness of procedures and substantive outcome. This evidence has been supported by observational work, reported in chapter five, which provided evaluations of the way in which hearings were conducted by tribunals and assessments of users' ability to participate in proceedings. In these respects the study has revealed some differences in experience and perceptions between different minority groups, but no evidence of behaviour on the part of tribunal judiciary that would raise a suspicion of direct discrimination against Minority Ethnic users. In a handful of cases Minority Ethnic users expressed concerns that the tribunal might have been prejudiced against them, but these feelings tended to be based on apprehensions that tribunal questioning or other aspects of demeanour might have been motivated by prejudice, rather than specific examples of prejudicial behaviour. Indeed, observers saw few examples of insensitivity or lack of courtesy and no overt examples of Minority Ethnic users being treated less favourably or with less consideration than White users. Overall, among the sample of over three hundred users interviewed at hearings, complaints about the behaviour of tribunals during hearings were relatively rare, despite considerable unhappiness when appeals failed.

However, a fundamental objective of the research was to assess not only users' reported experiences of tribunal hearings and observers' assessments of the treatment of Minority Ethnic users during hearings, but equally importantly to compare the **outcomes** of hearings involving users from different ethnic backgrounds and to identify the extent to which ethnic background and other relevant factors might be associated with particular outcomes. The purpose here was to complement **users' perceptions of procedural fairness** with an exploration of the extent to which Minority Ethnic users might be subject to any **substantive disadvantage** in tribunal proceedings. This chapter therefore presents the findings of a statistical analysis of a sample of 3,058 decisions in the three tribunals included in the research.

In light of previous research concerning the outcome of tribunal hearings, it was hypothesised that the type of tribunal, the type of case, pre-hearing advice, and representation at the hearing might be variously associated with the likelihood of succeeding at a tribunal hearing[70]. Additionally, in the context of this study, use of interpreters was also thought to be a factor that might influence users' chances of succeeding at hearings. Finally, since the study concerned sensitive issues and since many hearings were watched by the research team, the presence of an observer at the hearing was also included in the model as a factor that might have influenced the outcome of hearings.

The result of the outcome analysis in relation to these key variables has been divided into two parts. First, the overall outcomes in the three tribunals are described in relation to case type, ethnicity, whether pre-hearing advice was received, presence and type of representation, and use of interpreters in hearings. Second, in the final section of the chapter, the results of a statistical modelling exercise are presented indicating which of these key variables predict the likelihood of success and failure at hearings in the three tribunals.

The analysis of substantive outcomes was constrained by the need to have sufficient data on each of the key variables to produce robust results. For this reason, the bulk of the information used in the analysis of outcomes was that collected on ethnic monitoring forms completed by tribunal users attending hearings in the three tribunals during the research period or from information collected by the three tribunals and recorded on their own databases. Although information was collected during interviews on a wide range of factors that might contribute to outcome (such as judgements about ability to participate) it was not generally possible to include these variables in the outcome analysis because the number of cases for which they were available (around 350 interviews) was rather small by comparison with the total number of cases for which outcomes were known (around 3,500).

[70] Genn and Genn 1989, op cit. The value of advice and representation has been discussed by J Baldwin et al, *Judging Social Security*, Clarendon, 1992; L Dickens, *Dismissed,* Oxford 1985; J Gregory, *Trial by Ordeal*, Stationery Office, 1989; R Sainsbury, *Medical Appeal Tribunals*, DSS, 1992; R Young, 'Child Support Appeal Tribunals: The Appellant's Perspective' in M Harris and M Partington (eds) *Administrative Justice in the 21st Century*, Hart Publishing, 1999; R Berthoud and A Bryson, 'Social Security Appeals: what do claimants want*?', Journal of Social Security Law*, 4(1), 1997, pp 17-41. See also Seron, Van Ryzin, Frankel and Kovath, 'The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court', *Law and Society Review*, vol 35, No 2, 2001.

The case sample

As indicated in chapter two, this aspect of the research was the most challenging in terms of data collection. Although all three tribunals record information about the outcome of hearings on electronic databases, only SENDIST makes any attempt to collect information about the ethnic origin of their users. Even in SENDIST the information about ethnicity is weak because users are asked to volunteer the information when they complete their appeal application form and they frequently decline to do so.

The only feasible solution to the problem of how to construct a large enough sample of tribunal users to enable reliable analysis of outcomes was, therefore, to distribute ethnic monitoring forms to users attending tribunal hearings at TAS and CICAP. Users were asked to complete the forms with their name, case reference number and address so that the case could be linked with the tribunal database containing information about case type, representation and outcome. The forms then invited users to tick an appropriate box to indicate their ethnic or cultural background (see chapter two for a full discussion of the method). In addition to information about ethnic background, users were also asked to indicate their nationality, gender, whether they were using an interpreter at the hearing and, if so, the language that they spoke.

Tribunal staff agreed to distribute and collect the completed ethnic monitoring forms, and by this means a database was constructed containing information about 3,058 cases that were additional to the information about ethnicity and outcome that had been obtained during interviews with 529 users in the three tribunals. Together, the monitoring forms and interview data provided a total sample of 3,587 cases for which outcome data could be obtained from the tribunal databases. In the event, in 235 cases outcome information on the tribunal database was either incomplete or inconsistent with the information collected at interview, leaving a total sample of 3,352 cases for which complete information was available about both the ethnic origin of the tribunal user and the outcome of the tribunal hearing.

Overall outcome

The definition of the outcome of tribunal hearings is important and not straightforward. Unsurprisingly, all three tribunals defined outcome differently as a result of the different jurisdictions, the nature of the cases, and the types of decisions being made. In some cases the question at issue was one of basic entitlement where the outcome was close to a simple all or nothing decision. In others, what was being challenged was the amount or level of entitlement, so that any adjustment upwards by the tribunal might be interpreted as a gain or success, despite the fact that the user might have been claiming and hoping for more. Notwithstanding the variety of potential outcomes, it was necessary to create a variable which condensed the range of outcome types into a form which allowed for a single comparator outcome group with minimal categories.

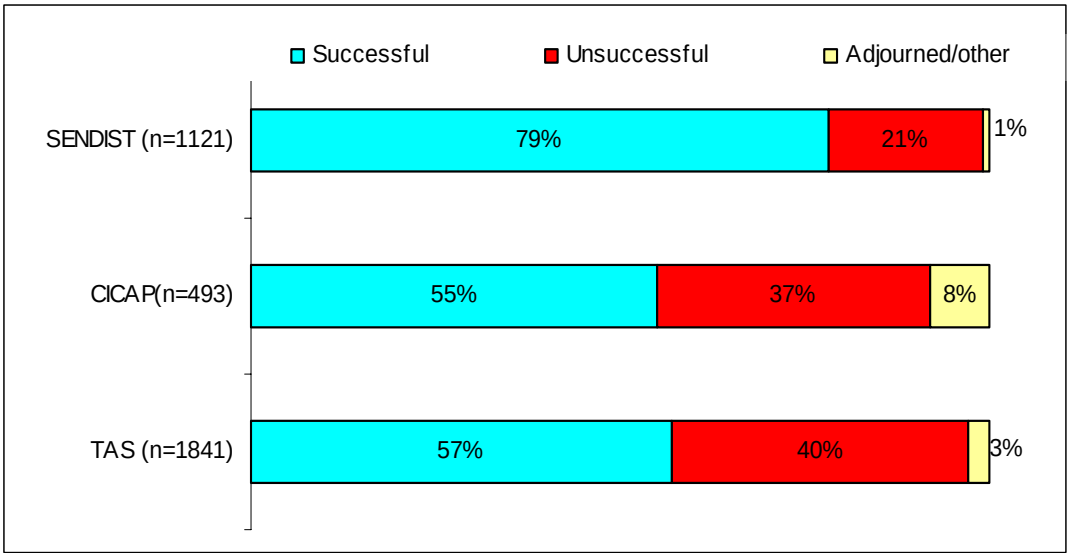
Although it is acknowledged that detail is lost in the process of condensing outcome categories, in order for frequencies to be large enough to produce meaningful results a binary distinction between "successful" and "unsuccessful" was the most useful categorisation for the regression analysis of outcomes. For the descriptive analysis of outcomes a third category of "Adjourned/other" [71] was used although these cases were excluded from the regression analysis. The "successful" category also contains decisions termed "part-success", where the decision or award has been made in favour of the user, but not to the extent that the user had originally claimed. Although part-success was identified in CICAP and SENDIST databases, TAS outcome definitions did not include "part-success".

Outcome of hearings in three tribunals

Roughly two-thirds of the tribunal cases included in the combined database were successful at the hearing. There was some variation in success rate between the three tribunals. TAS and CICAP had similar success rates of 57% and 55% respectively, while the SENDIST success rate was rather higher at 79%.

[71] Mostly TAS cases which had been adjourned or occasionally transferred out.

Figure 7.1 Rates of success in the three tribunals



The percentage of adjournments was relatively low in all three tribunals, with an average rate of about 3%.

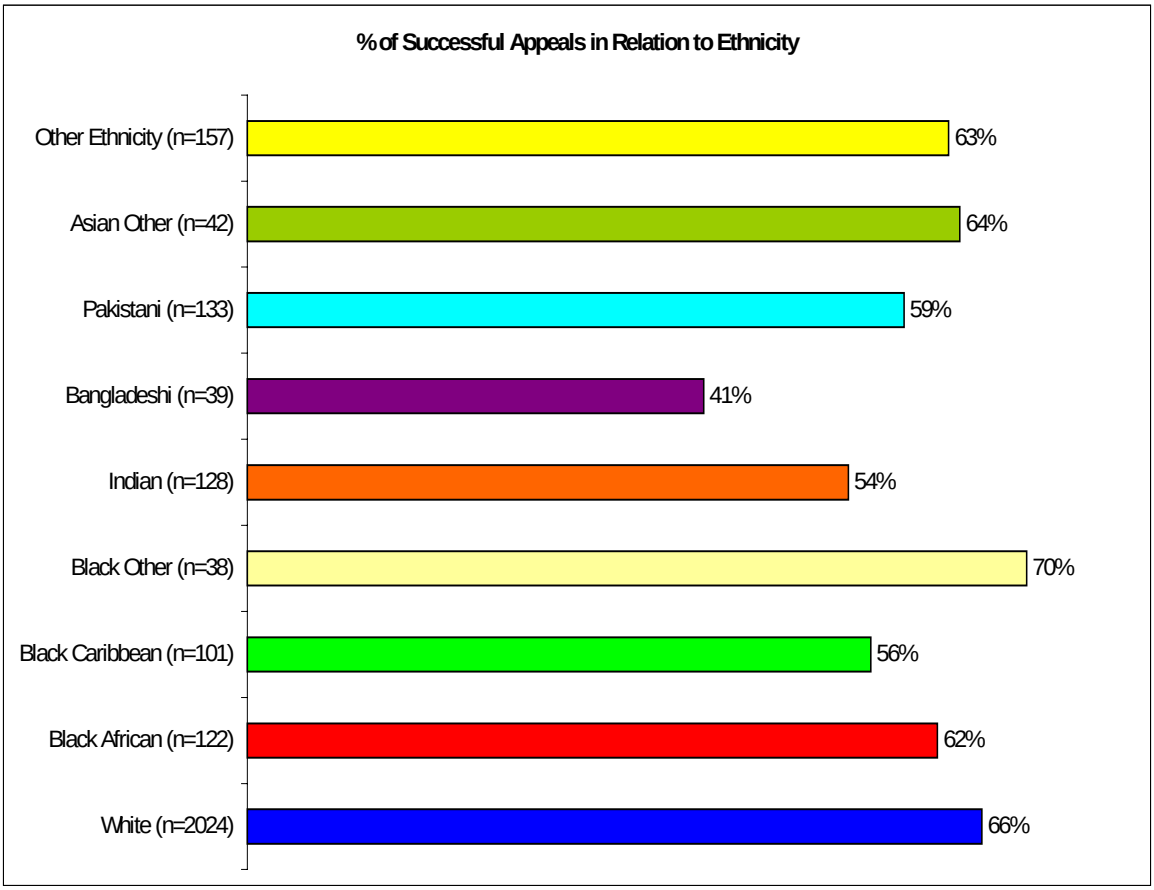
Ethnicity and outcome

There were some 2,886 cases where information for both ethnicity and outcome were available for analysis. Missing data occurred when monitoring forms were incorrectly completed or when information was unavailable on the tribunal database - for example, missing case number information occasionally prevented the retrieval of some outcome data. The proportion of successful users by ethnic group, as self-described by users on the research monitoring forms, is presented in Figure 7.2.

Taking the sample of tribunal users as a whole, divided between a relatively large range of self-defined ethnic groups, and leaving aside questions of tribunal or case type, at a basic descriptive level there were some significant differences in success rate between the different ethnic groups. Although the results at this level must be treated with some caution because of the large number of cases in the sample relating to White users and the small number of cases in some of the ethnic groups, users who defined themselves as 'White' had the second highest success rate at tribunal hearings with about two-thirds succeeding overall (66%). Users defining themselves as 'Black other' had the highest success rate (70%), but the number of cases in this category is rather small for confident inferences to be drawn. Those users who defined themselves as Bangladeshi had the lowest success rate at 41%,

although, again, this group represents a small proportion of the total sample. Users describing themselves as 'Indian' were the second most likely to be unsuccessful (54%).

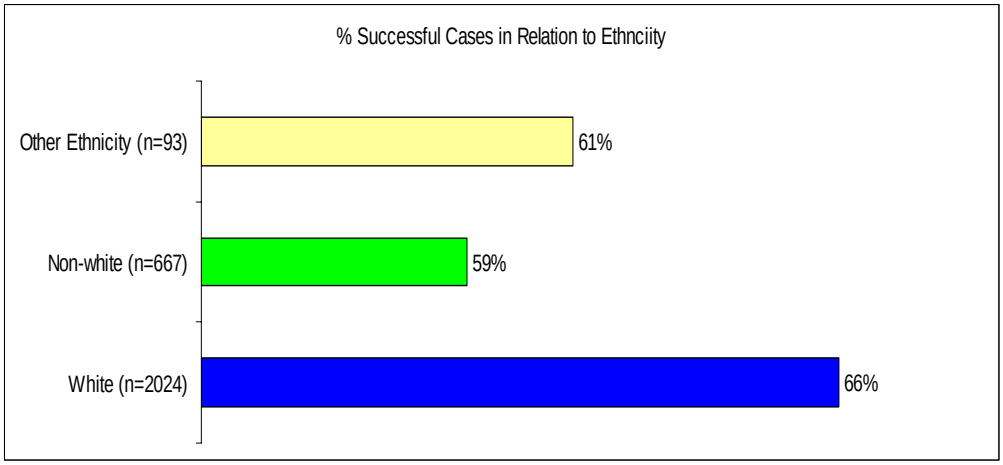
Figure 7.2 Proportion of successful users in self-defined ethnic groups



When ethnic groups were aggregated into the broad categories 'White', 'non-White' and 'other ethnicity' there was a small statistically significant difference in outcome[72]. The largest variation was between 'White' users and 'non-White' users with the former being 7% more likely to be successful. 'White' users were also more likely to be successful than users from 'other ethnicities'. These differences are small but still weakly significant (Figure 7.3) and were explored more fully in relation to other factors in the modelling of outcome, discussed further below.

[72] These groups comprise the following: 'White' (White British/Irish); non-White (those who self-defined as 'Black' ,'Asian', Black Caribbean, Indian, Bangladeshi, Pakistani, Asian Other, Black Other); and other ethnicity (users who defined themselves as of 'non-Black or South Asian' skin tone groups). P<001.

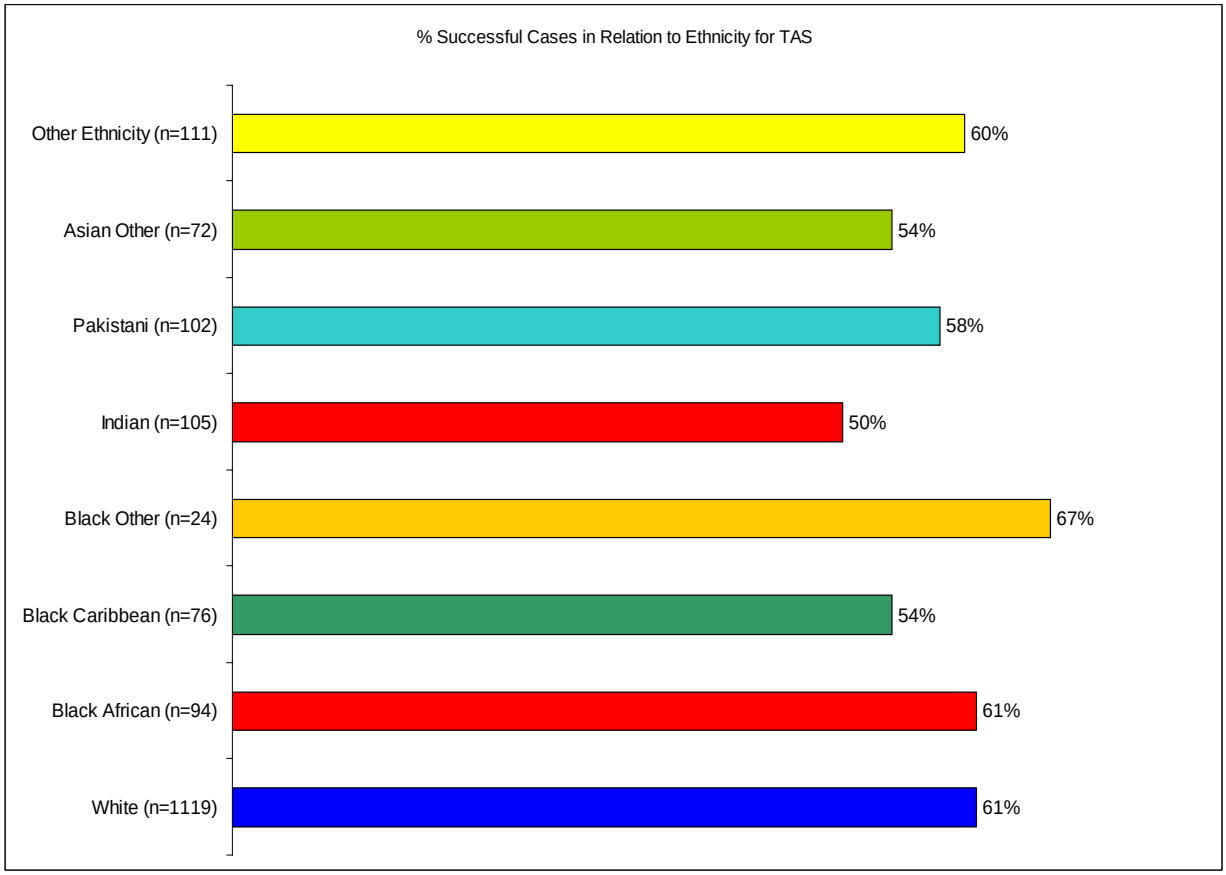
Figure 7.3 Success at hearing within aggregated ethnic groupings



Outcome and ethnicity within tribunals

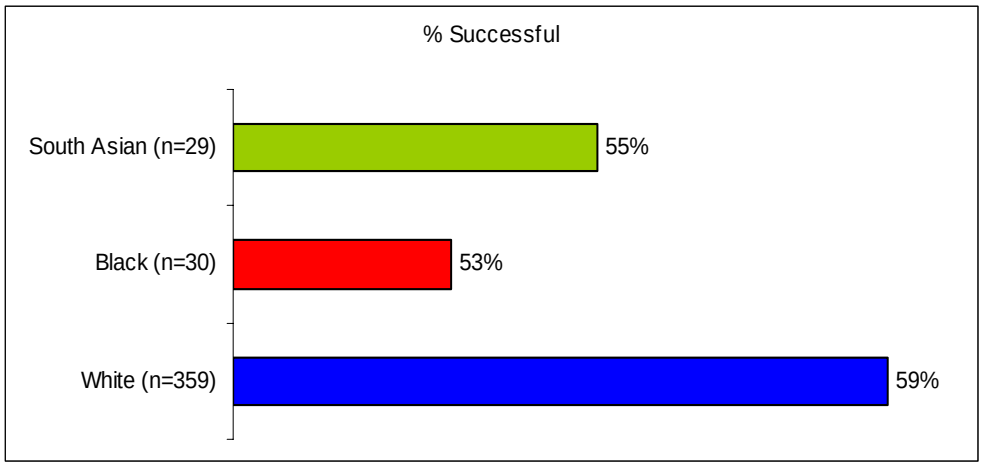
The outcome of hearings in TAS reveals a very similar pattern to that for the sample as a whole. This is to some extent explained by the much larger number of cases available from TAS than from CICAP or SENDIST. When crude outcome rates were compared within TAS, there were some small differences in success rates between different ethnic groups, but these were not statistically significant.

Figure 7.4 Success at hearing in relation to ethnic groupings in TAS



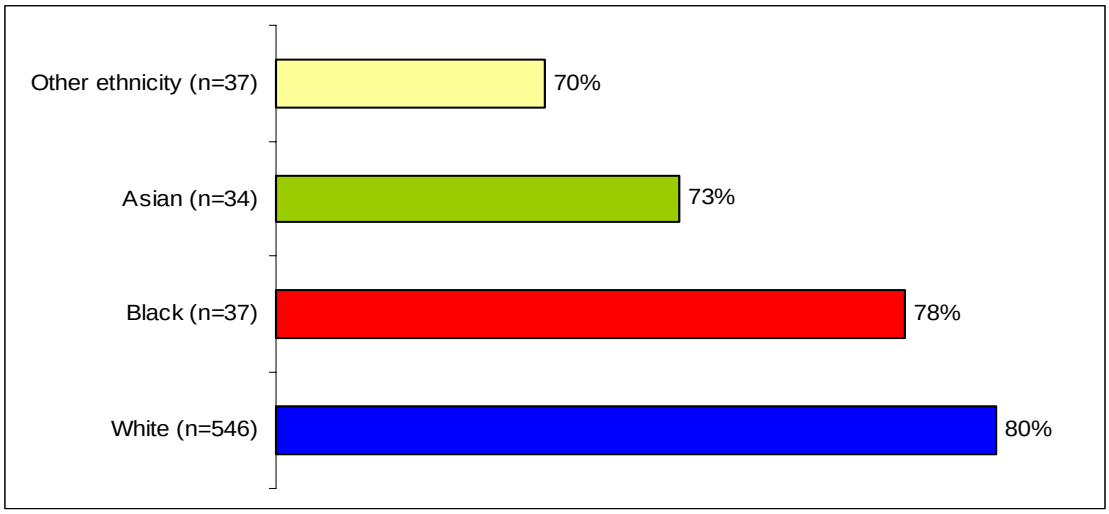
Using a more compressed variable for ethnic group in CICAP, as a result of the smaller number of minority users bringing appeals, little variation was found in success rates between users of different ethnic background. White users had a slightly higher success rate of 59% as compared with 53% among Black users and 55% among South Asian users. There were fewer than 10 users from other ethnicities so the results cannot be reliably compared.

Figure 7.5 Outcome at CICAP hearings in relation to broad ethnic group



Looking at outcome in relation to ethnic group in SENDIST hearings, the success rates were high for all ethnic groups. Although the number of cases in non-White groups was relatively small, the success rate was again somewhat higher for White users than any other group, although the differences were fairly modest and not statistically significant.

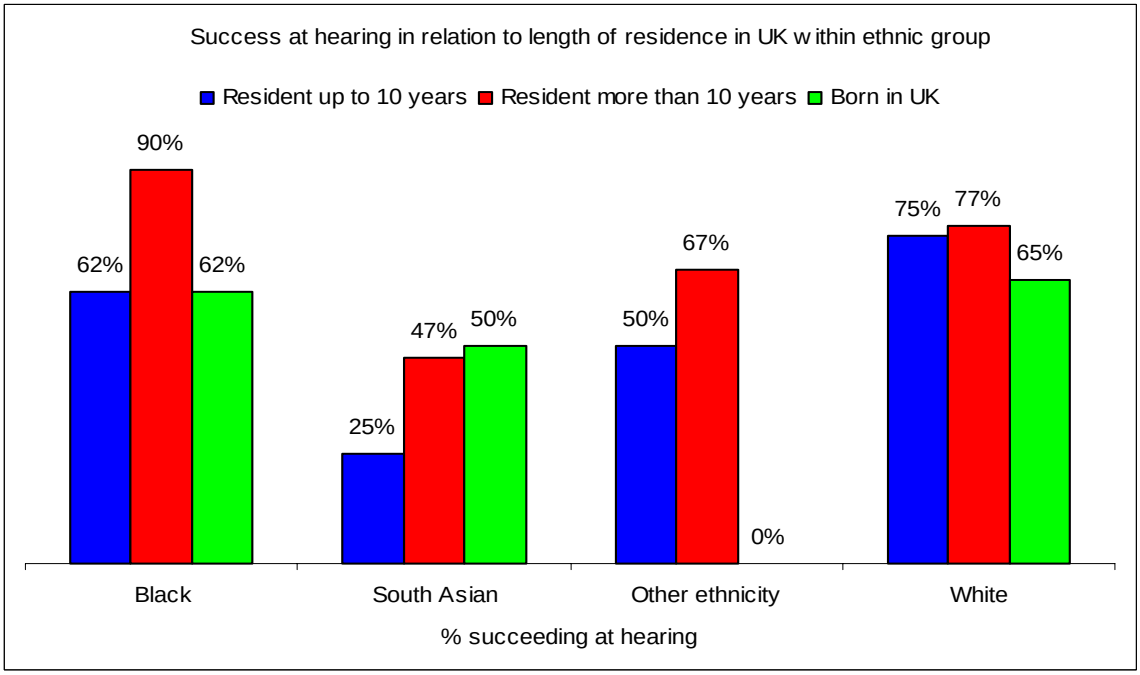
Figure 7.6 Outcome at SENDIST hearings in relation to ethnic group



Length of residence in UK

An analysis was conducted to explore the extent to which outcome might be associated with length of residence in the UK within different ethnic groups. No significant associations emerged, although the numbers available for analysis were very small in some categories. Figure 7.7 however, shows that although rates of success are generally higher for those users born in the UK or who have been resident in the UK for more than ten years, the generally lower rate of success among South Asian users and users of other ethnicities still appears to apply.

Figure 7.7 Success at hearings in relation to ethnic group and length of residence in UK (N=264)



Gender

Information about gender was only collected for TAS and CICAP. An analysis of outcome showed no significant variation between the success rate for male and female users in either tribunal. Similarly, there was no variation in success rate by gender across different ethnic groups.

Case type and outcome

The main types of claims made within the three tribunals were as follows:

TAS:

- Disability Living Allowance (DLA)
  - *Appeal against eligibility for receipt of allowance or assessment of the level of allowance that is deemed sufficient.*
- Incapacity Benefit
  - *Appeal against eligibility or assessment for benefit received if unable to work due to disability or illness.*
- Income Support and Housing/Council Tax Benefit
  - *Appeal against eligibility or assessment for benefit payable to those on a low income or not earning an income and having to pay utility bills, council tax or private rent.*

SENDIST:

- Against parts of the statement
  - *Appeal against parts of the statement, made by the Local Education Authority, which outlines the special educational needs of the child; provision required for the child; and the school named for the child.*
- Appeal against LEA action
  - *Appeal against Local Education Authority's refusal to carry out a formal assessment or to issue a statement of the child's special educational needs.*

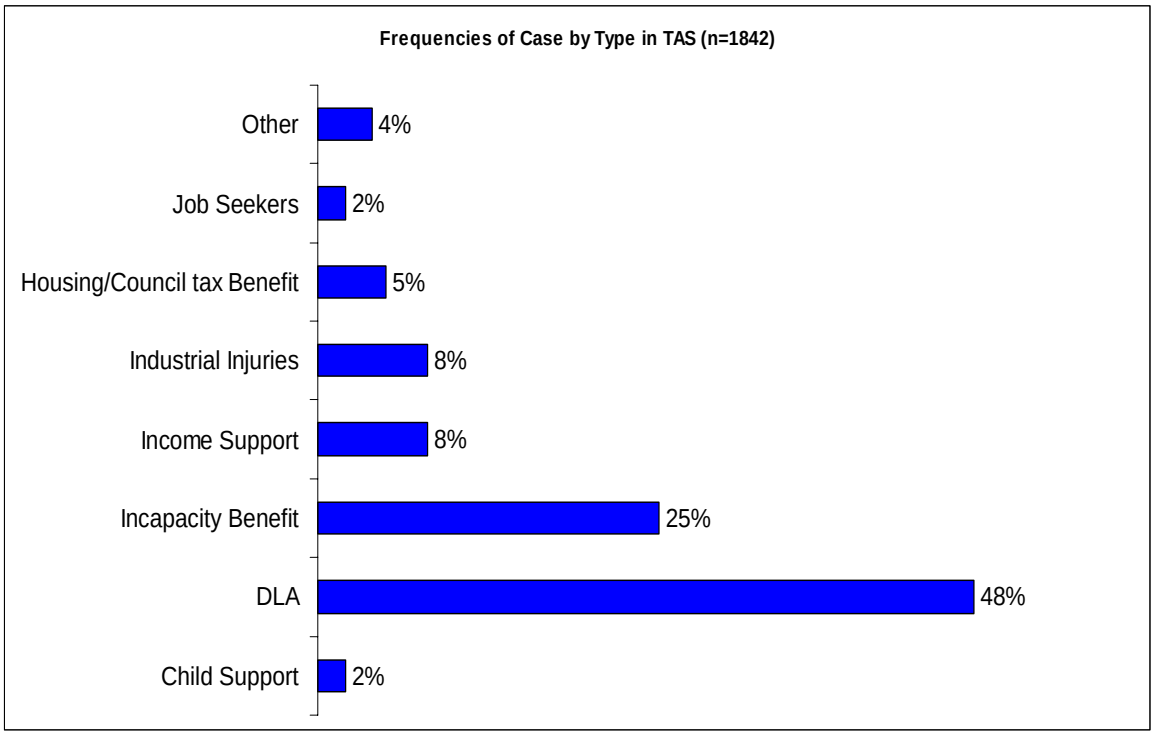
CICAP:

- Eligibility
  - *Appeal against a decision that refuses the claimant any award for a criminal injury claim.*
- Assessment
  - *Appeal against the level of an award already granted.*

Among the sample of cases assembled for the analysis of outcomes there were substantial differences in the frequency with which certain types of claim appeared in each tribunal. In TAS the most common types of appeals dealt with at hearings were

appeals in relation to Disability Living Allowance and Incapacity Benefit (Figure 7.8). Together these two types of claim comprise almost three-quarters of the cases within the sample.

Figure 7.8 Nature of appeals in TAS (N=1,842)



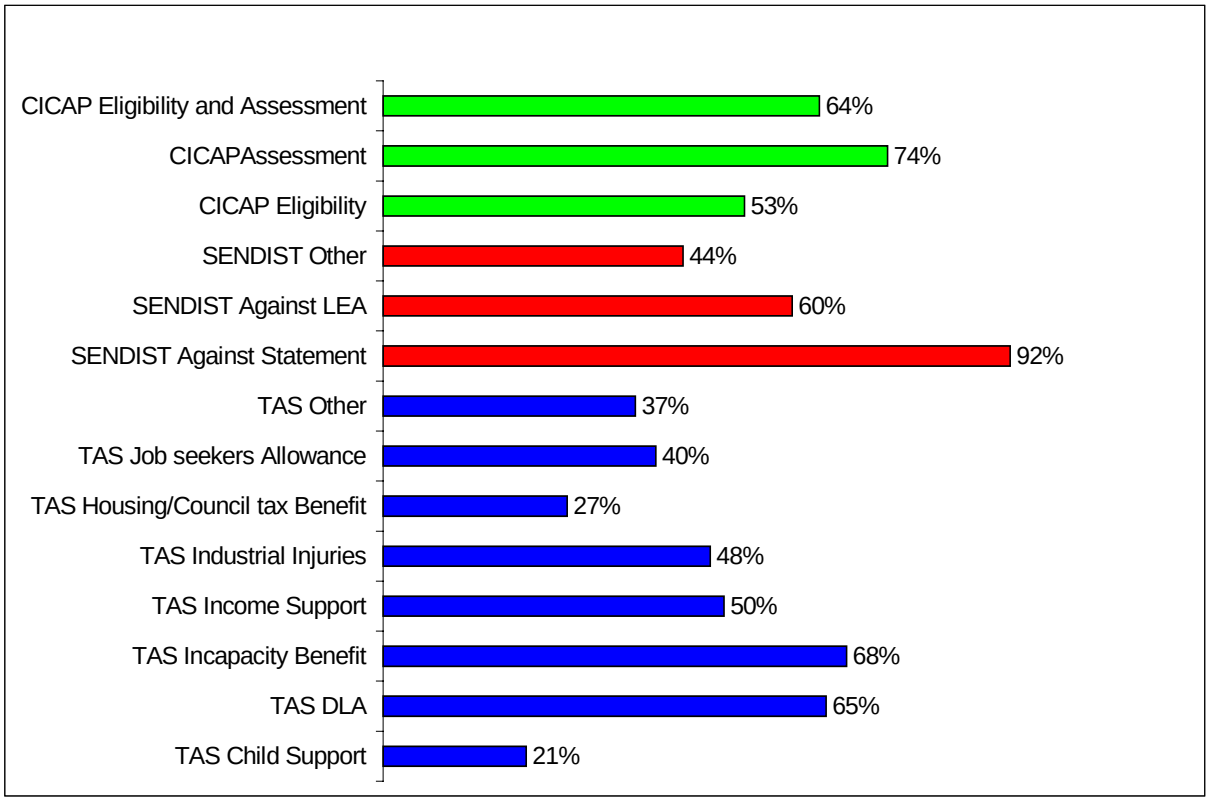
In CICAP about two-thirds of cases related to eligibility for an award (62%), a little under one-third were appeals against assessment (31%) and in a handful of cases the appeal was about both eligibility and assessment (7%).

SENDIST case types were condensed with the specificities of statement parts appealed against and types of LEA action placed under single headings to simplify the analysis. The majority of cases involved appeals against parts of the statement issued by the LEA (62%). About one-third were appeals against action being taken by the LEA (37%) and the remaining few cases comprised a miscellaneous collection of other issues.

Looking crudely at success rate in relation to case type there were significant differences in the rates at which different types of cases were successful, both within tribunals and between tribunals. Cases with the highest success rates overall were appeals against statement in SENDIST where the success rate was 92% (Figure 7.9).

In these cases any improvement in the outcome for the user was categorised as a success even though the user might not have achieved all of their objectives. The next most successful case-type category was appeals against assessment of award within CICAP, where about three-quarters of users achieved some improvement in their award, even if the amount achieved was not all that had been hoped for.

Figure 7.9 Success at hearing in relation to case type



Within TAS, appeals relating to DLA and Incapacity Benefit had the highest rates of success (65% and 68% respectively). On the other hand, Child Support and Housing/ Council Tax Benefit had the lowest rates of success both within TAS and of all case types in the three tribunals with only around one in four cases succeeding at a tribunal hearing.

Case type and ethnicity

Given the significant variation in success rates of different types of case within the three tribunals, an analysis was carried out to ascertain whether Black and Minority Ethnic groups were over or under represented in relation to particular types of appeals. A simple breakdown of the most common case types by broad ethnic group revealed no significant associations between ethnic group and type of appeal. In general the proportions of 'White' and 'non-White' users were fairly closely matched across case types. In TAS South Asian and 'other' ethnic users were somewhat more likely to bring claims in relation to Income Support than White users (11% and 13% respectively as compared with 6% of White users). White users, on the other hand, were more likely than any other ethnic group to be appealing in relation to Industrial Injury Benefit (9% as compared with no more than 3% or 4% within other ethnic groups). However, apart from these differences the pattern of case types within ethnic groups is very similar. The relationship between ethnic group, case type and outcome of tribunal hearing is explored further using multivariate analysis in the final section of the chapter.

In CICAP there were some differences between White and Minority Ethnic users in the types of cases being brought to the tribunal. White users were more likely than Black or Minority Ethnic users (as a group) to be appealing against decisions on eligibility (64% as compared with 55%) while Black and Minority Ethnic users were more likely to be appealing in relation to assessment only (38% of non-White users as compared with 29% of White users). Since eligibility cases appear to have a lower success rate than assessments one might expect that White users in CICAP would have a lower overall success rate than minority users, whereas in fact they had a slightly higher success rate than 'non-White' users. This is again explored further at the end of the chapter.

There was no significant difference between White and Minority Ethnic users In SENDIST in the type of cases being brought to the tribunal.

Patterns of representation

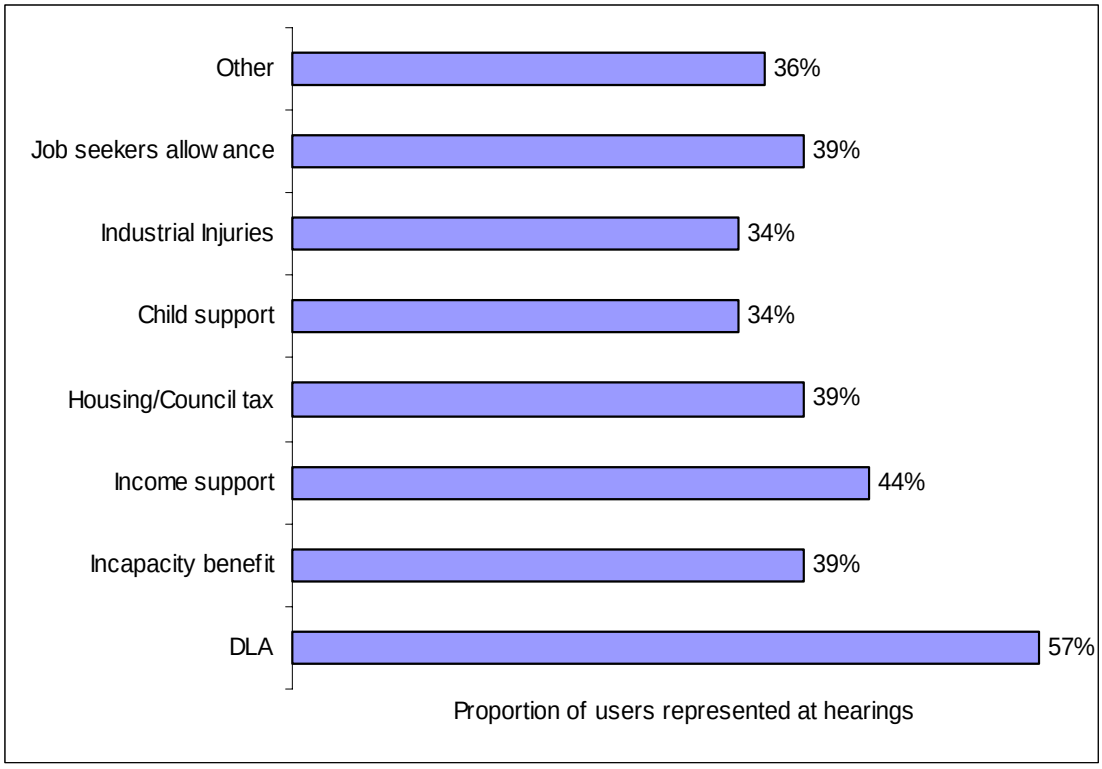
Information about representation for almost the entire outcome sample was obtained from tribunal database records. The information contained on tribunal databases showed that just over half of all users (53%) in the three tribunals were represented at their hearings. There were, however, significant differences between the three tribunals in the extent to which parties appeared at their hearings with representation.

As noted above in earlier chapters, representation was most common within CICAP with around 61% of users being represented, as compared with 55% in SENDIST and 43% in TAS.

Representation and case type

In all three tribunals there were significant differences in representation rates depending on the type of appeal being brought (Figure 7.10). In DLA cases in TAS, users were more likely to be represented than unrepresented with over half of those challenging DLA decisions appearing at hearings with representation as compared with about one-third of users challenging other types of decision.

Figure 7.10 Representation in relation to case type in TAS (N=1,842)

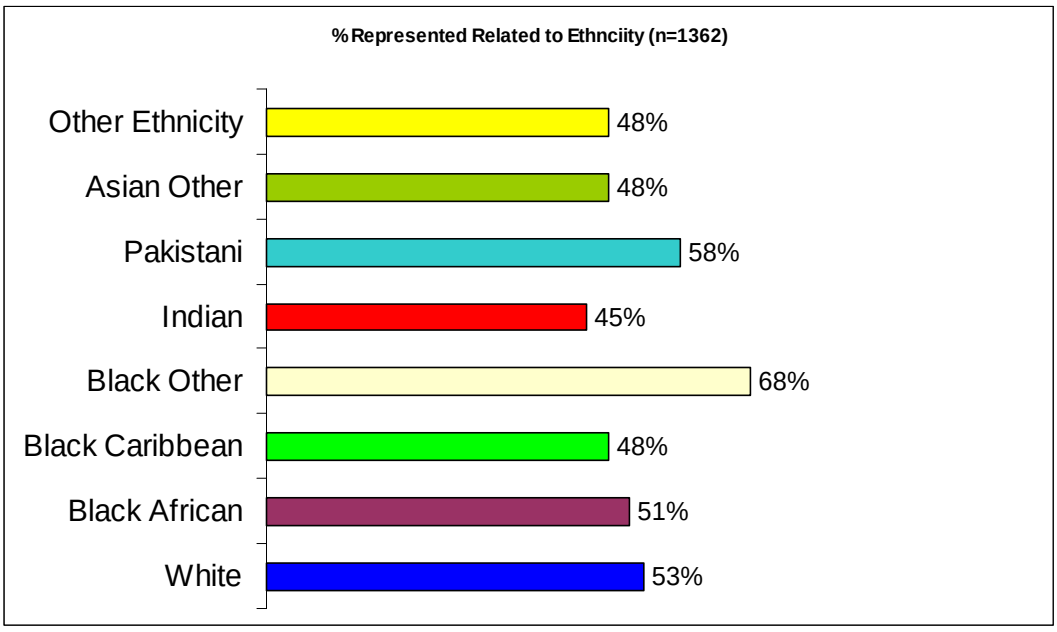


Representation in SENDIST hearings was more common in 'Against Statement' cases (64% represented) than in cases 'Against LEA' (42% represented). In CICAP there was also a difference in representation rates between case types, with about three-quarters of users appealing against assessment being represented as compared with only a little over half (54%) of users appealing against eligibility decisions.

Representation and ethnic group

Interestingly, there were no statistically significant differences in the rate of representation between different ethnic groups within the sample of tribunal users as a whole. Figure 7.11 shows that aside from Black "other" users where the sample size is rather small (n=41), Pakistani users had the highest rate of representation with 58% of users appearing at hearings with representation (n=139). Bangladeshi users also appeared to have relatively high rates of representation although, again, the number of users in this ethnic group was relatively small (n=42). All other users had slightly lower rates of representation than 'White' users, with 'Indian' users being the least likely to attend tribunal hearings with a representative. It is, however, interesting to note that 'Indian' users had the lowest rate of representation and also one of the lowest rates of success at tribunal hearings. On the other hand, 'Pakistani' users had a lower than average success rate but a higher than average percentage of represented users.

Figure 7.11 Proportion of represented users by ethnic group (N=2997)

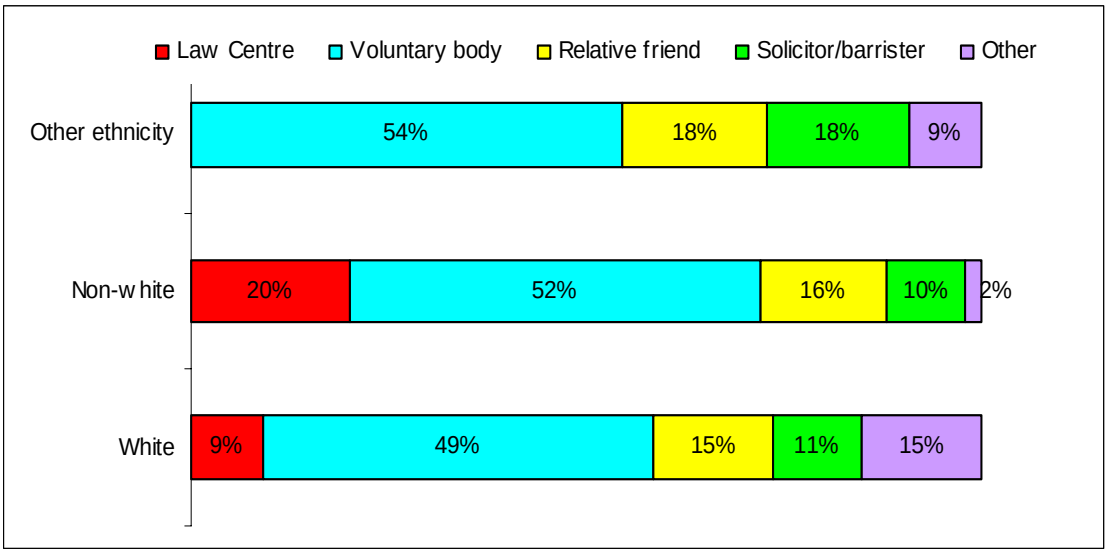


Type of representative and ethnicity

An analysis of type of representative used by different ethnic groups showed no significant variation in the pattern of representation among Minority Ethnic tribunal users as compared with White users in the three tribunals. In TAS the analysis was only possible for those cases where interviews had been conducted at tribunal hearings because the TAS database does not distinguish between different types of

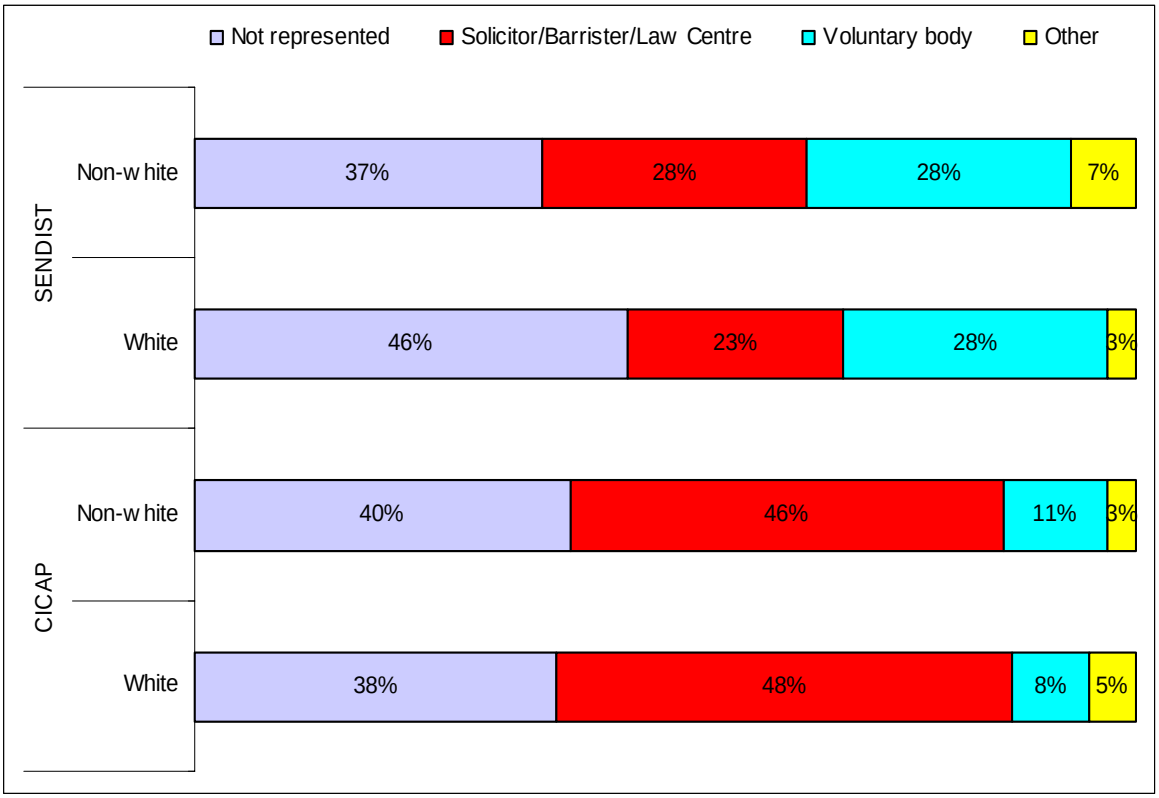
representative. Moreover, the relatively small number of represented cases means that rather broad ethnic categories had to be used in the analysis. However, the limited analysis of TAS cases indicated that the extent of representation was identical between Ethnic Minority and White users with 56% of users in each broad ethnic group being unrepresented. The analysis presented in Figure 7.12 shows that among those users who were represented within TAS, **the pattern of representation was similar among White and non-White users, the only notable difference being that non-White users in TAS were more likely than White users to be represented by law centres.**

Figure 7.12 Type of representation in TAS by broad ethnic group (based on interviews only N=126)



More information about type of representation was available for the entire outcome samples of CICAP and SENDIST cases. Comparing extent and type of representation between broad ethnic groupings, it is clear that again in these two tribunals there was **no significant difference between Minority Ethnic users and White users in either the extent of representation or the *type* of representation** used at hearings, although the figures show that non-White users at SENDIST hearings were somewhat less likely than White users to be represented at all.

Figure 7.13 Representation by ethnic group in CICAP (N=466) and SENDIST (N=554)

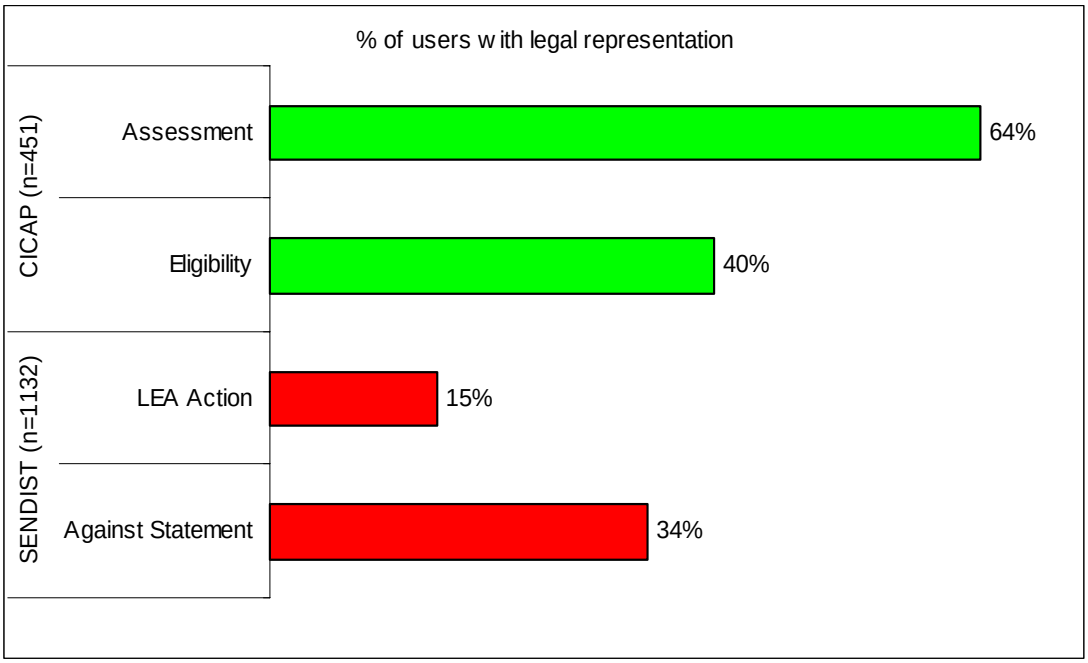


Type of representative and case type

It has already been shown that there were significant differences between the three tribunals overall in the use of different types of representation. Legal representation was much more common in CICAP and SENDIST than in TAS, where representation by CABx and other voluntary bodies tends to be the norm.

However, there were some differences within tribunals in the type of representative used for varying types of appeals. In SENDIST, appeals against statement cases were more likely to involve legal representation than appeals against LEA action, while in CICAP, assessment cases were more likely to have legal representation than eligibility cases. Both of the case types with higher rates of legal representation had higher overall success rates (see below Figure 7.14).

Figure 7.14 Use of legal representation for different case types in CICAP and SENDIST

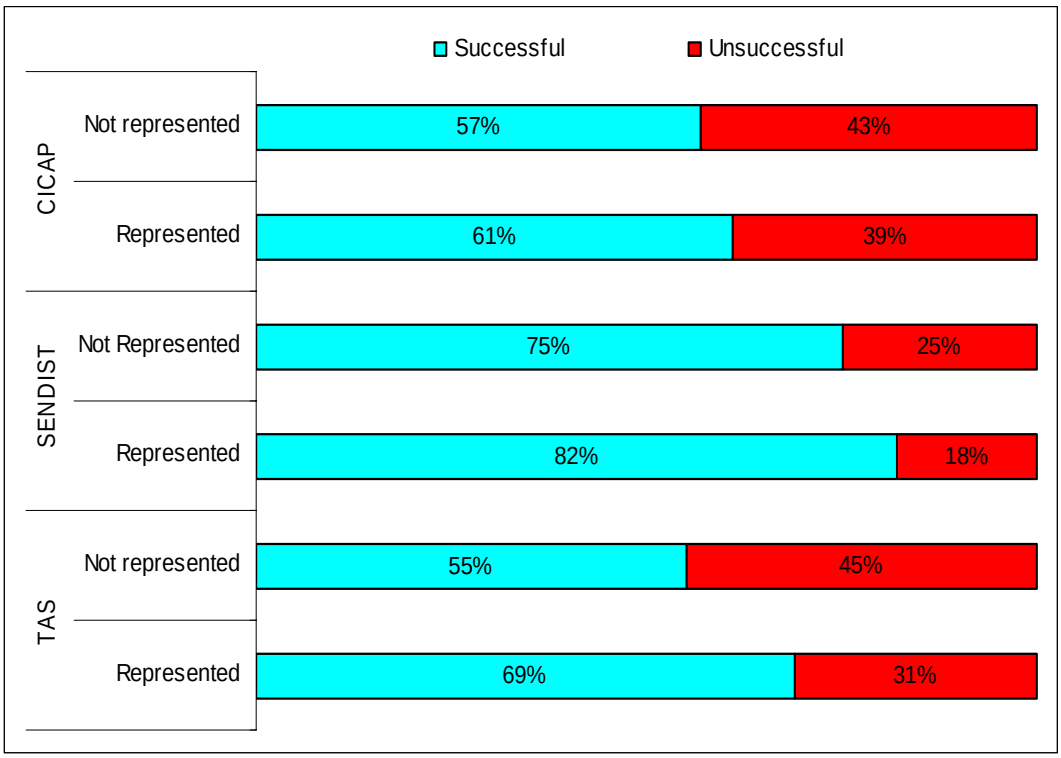


Representation and outcome

An analysis of outcome within the sample of users as a whole in relation to representation showed that 73% of represented users succeeded at their hearing as compared with 61% of unrepresented users. The apparent benefit of representation is consistent with earlier work which established that representation significantly increased the chance of success in tribunal hearings.[73] However, the benefit of representation appears to be most pronounced in TAS, with a 14% higher success rate among represented users than non-represented users. The effect of being represented was somewhat less pronounced in SENDIST where the success rate among represented cases was 7% higher than among unrepresented cases. In CICAP there was only a trivial difference, with the success rate some 4% higher in represented cases than in unrepresented cases (Figure 7.15).

[73] H Genn and Y Genn, *The Effectiveness of Representation at Tribunals*, Lord Chancellor's Department, London 1989.

Figure 7.15 Outcome at tribunal hearings by representation (N=3,258)



The relationship between representation and outcome in the three tribunals is explored further in the regression analysis at the end of the chapter, which shows **that once case type is controlled for, the difference in success between represented and non-represented cases in CICAP and SENDIST largely disappears.**

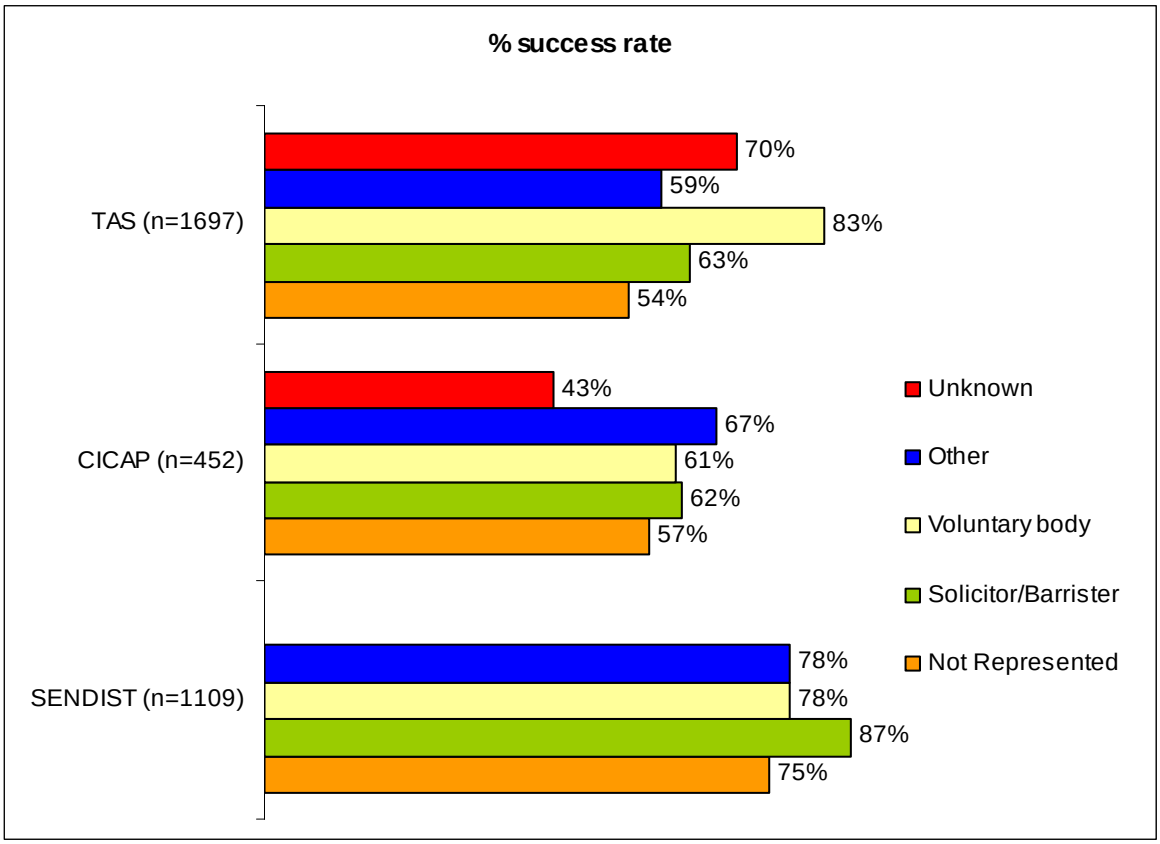
Type of representative and outcome

A thorough analysis of outcome in relation to the type of representative used was not possible since the TAS database did not distinguish between different types of representative. The only information within TAS for type of representative was collected from our interviews and reported earlier in chapter five. A limited analysis for TAS based on interview data and a large number of uncategorised represented cases showed that, in general, users represented by voluntary bodies were more likely than those represented by solicitors or barristers in private practice or from Law Centres to achieve a successful outcome (Figure 7.16). This is again consistent with earlier findings on the value of specialist as opposed to 'legal' representation in TAS

tribunal hearings[74].

The figures for CICAP display little variation in success rates between the various types of representative, and similarly in SENDIST there is no significant variation in success rates between representatives, although users with legal representation appear to be the most likely to be successful at their hearing.

Figure 7.16 Success rate at hearing by type of representative within three tribunals



Observer effect and outcome

In any empirical data collection exercise researchers need to be conscious of the extent to which the means of conducting the research may itself distort the processes being observed or investigated. There is no doubt that an observer attending a tribunal hearing in a confined space where all participants are aware of their presence and their purpose has the potential for impacting behaviour in ways that are impossible to determine. Would that tribunal on that day have behaved in exactly the same way, without the observer? If behaviour had been influenced, would that change work in the user's favour or to their disadvantage? Similarly, would that

[74] Genn and Genn 1989 op cit.

particular user on that day have behaved in exactly the same way had they not previously spoken to a researcher in the waiting room, and had the researcher not accompanied them into the hearing room? Although the degree to which any observer-effect can be measured is limited, an analysis was conducted of outcome of hearings in relation to the presence of an observer. The outcomes of cases where an observer from the research team was present were compared with those where a monitoring form was simply completed and no interview or observation took place. The result of this analysis indicates that taking the sample as a whole, the success rates at appeal hearings did not appear to be associated with whether or not a researcher was present at the hearing. Indeed, the gross success rate is identical between those cases where monitoring forms only were collected and those where interviews and observations were conducted. When the analysis was repeated for the three tribunals individually, again no significant effect was found, although the rate of success in TAS and SENDIST hearings was a little higher when an observer was present at the tribunal hearing. To explore any possible observer effect on outcome this variable was included in the statistical model described later in the chapter.

Advice and outcome

Previous research has suggested that even if users at tribunal hearings are not represented, having received advice is likely to put them in a better position to advocate their case. They may be a little more prepared about what to expect and more confident about presenting their case having been advised about the relevant law and procedure and, perhaps, having been helped to identify any documentary evidence that might be required at the tribunal hearing. Information about receipt of advice prior to the tribunal hearing was available only from those cases where interviews had been conducted with tribunal users. In order to investigate any independent effect of advice an analysis was conducted comparing outcomes in cases only where a representative did not accompany the user at the tribunal hearing.

Taking the sample as a whole, **unrepresented users who had received some pre-hearing advice were slightly more likely to be successful than those who said that they had had no advice, with 63% of unrepresented parties who had received advice being successful as compared with 59% of those who had not received any advice.** This slight difference was not statistically significant however.

Looking more closely at the individual tribunals it appears that although the numbers are rather small, **unrepresented parties at CICAP hearings who had received advice or help prior to their hearing were considerably more successful than those who had not received advice or help** (71% of those with advice being successful as compared with 59% of those without advice being successful).

Advice, outcome and ethnicity

Looking at advice and outcome in relation to unrepresented users from Minority Ethnic groups reveals some small differences in outcome. Among Black unrepresented tribunal users, success did not appear to be related to whether or not users had received some advice or help prior to their hearing and, indeed, was somewhat higher among the group who had not received any advice (63% with advice and 74% without advice). A possible explanation here might be that Black appellants who attended the hearings without advice were confident about their cases and presented them rather well. Among White unrepresented users those who had received advice or help prior to the hearing had slightly higher success rates (67% succeeding who had had advice compared with 61% without advice). South Asian users who had received pre-hearing advice were more likely to succeed at their hearing than those who had not received advice (50% succeeding as compared with 44% succeeding where no advice was obtained) and unrepresented users from other ethnic groups also appeared to be more likely to succeed if they had received some pre-hearing advice (67% successful with advice as compared with 60% successful with no pre-hearing advice). There are two possible explanations for these differences. First that pre-hearing advice means that users attend tribunals better prepared and with more understanding of what will be expected of them at the hearing. They may also be more likely to bring relevant documentation with them. It is also possible that the group of unrepresented users who have not received pre-hearing advice contains a somewhat weaker case mix, since presumably one of the functions of advisers is to filter out of the tribunal system cases without merit. The impact of pre-hearing advice on outcome in relation to other key variables was explored further in the modelling exercise and is discussed later in the chapter.

Interpreters and outcome

Cases in which interpreters assisted tribunal users tended to have a rather different style when compared with hearings in which the parties engaged directly in a dialogue with the tribunal judiciary and any departmental presenting officers. It was therefore anticipated that use of interpreters might have a negative impact on

outcome. Interestingly a simple analysis of outcome in the sample as a whole in relation to use of interpreters revealed no significant difference in success rates. Indeed, the success rates were virtually identical. When the three tribunals were disaggregated the result remained the same. Nonetheless, use of interpreters was included as a variable in the statistical model of outcome and its contribution to success, independent of other factors, is discussed in the final section of the chapter.

Nationality and outcome

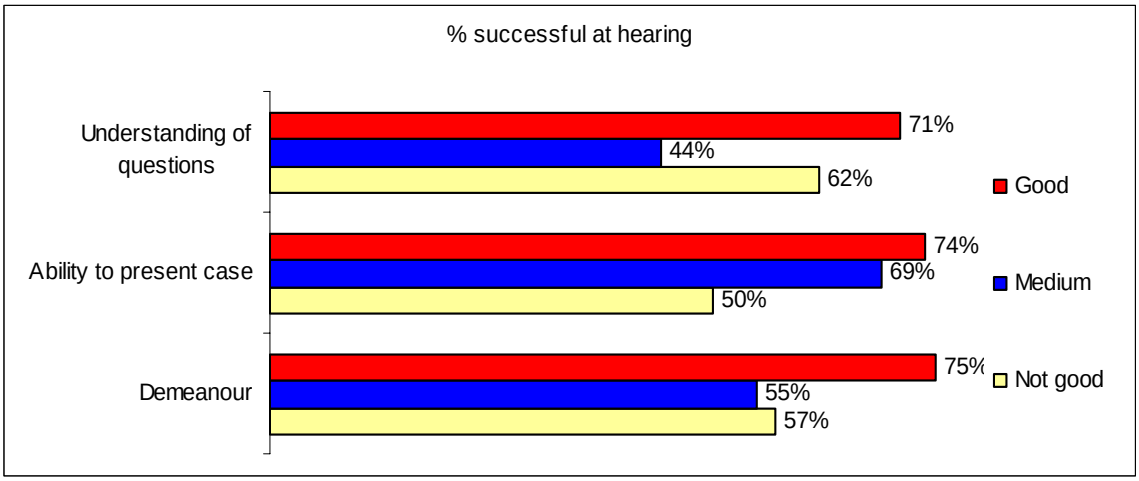
Information about nationality was collected on monitoring forms completed by TAS and CICAP users and during interviews with users from all three tribunals. An analysis of outcome in relation to nationality was conducted to assess whether nationality might be associated with success at hearings. However, the analysis revealed no significant variation in outcome across nationality categories. **Users of African nationalities had the highest success rate (68%) and users of South Asian nationalities had the lowest success rates (54%).** The range was nevertheless rather narrow and when the analysis was recomputed **using a simple British/non-British split the success rates for the two categories of users was identical** (60%). This masked the variation between non-British nationalities, but indicated that overall, nationality alone did not appear to be associated with higher or lower success rates at hearings in the three tribunals.

Ability to participate and outcome

Assessments of users' ability to participate effectively in tribunal hearings were discussed earlier in chapter five. These assessments were based on the scores given to users by observers in relation to various aspects of the hearing, including the user's demeanour, understanding of questions, willingness to speak, and ability to present their case. The exercise was conducted principally to assess any differences between White and Minority Ethnic users in their ability to participate effectively in tribunal hearings and to compare participants' own assessments of their ability to participate against more objective assessments. However, users' ability to participate effectively in hearings is important not only for the way it might impinge on perceptions of fairness, but also in relation to the extent to which it might impinge on substantive outcome. This information was only available for the 391 cases in which observations were conducted within tribunals. There were too few cases to include participation as part of the comprehensive modelling of outcome, but some further analysis of ability to participate and outcome is discussed below.

A simple analysis of outcome in relation to judgements about users' demeanour, understanding and ability to present their case revealed a clear association between substantive outcome and ability to participate. **The rate of success was significantly greater for those users whose ability to present their case was judged by research observers to be 'good' or 'medium' compared with those whose ability was judged to be 'not good'.** Similarly, users who appeared at ease in the hearing room and appeared to understand questions put to them by the tribunal were found to have a significantly higher success rate than those who appeared very ill at ease and did not appear to understand questions put to them (Figure 7.17).

Figure 7.17 Success at hearing in relation to ability to present case (N=278)



An ordinal regression model relating outcome to users' ability to present their case shows that success at hearings was clearly related to user's ability to present their case. Table 7.1 shows that as the ability of users to present their case decreases, so does the likelihood of being successful at the tribunal hearing.

Table 7.1 Applicant's ability to present their case in relation to outcome of hearing

Outcome	Applicant's ability to present case				
	Very Good	Good	Average	Poor	Very Poor
Successful	44	44	54	27	15
	23.9%	23.9%	29.3%	14.7%	8.2%
Unsuccessful	11	20	22	30	12
	11.6%	21.1%	23.2%	31.6%	12.6%

While assessments of users' ability to participate seem to be clearly related to outcome, this is not the case for assessments of panel behaviour. On all of the assessments of panel behaviour including panel demeanour, use of legalistic language, courtesy, degree of assistance or enabling, or appearance of listening, there was no association with substantive outcome.

It therefore seems clear that while the ability of the user to understand questions and present their case – their personal advocacy skill – is likely to have a bearing on substantive outcome, the behaviour of the panel does not seem to have such an important impact. This finding supports the conclusions of chapter five which suggest that there are limits to the ability of the judiciary to overcome significant shortcomings on the part of users who lack the necessary language, literacy and comprehension skills to present their case well or even adequately. While tribunals are accustomed to dealing with unrepresented parties and have received training specifically to develop their "enabling" skills, the situation is likely to be more even more difficult in the courts where the judiciary have not traditionally been trained in the development of enabling skills. The problems faced by the judiciary in dealing with unrepresented parties in the courts have been highlighted by Moorhead and Sefton's recent research which concludes that:

> *"Unrepresented litigants struggle to identify which legally relevant issues are in dispute and they sometimes struggle to understand the purpose of litigation. There is also some evidence of a broader, and understandable, confusion of law with social or moral notions of justice. These problems of course point towards a need for more active engagement with unrepresented litigants to clarify the legal basis of disputes. This is not a role which judges are always well-placed to play…".*[75]

Modelling outcome

The preceding analysis has explored success at tribunal hearings in relation to a number of factors hypothesised as being relevant to substantive outcome. However, these types of comparisons do not tell the whole story since factors which appear to be associated with success at tribunal hearings may, in fact, be related to each other. In order to make more confident assessments of the factors that might be considered to 'predict' success or lack of success in tribunal hearings, it is necessary to analyse the data using techniques that make it possible to quantify the effect of one factor on another while holding all other observable factors constant. Logistic regression

[75] Moorhead and Sefton (2005) op cit, p 256.

analysis is able to do this and estimates the effect of all of the hypothesised factors jointly, taking into account their interdependencies.

Two regression analyses were therefore conducted to provide a fuller understanding of the outcome of tribunal hearings. The first analysis was designed to identify factors that predicted outcome at hearings; the second, to explore factors associated with the likelihood that users would be represented at their tribunal hearings.

Predicting outcome

Entire sample

A binary logistic regression model was fitted examining the outcome of hearings (unsuccessful vs. successful), on the basis of five categorical predictor variables: ethnicity, case type, whether users were represented at their hearing, whether an observer was present at the hearing and whether advice had been received prior to the hearing[76], and whether an interpreter was used at the hearing. Of 3,352 cases with valid information about outcome of cases, 2,208 (65.9%) were successful. Where predictor variables contained a large number of missing values (e.g. for 'whether an interpreter was used'), a separate 'missing' category was constructed to avoid loss of data.

Because the purpose of the analysis was to explore the possibility of Minority Ethnic users being disadvantaged in tribunal hearings as a result of their ethnic origin, a model was fitted to predict the chances of being **unsuccessful rather than successful**, with all predictor variables entered as main effects. For each predictor variable, a single subcategory was chosen as a reference category with all other subcategories compared to this category. For 'ethnicity' this was 'White', for 'case type' 'DLA' was used, for 'representation' 'no representation' was used, for 'observer/advice' 'no observer' was used and for 'use of interpreter' 'no interpreter' was used[77].

[76] For technical reasons these two variables were combined since the question about pre-hearing advice was only asked for cases where an interview had been conducted and an observer was present at the hearing. Keeping the two variables separate would have had a confounding effect on the results. Thus a binary variable was constructed as follows: Observer/pre-hearing advice and observer/no-pre-hearing advice.

[77] Logistic regression output for a simple main effects model entering all five categorical predictor variables is shown in Table 1 Appendix A.

By removing each of the predictor variables from the model in turn, it was possible to identify which predictor variables made an important contribution to the model. The results indicated that **case type and representation** at the tribunal hearing were clearly the most influential predictors of success.

Representation and outcome in sample as a whole

Taking the sample of tribunal users together as whole, users who attended their hearing with a representative were significantly more likely to be successful at their hearing. If users were represented, being unsuccessful was about 20% less likely than if they were unrepresented and the reduced odds of success for unrepresented parties was statistically significant. The fact that trying to remove representation from the model resulted in a significant change in deviance suggests that it is **crucial to the prediction of success at tribunal hearings**.

Case type in sample as a whole

However, the **single most influential predictor of success was case type**. There were highly significant differences in the chances of success between different case types. Case types where users were particularly likely to be unsuccessful were Child Support and Housing/Council Tax in TAS. In contrast, success was particularly likely for Incapacity Benefit in TAS, appeals against assessment in CICAP and against statement in SENDIST, although the reference category DLA in TAS was also more likely to result in success than the majority of other case types.

Ethnicity in sample as a whole

Ethnicity did not make a major contribution to the model overall, and could be removed without a significant change in deviance. However, it should be noted that while only users self-defined as “Asian other” were significantly more likely than White users to be unsuccessful, **every Black and Minority Ethnic subgroup was more likely than White users to be unsuccessful at tribunal hearings**. A further analysis grouping all Black and Minority Ethnic groups into a single category revealed that Black and Minority Ethnic users fared significantly less well than White users and this new ethnicity predictor made a small yet significant contribution to the new model.

Of the remaining variables, **use of an interpreter had very little impact upon success**. The presence of an observer and pre-hearing advice had a modest impact

on outcome with **some evidence of higher rates of success in the observed group of cases, when compared with cases where there was no observer present at the hearing.**

Outcome of hearings in the individual tribunals

Although the regression analysis provides information about factors likely to predict success at tribunal hearings for the sample of tribunal users as a whole, there are important differences between the three tribunals in terms of procedures and levels of representation. Moreover, because of the much larger number of cases available for analysis from TAS and SENDIST as compared with CICAP, a further analysis was conducted in order to reveal whether the factors related to substantive outcome overall would hold true within the individual tribunals.

The following sections present similar analyses to those conducted for the combined sample for each of the three tribunal types, TAS, CICAP and SENDIST. Of the total of 3,587 cases in the dataset, 1,920 (53.5%) were TAS, 529 (14.7%) CICAP, and 1,138 (31.7%) were SENDIST cases.

TAS

The regression analysis was repeated within TAS only, including the same five categorical predictor variables used in the overall outcome analysis. Of a total of 1,920 TAS cases some 1,781 had valid information on outcome. Of these, 1,053 (59.1%) were successful and 728 (40.9%) unsuccessful. Since TAS cases accounted for over half of all the cases in the total sample, it is not surprising that the results of the analysis for TAS users were similar to the results for the sample as a whole discussed above. In common with the results for the sample as a whole, **representation and particularly case type were the most influential predictors of success at TAS hearings.**

TAS case type and outcome

Within TAS the single most influential predictor of success was case type, where there were highly significant differences in the chances of success between different case types. Appeals in relation to DLA (around 36% unsuccessful) and particularly appeals in relation to Incapacity Benefit (around 32% unsuccessful) showed the highest rates of success. All other case types were significantly more likely to be unsuccessful, with those relating to Housing/Council Tax (around 73%

unsuccessful) and child support cases (around 79% unsuccessful) being the least successful.

TAS representation and outcome

In common with the findings of the sample as a whole, the results of the TAS analysis showed that **represented cases were significantly more likely to be successful.** Indeed, this effect was slightly more pronounced in TAS cases alone than in the total sample.

TAS ethnicity and outcome

When TAS cases were analysed alone, ethnicity did not make a major contribution to the model overall, and could be removed without a significant change in deviance. It should be noted, however, that as with the overall analysis, while differences for specific groups did not reach statistical significance, **every Black and Minority Ethnic subgroup of users was more likely than White users to be unsuccessful**. Again, **an additional analysis grouping all Black and Minority Ethnic groups into a single category found that they were significantly more likely to be unsuccessful than White users**. Grouped ethnicity made a small yet significant contribution to the new model. For example, in an Income Support case with no interpreter, observer or representation, the model predicts that a White user would be likely to be unsuccessful around 52% of the time, compared with almost 59% for a Black or other Minority Ethnic user.

TAS other factors

Of the remaining variables included in the TAS model, use of an interpreter had very little independent impact upon success. On the other hand, as with the full sample, **the presence of an observer had a modest impact with some evidence of higher rates of success in the observed group** when compared with those cases where no observer was present. Pre-hearing advice, however did not appear to have any significant impact on success rate.

<u>CICAP</u>

There were 456 CICAP cases with valid information on outcome of hearings, with 273 (59.9%) of these being successful and 183 (40.1%) unsuccessful. As a result of the relatively small number of cases involving Minority Ethnic users in the CICAP sample it was necessary to collapse the ethnicity variable into only two categories of

'White' and 'Black and Minority Ethnic', with missing cases removed both here and for the use of interpreters. For case type, conducting the analysis for only CICAP cases reduced the number of case types from fourteen to three: 'eligibility', 'assessment' and 'both eligibility and assessment'.

The analysis of cases in CICAP showed that overall only 'case type' made a significant contribution to the prediction of tribunal outcome.

CICAP case type and outcome

Case type again had a significant impact upon case outcome in CICAP. Assessment cases were significantly more likely than eligibility cases to be successful, with appeals concerning both assessment and eligibility falling midway between eligibility and assessment. Overall, success for eligibility cases was around 53%, for cases involving both assessment and eligibility around 64%, and for assessment only cases the success rate was around 74%.

CICAP ethnicity and outcome

Within the analysis of CICAP cases, **ethnicity did not make a significant contribution to the model overall** and could be removed without a significant change in deviance. Black and Minority Ethnic users did not differ significantly from White users, with success rates of around 59% for White users compared with around 57% for Black and Minority Ethnicity users. While ethnicity could not be split into all nine subcategories used in previous analyses, if ethnicity was split into separate 'Black African, Black Caribbean and Black other' and 'Indian, Pakistani and Asian other', the differences remained negligible.

CICAP representation

Interestingly, in contrast with the analysis of outcome in the combined sample and the TAS sample, **representation had no impact upon outcome in CICAP cases.** Very similar outcomes were attained by CICAP users with and without representation. This explains why the impact of representation was more pronounced in TAS cases alone than when analysing the entire sample data combined. Interestingly, as was seen earlier in the chapter, if the impact of representation is examined alone, by simply cross-tabulating outcome and representation, it appears that represented users have marginally greater success at CICAP hearings than unrepresented parties. However, when case type is controlled for, this difference between represented and unrepresented cases disappears, since the difference is

simply the result of a greater proportion of 'assessment' cases being among the represented group. Success was higher in assessment than other case types regardless of whether users were represented or not. This higher proportion of assessment cases among the represented group creates the illusion of greater success, when in fact the differences were simply a consequence of differing case mixes between represented and unrepresented groups.

CICAP other factors

In common with the results for TAS, the presence of an observer, pre-hearing advice and use of interpreters had little impact on success in CICAP cases and could be removed from the model with only a modest change in deviance (see Appendix A for full results).

SENDIST

The analysis of outcome in SENDIST cases included only four predictor variables: 'ethnicity', 'case type', 'whether users were represented or not' and 'whether an observer was present and advice was received'. 'Whether an interpreter was used', had to be removed from this analysis since only one user attended a SENDIST hearing with an interpreter. Some 1,115 SENDIST cases had valid information on outcome, with 882 (79.1%) of these being successful and 233 (20.9%) unsuccessful.

A model was fitted to predict the chances of being unsuccessful rather than successful, with the four predictor variables entered as main effects. The following reference categories were used: for 'ethnicity' 'White' was used, for 'case type' 'against statement' was used, for 'representation' 'no representation' was used and for 'observer/advice' 'no observer' was used. As with the analysis of CICAP cases, small numbers in many of the ethnicity categories (when all nine categories were used) compounded by a significant percentage with missing ethnicity data (around 40%), necessitated that ethnicity was collapsed into three categories: 'White', Black and Minority Ethnic' and 'missing'. For case type three case types were used: 'against statement', 'LEA action' and 'other SENDIST'. Of these, 'against statement' accounted for the majority of cases (61.9%) followed by 'LEA action' (36.6%) with only a small percentage of 'other SENDIST' cases (1.6%). The 'observer/advice' predictor variable was also reduced to two categories, 'no observer' and 'observer (advice)', as 'observer (missing)' and 'observer (no advice)' were very rare.

In the analysis of SENDIST cases, only 'case type' made a significant contribution to the prediction of 'outcome'. The other three predictor variables, and particularly 'representation' and 'observer/advice' could be removed with little impact upon the model.

SENDIST case type

Users in 'against statement' cases were very likely to be successful (only 8% of cases in this category being unsuccessful), with significantly lower rates of success in both 'LEA action' and (despite relatively small numbers) 'other SENDIST' cases. In fact, the small number (n=18) 'other SENDIST' cases had the highest percentage of unsuccessful users, with around 56% being unsuccessful compared with around 40% unsuccessful in 'LEA action' cases.

SENDIST ethnicity

Ethnicity did not have a significant impact upon outcome in SENDIST cases and made little contribution to the model. While there was a small increase among Black and Minority Ethnic users in the likelihood of being unsuccessful (25.2% unsuccessful vs. 20.0% unsuccessful among White users) this difference was not statistically significant. Again, if 'ethnicity' was split further into separate 'Black African, Black Caribbean and Black other' and 'Indian, Pakistani and South Asian other' (as was done for CICAP cases), differences between these groups and White users were negligible.

SENDIST representation

As with CICAP cases and unlike TAS cases, **whether or not an applicant was represented had no impact upon outcome.** Similarly, the cases where an observer was present had very similar outcomes to the 'no observer' group.

Determinants of representation

The significance of representation and its impact on outcome, at least in TAS cases, raises questions about factors determining whether or not tribunal users obtain representation. Regression analyses were therefore carried out on the combined sample and then in respect of the three tribunals individually to identify which, if any, of the available variables might predict the chances of users being represented at their hearings.

Combined sample of users in all three tribunals

A binary logistic regression model was fitted, on the basis of four categorical predictor variables: ethnicity, case type, whether an interpreter was used and geographical location. Of 3,587 cases with valid information on representation of users, 1,911 (53.3%) had been represented.

A model was fitted to predict the chances of being represented rather than not being represented, with all predictor variables entered as main effects. For each predictor variable, a single subcategory was chosen as a reference category, with all other subcategories compared with this category. For ethnicity this was 'White', for case type, 'DLA', for interpreter, 'no interpreter' and for geographical location, 'Birmingham'. Logistic regression output for a simple main effects model entering all four categorical predictor variables is shown in Appendix A.

The change in deviance that resulted from removing each of the predictor variables from the model demonstrated that **case type and location were influential predictors of whether users were represented, and that ethnicity and use of an interpreter had little impact.**

Looking at all cases in the combined sample, appeals against assessment in CICAP had the highest rate of representation, and significantly higher rates of representation than the reference category DLA in TAS, and other case types (around 76% of 'assessment' users in these cases were represented). Appeals against statement in SENDIST had the second highest rate of representation, followed by the reference category DLA. Child Support cases and Industrial Injury cases had amongst the lowest rates of representation (around 34%) and users in both case types were significantly less likely than DLA cases to be represented. Attempting to remove case type from the model resulted in an unacceptable change in deviance, highlighting its importance in predicting whether or not users were represented.

Geographical location

Geographical location had a highly significant impact upon whether users were represented or not. Users in Wales had by far the highest chance of being represented (represented almost 90% of the time), and were significantly more likely than users in the reference location 'Birmingham' to be represented. Users in Liverpool were the second most likely to be represented (around 75% of the time). In contrast, those in Bristol, the North West and East Anglia were relatively unlikely to

be represented (44%, 48% and 43% represented respectively), though they were not significantly different from the reference category. A full summary of these differences can be seen in Appendix A.

Ethnicity, interpreters and representation

The results of the analysis show that neither ethnicity nor use of an interpreter had much influence upon whether users were represented. For ethnicity, users in the 'Black other' groups were the most likely to be represented and 'Indian' users the least likely, although differences were small, and there was **no evidence of Black and Minority Ethnic users faring differently in relation to representation.** Users using an interpreter were somewhat more likely to be represented, particularly when compared with those where no data was available (information about interpreter 'missing'). Again, however, these differences were modest.

Determinants of representation in TAS

A binary logistic regression model was fitted for TAS cases only, examining the likelihood of users being represented (represented vs. not represented), based on the same four categorical predictor variables used in the overall analysis of representation above: ethnicity, case type, whether an interpreter was used and geographical location. Of 1,920 TAS cases with valid information on representation of users, 940 (49%) had representation and 980 (51%) did not.

A model was fitted to predict the chances of being represented rather than not being represented, with all predictor variables entered as main effects. As with the TAS outcome analysis discussed above, case type was reduced from fourteen to eight categories. In addition, using only TAS data reduced the number of geographical locations from thirteen to three: 'Birmingham', 'Leeds' and 'London'.

The change in deviance that resulted from removing each of the predictor variables from the model, demonstrated that **case type was an influential predictor of whether users were represented or not. 'Location' continued to have a significant impact, though not as great an effect as in the combined sample. 'Use of an interpreter' had a greater influence than in the overall analysis, though it could still be removed from the model with only a modest change in deviance.**

TAS case type and representation

'DLA' cases had the highest rate of representation (around 57%), and significantly higher rates than all other case types. 'Income Support' cases were closest to 'DLA' cases, with around 45% of cases having representation. Again, 'Child Support' and 'Industrial Injury' cases had amongst the lowest rate of representation (around 34%) with users in both cases far less likely than 'DLA' cases to be represented.

TAS geographical location and representation

Geographical location also had a significant impact upon whether users were represented or not. This was a consequence of users in Leeds being more likely to be represented than those in London or Birmingham. Users in Leeds were significantly more likely than those in Birmingham to be represented, with around 56% being represented. Users in Birmingham (around 47%) and London (around 48%) had similar percentages of users who were represented.

TAS ethnicity and representation

Consistent with the results for the sample as a whole, neither 'ethnicity' nor 'use of an interpreter' had much influence upon whether users were represented. However, **users attending hearings with an interpreter were somewhat more likely to be represented than those who were not**, with around 56% of those using an interpreter represented compared with around 47% where no interpreter was used. While use of an interpreter had only a modest impact on the likelihood of users being represented in TAS, nonetheless it had a larger impact here than in the analysis of the combined sample. Looking at representation among different ethnic groups, again **'Indian' users were the least likely to be represented**, though differences were small, and there was no evidence of Black and Minority Ethnic users generally faring differently from White users. **Overall, 'ethnicity' had little or no effect upon the likelihood of being represented at TAS hearings.**

Determinants of representation in CICAP

Of 529 CICAP cases with valid information on representation of users, 339 (64.1%) had representation and 190 (35.9%) did not.

Again, all predictor variables were entered into a regression model as main effects. Reference categories, to which all other subcategories were compared, were: 'White'

for ‘ethnicity’, ‘eligibility’ for ‘case type’, ‘no interpreter’ for ‘interpreter’ and ‘Birmingham’ for ‘geographical location’. As with the previous CICAP analysis in relation to outcome of hearings, as a result of small numbers ‘ethnicity’ was collapsed into three categories; ‘White’, ‘Black and Minority Ethnic’ and ‘missing’. Again, as with the analysis of outcomes, case type was restricted to three categories: ‘eligibility’, ‘assessment’ and ‘both’. Location had eight valid subcategories for CICAP cases (see Appendix A Table 15). The results of the CICAP analysis of representation show that, in common with the TAS analysis of representation, ‘ethnicity’ and ‘interpreter’ could be removed from the model without a significant change in deviance, while ‘case type’ and ‘location’ could not.

CICAP case type and representation

‘Assessment’ cases had by far the highest rates of representation in CICAP, with users significantly more likely to be represented than in ‘eligibility’ cases. In percentage terms, those users bringing cases concerning ‘eligibility’ for award were represented around 56% of the time as compared with 77% in ‘assessment’ cases. ‘Both eligibility and assessment’ cases had similar rates of representation to ‘eligibility’ cases (around 58%) and were not significantly different in terms of representation.

CICAP geographical location and representation

Geographical location also had a significant impact upon whether or not users in CICAP were represented. As in the rate of representation in the combined sample of users, CICAP users in Wales had a particularly high rate of representation (represented around 87% of the time), as did those in Liverpool (represented around 80% of the time). These rates were significantly higher than regions with the smallest levels of representation, particularly Bristol (represented around 55% of the time) and London (represented around 57% of the time. A full summary of these differences can be seen in Appendix A.

CICAP ethnicity and representation

Neither ethnicity nor use of an interpreter had a significant influence upon whether or not CICAP users were represented at their hearings, although the number of cases in which an interpreter was used in CICAP was too small for confident results. Looking at Minority Ethnic groups, ‘White’ and ‘Black and Minority Ethnic’ users were almost identical in rates of representation (around 63% represented for ‘White’ compared with around 61% for Black and Minority Ethnic)

with no significant differences. **On these results ethnicity appears to have no impact upon the likelihood of being represented in CICAP cases.**

Determinants of representation in SENDIST

Of 1,138 SENDIST cases with valid information on representation of users, 632 (55.5%) had representation and 506 (44.5%) did not. The model predicted the chances of being represented rather than not being represented, with all predictor variables entered as main effects. Reference categories, to which all other subcategories were compared, were: 'White' for 'ethnicity', 'against statement' for 'case type' and 'Birmingham' for 'geographical location'. Again, 'ethnicity' was collapsed into three categories: 'White', 'Black and Minority Ethnic' and 'missing', and for case type, three types were used: 'against statement', 'LEA action' and 'other SENDIST'. For SENDIST cases, location had thirteen valid subcategories (see Appendix A).

The results of the modelling showed again that **'case type' and 'location'** were highly significant predictors of whether or not SENDIST users were represented at hearings, while 'ethnicity' could be removed without a significant change in deviance.

SENDIST case type and representation

Of the three case type categories, **'LEA action' cases were significantly less likely to be represented than 'against statement' cases**. In percentage terms, those in 'LEA action' cases were represented around 42% of the time compared with around 64% in 'against statement' cases. While 'other SENDIST' cases did not differ significantly from 'against statement' cases at the five percent level, this was mainly a result of small numbers of 'other SENDIST' cases (n=18). Overall, users in eight of these eighteen 'other SENDIST' cases were represented at hearings (44.4%).

SENDIST geographical location and representation

As with all previous analyses of determinants of representation, **geographical location had a significant impact upon whether or not SENDIST users were represented at hearings**. **Wales clearly had the highest rates of representation**, with users significantly more likely to be represented there than in the reference category Birmingham (which with 55% of users represented was close to the overall figure of 56%). **Particularly low rates of representation were found in Bristol and Leeds**

(with 34% and 37% respectively, compared to 59% in London, 60% in Manchester, 68% in Liverpool and 89% in Wales). A full summary of these differences can be seen in Appendix A.

SENDIST ethnicity and representation

Black and Minority Ethnic SENDIST users were somewhat more likely to be represented at hearings than White users (64% Black and Minority Ethnic users vs. 54% for White users), though this difference was not statistically significant. While small numbers prevented the use of a wide range of ethnic categories in the analysis, returning to the nine category ethnicity grouping used earlier in the outcome analysis above, similar levels of representation were found in SENDIST among White, Black African, Black Caribbean, other ethnicity and users with 'missing' ethnicity data (all around 55% represented). In contrast, there were higher rates of representation amongst Pakistani (67%), Indian (82%), Black other (83%) and South Asian other (80%) users. These findings should be treated with some caution given the small numbers involved. However, dividing ethnic groups simply into four categories, with separate 'Black African/Caribbean/other', 'Indian/Pakistani/South Asian other', 'other ethnicity' and 'White' categories, the analysis shows that **'Indian, Pakistani and South Asian other' users are very close to being significantly more likely than 'White' users to be represented at SENDIST hearings, with around 74% represented**.

Summary

Analysis of a large sample of tribunal cases showed that success rates at TAS and CICAP were very similar (around 55%) while SENDIST hearings were successful in over three-quarters of cases.

A simple analysis of case outcome in the three tribunals in relation to the ethnic group of users suggests that White users were slightly more likely to be successful than Black or Minority Ethnic users and a very slight difference was also found within each of the three tribunals. No significant association was found between outcome and length of residence in the UK, or between men and women. There were, however, significant differences in outcome depending on case type.

An analysis of representation at tribunal hearings showed that representation was obtained significantly more often for certain types of cases. For example in TAS,

users bringing Disability Living Allowance cases were more likely to be represented than not represented, as compared with only about one-third of users claiming Industrial Injury Benefit being represented. There were no statistically significant differences in the rate of representation between different ethnic groups within the sample, nor was there any significant variation in the type of representation obtained by different Minority Ethnic users. Extent and type of representation was associated with case type and tribunal, with CICAP having the highest rates of representation by solicitors.

A simple analysis of representation in relation to outcome of tribunal hearings showed that represented cases were significantly more likely to be successful at hearings than unrepresented cases. However, the results of a modelling exercise indicate that this does not apply across all tribunals once other factors, such as case type, are controlled for.

A logistic regression model designed to examine several factors that might be associated with outcome at hearings showed that in TAS, representation and case type were the most influential predictors of success at tribunal hearings. DLA and Incapacity Benefit cases had the highest rates of success while Housing/Council Tax and Child Support cases were the least successful. Within TAS, represented cases were significantly more likely to be successful, holding constant case type, ethnicity and other variables such as pre-hearing advice and use of interpreters. Ethnicity did not make a major contribution to the model overall, but every Black and Minority Ethnic subgroup of users was more likely than White users to be unsuccessful at their hearing. Additionally, the presence of the research observer had a modest impact on outcome with some evidence of higher rates of success in observed cases in TAS when compared with those in which no observer was present.

In CICAP, of the predictor variables included in the analysis, only case type had a significant impact on case outcome at hearings, with assessment cases being significantly more likely than eligibility cases to be successful. Although the number of cases in CICAP involving Minority Ethnic users was relatively small, ethnicity did not appear to be significantly associated with outcome of hearings. Interestingly, in contrast with the results of the model for the entire sample, and results from simple cross-tabulation of representation and outcome in CICAP cases, the modelling results show that representation had no independent impact on outcome in CICAP

cases. The apparently significant relationship revealed by a simple cross-classification of outcome with representation discussed in the first part of the chapter is, in fact, explained by the high success rate in assessment cases and the high rates of representation in those cases.

The results of modelling outcome for SENDIST cases shows that, in common with CICAP cases, of the factors included in the model, only case type made any significant contribution to the prediction of success. The ethnicity of the user had no significant impact on outcome in SENDIST cases and representation also appeared to have little impact on outcome.

Modelling the determinants of representation revealed that case type and location were critical indicators of representation in all three tribunals and that the ethnicity of the user had little, if any, influence on whether or not users were represented at their hearings. Black, South Asian, Other and White users were about as likely as each other to attend hearings with representation, once case type and location had been controlled for.

The statistical analysis of tribunal outcomes therefore largely supports the findings of the observational study discussed in chapter five and many of the conclusions of chapter six, although distinctions have to be made between the three tribunals. In CICAP and SENDIST, of the variables that it was possible to include in the analysis, only case type is significantly associated with differential outcomes. In TAS, however, as well as case type, both representation and ethnic group of the user are associated with differential outcomes. This suggests that, unless Minority Ethnic users are systematically pressing cases without merit, some Minority Ethnic users in TAS hearings, at least, are experiencing a disadvantage in terms of substantive outcome. How is this to be explained? Is it the result of direct or indirect discrimination or is it the result of other factors? Earlier chapters have indicated that the observations of hearings revealed no evidence of direct discrimination, nor evidence of the kind of behaviour that might raise suspicions of indirect discrimination. On the other hand, the observations of tribunal hearings showed that certain users, and quite often Minority Ethnic users, had considerable difficulties in hearings as a result of poor language skills, lack of fluency, or cultural barriers. TAS users are generally drawn from among the most disadvantaged groups in society, whether Minority Ethnic groups or White British, and Minority Ethnic TAS users may

labour under a number of disadvantages in addition to having poor language skills. Clearly, in TAS, representation can alleviate some of these difficulties, thus supporting the conclusion of chapter five that there are limits to the enabling ability of tribunal judiciary, no matter how well intentioned and how good their judgecraft skills. Given the relative informality of TAS hearings and their brevity, the difference between TAS, SENDIST and CICAP in these respects is interesting and worthy of further investigation.

Chapter 8. The tribunal perspective

The principal requirement of the research brief was to determine whether there is evidence of direct and indirect discrimination against ethnic minorities within the tribunal system, whether questions of race influence tribunal decisions, and whether different minority groups believe they are, or are likely to be, treated fairly within the tribunal system. Earlier chapters have presented evidence on users' expectations and experiences of tribunal hearings, and on the substantive outcomes of tribunal hearings. The detailed observation of the conduct of tribunal hearings involving users from a wide range of social and ethnic backgrounds discussed in chapter five showed that, with some exceptions, tribunal judiciary achieve good standards of professionalism, but that there are limits to their enabling activities. Many users were unprepared for hearings and there was considerable variability in users' comprehension and fluency. These difficulties traverse ethnic and, to some extent, social boundaries. However, language problems, dependence on interpreters, and lack of familiarity with the culture and institutions of wider society present **additional difficulties** that affect the ability of some Minority Ethnic users to participate effectively in hearings. These difficulties also present considerable challenges for tribunal judiciary seeking to deliver fair hearings for all users.

In order to understand these challenges from the perspective of tribunal judiciary, interviews were conducted with a sample of tribunal chairs and members in order to explore their approach to ensuring the fairness of hearings involving Minority Ethnic users and their perceptions of whether Minority Ethnic users were able to participate on the same terms as other tribunal users. Discussion was set in the context of tribunals' perceptions of the fundamental requirements for fairness in hearings and their views on the value of representation to users. Assessments were also sought on the value of diversity training for developing judgecraft skills. Interviewees were not asked directly about their "attitudes" to different Minority Ethnic groups or whether they felt that they were ever influenced either positively or negatively by the ethnicity of users. Nonetheless, in offering views on whether Minority Ethnic users in tribunal hearings face any particular challenges in participating, and in describing personal approaches to ensuring the fairness of hearings for users of all backgrounds there was scope during interviews for tribunal judiciary to manifest the kind of evidence of *'institutional racism'* which according to Sir William Macpherson's definition

> "*can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage Minority Ethnic people".* [78]

A total of 63 interviews were conducted with tribunal judiciary from all three of the tribunals in the study, comprising 24 interviews with CICAP tribunal judges, 24 interviews with TAS tribunal judges, and 15 interviews with SENDIST tribunal judges. Most of the interviews were conducted by telephone and all were, with permission, tape-recorded.

Interviewees were aware of the background and broad objectives of the research and the interviews revealed, with only one or two exceptions, very high levels of sensitivity to issues of diversity and equal treatment, occasionally bordering on anxiety. Many tribunal chairs and members interviewed were clearly uneasy about the interview as a whole and about particular questions. Some respondents gave very brief answers and were unwilling to expand. Many transcripts contain expressions of concern and requests for reassurance that the responses given were not out of line with those of other interviewees. Others, while similarly sensitive to the perceived importance of equal treatment issues, were more confident and relaxed about their approach and expansive about their personal strategies for ensuring fair hearings for all tribunal users.

What makes a 'fair' hearing?

The first substantive question asked during interviews with tribunal judiciary was what, in their view, were the necessary fundamentals of a 'fair' hearing. Although one or two interviewees were momentarily floored by the question, the vast majority of tribunal chairs and members from all three tribunals were able rapidly to provide a statement of the basic requirements of a fair hearing. There was a high level of consistency about the essentials of fairness falling into three broad areas. First, the need for information and evidence; second, that users should have, and feel that they have had, the opportunity to be heard; and finally that the hearing should be conducted by the panel in a fair and professional manner.

[78] *Report of an Inquiry by Sir William Macpherson*, 1999, op cit.

> *"That the appellant understands what's in issue; that he or she feels able to express and is capable of expressing their side of the case; that their case is heard by people with an open mind. That'll do for starters."* [TAS]

> *"There are several elements to this. The first is for all the information for the Appeal to be available both to the appellant and also to the Panel members who are hearing it. The second thing is for the appellants either to be able in person or through their representative to be able to present as perfectly as possible his or her case for lodging the Appeal. The third thing probably is to have as good quality evidence as possible.*" [CICAP]

> *"Full knowledge of the issues involved in the Appeal and good specialist information. Respect for the views of both parties. Providing the opportunity for everyone to have their say."* [SENDIST]

Full information for all sides

The fundamental requirement of fairness most frequently mentioned by interviewees from all tribunals was that all information and evidence should be available at the hearing and open for questioning. This included on the one hand the need for users to receive appropriate and helpful information in advance of the hearing about the tribunal and the tribunal's expectations of them, and on the other, the need for the tribunal panel to have to hand all the information that they might require to reach a confident and reasoned decision. For some tribunal judges, having all necessary information also involved taking the time to consider papers in advance of the hearing in order to identify the issues and pick up any points that might have been missed.

> *"I think the pre-discussion of the Panel is quite important to make sure that people on the Panel having read the papers before, have identified the issues in common or pick up any issues they might have missed in order to make sure that those that seem to be important issues are addressed during the hearing… however fair the Chairing is, if there are issues that fail to get brought to light, there could be unfairness there in something just not being considered."* [SENDIST]

As far as providing information to users was concerned, as well as ensuring that users knew what the case was about and why their claim had been rejected, part of the purpose from the tribunal's perspective was thought to be the management of users' expectations. A number of interviewees felt that users often come to tribunals with unrealistic expectations of what the tribunal is able to do within the limits of the relevant law or regulations. For example a SENDIST chair commented that:

> *"Parents should be aware of what the issues really are in legal terms, so they don't believe that they're going to get something out of the hearing that is actually not legally possible."*

The problem of users' access to and understanding of information about their hearing and their expectations of the outcome of hearings were referred to in more detail in relation to questions about the need for, and value of, representation at hearings, and this is discussed further below.

Giving the user the opportunity to be heard

Ensuing that users, witnesses and representatives had a full opportunity to be heard was also seen as fundamental in providing fair hearings for users. Allowing people to be properly heard during tribunals included appropriate questioning, active listening and taking the time to elicit all relevant information, while keeping people as far as possible to the point. The difficulties in managing this balancing act were recognised by several tribunal judges. For example:

> *"I think the role of the Chair's very important…getting the balance between giving parents and the LEA enough time to say what they want to. Sometimes I think it's quite easy, particularly for parents, to go kind of off the point, but then that needs to be very tactfully managed, because obviously parents do need time and space to say what they want about educational needs."* [SENDIST]

> *"I think the ability of everybody to say what they want to say, given the time to say it and if they go away at the end of the day feeling they've had their say, even if they don't necessarily get the results they wanted."* [TAS]

> *"…a fair hearing is one in which the applicant is given the full opportunity to explain himself."* [CICAP]

The question of how users are to be enabled to be properly heard was discussed further in the context of how tribunals ensure that Minority Ethnic users are enabled fully to participate in hearings and this is again discussed further below.

Professionalism and lack of bias

Many tribunal judges during interviews mentioned a bundle of attributes and skills that together constituted the idea of "professionalism" and were seen as crucial in delivering fair hearings. This bundle included expert understanding of the law, the necessary skills to enable users to participate in hearings, and neutrality and open-mindedness in decision-making. Enabling users to participate effectively in hearings required tribunals to appreciate the anxieties that the user might be struggling with, the difficulties of understanding what was expected of them, and eliciting from users relevant information in order to reach a decision.

Some tribunal judges mentioned the need for panel members to put users at ease during the hearing and to have an understanding of the anxiety and tension that users might feel. For example:

> *"All sorts of little things come into it…like the reception the parties get by the receiving Clerk and indeed the people in the hotel when they first arrive. I think anything of that nature - probably particularly for the parents who aren't used to this sort of meeting or discussion - anything that puts them at ease…I think from our point of view there's also the need to understand the tensions that sometimes parents get and feel which may make them seem a bit brusque or aggressive…"* [SENDIST]

Table 8.1 Most commonly mentioned essentials of a 'fair' hearing.

Both sides having all necessary information
- Tribunal have as much relevant information as possible and understand it
- Papers in advance (papers should be comprehensible)
- Tribunal have good understanding of the area of law being decided
- User given information about the nature of the tribunal and the decision-making process

Good opportunity for user to be heard
- Good 'chairing' such as identifying the issues, providing a structure, hearing the relevant evidence and keeping things on the point
- Listening to the user and/or his representative
- Ensure everybody who comes into the hearing has an opportunity to say what they've come for and it's taken into account

Open-minded and sensitive to diversity
- Full account of all the social, cultural and other factors that make people individuals
- Tribunal members come in with an open mind and not pre-judging the issues
- Judgment made entirely on the merits of the case without any bias
- Ensuring people are treated with respect (users, clerks and panel members)
- Ability to deal appropriately with people who have language or other needs

Decision explanation
- Right to appeal the decision
- Explain to user right there and immediately the reasons for the decision
- Provision of a full statement of reasons (either right away or within a reasonable time)

The value and impact of representation

Given the emphasis in the Leggatt Report and the 2004 White Paper on self-representation at hearings, the views of tribunal judiciary on the value of representation at hearings was explored during interviews. Interestingly, the prevailing view among those interviewed was that in the absence of universal high quality advice, being accompanied at a tribunal hearing was a valuable benefit for the user. Although there were some differences of view between the three tribunals and between judiciary within each of the tribunals, there was a common perception that represented users tended to be less anxious and better informed about the hearing

process. The key benefits of representation according to tribunal judiciary were being better prepared; knowing what evidence would be needed by the tribunal; and being better able to make a coherent and relevant case. Although tribunal judiciary were keen to emphasise the pains that they take to assist unrepresented parties, and many felt that on the whole they were able to compensate for lack of representation, a majority of interviewees felt that unrepresented parties were nonetheless at a disadvantage in tribunal hearings. Some of the comments made about the nature of this disadvantage illustrate the tensions referred to in chapter six about the legitimate limits of judicial assistance to unrepresented parties, or how far a tribunal judge should "lean over the bench". As the following concerns expressed by a CICAP member illustrate, for some tribunal judiciary there is clearly a difference between *enabling* an appellant to make the best of their case and *advising* them about arguments or claims that they were entitled to make but have not made, or indeed making those arguments for them:

> *"It is obviously very much fairer if the appellant is represented, especially if they're well-represented. It makes a huge difference. We bend over backwards to help people who are not represented, but they almost invariably don't know the law. Sometimes they've made hopeless claims that they could have been spared a lot of anguish by getting decent advice in advance, and sometimes they don't make claims that we know they could have made. Like loss of earnings or loss of future earnings capacity. The rules in my opinion are unfair. They lay the total burden on the appellant and some of the appellants simply are unable to carry that burden. So it isn't a fair system. I mean we do our best, but it's not fair and they're much better off if they're represented, but of course they got no Legal Aid under the scheme."* [CICAP]

> *"A lot of people don't have any advice before they come to the Tribunal. We see maybe 40% of people who haven't talked to anybody about what is going to happen, so all they get is from the Clerk… I find that users who are represented are much better equipped to deal with what's going on. From our viewpoint it's extremely informal. From the appellant's viewpoint it can be quite frightening, and if you add that frightening bit to not understanding really what's going on, then it can get very, very worrying for them."* [TAS]

Interviewees on the whole felt that tribunal hearings are daunting for most users and that this is exacerbated by lack of solid practical information about what to expect at the hearing.

> *"A lot come not knowing how they will proceed and I think that adds to the anxiety."* [TAS]

> *"They do get notices and information given to them... I sometimes think it's not user friendly"* [CICAP]

> *"Until you're there, it's quite hard for anyone to know what it's going to be like…they're usually really nervous."* [SENDIST]

The majority of interviewees in all three tribunals felt that the presence or absence of representation tended to have some impact on the conduct of hearings and over a quarter of all respondents stated that a hearing would differ markedly for represented users (summarised in Table 8.2 below).

Among TAS judiciary the most common perception was that represented users were more informed about the relevant issues in their case and therefore knew what information to present at the hearing. For example:

> *"People who are represented usually have a very well organised case to present. People who are not represented may not focus on the issues that either make a difference to their case or that the Tribunal wants to hear about."*

> *"With a representative there, you've got a system which is going to run perfectly smoothly because the representatives have been to a tribunal before… we could probably process more cases more efficiently and more quickly with representative input."*

With representatives present the tribunal could more easily focus on the issues relevant to the claim whereas unrepresented users might want to talk about issues that were not relevant or important to the decision. As a result representation, in TAS particularly, assisted in more efficient case processing:

> *"Representatives have insight into the system which allows them to focus more clearly on the important things."* [TAS]

> *"If they are represented, the case will go straight to the point sometimes and it might be easier for the client, easier for the Tribunal… rather than spending a lot of time explaining to them."* [TAS]

Some tribunal judiciary, on the other hand, perceived a potential for representation having a negative impact on hearings from the point of view of the tribunal and, in some cases, from the point of view of the user. Such views were more common among CICAP and SENDIST judiciary than TAS. Representation was seen to have a negative impact from the tribunal's point of view in two ways: first, in needlessly prolonging proceedings and second, in creating an unnecessarily legalistic and adversarial atmosphere in hearings. Such views lend some support to the assertion of the Leggatt Report that representatives can act to increase the 'formality and delay' in hearings.

> *"…sometimes representation is a nuisance… I wouldn't say it does harm, but it can prolong proceedings quite unnecessarily."*

As well as prolonging proceedings, some tribunal judiciary felt that greater use of legal jargon by representatives tended to alienate users and might weaken their case by decreasing the user's input to the hearing. This sentiment was particularly prevalent among SENDIST judiciary:

> *"I have come across one or two lawyers who I think almost do their clients a disservice by being quite adversarial when that's not always necessary."*

> *"It can be more confrontational if there is a representative, but likewise if there is a confrontational issue, such as a history of difficulty between the parents and the authority, they may be able to avoid that."*

> *"Some of the good ones come with carefully prepared alternative versions of a statement which actually helps to move the hearing forward… but if the legal person is more nit-picky then I think it can slow things down a little and bring in an antagonism between themselves and authority which maybe does not advantage parents."*

A specific risk for users, however, is poor representation. Interviewees from all three tribunals mentioned the difficulties presented by the variable quality of representation. Several interviewees highlighted the fact that poor representation can be more harmful to the user than if they were unrepresented and this is because some, although not all tribunal panel members feel that once a user has representation allowances cannot be made in the same way as if a user came without representation. Simply put, the tribunal has a responsibility to enable unrepresented users to participate effectively in hearings but that once represented, no matter how inadequate the quality of the representation, the enabling responsibility is different and perhaps, even, disappears. For example, a CICAP member commented that poor representation might actually result in a worse substantive outcome than if the user was unrepresented:

> *"If you have a representative who is absolutely hopeless he might get a worse result for the user than if the user was on their own."*

> *"You sometimes find that representatives come along woefully and ill-prepared and don't understand the scheme."*

Similarly, an interviewee from TAS commented:

> *"Sometimes if they are badly represented…then it goes badly for the user."*

There was, however, no consistency of view on this issue. While several interviewees felt that they could not step in to mitigate the effect of poor representation, others had

quite a different view. For example, the following CICAP member demonstrated a clear assumption of responsibility for bypassing weak representatives:

> *"If they're well represented then the tribunal simply becomes a bench which listens to the representations. If they're not represented then we really have to do the representative's job for them and some Chairmen are outstandingly good at that…Sometimes you get an incompetent lawyer and then the Chairman or indeed another Panel member will take over and do their best for the appellant because the quality of the legal representation does vary."* [CICAP]

> *"If they are represented then there is an expectation that their representative will know the process and understand it, although I have to say that the majority of people I've sat with, if it's somebody that's new to it and that comes across fairly quickly, then they will do their best to get the applicant's side out of the process."*

Such responses are examples of a feeling that representatives can act to confuse a case and prevent the user from giving their account of the situation, which some tribunal judiciary said is more advantageous. A minority of the tribunal judiciary noted that simply the quality of representation is poor leading to badly presented cases. A SENDIST member noted:

> *"Some of the representatives aren't very good actually, which is worrying."*

Table 8.2 Tribunals' views on ways in which representation impacts hearings

TAS

If unrepresented
- Lack of focus on the issues that the tribunal wants to hear about
- Claim may be unrealistic
- Unsure of the criteria, forms not completed properly and more time required to ensure all the evidence is taken down

If represented:
- Parties have a well organised case to present
- Parties produce much better presentations
- Parties have better information collected
- Hearings go straight to the point
- Greater insight into the system and greater focus on the issues
- Case will go straight to the point
- Better result if the case is presented properly
- Users feel they have had a fairer hearing
- Users will have their morale boosted

CICAP

If unrepresented:
- Panel tries to ensure that users get as much information as possible and that they get their story across
- Parties require the panel to do the job of a representative
- Hearing is more inquisitorial
- Panel goes the extra mile to make sure users are fully informed
- Spend more time to ensure users understand the system and are given opportunities to ask questions
- Panel helps users to present their case

If represented:
- More reliance on representative to know their way around the scheme
- Less need to explain the scheme
- Easier to get to the heart of the issue more quickly
- Case will cut to the chase
- More questions will be asked by the user's side
- No allowances made if mistakes are made in gathering evidence or calling witnesses
- Easier to take things as read
- Don't go through the formalities of explaining everything in simple language
- User is briefed beforehand as to what to expect
- Less need to stop so frequently for explanation

SENDIST

If unrepresented:
- Panel don't take anything for granted in terms of users' understanding
- Panel will ensure that parents have every opportunity to speak
- More explanation required
- Greater effort to ensure users understand
- Might stop to explain an LEA's answer or ask the LEA to rephrase the answer and explain

If represented:
- Much more formal, particularly if they are barristers
- Parents are much less directly involved
- Prolong proceedings
- More confrontational
- Case fits more evenly into the legal scheme
- Representatives can avoid certain confrontation that may otherwise exist between parents and LEA
- If they come with carefully prepared alternate versions of the statement, it can move the case forward
- If representatives are nit-picky, it can create an antagonism between parents and LEA

Interestingly, when reflecting on the question of whether lack of preparedness and representation would be likely to affect the outcome of a case, the majority of tribunal judiciary felt that it would not. This view was supported by descriptions of the efforts made by the tribunal to ensure that users feel comfortable within the tribunal setting and elicit relevant information from the user. This tends to involve taking more care to ensure that users understand proceedings, to repeat questions and check that the question has been understood by the user – indeed many of the best practices that were noted during observations of hearings. For example:

> *"I strive desperately to make sure that the applicant is at ease, even to the point of perhaps being almost too relaxed with him at times, just until they get the feel of what is happening."* [CICAP]

> *"Particularly when parents are not represented, we would make perhaps a greater effort to ensure that they understood what was going on or we might stop to actually explain an LEA's answer or to ask the LEA to rephrase the answer and explain it."* [SENDIST]

> *"I think what does differ is perhaps the tone of the proceedings if people are unrepresented. Given that there isn't an intermediary to do any explanation, extra effort is taken to make sure that everything is clear and understood…"* [SENDIST]

> *"I would say the non-represented are at a disadvantage… not that they are at a considerable disadvantage because we tend to bend over backwards, from a legal point of view, and help them."* [CICAP]

> *"The procedure is different [with representatives] because the representative will tend to speak and question on behalf of the parents, so if they're not there then the parents are much more directly involved, but it is probably going to be the same outcome."* [SENDIST]

On the other hand, some respondents did suggest that lack of representation might have an impact on outcome. This view was most often expressed among TAS judiciary and the observation is well made in light of the findings of the previous chapter indicating that, within TAS hearings, representation has a significant and independent effect on the likelihood of a successful outcome.

> *"I feel people are better off if they are represented. There's no doubt about that. Some people if they come completely unrepresented, they can't manage it*." [TAS]

> *"A lot of appellants come to tribunals without any representation. Representation is sometimes very difficult for appellants to obtain and obviously sometimes they do need representation. You get appellants who don't really understand what they're appealing against. If they had a rep they would actually understand that. You get appellants that are also receiving a Disability Living Allowance and they appeal, and they don't realise that they could lose their benefit."* [TAS]

Tribunals' perceptions of Minority Ethnic users

Following general questions about fair hearings and the value of representation, tribunal judiciary were asked a set of questions specifically exploring their perceptions of Minority Ethnic users' preparedness for hearings, ability to participate in hearings, and the use of interpreters during hearings.

Preparedness for hearings

Tribunal judiciary were asked whether in their experience Minority Ethnic users were as well prepared for hearings as White British users. The responses from TAS and CICAP were rather evenly split between 'yes – as well prepared' and 'no – not as well prepared', with just slightly more judiciary responding that Minority Ethnic users were less well prepared that White British users. Some judiciary from TAS and CICAP responded that Minority Ethnic users were sometimes as well prepared as White British users, but not always to the same extent. The majority of SENDIST judiciary felt that although they rarely saw Minority Ethnic users they were generally

as well prepared as White British users. Table 8.3 provides some examples of perceived differences in levels of preparedness between Minority Ethnic users and White British users.

However, among those respondents who felt that Minority Ethnic users were as well prepared as White British users, the majority qualified this impression by citing that in their experience, Minority Ethnic users were more likely to attend tribunal hearings with a representative and that it was this fact that explained the response. As one TAS member put it:

> *"I think because they're more likely to have representatives, in that case they are as well prepared, because often the local people don't have representatives whereas ethnic minorities have to more because of their language problems."*

The view that Minority Ethnic users were probably more likely than White British users to attend hearings with a representative or some kind of support also appeared to be held among interviewees from CICAP and SENDIST:

> *"In my experience, it is fair to say that I think Ethnic Minority users tend to be more frequently represented."* [CICAP]

> *"I find that ethnic minorities are more likely on the whole to have help."* [SENDIST]

It is clear that the experience, or perception, of a substantial proportion of tribunal interviewees was that Minority Ethnic users, if they took the step of attending a hearing at all, were at least or possibly more likely than White British users to be accompanied by someone who could represent them or provide them with support during the hearing. The 'help' received mentioned by various tribunal respondents included advice from CABx, agencies and also community organisations. There was a sense that Minority Ethnic users might be less confident about attending a hearing without advice and support which explained why they so frequently attended with representation. This belief led some tribunal judiciary to conclude that ethnic minorities were in fact better prepared at hearings than many White British users. A TAS member commented:

> *"I would say surprisingly that sometimes they are better prepared …maybe partly due to the fact that they have actually managed to get themselves there… it shows that they are made of sterner stuff then many of their colleagues."*

The discussion in the previous chapter concerning levels of representation at hearings revealed that Black and Minority Ethnic users attending hearings were as likely to attend hearings with representation as White users. The perception of tribunal chairs and members was consistent with this. One or two tribunal judges thought that Black and Minority Ethnic appellants might be more successful than White appellants in obtaining representation, and that this conferred an advantage:

> *"Sometimes they seem to be at more of an advantage because they come with representation, whereas White English people don't know that they can get representation, they don't know it's free, they think it's going to cost…sometimes I think Ethnic Minority people are better informed, as they've got strong and effective community organisation."*

On the other hand, when Minority Ethnic users attended hearings without representation some tribunal judiciary felt that they were *less* well prepared than White British users. Reference was made to problems deriving from cultural differences that minorities might face in preparing for their case, and this was particularly so for those who had only recently come to the UK. Several respondents pointed out that a newer entrant to the UK might be unfamiliar with the legal system and be less aware of what is required in preparing for a hearing:

> *"There's no doubt that a White British person will have, on the whole, more comprehension."* [TAS]

> *"Asylum applicants from countries like Somalia and Iraq…may not be so well prepared with language difficulties as well and being less familiar with the British tribunal system."* [TAS]

On the other hand, several respondents from TAS felt that although there were clearly differences in levels of preparedness for hearings this was related to basic levels of competence that cut across ethnic boundaries. For example:

> *"I don't find any difference between the two. I don't think it can be classed that way. It's a matter of people that are able to represent themselves and people that are not, in an articulate, intelligent, careful way and it's not really a matter of colour or Ethnic Minority."* [TAS]

CICAP judiciary tended to explain the variation in levels of preparedness as being the result of language barriers that may impede some Minority Ethnic users from accessing literature or obtaining reports. SENDIST judiciary, in contrast, largely did not perceive any particular disadvantage for Minority Ethnic users, although this may be a reflection of the fact that few SENDIST tribunal judiciary had much experience with Minority Ethnic users, especially in comparison with TAS which has by far the

largest proportion of Minority Ethnic users across the three tribunals. Overall TAS judiciary have more exposure to Minority Ethnic users and therefore could comment more extensively on any perceived differences in preparedness between Minority Ethnic and White British users.

SENDIST tribunal judiciary generally felt that there was no difference in preparedness between Minority Ethnic and White users or, that if there was some difference, it was not specifically a function of ethnicity, but rather problems associated with language or familiarity with the system. SENDIST judiciary tended to feel that these were difficulties faced by many users of the tribunal system and not simply Minority Ethnic users:

> *"It is not only ethnic minorities, it can also be other parents who've heard of the tribunal and who've gone ahead without really understanding what it is that they need to put forward."*

Similarly, interviewees simply interpreted the difficulties as flowing from different educational opportunities:

> *"… The divide is not between ethnic and non-ethnic. The divide is between maybe educational background or familiarity with official systems… and you see extremes in both the ethnic and non-ethnic groups. The ethnic groups do not fall into any one category."*

Indeed, although tribunal respondents from all three tribunals perceived significant differences among users in levels of preparedness for hearings, this variation was not felt to relate specifically to ethnic background. Rather, such variation in competence reflected differences in education, income levels, confidence and language abilities.

Table 8.3 Tribunals' views on preparedness of Minority Ethnic users

TAS

As well prepared:
- More likely to come with representatives
- More often have a representative which improves their preparation
- Only if they have a representative

Not as well prepared:
- More obstacles and barriers in the way of taking part effectively
- Sometimes talk about the wrong issues
- Difficulty understanding the forms
- Completely lost without representation
- Some of the law is notoriously complex (e.g. Social Security)
- They are going to have to be reliant on others (people to fill in the forms properly, translate, explain in English what their problems are)
- Always a difficulty with an interpreter

Better prepared:
- Have things explained to them and find out about the process (whereas White British take it for granted that things will be explained to them)
- A lot come with representatives

CICAP

As well prepared:
- If they have representation
- Tend to be more frequently represented
- If born in the United Kingdom
- Made of sterner stuff than their colleagues
- Ethnicity is not an indication of preparedness

Not as well prepared:
- If they can't speak English then in the hands of translators
- Language difficulties makes a greater problem
- Won't have the same level of understanding
- Lack of understanding of the procedures
- It is more the language than the ethnicity
- Difficult environment for them

SENDIST

As well prepared:
- More likely to have help
- Divide is not ethnicity; it is educational background

Not as well prepared:
- More likely to accept the judgment and not take it any further
- Not properly informed

Better prepared:
- Greater effort in order to overcome their perception of prejudice
- Better educated

Difficulties faced by Minority Ethnic users in hearings

Interviewees were asked whether, in their experience, Minority Ethnic users faced any particular difficulties during tribunal hearings. The majority of tribunal judiciary in all three tribunals felt that there were specific difficulties faced by Minority Ethnic users. The most commonly cited difficulties were language difficulties, dependence on interpreters, and differences in cultural practices. Table 8.4 presents examples of specific responses to the question of difficulties faced by Minority Ethnic users.

Language and interpreters

Language difficulties were clearly a common concern and this could occur whether or not an individual was accompanied by an interpreter. Some Minority Ethnic users attend tribunals without an interpreter and although their language skills might be sufficient for basic functional usage, they often proved to be inadequate for the specific context of a tribunal hearing.

> *"Obviously they are entitled to interpreters but some of them even don't know that that they are entitled because it's form ticking. So there's a fairly significant proportion who come without interpreters and have all these problems, and also some Chairmen quite rightly take the view that a family member can't really interpret because he or she might not give the direct reply to the question, but might sort of add on an interpretation of their own which they shouldn't do."* [TAS]

Even when interpreters were used, the problems were not necessarily overcome. In this context, tribunal judiciary in all three tribunals raised concerns about interpreters. First, using an interpreter slowed down proceedings and this could create pressure when tribunals were operating with relatively tight schedules (more of a problem in TAS than CICAP or SENDIST).

> *"I tend to ask fewer questions because otherwise you'd be there for longer than the allocated hour."* [TAS]

> *"There is some reluctance on the part of some tribunals when interpreters come in, purely because it takes more or less double the time. They tend to go over the time limit."* [TAS]

Second, interpreters were of variable quality and there were suspicions that the interpretation might not be sufficiently accurate. Examples were given by interviewees who were proficient in the language being used by an interpreter and therefore knew that the interpretation was not accurate. Third, there were concerns about interpreters deviating from their neutral role and their responsibility to the tribunal to provide a faithful translation of exactly what the user had said. Some

tribunals had experience of situations when they felt that interpreters were either adding to what the user had said in response to a question or omitting information.

> *"… a good interpreter who translates exactly what is being said of course is vital if somebody can't speak the language. A bad interpreter who gets involved in the hearing and does not interpret word for word, but rather interprets loosely and in a slanted way, is unhelpful."* [TAS]

> *"You get the impression that more is really said than you have said or they have said."* [TAS]

More seriously, some tribunals had experience of interpreters engaging in conversation or dialogue with the user, arousing suspicion that they were advising the user what they ought to be saying or seeking to dissuade them from giving certain responses. Whether or not these concerns were justified, the frequency with which this problem was raised during interviews illustrates the concerns and potential difficulties surrounding the use of interpreters. Given the findings of the previous chapter indicating that use of interpreters was associated with a depressed rate of success at tribunal hearings, this constitutes an issue for further reflection and training within tribunals and raises policy questions about the role and conduct of interpreters in judicial hearings.

Aside from problems of variability of interpreters and the risk of interpreters engaging in dialogue with users, some tribunal interviewees also referred to more subtle difficulties related to interpretation. It is difficult for the tribunal to be sure that the subject or worse, concept that they wish to discuss is translated in such a way that it has meaning for the user. For example, one TAS tribunal judge mentioned the difficulty of asking about feelings of depression through an interpreter:

> *"Sometimes, particularly on medical issues – and I feel strongly about this with regards to mental health problems - I have to be sure that what I ask an interpreter has been fully interpreted. So if I ask a person if they feel depressed, I really have to be sure that the interpreter knows what I am asking. And sometimes I've actually said to the interpreter 'Do you have a word for so and so, and do you understand what I mean by so and so?' And if they say 'Yes' I say 'Well will you please ask this question using that word'...I need to know that there is a word that conveys what I mean."* [TAS]

Unfamiliarity with the system was also felt to hinder the extent to which ethnic minorities may be able to comprehend the procedure of the hearing and communicate effectively with the tribunal. This in turn may be detrimental to how comfortable certain users may feel in the hearing. Despite these views, many interviewees were at pains to point out that such disadvantages were not necessarily

simply a function of skin tone, but would affect any user unfamiliar with the system or who came from a very different cultural background. Indeed, many interviewees, particularly from SENDIST and from CICAP felt that tribunal users were mostly impeded by a range of factors relating more to education and income rather than ethnicity:

> *"I think overall level of preparedness is often a function of education, rather than skin colour."* [CICAP]
>
> *"It has less to do with ethnicity than it is to do with language."* [CICAP]
>
> *"It's lifestyles I think that may be more of an impediment than ethnicity."* [SENDIST]
>
> *"I don't find any difference between [Minority Ethnic and White users]. I don't think it can be classed in that way. It's a matter of people that are able to represent themselves and people that are not, in an articulate, intelligent, careful way. And it's not really a matter of colour or Ethnic Minority."* [TAS]

Cultural issues

Interviewees also mentioned that customs or cultural practices may be different for Minority Ethnic users and could present barriers to Minority Ethnic users participating fully in hearings and providing the tribunal with the information they needed to make their decision. This often appeared to create difficulties in TAS hearings where health issues were at stake. For example:

> *"Depending on the cultural background of the user, they see the doctor as an authority figure and then tend not to disclose things that other people might disclose quite happily."*
>
> *"There are questions of modesty for female users where the tribunal are either entirely male or partly male constituent… often the doctor has to do quite a lot of questioning about intimate problems and the fact that he is of the opposite sex may cause some embarrassment…I think that may be more so for some ethnic minorities than it is for the general population, but it's not restricted to ethnic minorities. Obviously there can be the same problems with a person from the White majority."*
>
> *"Sometimes we get cultural difficulties. I mean primarily disability was what I was thinking of. It can be difficult. Well, it can be difficult for anybody to talk about personal care, you know, going to the toilet and that sort of thing. And yes, in cultural differences it can be an added embarrassment for them. And obviously depending on whether it's a man or a woman undressing them, it can be an added embarrassment for them."*

One CICAP member reflecting on experiences of dealing with Minority Ethnic users, felt that standards of behaviour and expectations of appropriate behaviour vary from culture to culture. This can also create some barriers during hearings when tribunals are seeking to probe for sometimes quite personal information.

> *"There are problems of different cultural attitudes…I'm thinking particularly of Iraqi or Iranian applicants, who are sometimes very different from the way we are. They often have a great deal of pride and, perhaps, will not inform what's happening to them because they feel it's demeaning to them."*

A few SENDIST members also commented about cultural practices as they related to mothers and wives participating during the hearing:

> *"… it could potentially be an impediment, because it is a part of their culture that the mother doesn't contribute as much to the actual hearing as the father… We always want to hear from everybody and that means both parents."*

> *"There is a cultural aspect that is sometimes an issue… the mother and father don't have equal input in a hearing."*

Another factor referred to as presenting a specific difficulty for Minority Ethnic users was lack of familiarity with the legal system of England and that this, naturally, was a particular problem for new arrivals to the UK. For example:

> *"I think sometimes the cultural differences are so huge that they simply get baffled by English justice."*

A substantial proportion of tribunal judiciary felt that recent arrivals experienced some level of confusion with accessing the system and this translates into a disadvantage during tribunal hearings. A TAS panel member highlighted that Minority Ethnic users recently arrived in the UK might be unaware of their entitlement and thus make claims that are unrealistic and bound to fail at a hearing:

> *"Ethnic minorities are often less familiar with the system of this country and they make wrong assumptions about what they're entitled to."*

> *"A lot of Ethnic Minority users come because they have, say Diabetes, and they think that Diabetes maybe equals an award… well that's not how the system works. And I think for those who don't understand the system, they may go away feeling that it's not fair, but that's because they've either not understood the system or been badly advised… I think it's a particular problem for ethnic minorities."*

Table 8.4 Tribunals' perceptions of difficulties facing Minority Ethnic users in hearings

TAS ▪ Language ▪ Cultural practices (e.g. eye contact, modesty) ▪ Translators who do a poor job ▪ Misunderstand the purpose of the system and then perceive unfairness ▪ Lack of documentation ▪ Expectations are sometimes incorrect ▪ Some bias among Tribunal Chairmen and lay members
CICAP ▪ Language ▪ Cultural differences, different cultural attitudes ▪ Dependence on an interpreter ▪ Lack of understanding the court system in the UK ▪ Not understanding the process ▪ More difficult to get information across (understand it less quickly)
SENDIST ▪ Language ▪ Cultural practices (e.g. women not participating in the hearing, not having equal input) ▪ Use of an interpreter ▪ Perception of bias ▪ Too few Ethnic Minority panel members ▪ Tribunal does not facilitate cultural elements (e.g. how to politely address someone, meal and prayer requirements during the day) ▪ Diction problems and having to continually ask to repeat due to accent

Minorities and representation

A large number of tribunal judiciary across all tribunals believed that ethnic minorities in particular benefited from representation. Responses ranged from a feeling that unrepresented ethnic minorities are *"horribly disadvantaged"* to a basic acknowledgement that preparation levels were improved for ethnic minorities who are represented. Several respondents felt that Minority Ethnic users, in fact, derived more benefit from representation than White British users in that they improved their understanding of the procedure and helped greatly in the presentation of their case (particularly if English was not the first language of the user).

Improving levels of preparedness

Most interviewees felt it was either the chair's responsibility, or the combined panels' job to limit any disadvantages that Minority Ethnic users might experience during hearings. However, a number of other suggestions were made for ensuring that users appeared at hearings in a position to make the best of their case. Several tribunal judges felt that more pre-hearing help was needed in order to reduce the potential disadvantages experienced by Minority Ethnic users. Some felt it was up to the relevant decision-making department to

give assistance with claims forms and suggest where users might seek further assistance or advice. SENDIST tribunal judiciary most often suggested this strategy, advocating an increased advisory role from the LEA. Several respondents thought that the Parent Partnership Service was very important in providing advice to users and that it should increase in its scope. These ideas seem to fit very much around the proposals in the White Paper for increased 'first tier' assistance to be offered to users by the department issuing the original decision.

Other tribunal judiciary felt that voluntary organisations offering advice and representation had a vital role in increasing the confidence of users. Some tribunal judiciary felt that pre-hearing advice, particularly from the voluntary sector, is important in preparing users and helping them to be more confident at the hearing. This reflected a feeling among some tribunal judiciary that both Minority Ethnic and White British users experience a lack of knowledge about their appeal and tribunal procedures. A minority of interviewees felt that specialist provision should be made for particularly vulnerable ethnic minorities and this is discussed in greater depth later in the chapter.

Ensuring fair treatment

On the question of how to ensure that Minority Ethnic users were able to participate on equal terms with White users most interviewees felt that while the rules applied equally to all users, special efforts should be made to ensure that **any** disadvantaged or vulnerable person should be enabled to participate effectively in hearings. For example, the provision and use of interpreters was not seen as special consideration, but rather a means of ensuring that non-English speaking users were properly able to present their cases. While the rules and procedures should not differ for any minority or potentially disadvantaged group, it was legitimate to recognise the added problems they may face:

> *"What we need to do is ensure that we have an understanding and an acceptance of everybody."* [SENDIST]

> *"I don't think you change the system or the rules or the procedure. I think you merely put things in a different context, explain things in a different way, so that you at the end of the day feel that even if they haven't got the result they wanted, they have understood what went on.*" [TAS]

> *"I think every individual user needs to be given individual attention according to their particular circumstance… ethnic background is just one of them."* [CICAP]

Occasionally it was felt that some special consideration should be given in ensuring that relevant information about specific and different cultural practices were drawn to the attention of the tribunal. For example, in reports provided to tribunals by local general practitioners, relevant information that might assist the tribunal was omitted:

> *"In regards to the medical report, doctors ought to put some comments; this person is a Sikh gentleman, unable to tie a turban because of …I do feel that I've come across tribunal judiciary where they are totally ignorant about this issue."*

A SENDIST member commented on cases where culture and religion were inherent in their appeal:

> *"…Thinking of a couple of cases where the families were Jewish families and religion was very much part of their appeal and maybe the panel wouldn't have considered it too highly, but you need to because it is part of their culture… there should be special consideration."*

The majority of interviewees who mentioned a need to give particular consideration to Minority Ethnic users, however, did so in the context of the need to assist any person who appears not to be coping well with the system, irrespective of ethnicity. To this extent, the articulation of the need to enable Minority Ethnic users to participate in hearings was merely an aspect of ensuring fairness for all users. Several respondents acknowledged that there are vulnerable users for whom help was needed, but their vulnerability was not due to fact they were from an Ethnic Minority group. The following quotes highlight this point:

> *"I would say it is much more important that special consideration be given depending on their intellectual abilities which I think is a bigger problem than ethnic minorities…"* [CICAP]

> *"I think special consideration should be given to all vulnerable users, including people of any colour who are brain damaged or not very intelligent or bamboozled, confused or shy... I think there's a whole range of users who need more help than they get."* [CICAP]

> *"We need to have an understanding and acceptance of everyone who comes to a tribunal… and I would like to think that it didn't matter if they were Black, White, yellow, brown or pink or whatever, or three legged or two headed… they are people in a difficult situation who come to a tribunal to solve their difficulties."* [SENDIST]

Table 8.5 Examples of consideration given to Minority Ethnic users

- Religious considerations
- Take into account the background in which they have been living
- More explanation
- Use of interpreters
- Greater effort to make sure they understand the questions and the procedure
- Respond to particular needs
- Try and understand that they might behave in a way which is slightly alien to national characteristics
- Take account of cultural sensitivities
- Cultural background, feelings, prejudices, assumptions and needs
- Ensure they understand
- Understand how users would view society and like and how people should behave
- Take account of legally relevant issues which may even be cultural

The value of diversity training

Diversity training is designed to assist tribunal judiciary in developing the competences necessary to ensure fair hearings for users of all backgrounds and of all abilities. Interviewees were therefore asked how much training they had received in ethnic awareness. Responses indicated that amount of training received differed quite markedly between the three tribunals.

The majority of TAS judiciary said they had received one day of diversity training, with several receiving two, three or more days, and only a very small number reported that they had not received any training. CICAP judiciary were more polarised in the level of training received, with respondents reporting either no or minimal training and others reporting more than three days. The lowest incidence of diversity training was among SENDIST judiciary, with the majority reporting that they had not received any training at all. Those that had received some training had only done so during their Annual Conference. The low levels of diversity training in SENDIST may be related to the fact that very few SENDIST users are from a Minority Ethnic background. As one SENDIST member put it:

> *"It's a difficult issue whether we need racial awareness training because there is a very small uptake from ethnic minorities of the tribunal service."*

> *'We're not being faced with the problems because it doesn't get as far as us… so the issue is much further down the line. Why aren't the ethnic minorities coming through in the same proportions to use the Tribunal facilities?"*

The majority of those that had received training felt that it was a valuable exercise. Many tribunal judges felt that the key value of diversity training was the reinforcement of messages and awareness. Most tribunal judiciary felt that the awareness of ethnic stereotyping was already there, but that training acted to remind people of its importance.

> *"It gives the, if you like, the backsliders, it gives them awareness and realisation."*

> *"I believe it does reinforce the message, it serves a purpose. It is an important piece of the training."*

Many interviewees felt that it was particularly useful in making the panel culturally aware. Training which informed participants about cultural differences between ethnic groups, for example, on how to be addressed by name or what cultural activities were about to happen, was seen as especially helpful. Many believed that such techniques enhanced their ability to increase the confidence of users and to put them at ease. One TAS judge commented on how training in this area could mitigate the lack of cultural understanding by the medical members:

> *"…they don't have any experience about headwear or the tying of turbans, what movement it requires, and the difficulty some people face."*

Conversely, a minority of interviewees felt that training on diversity in general was not particularly useful. Several tribunal judges noted that they felt the training they had attended had been 'patronising' or 'obvious'. Others saw the process as rather accusatory towards them. One TAS member was particularly critical saying that:

> *"There were groups that came away and were very angry because they felt that all of the time they were being accused of being racially prejudiced."*

Another TAS member was deeply disappointed by the training received:

> *"I thought it was dreadful. I though it was probably the worst course I've ever been on. Several of the barristers who were there got up and walked out. It was rather unfortunate the level it was pitched at. It presumed prejudice and then worked backwards from that… I think it was demeaning."*

Some CICAP members had had similar experiences:

> *"I thought it was dreadful, bluntly. I thought it was very badly run. I thought that the organisers demonstrated a lack of perception of ethnic minorities themselves."*

Although most interviewees welcomed diversity training and felt that more could be done to provide practical information about different cultural practices, some were critical of what was seen as "diversity training overload", feeling that too much attention was being focused on the issue of diversity to the detriment of other areas of judicial skills that required development. Some felt that they were well enough equipped with an awareness of diversity issues, and that it was more a matter of ensuring that everyone was treated fairly, rather than focusing on race or ethnic distinctions.

Generally those who saw merit in the training process tended to offer suggestions for improvements to the training currently offered. TAS tribunal judiciary in particular were keen for training to take account of cultural differences between users. They were often quite specific in wanting to know about ways of dressing or dietary habits:

> *"We could welcome more on cultural practices and on equality…Talking about attendance and bodily functions, I think dressing, that is most important aspect of dressing and grooming."*

Other TAS members outlined the type of training which would be welcome:

> *"I'd have liked training which was more formal, where it is spelt out… that their religion involves praying this many times, or involves this particular aspect of personal care… more practical information is what I would have liked."*

> *"…I would prefer to know more practical things like from the entrance of the Mosque to where you pray, where you kneel down and pray, what is the distance? What are the kinds of food that different people eat? What are the hygiene things which are crucial to that culture? … Courses should focus on those things."*

These views reflect the fact that for Disability Living Allowance claims, TAS judiciary are required to perform tests on users relating to their daily routine. Some tribunal judiciary felt they could make these tests more relevant to ethnic minorities if they were aware of different cultural practices.

Some tribunal judiciary did point to the fact that training provided them with a widening of perspectives as well as reinforcing the need for patience in hearings. Another commonly reported effect of training was an awareness of the correct terminology with which to address people. One TAS member gave the following example highlighting this need:

> *"…I did make one mistake once. Apparently some women are called Mrs 'X' and that's to do with the naming system. You won't get a Mr 'X' and I didn't know that and I called her husband Mr 'X'… I don't think I caused offence, everybody just smiled, but I thought, well, that's ignorance on my part. It would be helpful to have training on just basic information."*

Although the majority of interviewees who had received some training thought it was useful, only a small minority said that it had changed their approach to Minority Ethnic users. Most tribunal judiciary said that they saw themselves as fair before any training was received. Many also replied that they had had extensive exposure to the relevant issues in their professional career outside of the tribunal. These real life experiences were generally seen as more beneficial than training, which many felt simply reinforced how they already thought.

Critical incidents

Interviewees were asked whether they had ever experienced a colleague or panel member expressing racist or prejudiced views. The majority of interviewees reported that they had never been aware of an offensive or potentially racist incident during tribunal hearings

> *"In CICAP most people concerned are very well trained."*

> *"I think on the whole everybody is pretty good…I've never been aware of any treatment that I would consider wrong."* [TAS]

Some acknowledged that negative attitudes towards minority groups among tribunal judiciary might be well concealed and would probably not be revealed during hearings. As one TAS member pointed out:

> *"I'm pleased to say I have never seen anything… but the time you would see it of course is not with the applicant present, but in discussion and in private. I have never seen derogatory thinking or derogatory behaviour."*

A minority of interviewees said that they had experienced expressions of prejudiced attitudes on the part of other panel members during tribunal hearings and most interviewees recalling such an experience were from TAS. Although in most cases interviewees referred to the occasional comments that suggested negative attitudes, one TAS panel member appeared to feel strongly that there was evidence of systematic bias. Although this expression was very much a minority view, it was expressed in uncompromising terms:

> *"There is racism… institutional racism… inadvertent racism on the part of the Tribunal. But racism is a very difficult issue because it is very subtle… racism manifests itself in the manner in which the questions are asked of people."*

However, in most of the cases where some form of negative behaviour had been noted, reference was made to an expression, or attitude, or a glib remark made by another member of the panel, generally on a single occasion. Interviewees rarely felt that such remarks had influenced the decision-making process and several interviewees pointed out that negative attitudes can be held in relation to education and social class just as much as ethnic group.

Most reports of a 'critical' incident involved use of insensitive language:

> *"I think it's indirect…I think they could be slightly racist without knowing, that might be due to ignorance most probably."*

> *"…it could be something really simple like the tone of their voice. I've heard people speaking in a patronising way because the user is Black… there is a lot of prejudice which manifests itself in the use of language, the tone of their voice and the general demeanour towards the user."*

> *"Some doctors seem to have this prejudice and they perceive their role as the barrack room lawyer, weeding out the fraudulent claims… that's a prejudice and how that manifests is that they ask intrusive questions and attach significance to the evidence in a certain way…"*

One TAS member reported hearing a colleague say to a user who was accompanied by an interpreter during the hearing:

> *'How is it that you've been in this country for 20 years and still can't speak English?'*

Table 8.6 provides examples of potentially prejudicial incidents or behaviour mentioned by interviewees:

Table 8.6 Potentially prejudicial incidents of behaviour witnessed by tribunal judiciary during hearings

TAS
- Pre-judgment based on race and class
- Asking intrusive but irrelevant questions
- Speaking in a patronising way because the user is Black
- Prejudices that manifest in tone of voice, use of language and demeanour toward user
- Worrying comments, such as 'Well, this is very typical of this sort of person…'
- Expressing inappropriate views, such as 'Well, you know what Pakistanis are like…'
- Some panel members can be racist without knowing it
- Prejudicial remarks by a doctor: a certain Ethnic Minority 'are all liars'
- Reluctance from panel members to allow interpreters because they take too long
- Remarks by panel members which reflect their idea of a stereotype of a particular culture

CICAP
- Culture was an influencing factor
- Remarks by panel members which are inappropriate, usually in the retiring room, not during the hearing

SENDIST
- Chair queried a parent about something that was racist/sexist innuendo
- Chair once said something that made me cringe and I thought 'I hope they [user] don't interpret it the way I did…'

Several interviewees from TAS and CICAP stated that they had been the subject of prejudiced comments made by users themselves. One panel member from TAS said the following:

> *"On one occasion the user complained that the doctor who examined him had been a Hindu, whereas the user was Muslim and they thought that had affected his attitude."*

Two panel members from CICAP reported similar experiences:

> *"I've been aware of an aggressive user who as good as accused us of racism, and I've been aware of one who didn't like our verdict, and accused us of racism."*

> *"I've been aware of the converse that one would expect, of ethnic applicants playing the 'racial card'… I mean we get people at the end, they build up their hopes, they can be rude to us if they're disappointed… but so can White people."*

A proportion of those who responded that they had not been aware of a racist incident did, however, note that prejudice may be present but that it was based on class not race.

> *'I think that prejudices may be more class-based than race-based.'* [SENDIST]

> *'There's a lot of class prejudice in these tribunals… some doctors who sit on these panels think that everyone who claims a benefit is lying.'* [TAS]

It is noteworthy that a number of interviewees were from Minority Ethnic backgrounds and none reported any offensive incidents either towards themselves or towards users during hearings or at any other time. On the other hand one interviewee, a doctor sitting on TAS panels, demonstrated during the course of the interview a remarkable lack of insight into evident personal prejudices as follows:

> *"I find it difficult from the medical point of view, for example a thing like back pain. You know it's quite subjective you see. And there are cultural differences. I mean some people can tolerate pain more than others and most of the ethnic minorities' thresholds of pain appears to be less, so there is a question of do we believe that he has so much pain as he claims. That type of thing."*

That comment, however, was the only clear example among 63 interviews conducted with tribunal judiciary that displayed evident prejudice, although one or two medical members in TAS offered rather robust views that were somewhat out of line and sometimes out of sympathy with the views of legal and lay members. For example:

> *"Not invariably, but generally speaking most people are capable of giving a reasonable account of their medical problems, even if they are not particularly articulate… we prompt them with enough questions that they do give an adequate account… even if they don't understand the process themselves."* [TAS Medical member]

Increasing confidence

During the course of interviews respondents mentioned various apprehensions that Minority Ethnic users might have about attending a hearing and the difficulties that they sometimes experience in presenting cases. Almost all interviewees felt that there were steps that could be taken to increase the confidence of Minority Ethnic users and Table 8.7 provides some examples of the means by which tribunal judiciary felt that the confidence of Minority Ethnic users could be increased.
The most common ways of increasing confidence mentioned by interviewees across all three tribunals were:

- to have ethnically diverse panels
- to have more training for panel members about race awareness
- to have good quality interpreters
- to provide communication and materials in more languages
- to make Minority Ethnic users feel comfortable in the tribunal hearing.

Several interviewees thought that the uptake of advice was an important strategy to increase the confidence and participation of users. In particular, one SENDIST member commented:

> *"I think funding should be made more available to welfare rights advisors… I think that is absolutely central to making sure that minority communities are obtaining a fair crack."*

A particular concern among SENDIST members was lack of access to tribunals among Minority Ethnic groups. This concern reflects the very small proportion of SENDIST users from Minority Ethnic backgrounds.

> *"I think there is a whole group of people who don't come to the tribunal and those are the ones whose confidence needs increasing… those are the ones who will definitely be from Ethnic Minority backgrounds."*

Other interviewees in SENDIST as well as a large proportion of tribunal judiciary from the other tribunals felt that confidence could be increased at the hearing stage by having an ethnically diverse staff base. Tribunal judiciary argued that panels should comprise members from diverse ethnic backgrounds. It was felt that this would put Minority Ethnic users more at ease and increase their belief that they would receive a fairer hearing from a representative group of decision-makers.

In this connection some interviewees raised the issue of tribunal composition and the value of lay representation on panels. It was felt that this helped users to feel more at ease which itself would contribute to the fairness of the hearing. As one CICAP member put it:

> *"There is also an issue about the social class element…with lay practitioners or lay people you're more likely to get people who are coming from a different background than lawyers and doctors, who are predominantly middle class."*

The presence of lay members was commented on upon by several interviewees as helping make the user feel more at ease and thus enabling a fairer hearing. All respondents highlighted the need for a panel which was properly representative, with a smaller number of responses specifying that this should include a mix of ethnicities.

Table 8.7 Tribunals' suggestions for increasing the confidence of Minority Ethnic users

TAS

- Everyone coming into the system needs to know a lot more about how it works
- More representation of ethnic minorities on the panel
- Design recruiting policies to enable people from community backgrounds to apply for jobs
- Ensure printed information is available in different languages
- Have good interpreters and representatives
- Make it clear that there are available funds to pay for interpreters
- Treat ethnic minorities with respect
- Make people from ethnic backgrounds feel comfortable and settled and that people have dealt with them patiently
- Be nice and polite to them and treat them with respect
- Make members aware of particular problems of specific ethnic groups
- Provide more time to go through cases properly
- Not form an opinion of them when they walk into the hearing room
- Emphasise training needs
- More information on how people should be addressed by name (through training)
- Members must show they are interested in the subject matter
- Understand people's backgrounds and religions
- Ensure people have representation, are comfortable in the hearing room and feel they've had a fair hearing

CICAP

- Create an ethnic minorities booklet
- Translate information
- Get information out which is easy to understand
- Make sure the user totally understands the procedure and what is going on
- Have an ethnic person as part of the panel
- Greater representation of ethnic minorities on the panel
- Further education for the panel
- More training
- Constantly explain that the panel are independent
- Take a totally neutral stance
- Treat everyone in the same way
- Create the best and least threatening environment

SENDIST

- More members, both chairs and experts from ethnic minorities
- Have a designated and specially trained person to deal with user who perceive problems arising from their ethnicity
- Have someone to specifically answer questions for ethnic groups
- Make absolutely sure there are people they can talk to and get help from before the hearing
- Organise racial awareness training and public awareness of the system
- Promote awareness of tribunals in general
- Sensitive approach by the chair to make them feel comfortable
- Setting a mood or style, such as making a reference to something in their culture or religion
- Greater involvement by LEA in considering Ethnic Minority issues (as they encourage or discourage people from launching an appeal)
- Make sure there is clear understanding of the process

Summary

Interviews with 63 members of the tribunal judiciary in three tribunals demonstrated very high levels of awareness about diversity issues, the difficulties that might be experienced by Minority Ethnic tribunal users and potential users, and the need for tribunal judges to take special care to ensure that language difficulties, cultural differences, and cultural sensitivities do not represent barriers to fair hearings. Although almost all interviewees were extremely conscious of the issues, many felt that the difficulties faced by Minority Ethnic users were not necessarily of a different order from those experienced by other groups of users with low levels of educational attainment and various social and economic disadvantages. To this extent enabling Minority Ethnic users to participate in hearings required the same sort of consideration and help that would be given to any user with a particular need for assistance from the tribunal panel.

The one area of concern, about which there was virtual unanimity among interviewees, was in the challenges presented to tribunals by interpreters. The problems arise from variable quality and commitment to principles of objectivity among interpreters, and, perhaps more importantly, time constraints. Hearings involving interpreters invariably take longer than those without. This creates pressure on the tribunal and may discourage the tribunal from taking the necessary time to clarify points and ensure that the translation is faithful. This is particularly so in TAS hearings which appear to have relatively brisk listing schedules and where making enough space to probe cases thoroughly through an interpreter may not always be easy. The perceptions of tribunal judges about the difficulties of managing hearings with interpreters are consistent with the findings of the observational study reported in chapter five. On the other hand the results of the outcome analysis reported in chapter seven indicate that although in TAS hearings Minority Ethnic background of user and lack of representation are associated with slightly lower rates of success at hearings, the presence or absence of an interpreter at hearings had a minimal independent impact on substantive outcome, despite the practical difficulties of managing hearings and the risk of users feeling that they were not able to present their cases as well as they might have wished, as discussed in chapter six.

Many interviewees mentioned the need to tackle some of the problems faced by Minority Ethnic users at various stages in the appeal process and suggested a number of measures, such as providing good quality information about how to

appeal, improving access to pre-hearing advice, providing information about the tribunal in community languages, and better access to representation and high quality interpreters. A number of respondents also felt that increasing the diversity of tribunal panels would give greater confidence to Minority Ethnic users at tribunal hearings and enhance the appearance of fairness of proceedings. These sentiments are entirely in line with the results reported in chapter six indicating that some Minority Ethnic groups, especially those of South Asian origin, were significantly less likely to perceive some unfairness or lack of respect during their hearing if their case was dealt with by an ethnically diverse tribunal panel.

Most tribunal judiciary interviewed for the study had no experience of offensive or racist behaviour on the part of their colleagues. A small minority felt that the attitudes of some tribunal judiciary might be interpreted as prejudiced, but that this was generally thought to be unintentional and was felt to have no bearing on the decision-making process. The majority of tribunal judiciary felt that tribunal members and the system as a whole were sensitive to the needs of a diverse society and aware of the necessary techniques to ensure a fair hearing. It was also clear that for most interviewees diversity training provided both by their tribunal and the Judicial Studies Board played a large part in fostering these attitudes. Indeed, diversity training was generally seen as a positive exercise. Although most interviewees said that diversity training had not changed their attitudes or actions, because they did not have prejudices against any particular groups of users and were sensitive to ethnic and cultural difference, many felt that such training helped to maintain levels of awareness and provided them with vital information about cultural practices. A minority of interviewees felt that more information on cultural differences should be included in future training programmes.

Chapter 9. Summary and discussion

This study provides a comprehensive examination of access, expectations, experiences and outcomes of tribunals from the perspective of tribunal users and potential users. The research was designed specifically to compare the experiences of White, Black, and Minority Ethnic users in order to establish not only how users experience and are treated within tribunals, but whether Black and Minority Ethnic users experience any direct or indirect disadvantage in accessing and using tribunal services. This chapter summarises the key findings of the research and seeks to discuss and explain those findings. It also considers the more theoretical implications of the findings for the role of the judiciary in ensuring fairness in legal proceedings; the significance of user competence or 'cultural capital' in self-representation; public perceptions of procedural fairness; and the 'access to justice' implications of the influence of the criminal justice system on the public imagination of courts and tribunals. Consideration is also given to the challenges for research designed to illuminate presumed or suspected differences in human experience by using skin tone or other crude ethnic categorisation as a framework for explanation.

Public knowledge about and access to systems of redress

Discussion groups held with Black, South Asian and White members of the public revealed rather weak levels of public understanding about avenues of redress for tribunal-related grievances and disputes (chapter three). They also revealed concerns about accessing the legal system that were consistent with recent studies of access to dispute resolution for civil justice problems and disputes. People often assumed, when faced with a tribunal-relevant grievance or dispute, that there was no remedy or that seeking redress might involve going to court, which is seen as costly, time-consuming and complicated. These concerns were expressed across ethnic groups and were as prevalent among White respondents as Black and South Asian respondents. It appears, however that such barriers could be overcome by a strong sense of principle, a feeling that the issue at stake was critical, or when fulsome and extensive advice and support was available. Levels of awareness of advice, however, were variable and some members of the public had experienced difficulty in obtaining free advice.

There was also limited awareness of and knowledge about tribunals. The term "tribunal" is not well known or understood. Where it is recognised, it is often associated with serious criminal trials. Indeed, in the absence of direct knowledge or experience,

the public tend to apply images of the criminal justice system in their visualisation of legal proceedings of almost any kind. The closer images of tribunals were to criminal courts, the greater the level of concern expressed about the likely treatment of non-White participants.

In exploring public expectations about using tribunals as a means of redress, few differences were found to relate directly to ethnic group, with most views being expressed just as frequently among White, Black and South Asian respondents. However, there were some differences in levels of awareness of advice and redress systems, and of expectations that relate specifically to ethnicity and to length of residence in the UK. Among recent arrivals and, in particular, South Asian respondents living in relatively closed communities, knowledge about redress systems and concerns about seeking redress were influenced by cultural and communication barriers and some apprehensions about discrimination within the legal system. Lack of fluency in English, lack of familiarity with UK organisations, and, in the case of some Pakistani women, gender issues accounted for low levels of awareness and confidence about seeking redress. An additional barrier, particularly for some recent arrivals from oppressive regimes, was fear of challenging the Government and a sense of lack of entitlement on the part of an immigrant to the UK to challenge decisions of public bodies.

Discussion groups indicated a need for better availability of advice and information about seeking redress generally and about the work and procedures of tribunals in particular. People were in favour of telephone helplines and 'one-stop-shops' that would advise about the range of possibilities for seeking redress when faced with administrative grievances or disputes. Specific suggestions from non-UK born or non-English speaking groups included the provision of information in community languages and more advice directed specifically at Minority Ethnic communities.

Although there was some sense that greater ethnic diversity on judicial decision-making bodies, including tribunals, would increase comfort and confidence that cases were being taken seriously and that cultural and religious issues were properly understood, opinions were divided on this issue with UK born, English speaking Minority Ethnic respondents occasionally contesting the assumption.

The findings of the discussion groups underline the fact that members of the public who challenge the decisions of public bodies and who take the step of initiating an

application to a tribunal and then attend tribunal hearings, are either the most determined and confident, or those fortunate enough to obtain advice and support. Overall language and cultural barriers coupled with poor or inaccurate information about systems of redress were identified as the critical obstacles to people accessing and using the tribunal system. Both of these issues were perceived as more likely to limit access than the simple fact of an individual's ethnicity. Although it was clear that if faced with a sufficiently serious problem most respondents had, or would, overcome barriers such as limited access to information in order to obtain redress, there remained a nagging apprehension about the pervasiveness of ethnic stereotypes within the legal system and the resulting potential for Black and Minority Ethnic tribunal users to be treated unfairly. These views, held not by tribunal users, but by the public who might be potential users in the future, pose a continuing challenge to tribunals in providing reassurance through scrupulously fair procedures, sensitivity to cultural diversity, and through measures to reach out to communities that are under-represented among tribunal users.

This general negativity towards the legal system reflects evidence from the *Paths to Justice* surveys[79]. However, for Minority Ethnic groups, irrespective of language or cultural barriers, there is an additional apprehension, which is deeper and stronger than the concerns about the legal system of the White majority. Some White respondents fear that their resources and general levels of competence may put them at a disadvantage. They are concerned about the vocabulary of legal proceedings, about being insufficiently articulate, and about navigating unfamiliar processes. Some are concerned about social prejudice concerning education and class, and occasionally gender. However, among Black and Minority Ethnic groups, whether they are new to the country or whether they were born, raised and educated in the UK there is a deep and lingering apprehension – irrespective of class and education – that they might meet discrimination simply on the ground of their skin tone. Some Black and Minority Ethnic respondents felt this keenly and it was based on direct experience of discrimination in other areas of their life. Others felt it less strongly but for all respondents there was at least a nagging concern about whether they might meet discrimination in the course of seeking redress and whether they would receive a fair hearing in legal proceedings.

[79] Genn 1999; Genn and Paterson 2001, op cit.

All those responsible for the organisation, administration and day-to-day functioning of legal institutions and processes must bear in mind the fears, apprehensions and indeed expectations that users from Black and Minority Ethnic backgrounds carry with them. In general it plays a weak part in influencing decisions about whether to seek redress. For most Black and Minority Ethnic respondents integrated within the wider society, the factors that determine whether they seek redress are indistinguishable from those that influence White members of the public – the seriousness of the problem, concern about cost, time and difficulty of seeking redress and access to advice and information. The concerns about potential discrimination of Black and Minority Ethnic citizens do not represent additional barriers to finding advice. The difficulties experienced by Black and Minority Ethnic members of the public are again those shared by the majority population – not knowing where to go and not being able to access overstretched free services.

However, the area in which these lingering apprehensions do play a role is in expectations of treatment within the legal system. There is a considerable job to be done in educating the general public about the difference between the criminal justice system and those parts of the legal system that exist not to punish criminals but to protect the interests of citizens and to provide forums in which rights and entitlements can be made effective. There are two problems with the dominance of the image of the criminal justice system in the public imagination. First, that because court means criminal Court, the words “court” and “legal” and lawyer are associated with wrongdoing, not with rights enforcement or protection. This is especially so for recent immigrants who have arrived from oppressive regimes in which the courts and legal system are used in a cynical way to give sham legality to the harsh and sometimes brutal actions of the government.

The second is that in the UK the treatment of Black and Minority Ethnic groups within the criminal justice system has been a matter of concern and debate over a considerable period. The Hood study of 1993 establishing discrimination within the criminal courts sent shockwaves through the administration and the judiciary. The Runciman Commission on Criminal Justice that reported in 1993 was so concerned about the treatment of Black defendants within the criminal justice system that it recommended that all members of the judiciary should be trained in race awareness. In response, an Ethnic Minorities Advisory Committee (EMAC)[80] was quickly added

[80] Renamed in 1999 The Equal Treatment Advisory Committee (ETAC)

to the Committees of the Judicial Studies Board and a programme of judicial training in diversity commenced. Unfortunately the messages of the Hood study have become embedded in Black and Minority Ethnic public consciousness. The penetration and longevity of the messages of the Hood study was demonstrated in focus group discussions by the number of times when talking about the position of ethnic minorities within the legal system reference was made to the fact that Black defendants are sent to prison more often than White defendants. In this context the findings of the Macpherson Report, drafted in stark and uncompromising terms, might have been news in some quarters of government and the legal system, but it simply reinforced the existing negative expectations and fears about the system within Black and Minority Ethnic communities.

The effect of all this is that in a context when most members of the public, whether White or non-White do not have direct and possibly positive experiences of the legal system these negative images fill the information gap. Such images may deter people from seeking redress at the margins – where the subject matter or principles at stake are not critical to the livelihood or well-being of an individual. What is important is that in the design of systems and in the functioning of tribunal hearings such concerns and indeed fears about the potential for discrimination are acknowledged and responded to. This means that efforts to create a more diverse judiciary must be continued and that diversity issues should continue to be fully integrated into judicial training. It means that tribunals and other legal institutions should seek to reinforce the message that all those who appear are treated fairly and that citizens are equal in the eyes of the law.

At the broadest level, efforts to educate the public about the difference between the criminal, civil and administrative justice systems should be intensified, as should attempts to promote positive images of courts and tribunals in protecting the rights and entitlements of citizens.

Motivation and preparedness for tribunal hearings

The waiting room survey of tribunal users in TAS, CICAP and SENDIST revealed few differences between ethnic groups in experience of seeking pre-hearing advice or in the expectations of tribunal hearings (chapter four). The principal motivation for appealing was a sense of unfairness and this was true across all ethnic groups. Few had known about the possibility of seeking redress from their general knowledge. The most common source of information about challenging administrative decisions

was the information sent by the Department or Authority advising the user of the initial determination. Most users interviewed in tribunal waiting rooms, irrespective of ethnic group, had obtained some pre-hearing advice, thus confirming the conclusion of the general public focus group discussions that the ability to obtain advice and help may be critical in providing users with the necessary knowledge and confidence to pursue an appeal to a tribunal.

Expectations of tribunal proceedings were relatively vague among both TAS and CICAP users, with unacceptably high proportions of users interviewed in waiting rooms not knowing what to expect at their hearings – to the extent that some were anticipating something approaching a judge and jury, while others were expecting a friendly and informal chat. This finding presents an important but relatively modest challenge to the new Tribunal Service in providing information of a type and form that will help prospective users to prepare for their hearings. Although users often receive a fair weight of written material from the tribunal prior to their hearing, those with poor language and literacy skills are likely to struggle to make sense of it and even users with average levels of education may have difficulty wading through dense arguments about initial decisions. The new Tribunal Service has an opportunity to take a more imaginative approach to preparing users for their hearings and to think about what users need to know and do, and what documents they need to bring, in order to present their cases most effectively. As far as visualising the tribunal is concerned, the revelatory value to the public of a five minute video clip of a tribunal (discussed in chapter three) demonstrates the ease with which some of the worst fears of prospective users' can be allayed and expectations framed. This is a lesson already learned by SENDIST and it is not surprising that their users displayed greater awareness of what was likely to be involved in the proceedings.

Although most users attending hearings had received advice of some sort before their hearing, many appeared at the hearing without representation. Rates of representation between Minority Ethnic groups were very similar, but there was some evidence that Minority Ethnic users attending hearings without representation were more likely than White users to have tried and failed to obtain representation. The most common reason for attending a hearing without representation, however, was that the thought had simply not crossed the mind of the user or that it was assumed to be unnecessary. Curiously, representation appeared to make little difference in the extent to which users appeared to be well prepared for their hearing, which

suggests that there is also a challenge for advisers and representatives in preparing users for what will occur and what will be expected of them at hearings.

Delivering fair hearings

Structured observation of over 400 tribunal panels conducting hearings in three tribunals revealed generally high levels of professionalism and care on the part of tribunal judiciary (chapter five). Most tribunal chairs were able to combine authority with approachability and to maintain a relatively informal atmosphere during proceedings. There were few examples of insensitive language during hearings and with few exceptions tribunals were seen to treat users of all ethnic backgrounds with courtesy and respect. Tribunals were often at pains to enable users with language and comprehension difficulties to understand the proceedings and to present their case through coaxing and careful questioning. Again, with some notable individual exceptions, tribunals generally appeared to listen to users and to check that they had understood the user's case. Analysis of observations of many aspects of tribunal behaviour made by nine different observers from a range of ethnic backgrounds revealed no systematic difference in the behaviour of tribunal judiciary towards Minority Ethnic users as compared with White users. There was no evidence of behaviour that might disadvantage Minority Ethnic users during hearings, nor any significant variation in treatment between Minority Ethnic users from different ethnic backgrounds. There were no instances of language or overt behaviour that indicated direct discrimination or indirect discrimination against Minority Ethnic users.

Assessments of users' ability to participate in proceedings indicated that although, on the whole, with the assistance of tribunals most users were able to present their cases reasonably well, there were differences between the three tribunals in the ability of users to present their cases, with TAS users demonstrating more difficulties than SENDIST users. There were significant differences in the extent to which users from different ethnic backgrounds were able to participate in hearings. South Asian users and those from other non-European ethnic groups were consistently judged to be less able to understand questions put to them than Black African/Caribbean users or White users, whether or not an interpreter was being used at the hearing. In general, South Asian and other non-European ethnic users were judged to be less able to present their cases than Black African/Caribbean or White users. Notably, the relatively weaker ability of South Asian users to present their case persists even among those resident in the UK for over 20 years.

These findings support the conclusion of chapter three that language, culture and engagement with formal institutions are more helpful in explaining differences in experience between individuals, where they exist, than the simple and misleading factor of skin tone or unrefined ethnic categorisation. Although the number of Minority Ethnic users in narrower ethnic categories is too small for confident inferences to be drawn, the indications are that the category "South Asian" itself masks clear differences in experience between the constituent ethic sub-groupings. Thus, on assessments of ability to participate in hearings, users of Pakistani and Bangladeshi origin were much less likely to be seen to present their cases well than Indian or other South Asian users, despite the fact that all were combined within the single "South Asian" category for analytical purposes. This highlights the extent to which the use of broad ethnic categorisation in studies of the experiences of the Minority Ethnic population may distort results through obscuring differences between ethnic groups. How much more extreme would such distortion have been if this study had simply adopted the common "BME approach" to the analysis of tribunal users, given the clear and significant differences between the assessments and experiences of Black African and Black Caribbean users, and certain groups of South Asian origin.

Observations of hearings confirmed that, on the whole, tribunal judiciary have developed the necessary competences to conduct hearings that offer a fair opportunity for users to present their cases. However, the observations nonetheless underline the importance of language, education and culture in equipping users with the bundle of competences that they personally need in order to participate effectively in hearings and to make the best of their cases. The deep and fundamental differences between users in education, confidence, fluency and literacy – which traverse ethnic boundaries - mean inevitably that there are limits to the tribunal's enabling capacity. While differences in ability do not correspond neatly with ethnic categories, the relationship between ethnicity and social exclusion suggests that lower levels of ability will be more common among certain Minority Ethnic groups. Even with the benefit of training designed specifically to develop enabling skills, tribunals cannot be expected to compensate entirely for the disadvantages of some users. It has to be recognised that there are situations in which an advocate is not merely *helpful*, but is *necessary* to the requirements of procedural fairness and may also be crucial to substantive outcome (see chapter 7). These findings also have implications for procedural fairness in the courts, which are increasingly

required to manage the challenge of unrepresented parties, and where, unlike tribunals, the judiciary have not traditionally received training in enabling skills.

Users' assessments of hearings and outcome

Users interviewed after their hearings but before receiving their decisions generally made positive assessments of their treatment by the tribunal panel and of their own ability to participate in hearings. A consistent exception was users of South Asian origin, confirming the observations made during hearings. In general, users demonstrated high levels of trust in tribunals, feeling that they had been listened to and understood. Where dissatisfaction occurred it tended to result from the tribunal communicating the impression that they had already made up their mind or that they were not listening attentively to the user. This underlines the significance that users attach to feeling that they have been heard, that their arguments have been taken seriously and weighed by the tribunal, and that the tribunal had an open mind. These elements are fundamental to users' perceptions of the fairness of legal proceedings and although there are special measures that need to be taken during oral hearings, the principles apply equally to other dispute resolution processes. There is no reason to suspect that citizens receiving paper determinations of administrative complaints and grievances are any less likely to be concerned that open-minded decision-makers have heard and weighed their arguments before reaching justifiable and comprehensible conclusions.

The relationship between preparedness for hearings and perceptions of fairness is also important. Lack of preparedness for hearings meant that users were frequently surprised by the nature of the hearing. Those that were startled by the relative formality of the hearing tended to feel less comfortable and to express greater dissatisfaction with various aspects of the hearing. This underlines the importance of the challenge to the new Tribunal Service in helping to frame the expectations of prospective users, not only so that they are able to present their cases more effectively, but also in enhancing satisfaction with the process and perceptions of fairness.

Despite the generally positive assessments of hearings, about one in five users, when prompted, raised concerns about perceived unfairness or lack of respect during the hearing. Again South Asian users and some other non-European users were the most likely to perceive unfairness and some attributed this to their ethnicity. No

specific examples, however, were given of discriminatory comments or behaviour by tribunals, suggesting that tribunal behaviour experienced as negative or hostile was being read as motivated by race prejudice. This is a manifestation of the extent to which Minority Ethnic users carry with them the apprehensions of unfair treatment referred to above and highlights the need for tribunal judiciary to appreciate the existence of such apprehensions and to take steps to overcome them.

Importantly, there was evidence that those Minority Ethnic groups most likely to perceive unfairness at hearings were less likely to do so when the tribunal was itself ethnically diverse. This suggests that increasing the ethnic diversity of tribunal panels might have a positive effect on perceptions of fairness among Ethnic Minority users.

There were no differences in the extent or type of representation obtained by users from different ethnic groups, although unrepresented users from Minority Ethnic groups were significantly more likely than White users to say after their hearing that they would have preferred to have been represented at the hearing.

Post-decision interviews showed that the most important determinant of perceptions of the fairness of the *decision*, as opposed to the fairness of hearing procedures, was whether the user had been successful at the hearing and this was true across all ethnic groups. However, an important challenge for tribunals arises from the fact that among Minority Ethnic users who were unsuccessful at their hearing, about one in three said that they thought their ethnicity had influenced the tribunal's decision.

Post-decision interviews also revealed that about one-quarter of unsuccessful users had not understood the reason for the decision and Minority Ethnic users were more likely than White users to say that they had not understood the reason for the decision. This presents a significant challenge to tribunals. Since the acceptability of losing and users' perceptions of fairness are influenced by understanding of the justification for the decision, it is arguable that tribunals should take greater care to communicate the reasons for their decision in order to improve satisfaction and confidence in the system.

The outcome of tribunal hearings

A sample of 3,058 cases was analysed in order to identify the extent to which the ethnic background of tribunal users might be associated with any disadvantage in terms of substantive outcome. A statistical modelling exercise showed that, in TAS hearings, whether or not the user was represented at the hearing, and the type of case being brought, were the most influential predictors of success. While ethnicity did not have a strong influence on outcome, the analysis indicated that every Black and Minority Ethnic subgroup of users was less likely to be successful than White users at hearings.

By contrast, in CICAP and SENDIST only case type had a significant impact on case outcome at hearings. Neither representation nor ethnic group appeared to be significantly associated with outcome once other factors such as case type had been controlled for.

The statistical analysis largely supports the conclusions of the observational study reported in chapter five and many of the conclusions of chapter six. However, the findings regarding the influence of representation and ethnicity on success in TAS hearings raise some important questions. Unless Minority Ethnic users in TAS are systematically pressing cases without merit, even when represented, it appears that some Minority Ethnic users in TAS are experiencing a disadvantage in terms of substantive outcome. How is this to be explained? Is it the result of direct or indirect discrimination or other factors? The discussion above makes clear that the observations of hearings revealed no evidence of direct discrimination, nor evidence of the kind of behaviour that might raise suspicions of indirect discrimination. On the other hand, the observations of tribunal hearings also established that certain users, and quite often particular Minority Ethnic groups, had considerable difficulty in presenting their cases during hearings as a result of poor language skills, lack of fluency, and sometimes cultural barriers that might have inhibited full disclosure. TAS users are generally drawn from among the most disadvantaged groups in society, whether Minority Ethnic groups or White British, and Minority Ethnic TAS users may labour under a number of disadvantages in addition to having poor language skills. It was argued in chapter five that there are limits to the enabling skills of tribunal judiciary and this argument gains some support from the findings of the modelling exercise. Given the relative informality of TAS hearings and their brevity, the difference between TAS, SENDIST and CICAP in these respects is

worthy of further investigation. It is necessary to explore whether the apparent disadvantage for Minority Ethnic users in TAS derives from the characteristics of users, the behaviour of the tribunal, the composition of tribunal panels which include medical practitioners who may take a slightly different approach in hearings (see chapter eight), some aspect of TAS procedures, or an interaction of all of these factors. Identifying the source of the disadvantage would be valuable not only for TAS but for discussion about procedures and judicial training in other tribunals and, indeed, in the courts.

The tribunal perspective

Interviews with 63 tribunal judges revealed, with one or two exceptions, very high levels of sensitivity to issues of diversity and equal treatment, occasionally bordering on anxiety. Many felt that the difficulties faced by Minority Ethnic users were not necessarily of a different order from those experienced by other groups of users with low levels of educational attainment and various social and economic disadvantages. It was generally felt that enabling Minority Ethnic users to participate in hearings was an aspect of ensuring fairness that would apply to all users.

There were, however, significant concerns about the involvement of interpreters in hearings and the challenges that they presented. Interpreters were seen to increase the length of hearings and were often thought to be of variable quality. These facts create pressures on the tribunal, particularly in TAS hearings which have relatively brisk listing schedules. The perceptions of tribunal judges about the difficulties of managing hearings with interpreters were consistent with the findings of the observational study reported in chapter five.

Tribunal judiciary generally felt that representation was of value to all users and particularly so for Minority Ethnic users. There was also seen to be a need to provide good quality information about how to appeal, improving access to pre-hearing advice, providing information about the tribunal in community languages, and better access to representation and high quality interpreters. A number of respondents also felt that increasing the diversity of tribunal panels would give greater confidence to Minority Ethnic users at tribunal hearings and enhance the appearance of fairness of proceedings. These sentiments are entirely in line with the earlier discussion indicating that some Minority Ethnic groups, especially those of South Asian origin, were significantly less likely to perceive some unfairness or lack of respect during

their hearing if their case was dealt with by an ethnically diverse tribunal panel.

Most tribunal judiciary interviewed for the study had no experience of offensive or racist behaviour on the part of their colleagues. It was also clear that for most interviewees, the diversity training provided both by their tribunal and the Judicial Studies Board was important in maintaining levels of awareness and providing them with information about cultural practices.

Conclusion

The findings of the research provide a wealth of information about the needs and experiences of tribunal users and prospective users. The study establishes with some degree of confidence that within the three tribunals included in the research, users are on the whole treated well during hearings and that the majority of users, across ethnic groups, perceive this to be the case, at least before they receive their decision. The study also contains strong messages about the importance of preparing users for hearings, of paying attention to those features of proceedings that contribute to perceptions of fairness, of the need to equip the judiciary with the necessary skills to enable unrepresented parties to participate effectively, and of the limits to the enabling role. It also continues to confirm that in some cases representation may be crucial to substantive fairness.

Most importantly, some of the differences noted between the three tribunals, in particular in relation to outcome of hearings, highlight the difficulties of generalising about tribunals as a whole. Chapter one of this report referred to the enormous differences between tribunals in subject-matter, caseload, procedures and composition, and there is an argument for conducting similar research in other tribunals such as employment, immigration, and mental health. In the meantime, it is hoped that the results of this study will contribute to discussion about the objectives, appropriate procedures and training programmes within the new Tribunals Service. The issues raised may also be of relevance to other administrative dispute resolution bodies such as ombudsmen and complaints handlers.

Finally, although it is not customary to extrapolate from the tribunals' world to that of the ordinary courts, the results of the research in relation to tribunals' enabling skills and users' perceptions of fairness, contain lessons for the wider judiciary who are increasingly required to meet the challenge of delivering fair hearings for unrepresented litigants.

Appendix A.
Binary logistic regression analysis results

Table 1. Binary logistic regression output for successful vs. unsuccessful

		B	S.E.	Wald	df	P	e^B
Ethnicity	White			10.353	8	.241	
	Black African	.091	.214	.181	1	.671	1.095
	Black Caribbean	.350	.216	2.633	1	.105	1.419
	Black other	.091	.386	.056	1	.813	1.095
	Indian	.371	.203	3.349	1	.067	1.449
	Pakistani	.320	.207	2.386	1	.122	1.377
	Asian other	.549	.250	4.822	1	.028	1.731
	Other ethnicity	.149	.188	.630	1	.428	1.160
	Missing	.100	.133	.572	1	.450	1.106
Case type	DLA			246.615	13	.000	
	Child support	1.883	.467	16.243	1	.000	6.572
	Income support	.531	.189	7.944	1	.005	1.701
	Industrial injuries	.610	.188	10.543	1	.001	1.840
	Job seekers	.943	.352	7.169	1	.007	2.568
	Housing/council tax	1.528	.262	33.982	1	.000	4.608
	Other	1.044	.275	14.352	1	.000	2.840
	Incapacity	-.228	.126	3.248	1	.071	.796
	Against statement	-1.735	.297	34.198	1	.000	.176
	LEA action	.188	.292	.414	1	.520	1.206
	Other SENDIST	.875	.551	2.517	1	.113	2.399
	Eligibility	.529	.142	13.857	1	.000	1.696
	Assessment	-.316	.209	2.292	1	.130	.729
	Both	.030	.403	.006	1	.940	1.031
Representation	Yes	-.239	.081	8.669	1	.003	.787
Observer/advice	No observer			6.014	3	.111	
	Observer (advice missing)	-.911	.434	4.406	1	.036	.402
	Observer (no advice)	-.158	.186	.722	1	.396	.854
	Observer (advice)	-.167	.147	1.292	1	.256	.847
Interpreter	No			.552	2	.759	
	Yes	-.112	.156	.517	1	.472	.894
	Missing	-.061	.274	.049	1	.825	.941
Constant		-.498	.093	28.675	1	.000	.608

Table 2. The effect of removing terms from the model in Table 1

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Ethnicity	-1929.563	10.302	8	.244
Case type	-2067.657	286.491	13	.000
Representation	-1928.747	8.670	1	.003
Observer/advice	-1927.748	6.673	3	.083
Interpreter	-1924.689	.554	2	.758

Table 3. Binary logistic regression output for represented vs. not represented

		B	S.E.	Wald	df	P	e^B
Case type	DLA			139.470	13	.000	
	Child support	-.853	.380	5.031	1	.025	.426
	Income support	-.488	.182	7.186	1	.007	.614
	Industrial injuries	-.898	.192	21.777	1	.000	.407
	Job seekers	-.744	.342	4.735	1	.030	.475
	Housing/council tax	-.724	.238	9.229	1	.002	.485
	Other	-.832	.261	10.157	1	.001	.435
	Incapacity	-.726	.119	37.455	1	.000	.484
	Against statement	.520	.232	5.021	1	.025	1.683
	LEA action	-.350	.248	2.000	1	.157	.704
	Other SENDIST	-.309	.540	.326	1	.568	.735
	Eligibility	-.177	.151	1.372	1	.241	.838
	Assessment	.716	.217	10.890	1	.001	2.046
	Both	.035	.368	.009	1	.924	1.036
Ethnicity	White			6.579	8	.583	
	Black African	-.120	.199	.360	1	.548	.887
	Black Caribbean	-.146	.210	.482	1	.488	.864
	Black other	.643	.361	3.170	1	.075	1.902
	Indian	-.224	.193	1.355	1	.244	.799
	Pakistani	.172	.199	.747	1	.387	1.188
	Asian other	-.016	.238	.004	1	.948	.985
	Other ethnicity	-.010	.175	.004	1	.952	.990
	Missing	.009	.111	.007	1	.933	1.009
Interpreter	No			2.688	2	.261	
	Yes	.194	.147	1.738	1	.187	1.214
	Missing	-.206	.223	.850	1	.357	.814
Location	Birmingham			41.905	12	.000	
	Manchester	.316	.226	1.962	1	.161	1.372
	Leeds	.229	.128	3.209	1	.073	1.258
	North East	-.022	.210	.011	1	.916	.978
	North West	-.319	.462	.475	1	.491	.727
	Bristol	-.548	.298	3.374	1	.066	.578
	Wales	1.595	.360	19.677	1	.000	4.929
	Liverpool	.837	.314	7.112	1	.008	2.309
	South West	-.149	.235	.400	1	.527	.862
	South East	-.301	.323	.867	1	.352	.740
	Midlands	.004	.224	.000	1	.985	1.004
	East Anglia	-.478	.306	2.446	1	.118	.620
	London	.031	.096	.106	1	.744	1.032
Constant		.210	.090	5.430	1	.020	1.234

Table 4. The effect of removing terms from the model in Table 3

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Case Type	-2353.422	145.144	13	.000
Ethnicity	-2284.252	6.805	8	.558
Interpreter	-2282.200	2.701	2	.259
Location	-2305.793	49.887	12	.000

Table 5. Binary logistic regression output for decision unfair vs. decision fair

		B	S.E.	Wald	df	P	e^B
Representation	Yes	.650	.429	2.294	1	.130	1.916
Interpreter	No			3.730	2	.155	
	Yes	.558	.595	.880	1	.348	1.747
	Missing	-1.909	1.200	2.529	1	.112	.148
Ethnicity	White			7.014	8	.535	
	Black African	-1.390	.840	2.737	1	.098	.249
	Black Caribbean	.397	.881	.203	1	.652	1.487
	Black other	.590	1.351	.191	1	.662	1.805
	Indian	.381	.749	.258	1	.611	1.463
	Pakistani	.232	.942	.060	1	.806	1.261
	Asian other	.430	.828	.269	1	.604	1.537
	Other ethnicity	.517	.759	.464	1	.496	1.676
	Missing	1.824	1.116	2.673	1	.102	6.199
Outcome	Unsuccessful	3.682	.450	66.954	1	.000	39.74
Constant		-2.830	.455	38.731	1	.000	.059

Table 6. The effect of removing terms from the model in Table 5

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Representation	-85.860	2.367	1	.124
Interpreter	-86.669	3.985	2	.136
Outcome	-134.681	100.009	1	.000
Ethnicity	-88.392	7.432	8	.491

Table 7. Binary logistic regression output for successful vs. unsuccessful using only TAS cases.

		B	S.E.	Wald	df	P	e^B
Ethnicity	White			11.473	8	.176	
	Black African	.020	.248	.006	1	.937	1.020
	Black Caribbean	.365	.246	2.208	1	.137	1.441
	Black other	-.043	.451	.009	1	.924	.958
	Indian	.417	.225	3.431	1	.064	1.517
	Pakistani	.261	.240	1.183	1	.277	1.298
	Asian other	.423	.268	2.502	1	.114	1.527
	Other ethnicity	.120	.220	.298	1	.585	1.127
	Missing	.584	.253	5.332	1	.021	1.794
Case type	DLA			86.309	7	.000	
	Child support	1.833	.468	15.309	1	.000	6.251
	Income support	.520	.190	7.496	1	.006	1.682
	Industrial injuries	.550	.190	8.408	1	.004	1.734
	Job seekers	.902	.354	6.479	1	.011	2.464
	Housing/council tax	1.500	.264	32.371	1	.000	4.483
	Other	.995	.278	12.792	1	.000	2.704
	Incapacity	-.263	.128	4.224	1	.040	.769
Representation	Yes	-.370	.105	12.410	1	.000	.691
Observer/advice	No observer			5.758	3	.124	
	Observer (advice missing)	-1.557	.766	4.131	1	.042	.211
	Observer (no advice)	-.076	.214	.127	1	.722	.927
	Observer (advice)	-.232	.176	1.751	1	.186	.793
Interpreter	No			2.306	2	.316	
	Yes	-.049	.166	.087	1	.768	.952
	Missing	-.720	.478	2.270	1	.132	.487
Constant		-.426	.102	17.543	1	.000	.653

Table 8. The effect of removing terms from the model in Table 7

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Ethnicity	-1138.968	11.488	8	.176
Case type	-1180.692	94.936	7	.000
Representation	-1139.453	12.458	1	.000
Observer/advice	-1136.889	7.330	3	.062
Interpreter	-1134.468	2.489	2	.288

Table 9. Binary logistic regression output for represented vs. not represented using only TAS Cases

		B	S.E.	Wald	df	P	e^B
Case type	DLA			58.729	7	.000	
	Child support	-.821	.381	4.632	1	.031	.440
	Income support	-.469	.183	6.598	1	.010	.625
	Industrial injuries	-.888	.193	21.074	1	.000	.412
	Job seekers	-.696	.343	4.116	1	.042	.499
	Housing/council tax	-.726	.240	9.189	1	.002	.484
	Other	-.806	.262	9.446	1	.002	.446
	Incapacity	-.733	.119	37.791	1	.000	.481
Ethnicity	White			5.519	8	.701	
	Black African	-.125	.230	.293	1	.588	.883
	Black Caribbean	-.140	.243	.333	1	.564	.869
	Black other	.339	.427	.632	1	.427	1.404
	Indian	-.451	.221	4.142	1	.042	.637
	Pakistani	.009	.233	.002	1	.968	1.009
	Asian other	-.106	.255	.173	1	.678	.899
	Other ethnicity	-.087	.213	.167	1	.683	.917
	Missing	-.114	.244	.219	1	.640	.892
Interpreter	No			4.720	2	.094	
	Yes	.325	.157	4.303	1	.038	1.384
	Missing	.322	.393	.673	1	.412	1.380
Location	Birmingham			8.379	2	.015	
	Leeds	.389	.142	7.463	1	.006	1.475
	London	.004	.111	.001	1	.971	1.004
Constant		.203	.094	4.625	1	.032	1.225

Table 10. The effect of removing terms from the model in Table 9

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Case Type	-1262.025	59.860	7	.000
Ethnicity	-1234.902	5.614	8	.690
Interpreter	-1234.467	4.743	2	.093
Location	-1236.310	8.428	2	.015

Table 11. Binary logistic regression output for decision unfair vs. decision fair using only TAS cases.

		B	S.E.	Wald	df	P	e^B
Representation	Yes	.564	.584	.932	1	.334	1.758
Interpreter	No			3.561	2	.169	
	Yes	.765	.687	1.240	1	.265	2.150
	Missing	-1.785	1.323	1.822	1	.177	.168
Ethnicity	White			5.381	2	.068	
	Black and Minority Ethnic	.795	.621	1.636	1	.201	2.214
	Missing	3.130	1.403	4.976	1	.026	22.88
Outcome	Unsuccessful	3.991	.606	43.346	1	.000	54.13
Constant		-3.876	.704	30.317	1	.000	.021

Table 12. The effect of removing terms from the model in Table 11

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Representation	-48.574	.958	1	.328
Interpreter	-50.067	3.944	2	.139
Ethnicity	-50.575	4.961	2	.084
Outcome	-82.785	69.381	1	.000

Table 13. Binary logistic regression output for successful vs. unsuccessful using only 'CICAP' cases.

		B	S.E.	Wald	df	P	e^B
Ethnicity	Black and Minority Ethnic	.354	.297	1.418	1	.234	1.425
Case type	Eligibility			17.593	2	.000	
	Assessment	-1.030	.248	17.207	1	.000	.357
	Both	-.511	.438	1.358	1	.244	.600
Representation	Yes	-.008	.221	.001	1	.973	.992
Observer/advice	No observer			1.285	3	.733	
	Observer (advice missing)	-.475	.617	.592	1	.442	.622
	Observer (no advice)	-.374	.429	.760	1	.383	.688
	Observer (advice)	-.054	.316	.030	1	.863	.947
Interpreter	Yes	-.819	.875	.876	1	.349	.441
Constant		-.066	.188	.123	1	.726	.936

Table 14. The effect of removing terms from the model in Table 13

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Ethnicity	-269.210	1.412	1	.235
Case type	-277.876	18.744	2	.000
Representation	-268.505	.001	1	.973
Observer/advice	-269.167	1.325	3	.723
Interpreter	-268.982	.955	1	.329

Table 15. Binary logistic regression output for represented vs. not represented using only 'CICAP' Cases

		B	S.E.	Wald	df	P	e^B
Case type	Eligibility			16.452	2	.000	
	Assessment	.948	.234	16.449	1	.000	2.582
	Both	.243	.380	.409	1	.523	1.275
Ethnicity	White			.024	2	.988	
	Black and Minority Ethnic	-.021	.296	.005	1	.942	.979
	Missing	-.066	.455	.021	1	.885	.936
Interpreter	No			1.992	2	.369	
	Yes	-.959	.785	1.493	1	.222	.383
	Missing	.370	.550	.452	1	.501	1.448
Location	Birmingham			17.800	7	.013	
	Manchester	.045	.402	.012	1	.912	1.046
	Leeds	-.269	.437	.379	1	.538	.764
	North East	-.214	.432	.246	1	.620	.807
	Bristol	-.587	.562	1.093	1	.296	.556
	Wales	.988	.584	2.863	1	.091	2.685
	Liverpool	.737	.510	2.094	1	.148	2.091
	London	-.539	.345	2.430	1	.119	.584
Constant		.387	.322	1.452	1	.228	1.473

Table 16. The effect of removing terms from the model in Table 15

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Case Type	-309.594	17.624	2	.000
Ethnicity	-300.794	.024	2	.988
Interpreter	-301.818	2.072	2	.355
Location	-310.795	20.026	7	.006

Table 17. Binary logistic regression output for decision unfair vs. decision fair using only 'CICAP' cases.

		B	S.E.	Wald	df	P	e^B
Representation	Yes	.566	.628	.812	1	.367	1.761
Ethnicity	Black and Minority Ethnic	-.039	.704	.003	1	.956	.962
Outcome	Unsuccessful	3.117	.673	21.444	1	.000	22.58
Constant		-1.776	.561	10.044	1	.002	.169

Table 18. The effect of removing terms from the model in Table 17

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Representation	-33.976	.831	1	.362
Ethnicity	-33.562	.003	1	.956
Outcome	-48.185	29.249	1	.000

Table 19. Binary logistic regression output for successful vs. unsuccessful using only 'SENDIST' cases.

		B	S.E.	Wald	df	P	e^B
Ethnicity	White			1.925	2	.382	
	Black and Minority Ethnic	.382	.278	1.891	1	.169	1.465
	Missing	.097	.173	.315	1	.574	1.102
Case type	Against statement			134.698	2	.000	
	LEA action	1.987	.176	127.234	1	.000	7.291
	Other SENDIST	2.666	.501	28.260	1	.000	14.38
Representation	Yes	-.037	.165	.051	1	.821	.963
Observer/advice	Observer (advice)	.082	.537	.024	1	.878	1.086
Constant		-2.452	.195	158.265	1	.000	.086

Table 20. The effect of removing terms from the model in Table 19

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Ethnicity	-484.804	1.890	2	.389
Case type	-562.757	157.796	2	.000
Representation	-483.885	.051	1	.821
Observer/advice	-483.871	.023	1	.879

Table 21. Binary logistic regression output for represented vs. not represented using only 'SENDIST' Cases

		B	S.E.	Wald	df	P	e^B
Case type	Against statement			48.719	2	.000	
	LEA action	-.894	.129	47.742	1	.000	.409
	Other SENDIST	-.830	.497	2.793	1	.095	.436
Ethnicity	White			2.796	2	.247	
	Black and Minority Ethnic	.380	.227	2.794	1	.095	1.462
	Missing	.055	.133	.173	1	.678	1.057
Location	Birmingham			30.158	12	.003	
	Manchester	.107	.393	.075	1	.785	1.113
	Leeds	-.845	.450	3.523	1	.061	.429
	North East	-.139	.333	.173	1	.677	.871
	North West	-.184	.518	.126	1	.722	.832
	Bristol	-.781	.429	3.312	1	.069	.458
	Wales	1.745	.539	10.497	1	.001	5.726
	Liverpool	.380	.498	.581	1	.446	1.462
	South West	-.170	.316	.289	1	.591	.844
	South East	-.321	.387	.687	1	.407	.726
	Midlands	-.015	.307	.002	1	.960	.985
	East Anglia	-.507	.372	1.861	1	.172	.602
	London	.107	.258	.172	1	.678	1.113
Constant		.522	.253	4.244	1	.039	1.685

Table 22. The effect of removing terms from the model in Table 21

Variable	Model Log Likelihood	Change in -2 Log Likelihood	df	Sig. of the Change
Case Type	-759.934	49.802	2	.000
Ethnicity	-736.457	2.848	2	.241
Location	-753.505	36.943	12	.000

Appendix B.
Topic guide for focus groups January 2003

Aim:
To explore people's knowledge of; and attitudes towards; seeking redress for 'tribunal-worthy' grievances:

- Whether they would seek redress at all – reasons why/why not
- Knowledge about how to seek redress
- Attitudes towards seeking redress
- Expectations of the process of seeking redress

Reminder to researchers:

- *Do not mention tribunals unless respondents mention them themselves - until section 5, which deliberately introduces the word*

1. Introduction

- About NatCen
- Summarise aims of study *but do not mention tribunals, i.e.*
  - Looking at people's knowledge of and attitudes towards resolving disputes between ordinary people and public bodies or employees and employers
  - You will explain more about what you mean by this once the group is underway
- Being carried out with a wide range of different groups in the UK with the purpose of exploring the differences between these groups
- Study funded by the Lord Chancellor's Department, a central government department
- Will produce a written report – published by the LCD
- Results will be used by the Department and others to understand more about how the general public feel about these issues
- Introduce tape recorder
- Reassure them that everything they say will be treated confidentially and that the findings will be anonymised
- Outline ground rules (*no right or wrong answers/don't talk at once*)
- Reassure about the validity of not having an opinion/not caring and explain the value of stating this lack of concern/disinterest
- Reassure that NO PRIOR KNOWLEDGE of the subjects under discussion is needed
- Remind them about length of discussion

2. Background

- Name
- Age
- Household composition
- Nature of main current activity (Employment/Education/etc)

3. General issues relating to resolving disputes

The aim of this section is to explore:

- *whether respondents have personally experienced any 'tribunal-worthy' grievances, or know people who have*
- *how they did or would envisage responding in the types of situations raised*

TRY TO AVOID ALLOWING ANY INDIVIDUAL RESPONDENTS TO 'TAKE OVER' THIS SECTION – OPEN DISCUSSION UP TO THE GROUP AS A WHOLE WHEREVER POSSIBLE

Explain that we are interested in disputes that respondents or other family members have experienced with:

1) *public bodies (for example, disputes around social security benefits, school inclusion/exclusion, special educational needs provision for children, granting of asylum/permanent residence rights, fines (i.e. parking/speeding))*

2) *employers (for example, unfair/wrongful dismissal, racism or sexism in the workplace, unfair pay, unreasonable working conditions)*

<u>If respondents are unable to think of examples that have happened to them or family members, open up discussion to include cases they might have heard about through other acquaintances or on the news.</u>

- For disputes mentioned (or the most pertinent ones if a lot are mentioned), explore the following:
  - Seriousness of dispute and views about definitions of 'serious'
  - What the individual respondent did about the dispute they mentioned – <u>KEEP CONCISE</u>
  - How other people in the group think that they would have acted in the disputes mentioned:
    - Whether they would have taken action – PROMPT FULLY ON WHY, WHY NOT
    - *If action would be taken* - whether they would seek advice/support, where they would seek advice/support, how they would envisage resolving the problem, expectations about outcome and reasons

4. Detailed exploration of 'problems'

The aim of this section is to explore in detail:

- *How respondents would envisage acting in the three 'tribunal worthy' scenarios mentioned below and why*

Scenario 1

- Explain purpose of scenarios
- Distribute scenario 1, allow time to read

> Your company makes cutbacks and you are one of two people in your department of ten to be made redundant. This is very unexpected. You think you were one of the best workers in your department, and that you had a track record to prove it. However, the manager refuses to reconsider the decision or to listen to your proof.
>
> You do not think that you will find another job that pays as well - similar jobs in your area are few and far between. What's more, you think that being made redundant will look bad on your CV and affect your chances of getting another job.

Explore the following:

- Seriousness of the situation – if anything would make it more serious (*allow spontaneous discussion and then PROMPT for* suspected racism/ageism on the part of their employer)

- What they would do in response to the scenario/permutations of the scenario discussed above – EXPLORE SPONTANEOUS REACTIONS FIRST THEN PROMPT:
  - Whether they would seek advice – who they would go to first, who else they would go to, what they would hope for

  - Whether they would take action
    - Why (i.e. personal disposition, confidence in system, knowing where to go, knowledge of similar cases)
    - Why not (i.e. not knowing where to go, cost, lack of faith in system, being too upset, feeling it is too much bother, not wanting to create 'trouble', suspected prejudice on account of their age, ethnicity, gender etc.)

  - *If they would take action*:
    - Where they would go
    - What they would do
    - Expectations about experience/outcome and reasons
    - Whether they would expect different groups of people (i.e. age/gender/ethnicity) to be treated the same and why

- (*If not already covered*) - Whether they think there are <u>legal</u> remedies for the situation:
  - IF NOT – why not (PROMPT FULLY FOR REASONS)
  - IF SO:
  - What these are, what they know about them
  - Sources of advice/support around legal remedies – knowledge of, feelings about
  - Likelihood of use and why
  - Barriers to use and why

Scenario 2

- Distribute scenario 2, allow time to read

You trip over at home and bang your head. At the time you think the injury is reasonably mild, although you have a headache afterwards. In the period following the accident you start to get dizzy spells. These get worse and worse and eventually you feel unable to go into work. You are signed off with three months pay.

You continued to suffer dizzy spells and do not feel able to cope with working. Your GP agrees and advises that you stay off work.

You decide to apply for Incapacity Benefit, and the Benefits Agency refers you to one of their GPs for an examination. He says that you <u>are</u> fit to work. As a result you are refused Incapacity Benefit and put on Jobseeker's Allowance, which pays out a lot less than Incapacity Benefit and is only available to those who can prove that they are looking for work. You still feel unfit to work. Your three months pay has run out and you are struggling financially.

Explore the following:

- Seriousness of the situation – if anything would make it more serious (*allow spontaneous discussion and then PROMPT for* suspected racism/malpractice on the part of the Benefits Agency)

- What they would do in response to the scenario/ permutations of the scenario discussed above – EXPLORE SPONTANEOUS REACTIONS FIRST THEN PROMPT:
    - Whether they would seek advice – who they would go to first, who else they would go to, what they would hope for

    - Whether they would take action
        - Why (i.e. personal disposition, confidence in system, knowing where to go, knowledge of similar cases)
        - Why not (i.e. not knowing where to go, cost, lack of faith in system, being too upset, feeling it is too much bother, not wanting to create 'trouble', suspected prejudice on account of their age, ethnicity, gender etc.)

    - *If they would take action*:
        - Where they would go
        - What they would do
        - Expectations about experience/outcome and reasons
        - Whether they would expect different groups of people (i.e. age/gender/ethnicity) to be treated the same and why

- (*If not already covered*) - Whether they think there are <u>legal</u> remedies for the situation:
    - IF NOT – why not (PROMPT FULLY FOR REASONS)
    - IF SO:
        - What these are, what they know about them
        - Sources of advice/support around legal remedies – knowledge of, feelings about
        - Likelihood of use and why

Scenario 3

- Distribute scenario 3, allow time to read

Your child is excluded from school, along with another student. A teacher caught them fighting. No-one else saw the fight.

Your child says that the other student had been bullying them for several months - threatening violence and calling them names. The fight started because the bully grabbed them by the collar and called them a particularly nasty and hurtful name. Your child then hit back. Your child did not tell anyone about the bullying before because they felt frightened and ashamed.

The head teacher has refused to reconsider the decision. He said that the school needs to make an example of people who fight.

Explore the following:

- Seriousness of the situation – if anything would make it more serious (*allow spontaneous discussion and then PROMPT for* suspected racism/negligence on the part of the school)

- What they would do in response to the scenario/ permutations of the scenario discussed above – EXPLORE SPONTANEOUS REACTIONS FIRST THEN PROMPT:
  - Whether they would seek advice – who they would go to first, who else they would go to, what they would hope for

  - Whether they would take action
    - Why (i.e. personal disposition, confidence in system, knowing where to go, knowledge of similar cases)
    - Why not (i.e. not knowing where to go, cost, lack of faith in system, being too upset, feeling it is too much bother, not wanting to create 'trouble', suspected prejudice on account of their age, ethnicity, gender etc.)

  - *If they would take action*:
    - Where they would go
    - What they would do
    - Expectations about experience/outcome and reasons
    - Whether they would expect different groups of people (i.e. age/gender/ethnicity) to be treated the same and why

- (*If not already covered*) - Whether they think there are <u>legal</u> remedies for the situation:
  - IF NOT – why not (PROMPT FULLY FOR REASONS)
  - IF SO:
    - What these are, what they know about them
    - Sources of advice/support around legal remedies – knowledge of, feelings about
    - Likelihood of use and why
    - Barriers to use and why

5. Tribunals/courts - awareness

The aim of this section is to explore:

- *What types of images – if any – the words 'tribunal' and 'court' conjure up*
- *Reactions to a still of a tribunal hearing*
- *Reactions to description of key features of a tribunal*

- Whether they have heard of the word 'tribunal'
- What if anything they know about tribunals
- Where they have heard about them
- What images the word conjures up
- What they think tribunals are for
- What a tribunal would look like
- Who a tribunals would be staffed by
- Whether they think that different groups of people would be treated the same/differently (i.e. whether treatment dependent on age, ethnicity, gender, etc)
- Anticipated barriers to use
- Anticipated incentives to use

- Whether they have heard of the word 'court'
- *Ask questions about courts as set out for 'tribunals', above*
- Any anticipated differences between 'courts' and 'tribunals' – if so what and why

Show respondents a still of a tribunal hearing

- What they think is going on
- Fit with prior knowledge/expectations
- Any surprises and why
- Who it looks as though it is for
- Anything off-putting – what and why
- Anything encouraging – what and why

Describe the key attributes of a tribunal as set out below:

- *To settle disputes between:*
  - *Employers and employees*
  - *Citizens and the state (i.e. employment, school exclusion, benefits disputes, as described in the scenarios)*
- *No fee*
- *Easy to arrange a hearing – simply write a letter to the tribunal explaining how you think you have been wronged*
- *No legal representation required*
- *Automatic right of appeal in response to a tribunal's decision*
- *More informal than a court – sitting around a table, no wigs*

- Responses to this description:
  - Fit with prior knowledge/expectations
  - Any surprises and why
  - Anything off-putting – what and why
  - Anything encouraging – what and why
  - What else they would like to know and why
  - What would most encourage them to use a tribunal in the scenarios above – *prompt if necessary with:*

- More and better information
- Reassurances about fairness of process
- Ease of access
- Knowing someone else who had used one
- A good and reliable source of advice to help them make their case

6. Conclusion

- Whether they can think of a better system for resolving problems/disputes than the ones that have been discussed
- Ask for any further contributions from the group

Thank respondents and reassure about confidentiality – make sure everyone has received incentive money

Users' survey and observation schedule

SECTION A:

PRE-HEARING QUESTIONNAIRE

1. What is your case about?

2. Why was your claim turned down?

3. What made you try to get another decision?

4. How did you know about appealing?

IT WAS ON THE FORM FROM DEPARTMENT	1
GENERAL KNOWLEDGE	2
APPEALED BEFORE	3
FRIEND/RELATIVE TOLD ME	4
ADVISER TOLD ME	5
OTHER	

ADVICE

5. Have you had any advice or help from anyone with your case?

YES	1 GO TO Q5(A)
NO	2 GO TO Q5(D)

If Yes:

5(a) Where did you go for advice?

SOLICITOR	1
CAB	2
WELFARE RIGHTS	3
OTHER ADVICE AGENCY	
FRIEND	5
RELATIVE	6

5(b) ***IF OTHER THAN FRIEND OR RELATIVE***:

How did you know they would be able to help you?

USED BEFORE	1
GENERAL KNOWLEDGE	2
FRIEND/RELATIVE SUGGESTED	3

5(c) Did you find it useful?

YES	1 GO TO Q6
NO	2 GO TO Q6

If No:

5(d) Why not?

WAS NOT AWARE IT WAS REQUIRED	1
DID NOT WANT IT	2
WANTED IT, BUT COULD NOT FIND ANY	3
DID NOT HAVE THE TIME	4

6(a) Have you been to any kind of legal hearing before?

YES	1
NO	2

6(b) If yes, brief details:

EXPECTATIONS

7(a) Do you expect to do much talking?

YES, THE MAJORITY	1
SOME TALKING	2
NO, MY REPRESENTATIVE WILL	3
I DON'T KNOW	4

7(b) Do you expect the hearing to be formal or informal?

VERY FORMAL	1
QUITE FORMAL	2
QUITE INFORMAL	3
VERY INFORMAL	4
NOT SURE	5

8 What outcome/decision are you expecting?

COMPLETE SUCCESS OF APPEAL	1
PARTIAL OVERTURN OF ORIGINAL DECISION	2
COMPLETE FAILURE OF APPEAL	3

REPRESENTATION

9(a) Are you being represented today?

YES	1 GO TO Q9B
NO	2 GO TO Q9C

9(b) If yes, what type:

SOLICITOR	1
LAW CENTRE	3
CAB	4
WELFARE RIGHTS GROUP	5
OTHER	

9(c) If no, why not?

10(a). Were you born in the UK?

YES	1
NO	2 GO TO Q10B

10(b). If No, how many years have you lived in the UK?

AFTER PRE-HEARING INTERVIEW:

It would be very helpful if I could come in with you when you go into the tribunal for your hearing. I won't be involved in any way but I will just watch what happens

SECTION B:

OBSERVATION SHEET

CASE NO:	ETHNIC ORIGIN:

TIME STARTED:

MEMBERS AND ORDER:

PRE-HEARING

1 Quality of introduction:	**2 Quality of explanation**
Very full 1 2 3 4 5 **Poor/absent**	**Good** 1 2 3 4 5 **Poor/absent**

HEARING

APPLICANT

1 General Demeanour **Relaxed** **Anxious** 1 2 3 4 5	2 Willingness to speak **Very** **Not at all** 1 2 3 4 5
3 Degree of understanding of questions **Very good** **Not good at all** 1 2 3 4 5	4 Ability to present case **Very good** **Not good at all** 1 2 3 4 5
5 Did they bring extra materials/evidence? **Yes** 1 **No** 2	6 Eye contact **Good** **None** 1 2 3 4 5

PANEL

M F ETHNICITY	M F ETHNICITY	M F ETHNICITY

1 General Demeanour **Very Informal** 1 2 3 4 5 **Very Formal**	2 Checking understanding of appellant's story **Frequently** 1 2 3 4 5 **Not at all**
3 Use of legalistic language **Rarely/none** 1 2 3 4 5 **Constantly**	4 Courtesy? **Very Courteous** 1 2 3 4 5 **Not at all**
5 Degree of assistance/enabling **Very Helpful** 1 2 3 4 5 **Unhelpful**	6 Any use of potentially offensive language? **None** 1 2 3 4 5 **Often**
7 Appearance of listening **Very Good** 1 2 3 4 5 **Not Good**	8 **Where representative**- attempt at involving **Good** **No attempt**

Additional:-

REPRESENTATIVE

1 Advocacy skills:

Very good 1 2 3 4 5 **Not good**

2 Clarification of case:

Very good 1 2 3 4 5 **Not good**

DEPARTMENT OFFICER

_____

OTHER- POLICE OFFICER/INTERPRETER/RELATIVE

_____

OBSERVERS NOTES

DECISION

Details of Decision

1 Good full explanation **Poor/absent**
1 2 3 4 5

OUTCOME:

☐ SUCCESSFUL

☐ UNSUCCESSFUL

☐ ADJOURNED

TIME ENDED:

SECTION C:

POST-HEARING QUESTIONNAIRE

1. How long did the hearing last: (Interviewer complete)

LESS THAN 30 MINUTES	1
30-MINUTES-2 HOURS	2
2-4 HOURS	3
WHOLE DAY	4
MORE THAN ONE DAY	5

2(a) Did you feel comfortable in the setting of the tribunal?

YES	1 GO TO Q3
NO	2 GO TO Q2(B)

2(b) What made you feel uncomfortable?

3. Did you have any difficulties understanding what was going on at the hearing, for example-

	YES	NO
THE TRIBUNAL PROCEDURES?	1	2
WHY PARTICULAR QUESTIONS WERE BEING ASKED?	1	2
WHO THE VARIOUS PEOPLE AT THE HEARING WERE?	1	2

4. Do you feel that you had an opportunity to say what you wanted to say at the hearing?

ALL OF WHAT I WANTED TO SAY	1
MOST OF WHAT I WANTED TO SAY	2
SOME OF WHAT I WANTED TO SAY	3
VERY LITTLE OF WHAT I WANTED TO SAY	4
NONE OF WHAT I WANTED TO SAY	5

5. Were there any important facts about your case which you feel did not get discussed at the hearing?

YES	1 GO TO Q5(B)
NO	2 GO TO Q6

5(b). If Yes, which facts?

6(a). How well do you think that the tribunal/panel understood your case?

VERY WELL	1
FAIRLY WELL	2
NOT VERY WELL	3
NOT AT ALL	4

6(b). If Not very well, or Not at all, why?

7. Was the hearing more or less formal than you expected?

A LOT MORE	1
A BIT MORE	2
ABOUT THE SAME AS I EXPECTED	3
A BIT LESS	4
A LOT LESS	5

8. Do you think that the tribunal/panel was listening to everything that you said?

YES	1
NO	2

9. Do you think that the tribunal/panel was listening to everyone equally? (Did you feel that he/she was on anyone's side?)

YES	1
NO	2

10(a) Did anything happen at the hearing that made you feel that you had been treated in a way that was unfair, was biased, or which showed you lack of respect?

YES, SOMETHING	1 GO TO Q10(B)
NO, NOTHING	2 GO TO Q11

IF SOMETHING HAPPENED:

10(b) Tell me what happened that you think was not right?

10(c) What was it about this thing that made you feel dissatisfied?

IF APPLICANT FROM ETHNIC MINORITY (IF NOT GO TO Q12)

11(a) Do you think that what happened had anything to do with the fact that you are from an ethnic minority?

YES, SOMETHING	1 GO TO Q11(B)
NO, NOTHING	2 GO TO Q12

11(b) Why do you think it had something to do with the fact that you are from an ethnic minority?

12(a) How satisfied have you been with the behaviour of the court staff (such as receptionists or clerks) you have come into contact with?

VERY SATISFIED	1
SATISFIED	2
DISSATISFIED	3
VERY DISSATISFIED	4
DNA/MET NO ONE	5

12(b) If dissatisfied/very dissatisfied: Why?

IF DEPARTMENT OFFICER PRESENT:

13(a) Was there anything about the way you were questioned by the department's presenting officer that you thought was unfair or disrespectful?

YES, SOMETHING	1	GO TO Q13(B)
NO, NOTHING	2	GO TO Q14

13(b) What was it?

14(a) Were you happy with the composition - the make up – of the panel?

YES	1	GO TO Q15
NO	2	GO TO Q14(B)

14(b) What were you unhappy about?

15(a) Were you represented?

YES	1	GO TO Q15(B)
NO	2	GO TO Q16

If Represented:

15(b) Was your representative from an ethnic minority?

YES	1
NO	2

15(c) Overall how happy were you with the way your representative handled your case?

VERY SATISFIED	1
SATISFIED	2
DISSATISFIED	3
VERY DISSATISFIED	4

15(d) If dissatisfied/very dissatisfied: Why?

15(e) Do you think that everything was said in your favour by your representative that could have been said?

YES	1	GO TO Q17
NO	2	GO TO Q15(F)

15(f) What do you think should have been said?

GO TO Q17

If NOT Represented:

16(a) On reflection do you wish that you had a representative with you today?

YES	1	GO TO Q16(B)
NO	2	GO TO Q17

16(b) What aspects of the hearing would have been better if you were represented?

17(a) Do you think that people from an ethnic minority are always treated by the tribunal system in the same way that a White person is treated?

YES	1
NO	2
NOT SURE	3
DON'T KNOW	4

17(b) If No or Not sure: Is your reason for saying this any or all of the following?

	Yes	No
YOUR PERSONAL TREATMENT	1	2
HEARSAY FROM OTHER PEOPLE	3	4
'COMMON KNOWLEDGE'	5	6

17(c) Could you give me some examples?

SECTION D:

POST-DECISION QUESTIONNAIRE

SUCCESSFUL	**1**
UNSUCCESSFUL	**2**

EXPLANATION: **YES** **1**
NO **2**

If yes:

1. Did you understand the reasons given for the decision?

YES	1 GO TO Q2
NO	2 GO TO Q1(B)

IF NO:
1(b) Why not?

2(a). In the circumstances do you think that the decision was fair?

YES	1
NO	2
DON'T KNOW	3

2(b) ***IF NO*****:** What was unfair about it?

IF ETHNIC MINORITY:

3(a) Do you think that the fact that you are from an ethnic minority group affected the tribunal's decision in any way?

YES	1
NO	2
DON'T KNOW	3

IF YES:

3(b) How do you think it affected their decision?

4(a) If you needed to come to a tribunal again would you be confident that you would be treated fairly?

YES	1
NO	2
DON'T KNOW	3

4(b) If No/ Don't know: Why not?

5(a) Do you think there is anything that could be done to increase your confidence in the tribunal system?

YES	1
NO	2
DON'T KNOW	3

5(b) **If yes**, what is that?

6(a) **Is there anything else you would like to say about your tribunal hearing?**

YES	1
NO	2

6(b) **If yes:** specify

Research for the Lord Chancellor
Conducted by Professor Hazel Genn, Faculty of Laws, University College London

A research project is being conducted into the Appeals Service to identify whether there are ways that it can better meet the needs of users. We would be grateful if, as part of the research project, you could take the time to fill in this short form. The information given will remain private and confidential to the research team. Thank you for your time.

Name:_____

Case Ref. No. _____

Address: _____

_____

Home telephone number:_____

Sex

☐ Male ☐ Female

Nationality: _____

Ethnic Group

Tick the appropriate box to indicate your cultural background.

☐ Bangladeshi	☐ Black Other	☐ Pakistani
☐ Black African	☐ Chinese	☐ Asian Other
☐ Black Caribbean	☐ Indian	☐ White

☐ Other, please specify_____

Are you using an interpreter at this hearing?

No ☐

Yes ☐

→ Please state language_____

تحقیق برائے لارڈ چانسلر
زیر اہتمام پروفیسر ہیزل جن، فیکلٹی آف لاز، یونیورسٹی کالج لندن

اپیلز سروس سے متعلق ایک تحقیق انجام دی جارہی ہے جس کا مقصد اس بات کی نشاندہی کرنا ہے کہ کیا ایسے طریقے ہیں جن سے صارفین کی ضروریات کی تکمیل بہتر طور پر کی جا سکے۔ہم آپ کے شکر گزار ہوں گے اگر آپ، تحقیقی پروجکٹ کے ہسے کے طور پر، اس مختصر فارم کو بھرنے کے لیے وقت نکال سکیں. آپ کی دی گئی معلومات کو نجی حیثیت حاصل ہوگی اور اسے تحقیقی جماعت سے خفیہ رکھا جائے گا. وقت دینے کے لیے آپ کا شکریہ.

نام: _____

معاملے کا حوالہ نمبر: _____

پتہ: _____
_____

گھر کا ٹیلی فون نمبر: _____

جنس

مرد ☐ **عورت** ☐

قومیت: _____

نسلی گروپ

اپنا تہذیبی پس منظر ظاہر کرنے کے لیے موزوں خانے پر صحیح کا نشان لگائیں.

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☐ سیاہ فام کیریبیائی ☐ ہندوستانی ☐ سفید فام

☐ دیگر، برائے مہربانی وضاحت کریں _____

کیا آپ اس سماعت میں ترجمان (انٹرپریٹر) کا استعمال کر رہے ہیں؟

نہیں ☐
ہاں ☐
↳ براہ مہربانی زبان کی وضاحت کریں_____

DCA Research Series No. 1/06

Tribunals for diverse users

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

For further copies of this publication or information about the Research Series please contact the following address:

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