

Recruitment

2 Recruitment

The Sex Discrimination Act makes it unlawful for employers to discriminate at the point of recruitment and hiring. Discrimination can take place in the arrangements the employer makes for deciding who should be offered a job if, for example, the employer issues instructions to a recruitment agency to issue application forms to male enquirers only. In addition, there is discrimination at the point of recruitment if an employer refuses or deliberately omits to offer a person employment by, for example, refusing to consider an application due to the sex of the applicant. Finally, an offer of employment whose terms are themselves in breach of the EqPA (for example, one which offers more favourable rates of pay to men than to women) would also be discriminatory.

In this chapter we consider eight cases where discrimination occurred at the point of recruitment. Two of the organisations are in the public sector, in this instance, local authorities, and the remaining six are private sector commercial organisations. Three primary group employers are considered first.

R1: Denton Council

Denton Council has approximately 1200 employees with over 700 of these being in blue collar occupations. The department we are primarily concerned with has less than 100 employees and the vast majority of these are in non-manual officer grades. This department houses the council's personnel function, a small unit of 5 under the day to day supervision of a personnel officer. In common with other local authorities, the council's establishments subcommittee (comprising local councillors) has a major involvement in

appointments to senior posts. We describe below the procedures involved in recruiting since these are pertinent to the case.

Information for this case is derived from interviews with the following individuals: the town clerk, the personnel manager, the councillor who at the time of the tribunal chaired the establishments sub-committee and the applicant.

The tribunal's decision

The tribunal found that the council had discriminated against the applicant in the arrangements made for the purposes of determining whether she should be shortlisted, and also in failing to shortlist her for further consideration. With respect to remedy, the tribunal declared that the rights of the applicant were to have been placed on a shortlist, awarded the applicant £500 by way of compensation, and, unusually, made recommendations to the council as it is entitled to do under section 65 (1)(c) of the SDA. These recommendations were that the establishments subcommittee (a group of local councillors) should include in its membership at least one woman and that the council should set up a working party or committee to review specific aspects of the selection criteria. The applicant was legally represented at the tribunal.

Case history

The applicant held a senior post in Houndsville District Council, a local authority in close proximity to Denton. The post she applied for involved only a sideways transfer and she was therefore very disappointed at being completely passed over and not shortlisted for interview. The primary motivating factor in this case, then, was the slight on her professional reputation which she felt was implied by the failure to shortlist. As is often the case however, other factors were involved in giving impetus to the decision to take a complaint as far as a tribunal. Because of her professional and political connections the applicant knew quite a bit about the way the respondent authority operated. She considered the authority's practices to be fundamentally discriminatory and believed that the authority had an unwritten policy of not employing women in senior posts. In addition, a colleague at Houndsville claimed to have been asked discriminatory questions about domestic arrangements when she had applied for (and failed to get appointed to) a job at Denton.

There were, it seems, two stages to the shortlisting process and since the tribunal found there to have been discrimination in both the arrangements for the shortlisting and in its outcome it is important to describe these processes in some detail. An initial sift of applications was made by the town clerk who was responsible for receiving applications and supervising the appointments process. There were in this instance 21 applications for the post and the town clerk had recommended that the establishments subcommittee, whose job it was to interview and appoint, should give particular regard, in deciding who to invite to interview, to eight applicants whom the town clerk considered were the most qualified for the job. The second stage of the shortlisting process involved a meeting of the establishments subcommittee at which eight applicants, that is, all those recommended by the town clerk, were selected for interview. The applicant was not on the shortlist.

In carrying out the initial sift the town clerk seems to have taken into consideration two points both of which he claimed justified his decision not to shortlist the applicant. First, the preferred age range for the appointment was between 35 and 40 (the applicant was 33) and suitable candidates would require to have had considerable committee experience. (The tribunal took the view that the applicant did have sufficient committee experience and noted that one of those who was shortlisted was only 32.)

The tribunal seems to have found the arrangements for shortlisting discriminatory in that these arrangements did not provide for a careful assessment of all aspects of the applicant's considerable experience. The town clerk's judgement as to her experience was in the words of the tribunal 'inaccurate'. Furthermore, at the meeting of the subcommittee which carried out the shortlist, one of the councillors present had suggested that the applicant be put on the shortlist in order to avoid any possibility that the council might be found guilty of sex discrimination. The tribunal seems to have taken the view that this intervention had provided the subcommittee with the opportunity for a more careful assessment of the applicant's qualifications which they failed to seize. Thus, although the applicant had not been deliberately omitted from the shortlist because she was a woman, a more careful assessment of her experience would have resulted in her inclusion on the shortlist. The panel took the view that the attitudes and the remarks of employees and councillors from the respondent organisation prior

to and at the tribunal were indications of ‘underlying discrimination against women’.

Effects and consequences

The effects of this decision can be examined at various levels, but we start with the two specific recommendations made by the tribunal. The first of these was that the establishments subcommittee should include in its membership at least one woman so that a proper assessment could be made ‘of the range of factors relevant to female candidates’. It will be recalled that shortlisting was carried out by the subcommittee on the advice of the town clerk and that all members of the subcommittee were men. The recommendation of the tribunal has been acted upon and there are now two female councillors on the subcommittee. The town clerk was proud of the fact that the council had been able to go further than the tribunal’s recommendation on this point. Furthermore the subcommittee’s parent committee (Policy and Resources) now included three women where there had previously been none.

The second recommendation was that the council should set up a working party whose remit would be to draw up a more precise basis on which a candidate’s committee work could be assessed. Such a systematic approach would, it was intended, eradicate purely subjective assessments of relevant experience. The council’s officers considered this recommendation to be unrealistic and it had not been implemented. However, the council has sought to implement what it interprets as the spirit of the recommendation by drawing up a list of guidelines to govern future senior appointments of this type which is designed to spell out the nature of the committee experience required.

We can look at consequences by assessing what progress, if any, the council has made in the development of an equal opportunities policy and try to determine to what extent progress was given impetus by the tribunal’s decision. There can be few local authorities who in the past few years have not had to give consideration to the issue of equality of opportunity. This makes it more difficult to pinpoint the precise effects of the tribunal decision. In Denton, as in other local authorities, officials deny that the tribunal decision prompted setting up an equal opportunities policy. However, at Denton Council progress in the development of a policy and in training initiatives was related very closely in time to the tribunal and officers’ denials of a connection have to be treated with some scepticism.

A summary of the timetable of events can be given: shortlisting for the post took place in September; the applicant was informed that she had not been successful in October and raised the originating application to the tribunal at the end of November. A new personnel officer who had had previous experience of equal opportunity work in a previous local authority was appointed in February and he reported to us that work on an equal opportunities policy had already commenced prior to his appointment. In his view the policy was unconnected with the industrial tribunal decision because the tribunal had not yet taken place. The tribunal sat for four days between March and July. An equal opportunity policy had been agreed and adopted by the council by the middle of the year and at the same time the council took the decision to describe itself as an equal opportunity employer in job advertisements and council publicity material. It can be seen that practical and rapid progress was being made by the council at the time the case was going through the system but, it should be noted, before the tribunal had reached a decision on the case. We can, it seems, infer that there would have been some progress towards an equal opportunity policy even if the applicant had not been successful at tribunal.

Additional elements of the council's equal opportunity package included the issuing of a comprehensive six page Code of Practice on Advertising, Recruitment and Selection to chief officers, the revision of application forms and the setting up of a training programme on equality of opportunity for all staff involved in the recruitment process. It was estimated that this would take two years to complete.

We can also consider the influence and effects of the tribunal decision on attitudes. To what extent was the tribunal decision instrumental in changing attitudes? Was there any evidence of a genuine commitment to furthering equality of opportunity? In this case as in others, interviewees, especially those judged to have been directly involved in the discriminatory acts, often claim that the tribunal came to the wrong conclusion and at first sight it appears that attitudes may have hardened. But if the case has had any beneficial effect on attitudes and any educational effect, one might expect a recognition of the ways in which the authority's procedures and practices were at fault. In this instance, the town clerk continued to put forward the view that the two selection criteria he had used (age 35-40 and committee experience) were non-discriminatory but at the

same time he agreed that there was sense in the action he was recommended to take by the tribunal and that objective guidelines made it easier to make difficult decisions. In addition the chair of the establishments subcommittee recognised that there had been problems in the past and took the view that there were ‘one or two rough edges which we’ve polished since the tribunal’.

Conclusions

We would have to come to the conclusion that in Denton Council considerable progress had been made in developing and implementing an equal opportunity policy since the applicant raised the case. Furthermore, specific steps had been taken to implement the spirit if not the actual detail of the tribunal’s recommendations. We believe that the fact that there was a tribunal at all, irrespective of its outcome, served to focus officials’ minds.

Of major importance in local government is the fact that officials are accountable to politicians and personnel policies have to be justified in the political arena. Denton could at the time this case was brewing have been described as an old-style Labour council being subjected to criticism from a radical and ‘younger’ element within the party. The promotion of equality of opportunity was to some extent evidence of the success of this new element and cannot therefore be accounted for entirely by the tribunal case.

Interviewees commented on the publicity in the local media; the town clerk had to provide a report on the tribunal decision to the establishments subcommittee and the minutes of that meeting went to the full council. Had the decision gone in favour of the authority there would have been no specific recommendations, but it is likely that progress would still have been made towards implementing an equal opportunity policy.

There can be little doubt that in this case the panel at the tribunal demonstrated a firm grasp of sex discrimination law. In addition, the thoroughness of its analysis of the facts and its understanding of the issues involved in the case enabled it, not only to recognise wherein the discrimination lay, but also to see what steps needed to be taken to lessen the likelihood of further occurrences. In other words, the tribunal’s expertise enabled it to pinpoint how discrimination might be avoided in future. Although the initial attitude of the respondent

may have been begrudging, this advice was of some use to the respondent.

There is, however, the possibility of the panel overreaching itself and losing credibility with the respondent, and the second recommendation may have been an example of this. It is interesting in this respect to note that the recommendation to set up a working party found no favour with the applicant herself who regarded it as 'inadequate and missing the point'.

R2: Jones Outlets Ltd

Jones is a large high street retailing organisation with about 1000 branches throughout the UK employing in total approximately 25,000 employees of whom the majority, about 15,000, are female. In addition to a central personnel function at headquarters the company employs about 25 personnel officers based at various regional offices up and down the country. The company has six area offices and in each area there are divisional managers each of whom is responsible for about 20 branches. The branch manager has responsibility for recruiting sales staff for the branch, although in larger branches, as happened in the case we are examining, aspects of the recruitment process such as an initial sift of applications might be delegated to a departmental head within the branch. The company has its own in-house staff association of which employees are automatically members.

The branch in question employs 30 staff, of whom 13 are part-time. All part-time staff bar one are female. Of the full-time staff, there are eight sales assistants, two of whom are men, and seven departmental managers, three of whom are men. Both the manager and the deputy manager are male.

Information for this case study is derived from interviews with the organisation's personnel director at company headquarters, a branch manager, the applicant and the secretary of the staff association.

The tribunal's decision

The tribunal found that the respondent had discriminated against a male job applicant under section 6(1)(a) of the SDA, that is, in the arrangements made for the purposes of determining who should be offered employment. The applicant was awarded £150 for injury to feelings although the applicant's representative had argued for £200.

The case was supported by the EOC who provided the applicant with a solicitor. The employer was also legally represented although in previous cases (none of which according to the personnel director were sex discrimination cases) the personnel director had argued the case himself. The tribunal made no recommendations to the employer although, interestingly, the applicant recalls the chairman of the panel telling the company that it ought to improve its employment practices.

Case history

The company advertised in a local paper for a part-time sales assistant. The branch manager had placed the advertisement himself without reference to higher management, this being normal practice for such an appointment. The procedure outlined in the advertisement was that candidates were to telephone a departmental manager at the store (whom we can call Mrs Pearson) to ask for an application form. The branch manager told us that he wanted a mature person for the job so as to 'balance up the staff' in the department where the vacancy had occurred. According to the branch manager, Mrs Pearson's task was to filter out unsuitable applicants on the phone. By unsuitable the manager told us he meant candidates who were 'not mature' which meant in this instance under 25. As he told the tribunal and reiterated during the research interview, there was no instruction to consider only women for the job. The advertisement had, however, mentioned that the hours of work could be arranged to fit in with school hours and the panel formed the view that it had in fact been pitched at married women.

The manager had directed Mrs Pearson that she was to send application forms only to suitable candidates. Apparently Mrs Pearson received about 100 telephone enquiries in connection with the advertisement in the course of two days. One of the enquirers was the applicant. We were told by the manager that Mrs Pearson gained the impression from speaking to the applicant that he was only aged 18 or 19 and he was therefore told on the phone that he was unsuitable for the job. The applicant claims that he persisted in asking for an application form but was then told that the post was really for a mature woman. Mrs Pearson maintained in evidence to the tribunal that something along these lines may have been said but, if these words had been said, it was only a slip of the tongue. The tribunal took the view that Mrs Pearson had spoken to the applicant in such a way as to

put him off making a formal application and the effect of this was to discriminate against him on the grounds of his sex. It took the view that a female would have been spoken to differently.

Effects and consequences

It was clear that at the local branch attitudes had hardened as a result of the case going to tribunal. The branch manager variously described the tribunal proceedings and the outcome as ‘a fiasco’, ‘a total farce’, and ‘a waste of everybody’s time, effort and money’. He believed the case to have been ‘trumped up by the EOC to give them a job to do’. However, our interpretation was that the applicant had been so incensed by the attitude of Mrs Pearson that he would have pursued the case himself even if no assistance had been provided by the EOC. In the manager’s view the applicant had pursued the case because he was unemployed and had nothing better to do.

On the surface, then, it seems that the tribunal had achieved little in changing attitudes at a local level. Nor did the manager seem to have appreciated that the applicant had no need to show that the discrimination had been intentional in order to win the case. In addition, the manager believed that the various changes in recruitment procedures that had been introduced consequent to the tribunal decision were unnecessarily laborious. The tribunal decision had clearly not brought about any commitment on the part of the company to equality of opportunity, nor, it seems, had the training in equal opportunity instituted by headquarters. There was perhaps one exception to the manager’s stubborn reaction: he was able to admit that the job advertisement could have been more neutral by not mentioning school hours.

If this, then, had been a case taken against the proprietor of a small corner shop it is likely that no changes would have taken place and recruitment would have gone on much as before. It is significant, however, that no staff from headquarters appeared for the respondent at the tribunal and that apart from headquarters providing a solicitor the local branch was left to its own devices.

The branch manager reported that important changes in recruitment procedures had emanated from headquarters since the tribunal. All job applicants now got an application form automatically and no sifting was done on the telephone. There was a standard form of words used in all job advertisements and standard job

advertisements had been produced for each occupational category. All job applicants received a letter from the company acknowledging the application. Corroboration of some of these changes was provided by the applicant who said that a few weeks after the tribunal he had noticed a job advertisement in the paper from the respondent company which he said looked quite different and in his view 'more professional'. Applicants were required to contact the branch manager rather than a departmental manager.

The personnel director at headquarters reported that after the case he had been required to give an account to senior management who had become concerned at losing the case. He considered that the tribunal had been such a traumatic event for Mrs Pearson that he was sure she would never make the mistake of using such a turn of phrase again. He claimed that the branch manager had been reprimanded and told to make sure that his staff were properly briefed on equal opportunity policy. However, the branch manager denied that he had been reprimanded or disciplined in any way. He took the view that the main benefit was that the incident provided a useful case study for management training.

We come up against the common problem with this organisation as with others of trying to understand developments in company equal opportunity policies from the perspective of the industrial tribunal. At Jones Outlets a formal equal opportunity policy statement was adopted by the company and issued to all branches seven months after the tribunal's finding (although it was claimed that the company had had references to equality of opportunity in recruitment guidelines and at interview briefings for four or five years). However, the personnel director maintained that the catalyst for the development of a formal policy was the Codes of Practice of the EOC and the Commission for Racial Equality (CRE) rather than the tribunal, and that the company had liaised with the CRE about the wording of the statement. The adoption of the policy was followed by a training session on the policy at company headquarters for all regional and area (but apparently not branch) managers. In addition, regular management training courses now had an equal opportunity component.

Conclusions

We formed the view that the tribunal's decision was instrumental in bringing about specific changes in recruitment methods. Most

notably, changes were made in the way job advertisements were written and in the methods of application. Telephone screening, a method which clearly allows for bias and subjective judgement of suitability, was ended. Both the branch manager and the personnel director spoke quite independently of these changes but we have not been able to ascertain to what extent they have actually been implemented in all the company's 1000 branches.

Because of the close proximity in time between the incident and the adoption of a formal equal opportunity policy and subsequent training, it is reasonable to infer that the case played a part in the formulation of this policy. However, it should be noted that the personnel director referred to the two Codes of Practice and we know that the company had been before an industrial tribunal on a few occasions with respect to the Race Relations Act (although it appears to have won these cases). As far as we know there have been no other sex discrimination cases taken against the company.

The local branch manager continued to feel aggrieved and annoyed with the tribunal's decision and no personal commitment to the development of equality of opportunity in his branch was evident. Although his attitude was hardened by the tribunal decision, the adverse effects of this were likely to have been offset by changes to procedures imposed by the organisation.

The personnel department at headquarters sought to distance itself from the discriminatory actions of the local branch. While this was a convenient evasion of responsibility, it nevertheless made it easier for the company to carry out an objective assessment from a distance of what follow-up action was necessary. In complex organisations it is not an easy task to pinpoint individual culpability or to attribute blame with a view to proposing disciplinary action against individual employees. In this case central management failed to issue clear guidelines to its branches about non-discriminatory recruitment methods until after the tribunal and the disciplining of local managers would have been inappropriate given senior management omissions and failures.

R3: Forward Enterprises Ltd

The respondent company is the proprietor of several semi-autonomous establishments involved in the communications and media industry. Unlike the previous two organisations whose branches and

departments operate under the same name and present the same 'company image', the constituent establishments of this organisation go under different trading names and the general public would not necessarily know that each establishment was owned by the respondent. The company as a whole employs about 600 people but only 25 of these are based at the respondent's headquarters. The establishment where the discrimination occurred employs less than 50 people. The respondent company is in turn owned by a well-known multinational corporation which takes no interest in the day-to-day running of the company, and operational matters including personnel policy are left entirely to the respondent.

Data is derived from interviews with the personnel director, the applicant and a trade union official.

The tribunal's decision

The tribunal took the view that the applicant was discriminated against by not being considered for a reporter vacancy advertised by the company. The reason she had not been considered for the post was that she was a woman. The outcome would, in the view of the tribunal, have been the same for any woman who had applied for that particular post. The tribunal was unable to find that the applicant had been discriminated against by not being appointed to the post. The discrimination lay solely in the failure of the company to consider her.

The tribunal took into account two factors in awarding compensation in excess of £1,000. By denying the applicant the opportunity of being considered for the post of reporter, the company had, due to its monopoly position, prevented her from carrying out her profession. In addition, the degree of injury to the applicant's feelings was serious.

The applicant represented herself at the tribunal. The company employed a solicitor.

Case history

The applicant was a freelance reporter without a contract of employment at one of the respondent's constituent establishments which we can call Voxprint. It was understood by her that her employment was to be of a temporary nature and she was therefore paid at freelance rates and not as a member of staff. While she was working for the company two full-time permanent positions for

reporters became vacant in areas for which the applicant regarded herself as qualified. There was considerable dispute in this case about the sequence of events, about who said what, and about what significance should be attached to any remarks made.

However, it is clear that, although the posts were formally advertised, there was no fixed method of applying for reporter vacancies. Applicants could make their interest known to the general manager or the editor at Voxprint and appointments were often made on the basis of reputation or after recommendation from one of Voxprint's sister establishments in the organisation. Interviews for posts of this type were conducted by Forward's personnel director and by Voxprint's general manager but only after suitable candidates had been selected locally at Voxprint. We gained the impression that the personnel director was there only to oversee the process and that for this type of post the decision lay with the general manager in consultation with the editor.

The selection process was therefore very informal to the extent that the person appointed to one of the vacancies had made no formal application at all and was not even interviewed. He had made known his interest only after interviews had been conducted, being appointed, it seems, because of his professional reputation.

The applicant had, however, notified her interest in writing to the general manager and also personally discussed with the editor her interest in the post. She received no formal acknowledgement of her application and was not selected for either post. Neither did she receive a letter informing her that she had not been appointed. On enquiring of the production manager why she had not been appointed she was informed that the general manager wanted to secure a balance of males and females in the establishment, and that she should not take it as a personal slight because only men had been considered for the job.

There was conflicting evidence at the tribunal from the respondent's witnesses as to whether or not only men had been considered for the vacancies but the tribunal accepted the evidence of the applicant that she had been given this reason by the production manager. The case had clearly had a considerable impact on the applicant. She could no longer continue to work for the company on a freelance basis as it had become impossible as a result of her tribunal application to maintain good relations with professional colleagues.

She had successfully managed to change careers but this had not been accomplished without considerable strain and personal difficulty. She had in any case become convinced that the company would never have employed her again if she had waited for other vacancies to crop up.

Effects and consequences

It seemed to us that there was some history of conflict between the respondent organisation and its component establishments as to who should be responsible for recruitment and appointment. It seemed that the personnel director was engaged in a process of trying, with some success, to exert authority over company recruitment methods. He had been able to use the tribunal decision as part of a strategy to gain more central control over recruitment. He believed that it was now easier for him to demonstrate to local establishments including Voxprint the benefits of central recruitment. The decision had encouraged Voxprint and others to look to the centre for support and advice on recruitment matters so as to avoid being taken to a tribunal and risk being pilloried in public.

We gained the impression that the company's response to the tribunal decision had been somewhat defensive and cynical. For instance, the personnel director said that the main lesson to be learned from the case was the need to be more careful in what was said to candidates. The one and only practical consequence of the decision had been the setting up of a half day training course in recruitment methods at each of the company's establishments.

The personnel director showed little awareness even after the tribunal of those aspects of company procedure which were discriminatory. For instance, he continued to maintain that the best people had been appointed to the two jobs and that there had therefore been no discrimination. But the tribunal indicated that the company's failure had been in not giving the applicant consideration for the job; thus the fact that others had been appointed and she had not was largely irrelevant. Furthermore, the personnel director rather perversely read the decision as an exoneration of the company's appointments procedures which he said had been given 'a clean bill of health'. He came to this conclusion because the tribunal had not explicitly said that these were discriminatory.

In the view of the personnel director the company had had the misfortune to be called to account for the attitudes of some of its

managers. Attitudes were difficult to change and the real problem was that equal opportunity legislation was in advance of what most people could accept. In his view the decision had not helped to change attitudes. He believed a case such as this one had brought the legislation into disrepute among local managers, commenting that 'they all just had a good laugh about it'.

What developments there had been in the adoption of equal opportunity policies had come about because of, it seems, to unrelated pressure from the trade union which covered the organisation's professional grades. It was the union's practice to negotiate with employers for the adoption of an equal opportunity statement. Forward Enterprises had drafted a statement which had been revised by and then agreed with the union. This statement then became part of the collective agreement with the union which had been distributed to all general managers and all union representatives throughout the company. The trade union had not become involved in the applicant's case: she had allowed her union subscriptions to lapse and had not asked for any support.

Conclusions

There had clearly been no concerted effort by the organisation to learn lessons from the tribunal decision. No internal discussions at a senior level had resulted from the case. Management at Forward saw the case as an opportunity to exert control over its various establishments including Voxprint, but this was not motivated by a desire to promote equality of opportunity and was better explained by internal political battles within the organisation. However, in consequence, it seems that local managerial discretion concerning recruitment decisions had been curtailed as senior management exerted its authority.

A joint union-management statement on equality covering some professional grades had been negotiated and the organisation referred to itself as an 'equal opportunity employer' in job advertisements. This had come about as a result of union pressure unconnected, it seems, with the case.

We find this a good example of a case where clear recommendations to an employer by the panel would have been helpful. The panel's analysis of wherein lay the discrimination remained too legalistic to be constructive. What the employer needed was a lesson in how to recruit in a non-discriminatory way. It needed to know those

aspects of its recruitment practices which were likely to lay the company open to further claims of discrimination, such as the absence of application forms, job descriptions, and closing dates for applications etc. It seems to us unfortunate that an employer can go through an industrial tribunal without learning such basic points.

Other recruitment cases

In this section we analyse data collected from a further five employers in the 'secondary' group (as defined in Chapter 1) where recruitment methods have been found by the tribunal to be discriminatory. The five employers are four private sector commercial organisations and one local authority. First, we describe the main features of each case in turn and consider the impact of the decision on the employer. We then summarise the evidence on effects and consequences for the secondary group before coming in a final section to some conclusions about all eight recruitment cases.

R4: Northern Tools

The employer is a small privately owned engineering company with between 50 and 60 employees, 12 of whom are women doing secretarial or clerical jobs. None of the employees are members of trade unions. The applicant was a pupil on an engineering course at a technical college. The careers advisory service of the college was informed by the employer that it had a vacancy for a trainee machine operator and the applicant, who had completed one year of her course, was judged by her careers adviser to be a suitable candidate for the post. The careers adviser made an appointment with the production manager for the applicant to visit the factory for interview but no mention had been made on the telephone that the applicant was female. The tribunal decided that the employer was in breach of section 6(1)(c) of the SDA by not offering her employment after evidence was heard from the careers adviser that the director of the company had told her that he did not employ women on the shop floor. The respondent argued at the tribunal that the reason the applicant had not been appointed was that it had become unnecessary to take on new labour as the order for work had been taken from Northern and given to another company. However, the company failed to produce any evidence to that effect at the tribunal.

Both parties were represented at the tribunal by a solicitor and the applicant was legally assisted by the EOC. But it was the applicant's careers adviser who had been instrumental in assisting her to pursue the case from the outset. Indeed the careers service took the decision to refuse to service any further vacancies from Northern as a result of the company's refusal to employ the applicant. The employer, for his part, took the view that the careers service had been responsible for causing all the trouble and had put the applicant up to pursuing the case.

The applicant was awarded £250 by way of compensation for injury to feelings and a further £750 for what the tribunal judged to have been a lost training opportunity which had adversely affected her future career. In its written decision the tribunal stated that the applicant had not sought any recommendation and consequently no recommendation under section 65(1)(c) was made.

It was clear to us that this employer had no intention of taking any steps to promote equality of opportunity or remove job segregation. According to the general manager, women would never be allowed on the shop floor 'in my lifetime', and there was no point in his view in going through the charade of an interview if a job enquirer had no chance of employment. The main lesson to be learned from the case was not to delegate job interviewing to his departmental managers because they clearly could not be trusted to handle recruitment without getting the company into trouble. He had decided that he could not trust the careers advisory service or the job centre and so he now used a private recruitment agency with whom he claimed to have a better understanding. If there was a need to advertise then he personally took charge of screening job enquirers on the telephone so as to make sure that only appropriate people got application forms.

We had confirmation of the intransigence of the employer from the careers adviser who was shocked at the refusal of the employer to take the applicant seriously. In her view there had been no problem about the lack of female toilet facilities, as claimed by the employer. She herself had visited the premises to enquire why the applicant had been refused the job and had come to the view that it would have been suitable for the applicant to have used the facilities provided for female office staff.

The main effect of the case, then, had been that the employer had adopted recruitment procedures which more easily allowed him to discriminate against women without its becoming public knowledge.

R5: Boltons Contracts

The company provides office services on a contract basis to over 5000 business sites throughout the UK. It employs in excess of 20,000 people many of whom are part-time. The company has 70 branches each under the control of a branch manager who is typically responsible for administering about one hundred contracts and who has virtual autonomy from company headquarters in recruiting and dismissal. Regional directors are responsible for ensuring that branch managers successfully deliver the services as specified in the contract; in addition, they have a responsibility for bringing in new business. The company itself does not recognise trade unions. However, it takes the lead from its client organisations some of whom may insist that workers provided by the company join an existing trade union. Wage rates vary from one contract to another and are the subject of negotiations between the company and the client.

A branch manager of Boltons placed a vacancy with the local job centre but specified to the job centre that it wanted a woman for the job because it involved cleaning women's toilets. The job centre informed Boltons that the job could not be advertised in this way and that the company would have to consider suitable men unless there was a genuine occupational qualification for not employing men. The officer made clear to Boltons that in his view there was no genuine occupational qualification and he arranged over the telephone for an unemployed male to go along for interview. The applicant was interviewed for the job but was told that he would not be suitable and that a woman was required. The applicant returned to the job centre and was apparently informed by job centre staff of his right to take a case against Boltons to an industrial tribunal.

In its defence the company all along accepted that it had discriminated against the applicant contrary to section 6(1)(c) of the SDA but claimed that, under section 7 of the Act, there was a genuine occupational qualification which necessitated employing women only. The tribunal decided that the respondent had failed to make out a case for a genuine occupational qualification. It took the view that there was scope for reorganising the work of existing employees so

that women already employed at the site could clean out the women's toilets and that the applicant could have been found alternative work in other areas of the building. The panel made no ruling on compensation and left the parties to sort out a suitable award. No recommendations were made to the employer. The company paid £200 to the applicant who was represented at the tribunal by a solicitor and legally assisted by the EOC. The employer was represented by the personnel manager.

The personnel director took the view that the case was really quite trivial and unimportant. The company's recruitment methods and selection procedures had not been the issue and the tribunal had made no comment on these. The company had admitted discriminating but it wanted the tribunal to rule on whether it had been lawful to discriminate in these circumstances. The tribunal decided the company had unlawfully discriminated, and, in the director's view, the company had tried to take note of and implement the decision. He felt, however, that the tribunal had not appreciated the employee relations problems which might ensue from transferring an employee from one job to another as such a transfer might be interpreted as a lowering of working conditions. Furthermore, if an employee was good at his or her job it was wasteful of skills and experience to transfer the employee to another job.

The company had sought to implement the decision of the tribunal by sending a copy of the decision to all branch managers with a note outlining its implications. Apparently this was common practice with all tribunal decisions and this case was no different. Furthermore the case was used in an industrial relations course which he ran as part of the three week induction training for new managers joining the company. He thought it most unlikely that a similar episode could happen again because all managers should now be familiar with this point of law, but if it did he would be wanting to hold the manager personally responsible.

The company took the view that there was no need to have an explicit equal opportunities policy. Equality of opportunity was inherent in company policy as all jobs were open to men and women and job adverts made this clear. The fact that the company had been to an industrial tribunal should not be interpreted as a comment on the fairness of the company's procedures since the point at issue was in

his view a technical matter relating to what constituted a genuine occupational qualification.

The job centre, it seemed, had encouraged the applicant to pursue the case. But instrumental in the applicant's decision to take the case had been a telephone call from Boltons branch manager who had found out about the impending tribunal case from the job centre. The applicant perceived this as a threat from the employer not to pursue the case but this only made him very annoyed and more determined to pursue it.

R6: Camley Council

The employer is a local authority which advertised a vacancy for a senior professional appointment in its administrative department. The applicant was shortlisted and interviewed for the post but failed to be appointed. The applicant's claim was not that she should have been appointed to the job, since it seems that she accepted that she had less relevant experience than the person appointed. However, she claimed under section 6(1)(a) of the SDA that the interviewing panel had discriminated in the arrangements made for the appointment by asking her discriminatory questions in the course of the interview.

While there was dispute about the precise wording of the questions allegedly put to the applicant, it seemed to the panel that some questions were designed to discover whether the applicant intended to have a family and whether this might lead her to having time off to the inconvenience of the authority. The applicant was represented by the district officer of her trade union who drew attention at the tribunal to the failure of the authority to comply with the EOC Code of Practice regarding recruitment procedures. The applicant was awarded £100 by way of compensation for injury of feelings.

The chief administrative officer was disappointed by the decision of the panel as he felt that the applicant had taken a line of questioning about family commitments out of context. Furthermore he said he had always tried to promote women to senior positions in the council, and his record and that of the council on equal opportunities had been good. However, the panel had not taken that evidence into consideration. He now accepted, however, that if the questions had been put the way the applicant alleged they were, then they probably were discriminatory. He furthermore acknowledged that he ought to have intervened as chair of the interviewing panel to stop that line of questioning. His

preference was to run interviewing panels for senior posts in a more relaxed and less formal manner than might be the case for junior positions, but this might have to stop.

He believed that as a result of the case he had become more aware of the vulnerability of the authority to charges of sex discrimination and that he and his immediate staff were now unlikely to ask questions which could be construed the wrong way. There had been considerable local publicity about the case and he had made a report to the personnel committee. As a consequence he had been involved in drafting with the personnel officer for the authority a circular entitled 'Avoiding Discrimination in the Recruitment and Selection Process' which had been incorporated into a new Recruitment Manual issued to all departmental heads about 18 months after the tribunal. The relevant chapter of the manual contains a section on 'dos and don'ts' in interviewing, one of which reads, 'DON'T – ask questions relating to personal circumstances or family commitments or assume that such situations will arise in an individual's future'.

The political make-up of the council was overwhelmingly Conservative and we were told that, while the authority abided by all anti-discrimination legislation, it did not believe in subscribing to equal opportunity statements. Consequently, job adverts do not describe the authority as an equal opportunity employer. The head of administration said there was no need for the authority to go about proclaiming its practices. Evidence of the authority's commitment to equality of opportunity could be seen in its decision to circulate the EOC Guidelines for Equal Opportunity Employers to managers involved in recruitment.

R7: Foodcheck Ltd

Foodcheck is a large supermarket retailing chain with in excess of 300 branches throughout the country. Some of the largest branches employ between three and four hundred staff many of who are part-time female checkout assistants and shelf-fillers. We were told that standardisation is an important part of the company image, policy being made centrally by the company board and applied in the same way in each of the five areas.

The company was found to have been in breach of section 6(1)(a) of the SDA in the arrangements it made for carrying out the selection process for management trainees. The applicant claimed to have been

asked discriminatory questions including, ‘Do you plan to get married?’, ‘Do you plan to have a family?’, and ‘How do men respond to your instructions?’ The company did not deny that these questions were asked but claimed that the first two questions were relevant to enquiring about the applicant’s mobility and willingness to work unsocial hours. The tribunal established that none of the male candidates had been asked if they planned to start a family and that in these circumstances such a question discriminated against women candidates. The applicant was awarded £25 as compensation for injured feelings.

The applicant had been interviewed by a local branch manager and his personnel assistant after adverts had been placed in the local paper seeking management trainees. The company was engaged in a national recruitment exercise and the interview was to have been the first stage of a selection process whereby candidates were assessed for their management potential. Candidates who were successful at this stage were to go forward to a further interview at the area headquarters office. Although this was a national recruitment exercise the branch manager did not appear to have been given any definite instructions by the area office as to how the selection process should be conducted nor what qualities or characteristics he should be looking out for in candidates. The area personnel manager told us, however, that he regarded the manager as well qualified for the selection task. Nevertheless, the checklist of questions had been devised by the branch manager without reference to any higher authority, but this process was considered to be acceptable to the company.

The fact that the branch manager himself and not company headquarters had devised the questions was considered to be highly relevant by the tribunal but we found the panel’s reasoning on this point to be confused. The fact that the company had not had any say in devising the questions was interpreted by the panel as an exonerating factor, whereas it seemed to us it could more properly have been interpreted as evidence of a failure of supervision. We found it difficult also to appreciate why an award for injury to feelings (£25 was the lowest award we came across in the three years studied!) should be linked to the existence of what the tribunal considered to be ‘exonerating features’. The degree to which the applicant’s feelings had been injured by being asked discriminatory questions seemed to

us to be unaffected by whether or not the questions asked had the approval of the organisation's headquarters.

It can be argued that the tone adopted by the tribunal affects the respondent's perception of culpability and influences whether or not the respondent considers follow-up action appropriate. In this case we found very little evidence of procedural changes. For instance, there were no changes in the composition of screening interview panels; there was no specific training introduced for managers on how to carry out interviews and no attempt has been made to introduce uniformity and consistency in the selection interviews for management trainees across the country as a whole. We found this lack of uniformity noteworthy in a company which prides itself on an identifiable, national corporate image!

The area personnel manager was against providing his branch managers with a formal set of questions for screening interviews because he felt they were experienced enough to make the right decisions about candidates who had real management potential. The tribunal's decision had not made him change his mind on this matter because the applicant had in his view clearly not been of management potential in any case. He felt the tribunal had agreed with him on this point. The award had been derisory and this signified to him that the tribunal had sympathy with the company's position, although it had been required to find the company in technical breach of the Act. In his view there was no basis in the judgement for mounting a review of recruitment methods; this would have been an over-reaction considering the very mild rebuke delivered by the panel.

However, it seemed that the decision had been used as a training exercise in induction training for new managers. In addition, it had been discussed at regular meetings of area personnel directors to the extent that it was mentioned as a problem that had come up in one area. It did not seem to us that any particular effort was put into drawing out lessons or implications and we were told it was up to area personnel directors to draw whatever conclusions they felt appropriate for practices in their own area.

We were shown the company's equal opportunity policy statement (but were not permitted to retain a copy). In addition, the company training manual contained a section outlining the questions that should and should not be asked at interview. The manual is available in all

branches. All employees are provided with an Employee Handbook which refers to the company's commitment to equality of opportunity.

R8: Paper Supply Company

The company is a small one-site trading organisation involved in buying and selling consignments of paper products and fancy goods. There is no manufacturing activity and the workforce consists of less than 50 employees, with men working in the warehouse and women engaged on invoicing, sales and other clerical activities. There are no trade unions and the proprietor showed considerable antipathy towards any form of workforce organisation.

The applicant saw a job advertised for a warehouse assistant for males or females at the job centre. She had had previous experience of unloading vans and lifting heavy weights and considered herself suitable and qualified. The job centre officer telephoned the respondent to arrange an interview for the applicant but was told that a female would not be suitable as the job involved lifting heavy weights and the bad language would be offensive to a woman. At the tribunal the company, represented by the proprietor, claimed that because the job required physical ability being a man was a genuine occupational qualification for the job. However, the tribunal held that the company had sexually discriminated against the woman in refusing to even consider her for the vacancy. There were in its view no grounds for a GOQ defence. The applicant was awarded £100 for injury to feelings but the panel took the view that she would have been most unlikely to have got the job had she been interviewed (no reasoning was given for arriving at this view!) and so compensation was not considered appropriate. The applicant presented her own case at the tribunal.

The proprietor told us that he had not sought at the tribunal to conceal the fact that he had discriminated against women by not employing them in the warehouse. Moreover he would continue to do so in the future because women were good in the office and men were better at lifting. It was, in his view, as simple as that and he told the panel at the tribunal that he did not think they should be allowed to interfere in his business. There was too much protective employment legislation including the SDA, and all these Acts should be abolished. The only effect of the case was that he would never again use job centres for recruiting. He now used advertisements in

the local press because he could listen to job seekers on the telephone and tell them the job had been taken if he did not like the sound of them.

He did not regard the case as a defeat. The chairman of the panel had been very understanding of his predicament and he felt his honesty before the tribunal had been rewarded in that such a small amount of money had been awarded to the applicant. We find it noteworthy that an employer with such extreme views could come away from an industrial tribunal with the impression that the members of the panel had been sympathetic and understanding towards him.

Summary: Cases R4 to R8

We have found evidence of changed employment practices in two of the five cases, namely Camley Council and Boltons, but given that both of these are large decentralised organisations (especially Boltons) we wonder about the extent to which instructions issued and procedures amended will have filtered through to all sections of each organisation. Both employers sought to respond to the specific infringements which the tribunal had highlighted although neither had undertaken thorough reviews of personnel policy.

The remaining three employers showed little or no positive response to the tribunal decision. Two employers (Northern Tools and Paper Supply) proudly flouted the legislation by turning to methods of recruitment which made it easier for them to illegally discriminate, while the other (Foodcheck Ltd) made little, if any, purposive effort to change practices to ensure that its local managers would have reduced opportunities for discriminating.

Summary and conclusions

In this chapter we have considered the impact of the decision of an industrial tribunal on eight employers who have been judged to have discriminated in their recruitment practices. We have considered each of these employers in turn in order to ascertain what changes in policy and practice were appropriate, that is, to define the scope for reform, and then to find out what changes if any were actually carried out.

Because the emphasis has been on the quality and depth of change and about attitudes as well as practices, a simple headcount of organisations which have made changes may be inappropriate, but, at the risk of simplification, we can conclude that four of the eight

organisations had made efforts to address the discriminatory practices found by the tribunal.

In Denton there had been considerable progress since the date of the tribunal in developing an equal opportunity policy statement and in putting this statement into practice. The panel had made recommendations to the respondent, and one of these recommendations had been fully implemented while the other had not. However, an alternative way of implementing the spirit of the recommendation had been found.

In Jones Outlets we concluded that the tribunal decision had been instrumental in bringing about specific changes in recruitment methods including the abolition of telephone screening of applicants and in the advertising of vacancies. The case played a part in the development of the company's equal opportunity policies, but other industrial tribunal race cases may also have been important as well as the EOC and CRE Codes of Practice. Attitudes had probably not been changed by the decision.

The other two employers where change was noticed were Camley Council and Boltons but in both these cases we were not able to gauge the extent to which changes would have permeated the entire organisation. Nevertheless it seemed that the specific infringements highlighted by the tribunal were attended to.

Forward Enterprises, on the other hand, had made little effort to learn lessons from the tribunal decision although headquarters had used the decision to extend its control and influence over the constituent organisations, and the semblance of a coordinated personnel function was beginning to develop. The company had recently adopted a policy statement on equality, but this had come about through trade union pressure which seemed unrelated to the tribunal decision.

No changes had been noticed in Northern Tools, Paper Supply or Foodcheck Ltd, the first two of these companies openly indicating to us that they would continue to unlawfully discriminate at their own convenience.

It is clear from the case studies presented in this chapter that employers assess the importance of the decision, and, in consequence, how seriously they are going to have to deal with the tribunal's decisions, not only by reference to the remedy proposed. Of equal importance are the messages the employer picks up from the tribunal

while evidence is being led and in the written decision indicating how seriously the tribunal regards the offence. Employers gear their responses to these clues and messages.

Although finding in favour of the applicant, some tribunal decisions appear to exonerate the employer who comes away from the hearing with the impression that the offence was merely a technical one, or even that the tribunal had some sympathy with the employer's position. If the tone adopted by the tribunal allows such an interpretation of events, it is unlikely that follow-up action will be forthcoming.

There is inconsistency in the way various tribunals consider evidence about the presence or absence of an equal opportunity policy. Some tribunals may accept the fact that the employer has an equal opportunities policy as in itself evidence of good intent and hence as an exonerating factor, whereas others may see additional culpability in the employer's failure to take that policy seriously. If the presence of a policy is to be seen as praying in the employer's aid (by and large, but not always, an unsophisticated view), then the absence of any kind of equal opportunity policy should be treated, in the same vein, as a general sign that the employer has no real commitment to promoting equality, but this interpretation is rarely arrived at. The underlying problem is that tribunals are on the whole not qualified or skilled enough to assess the value or significance of a stated commitment to equal opportunities.