

3 Promotion and Transfer

Discrimination in relation to promotion and transfer is outlawed under section (6)(2)(a) of the SDA which makes it unlawful for an employer to discriminate against a woman ‘in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them’. In this chapter we consider eleven cases successfully brought under this section of the legislation. We examine the effects of the cases on the employment prospects of the applicant with respect to that employer as well as any wider consequences the tribunal decision may have had for the employer’s policies and practices.

In promotion cases we can note that the applicant is very often a better source of information about the employer’s practices than applicants in recruitment cases where contact with the employer is fleeting and could be restricted to a telephone conversation. In these cases we have therefore sought to make full use of the applicant’s experience of the respondent’s employment practices both before and after the tribunal. Secondly, we can note that promotion cases are more likely to arise in larger bureaucratic organisations which are hierarchically organised and have a formal career structure. This factor may go some way to accounting for the greater number of public sector organisations considered in this chapter. Of the seven public sector employers, five are local authorities (three county or equivalent upper-tier), one is a health authority and the other is a central government department. There are four private sector organisations, three being commercial companies and the other a non-profit-making charity.

P1: City Council

The employer is a local authority with about 1,000 employees and the department we are concerned with is responsible for estate management and lettings and consists of 130 staff more or less evenly divided between manual workers, such as cleaners and grounds staff, and administrative grades.

For this case study we conducted interviews with 5 people: the head of department, a section manager, a manager for the personnel and staffing department of the authority, the applicant and the solicitor who represented the applicant.

The tribunal's decision

The panel decided that the authority had discriminated against the applicant by failing to appoint her to a more senior administrative post. The panel found that even although a woman had been promoted to the post the applicant had been treated less favourably over a long period of time than a man would have been treated. Had the applicant been a man, he would, in similar circumstances, have been promoted. The tribunal found that the reasons she had been unfavourably treated over a period of time were connected with a break of service due to pregnancy, in that after she returned to the employment of the authority she had been offered work in another department which was less interesting and which had reduced her promotion prospects.

The tribunal ordered that the applicant be awarded back pay, the exact amount to be agreed between the parties within 28 days. The tribunal recommended that the applicant be appointed to a post equivalent to the grade of the post to which she had failed to be appointed within two months of the decision. Both parties were legally represented at the tribunal and the applicant was assisted by the EOC.

Case history

Before becoming pregnant, the applicant had worked continuously for the authority for a period of 12 years. She was considered to be a competent employee and had on occasions deputised for her section manager when he had been absent. Prior to going on maternity leave she had discussed with both the section and departmental manager her desire to return to work after the birth and had made a written statement of her intention to do so. The department had had no experience of

women actually returning to work after maternity leave. It seems that management had not expected the applicant to return to work and had taken the view that she had intended to return only if something went wrong with the pregnancy. Her post was advertised and filled while she was on maternity leave.

The department claimed to be surprised when the applicant decided to return to work after the birth of her child. She expressed the desire to have her previous job back but was offered alternative employment at a lower clerical grade, but she was unhappy with this work even though her salary had been made up to the grade she had been on before maternity leave. The head of her department now took the view that her future lay in this new section and it was suggested to her that if she wanted to progress further she should study for a professional qualification. This she did, and the department gave her time off to go on day-release to study.

After being back at work for two years the senior administrative assistant (her previous boss) in the section she used to work in retired, and she applied for the job. She failed to get promoted and the job went to a much younger internal candidate with less experience. The applicant was very angry at the outcome and approached the secretary of the staff association who was very helpful to the applicant and suggested that she should take the case to an industrial tribunal. The applicant felt that had she not gone off on maternity leave and had she still been in her previous section she would have been promoted. She felt that the authority needed to clarify its policy on maternity leave arrangements, and that male managers had the wrong attitude to women going on maternity leave. Taking the case to the tribunal was a way of trying to get the authority to put its house in order with respect to these specific matters.

From the management's point of view the applicant had always been well treated by City Council. The department had been genuinely surprised when the applicant returned to work but had, it believed, carried out its statutory duties by providing her with work at the same rate of pay. They had tried to help her further her career by allowing her time to take professional examinations. The personnel officer at headquarters (who had experience of industrial tribunals as the employers' representative) believed the tribunal had made a wrong decision by confusing the maternity and promotion issues. He took the view that if City Council had correctly discharged its duties with

regard to maternity leave (and the tribunal did not state that it had not) then there could have been no discrimination, especially as it was a woman who had in fact been promoted. We formed the view that this officer regarded the decision as the result of some kind of female conspiracy: the chair of the panel had been a woman and in his view clearly biased against City Council (although, interestingly, the applicant's solicitor also took this view); the female staff association representative was, he believed, using the affair to advance her own career and the applicant herself seemed to be fighting a battle for womankind in general.

Effects and consequences

We can look first of all at the remedy proposed and the recommendation of the tribunal. Both of these, it seems, were resolved quite quickly. The applicant was paid in the region of £1,000 and two months after the tribunal a vacancy for a senior administrative post arose in another section and it was offered to the applicant and accepted by her without being internally advertised. The applicant told us she was convinced she would not have been offered that job and would still be doing clerical work had she not taken a case to the tribunal. She expressed herself as well pleased with the new job and as a result she says she became 'charged with energy' which encouraged her to complete her professional exams.

Secondly, the case had brought about changes in the authority's practices concerning maternity leave. A circular had been issued to all departments advising that the jobs of women going on maternity leave should be kept open. The applicant corroborated that this was now standard practice. Two women, she told us, had taken maternity leave since the tribunal decision, and both their posts had been filled on a temporary basis. More generally, there had been improvements in personnel practice: all staff were now issued with a staff handbook giving details of terms and conditions of employment. Previously, pregnant women would not have known where to go to find out about maternity leave entitlements but this was now explained in the handbook.

Thirdly, it seemed that attitudes had changed: the applicant said that managers were now more cautious in personnel matters, that she herself was treated with a new respect. The departmental manager said that he was more aware of the need for a good staff appraisal

system (but it was not clear to us that this had actually come about). He said that there was a need to get more women into senior positions and that they now tried to get a woman on interviewing panels.

Finally, some progress had been made towards developing a formal equal opportunities policy. The council does not refer to itself as an equal opportunity employer but it had recently adopted a policy statement. The personnel officer said the timing of this had nothing to do with the tribunal's decision although it was adopted about 18 months after the tribunal. It is interesting to note that the applicant herself became involved in the staff association's lobbying for the introduction of such a statement and helped gather together examples of policy statements from other organisations which were then put to the authority by the staff association. The elected representatives of the authority do not have party political affiliations and there had therefore been no direct political pressure for the adoption of an equal opportunity policy. In these circumstances the positive stance taken by the staff association had been highly significant and effective.

Conclusions

There seems to us no doubt that the outcome of the tribunal was a considerable shake-up in the personnel policies of City Council. The applicant is still employed by the authority and we were therefore able to have her views on changes that had taken place. For the most part she backed up the claims made by our management interviewees. She now took the view that the authority was an 'excellent' employer and claimed that there had been no bad feeling towards her since the tribunal.

The support given to the applicant by the staff association in preparing for the tribunal was considerable, as was the enthusiasm of the association in pursuing the implications of the decision. Without the support of the association and of colleagues at work the applicant might not have pursued the case and might not have continued to work for the authority after the decision. The fact that she continued in the authority's employment as a witness to subsequent changes in practice would in itself, we believe, have acted as a stimulus to the authority to get on with things.

This case might not have resulted in a decision in favour of the applicant if the chair of the panel had not played such a full role in the proceedings, as it seems she did by making what the applicant

described as ‘pertinent’ remarks during the proceedings. She gave a lot of assistance to the applicant by way of clarifying the grounds of the application. The decision records that it had been difficult for the applicant to pinpoint the exact breaches of the legislation attributed to the respondent until the evidence had been fully heard. Another panel might have taken a much more perfunctory view of its role, and if so, the outcome might have been quite different. (There would then have been no recommendation and the applicant might not have been promoted as quickly as she was.) It was the view of the solicitor for the applicant that the chair of the panel had moved the grounds of the original application from a case of discrimination against a married woman (which sought to compare the applicant’s married status with that of the single status of the person appointed to the job) to a case which sought to examine the continuing attitude of the respondent over a period of time.

P2: Carlton Council

The employer is a large upper-tier local authority with responsibility for the provision of services to around 2.5 million people. We are concerned here primarily with the authority’s education department which in itself employs in excess of 40,000 people, about half of these being teaching staff. The education department has six divisions and the recruitment of teaching and ancillary staff is, for the most part, the responsibility of the department’s divisional education officers under general guidelines established by the department. Divisions therefore have a high degree of operational autonomy and although there is movement across divisional boundaries, many promotions and transfers take place within the division itself.

For this case study we conducted interviews with a senior staffing officer in the education department’s headquarters, a divisional education officer, the applicant, and an officer concerned with the implementation of equal opportunities for the department.

The tribunal’s decision

The tribunal decided that the authority had discriminated against the applicant by not placing her on a shortlist of candidates to be interviewed for a senior teaching post. It was further decided that the authority had discriminated against her by not appointing her to the post. The applicant was awarded compensation both for injury to

feelings and for loss of earnings, amounting to in excess of £2,000. No recommendations were made to the employing authority.

This case was legally assisted by the EOC and both parties were represented by solicitors.

Case history

The applicant had been an assistant principal teacher for a period of 12 years and during that period had applied for seven principal teacher posts within the same division of the authority. She had on all occasions been shortlisted and interviewed except on the last occasion which was the subject of her application to the tribunal.

All the principal teacher posts in this subject were held by men, a situation unique to this division. Conversely, assistant principal teacher posts were held by women but in order not to frustrate the promotion prospects of male teachers an unofficial agreement had been reached whereby male basic grade teachers were promoted over the heads of female assistant principals to the post of principal. It appears that such arrangements had been the practice in this division for many years, and although many female teachers had brought the potentially discriminatory aspects of this practice to the attention of the authority's officers on a number of occasions, the position had continued unchanged. Although women had been considered at promotion boards none had ever been promoted to the rank of principal in this subject area.

It is important to understand the authority's selection procedures for promoted posts. Such posts were advertised in the authority's own circular (but might be advertised in other publications as well) and interested parties collected application forms from the head of their school. There were no job descriptions or specifications. Completed application forms were returned to the divisional education office and a confidential report on candidates was obtained from the candidate's head teacher. For each subject area there was an educational adviser with responsibility for ensuring that high teaching standards were maintained. The adviser gave advice to the education officer on the suitability of applicants for promotion, and typically a shortlist of applicants was drawn up by the education officer after having consulted the subject adviser.

Once a shortlist was compiled by the divisional education officer, an interview board was arranged and candidates were interviewed by

three persons: the divisional education officer, the head teacher of the receiving school and a teacher of equivalent rank to the post advertised.

In the case in question, the applicant was not shortlisted although she had been on six previous occasions for similar posts. Her academic and teaching qualifications were excellent and she was noted as an expert in her subject area, having been on advisory panels and distinguished herself in the subject by attending in-house courses and taking part in a variety of extra-curricular activities. Over the years the applicant had become frustrated by the continual failure of the authority to recognise her talents. She had put up with these continual rejections, but was sure that her time would eventually come. This optimism was, however, balanced by an awareness of the historic failure of the authority to promote women to principal posts.

It was the failure of the authority to even shortlist the applicant which provoked her tribunal application, coupled with the fact that a male teacher in her school who was many years her junior and did not have her experience was shortlisted. In reaching its decision the tribunal drew attention to the following facts: the applicant's head teacher had sought to discourage her from applying and seemed to take the view that the post was for a man; he had provided the male candidate from her school with a better reference when the applicant was clearly better qualified than the male candidate; he had commented in his reference on aspects of her qualifications that he could not have been expected to know about and had shown favouritism towards the male candidate; the divisional adviser had asked for the applicant to be placed on the shortlist but she had been excluded by the divisional education officer; the divisional education officer had continually over a period of time refused to promote women to principal posts within that subject area.

Effects and consequences

It is perhaps not surprising that when we spoke to the education officer at headquarters he sought to distance himself from the activities of the divisional office. While this could be interpreted as an evasion of management responsibility on the part of the authority, it seemed that the tribunal had been used by the authority as an opportunity to sort out and amend aspects of personnel policy which conflicted with the authority's overall commitment to equality of opportunity. The view

at headquarters was that the authority would lose the case, that there would be adverse publicity, but that the council was nevertheless quite happy to see the old-fashioned views of the division confronted as this could only have beneficial effects in the longer term.

So why did the council not settle the case prior to the tribunal and remedy matters within the division? The headquarters officer took the view that since divisional management were adamant that there had been no discrimination it was up to them to make out such a case before the tribunal. We gained the impression that sorting out the divisional office was seen as a rather delicate and difficult management task and the intervention of the tribunal made that task a lot easier. We were told that the case was not vigorously defended and that there had been no question of the authority appealing the tribunal's decision. Interestingly, the divisional officer who bore much of the brunt of the cross-examination from the tribunal (no HQ officers were called) himself took the view that the council's own solicitor had been unhelpful. He felt that she was against him during the hearing and he described her as a feminist.

However, it seemed to us that the council had permitted the situation in the division to continue over a number of years even after there had been complaints from female teachers, and had not sought to intervene. HQ officers had been able to evade any direct criticism by not attending the tribunal to explain or defend these omissions.

Yet the council had sought to use the tribunal's decision to make changes in appointments procedures. The divisional officer told us that he had been summoned by the education director and told that the applicant ought to have been shortlisted for the post. He now agreed with hindsight that it was a 'tactical mistake' not to have shortlisted her as she had been, in his view, provoked into action by her junior being shortlisted when she was not. He said that he could never accept that she should have got the post and he resented the tribunal casting a slur on his abilities to choose the best person for the post.

He confirmed that HQ had decided to take direct control over future appointments procedures for promoted posts in this subject area. As far as we could ascertain, this was an unprecedented step without parallel in other subject areas, or in any other of the authority's divisions, and it would have been seen as a clear indicator that the authority did not trust the division's ability to make non-discriminatory appointments. In the two years that had passed since

the tribunal's decision there had, however, been no vacancies for principal teacher posts. (We were told that the council had a surplus of teachers and that there was a moratorium on appointments throughout the authority.) When we spoke to the applicant she was aware of a post coming up in the near future but did not seem to have knowledge of the new appointments procedures. She was therefore not confident of her eventual appointment, being convinced that the divisional education officer would continue in the future to make every attempt to ensure that she never won promotion.

The authority had also instructed changes in the composition of promotion boards within the division which had in the past inevitably been composed in this subject area only of men. (There were no female head teachers at all within the division; the divisional education officer, who had taken part in 95 per cent of promotion boards within the division, was a man and because there were no female principal teachers in this subject there could never be a female teacher of equivalent rank to judge the suitability of candidates.) The authority had therefore instructed that, in an attempt to undermine male domination of promotion panels, teachers of equivalent rank from other divisions were to be invited to sit on promotion panels in this subject area. It seemed to us, however, that the effect of this change could turn out to be fairly insignificant if getting women on to promotion panels was the objective. This was because both male and female teachers from other divisions would be entitled to sit on the panel as teachers of equivalent rank on a rota basis, and, given the distribution of men and women at principal teacher level even in other divisions, it was still likely that the third member of the panel would be male.

Another recent change, not directly connected with the decision of the tribunal, but which, in the view of the HQ officer, might have prevented the discrimination was that head teachers had been instructed to adopt a more open reporting system when compiling confidential reports on teachers for promotion panels. Head teachers had been encouraged to discuss the contents of the report with the teacher concerned so that any statement made could be challenged. Head teachers had also been advised to consult with others in compiling reports, as it had been recognised that they might not have first-hand experience of a candidate's abilities. The applicant believed that a more open reporting system would have been of major benefit

to her own candidacy, as her own head teacher had at the time no in-depth knowledge of her subject area. We were told that this move had been introduced by the council as a direct result of a commitment to more openness in the way the authority conducted its business which had been made in the ruling party's election manifesto.

The applicant was critical of the progress that had been made by the council since her case and provided a good account of the continuing omissions of the council. As far as she was aware, there had been no positive attempt to learn lessons from the case. (She was unaware of the new arrangements that had been made for promotion boards, and this in itself is a comment on the failure of the council to give any publicity to these changes.) In her view the council should have been making a positive effort to encourage women to apply for promoted posts. It should have issued a statement after the tribunal expressing concern about the lack of women principal teachers and giving reassurance that steps would be taken to improve the situation. Instead there had been complete silence.

Furthermore, there should, in her view, be proper job descriptions for promoted posts and candidates should know against what criteria they were being evaluated. Notes should be kept of reasons for non-appointment and candidates should be made aware of these for career development purposes. She had been to seven promotion boards but no notes had been kept by panel members indicating how well she had performed on previous occasions. This had allowed the education officer to claim that she had not performed well at previous interviews without producing any supporting evidence. In her view the whole selection process was 'unprofessional' and too much power had been given to one individual in the divisional education office who single-handedly had been allowed to control promotions in the division for almost 20 years.

Both the council and the education department in particular now recognised that more had to be done to promote equality of opportunity. This was not the first case that the department had lost at tribunal. Promoting equality had been a major plank of the ruling party at the last election which it had won by a large majority, and in order to develop that commitment the department had set up a Working Party on Sex Equality in the education service convened by the deputy director of education and including nominees from both the authority and the teaching unions. A substantial report had been

produced which examined both career opportunities for women and the content and structure of the curriculum. At the time of writing, this report had just been accepted by the full council. There was to be an equal opportunities unit set up within the department, and the chief executive's department was to make a senior appointment of an equal opportunities officer.

We tried to establish what consideration the working party had given to recent tribunal decisions in coming to its conclusions but we were told that the particularities of recent cases had not been drawn to its attention. This seemed unfortunate as lots of material of more general relevance is brought before the panel when it hears evidence.

Conclusions

It is probably inevitable that in a large bureaucracy local fiefdoms and concentrations of power develop in opposition to the centre. This was allowed to develop because of a lack of supervision by departmental headquarters. Nevertheless the department used the tribunal decision in positive ways to seek to eradicate discriminatory practices. It did this quietly and other authorities might have sought to demonstrate publicly that they were tackling discrimination. The case, it seemed, was dealt with only at officer level and we were not aware that the education committee became involved, or that its views were sought.

In parallel to the specific responses of the council to the tribunal decision, there were important developments taking place in the council's equal opportunities policies. It was clear that officers were obliged to implement the majority party's manifesto commitments and it is likely that the impetus for major changes had come from politicians and not from tribunal decisions. The decision of the tribunal in this case had confirmed officers in the view that there was room for improvement, although it is clear that some HQ officers knew that this was so before the applicant took the case.

The tribunal's decision showed considerable irritation with the authority's promotion practices and drew attention to a number of omissions and failures. Given the thoroughness of its enquiries, it would have been a simple matter for the panel to have come to some constructive conclusions about future practice by way of advice and recommendation to the council's officers. It seemed a great waste of effort to have examined under the microscope the council's promotion

procedures without putting forward some helpful comments and suggestions.

Case P3: Power Supplies PLC

The respondent is a regional office of one of the principal energy supply industries in the country. It is part of a larger national corporation but in operational terms has a high degree of management independence. For instance, this particular regional office regards its equal opportunities policies as in advance of other regional offices. The employer (by which we mean the regional office) has about 10,000 employees, making it one of the biggest employers in the area. Approximately 5,500 of these are office, showroom or managerial staff and the remainder are in manual industrial grades. There are about 250 senior managerial staff.

Eighty-six per cent of industrial staff belong to trade unions with one major union predominating. There is a lesser proportion of non-manual grades, but more than 50 per cent belong to a major white-collar union. The company has a large personnel section at regional headquarters with a major responsibility for staff training and development. In addition, each of four areas within the region has an area personnel officer located out of headquarters at an area office.

For this case study we carried out a group interview with managers from the company including the personnel manager, a manpower services officer, a recruitment officer and an employee services officer. In addition, we interviewed an employee services officer about the company's equal opportunity policy and a union official.

The tribunal's decision

The tribunal found that the applicant had been discriminated against under sections 6(1)(a) and (c) of the SDA. It took the view that the arrangements made for considering candidates at interview were discriminatory in that there was no woman on the panel which interviewed the applicant. In the view of the tribunal the applicant was clearly the best candidate for the post and ought to have been appointed. The applicant was awarded £500 for injury to feelings. In addition, the tribunal made the recommendation that the company it should review its interviewing procedures and that, when practicable, should include a woman on the interviewing panel. It also

recommended that the composition of the panel should change from time to time.

Both applicant and employer were represented by solicitors. The applicant's case was legally assisted by the EOC.

Case history

The application to the tribunal was made after the applicant had failed for the second time to be appointed to the position of manager of one of the company's retail outlets. The applicant had worked with the company for some 14 years prior to the application and during that period she had gained promotion from sales assistant to deputy manager and had acted as manager of a shop during a 12 month period when the manager was absent due to illness. There had been no criticisms of the applicant's performance as acting manager and in fact she had been nominated by the sales manager for the company's Star Award in recognition of her managerial potential and motivation.

When it became clear that the manager for whom she had been deputising would not be returning to employment with the company, the post of manager was advertised and the applicant was one of the candidates interviewed. She was unsuccessful at interview and a man was appointed to the job. Five men and two women in addition to the applicant had been interviewed. After the interviews a piece of paper was found on the floor of the interview room on which had been written the words 'Good screw', and when this was investigated by the company it was discovered to have been written by one of those on the interviewing panel. From what we can understand no immediate disciplinary action was taken against the officer who had admitted writing the remark, and neither was it proven at that stage that the remark had been specifically directed against the applicant rather than against either of the two other female candidates. The applicant continued to be employed by the company at the same outlet but under the new manager appointed by the interviewing panel.

Just over a year later the job of manager at the same outlet again became vacant and the applicant once more took up the position of acting manager during the interregnum prior to the new appointment. She was interviewed again for the post of manager but a male candidate with less experience than herself was appointed. The applicant was considered by the interviewing panel to have been a good number two for the job. However, when the person appointed

decided that he could not take up the job after all, rather than offer the post to the applicant, the company decided to readvertise the post. Of the two candidates, a 24 year old male and a 40 year old female, the man was appointed.

In arriving at its decision that the applicant had been discriminated against, the tribunal decided that the company demanded a higher standard of performance from female candidates. It also considered statistics on the general position of women within the company, noting in particular the fact that women comprised only 3.9 per cent of senior sales staff but 69.7 per cent of junior sales staff. It also took the view that the company had failed to carry out the general policies of equality of opportunity for women under the terms of its own equal opportunity policy which it had produced in evidence at the tribunal.

Effects and consequences

We were told that the company believed the tribunal had arrived at a wrong decision. It continued to believe that the applicant was unsuitable for the vacancies for which she had applied and that the male applicants appointed were the best qualified of the field. The company had not been persuaded otherwise by the decision of the tribunal. It believed that the applicant had pursued the case because of personal animosity towards area management and that she had a grievance against the company because her husband, also employed by the company, had been forced to leave under unfavourable circumstances.

We were told in addition that the applicant had been pushed into applying to the tribunal by an ex-employee of the company who it was again alleged had an axe to grind. We found it surprising that the company still adopted such a strong defence of its actions at the time, and we take this as evidence that official attitudes may not have changed all that much after the tribunal. The company pointed to the union's failure to back the applicant as further evidence that there had been no discrimination. The personnel manager claimed to have been told by a union official that the union would not support the applicant because she did not have a good case. When we asked a union official about the union's attitude towards the case we were told that the union could not give the applicant assistance because she was not a member but the union 'had pointed her in the direction of the EOC'. The failure

to provide practical assistance did not, he claimed, imply that the union considered there to be no merit in the case.

We heard that the officer who made the sexist comments had been disciplined following the tribunal ‘for bringing the company into disrepute’. The union officer thought that another officer representing the personnel department on the interview panel had also been demoted for his mishandling of the case.

The company, we were told, had not found the recommendations of the tribunal particularly helpful. In fact, it had taken legal advice on the status of the recommendations and had been advised that the company was under no legal obligation to conform to them. It objected in particular to the recommendation to include, where practicable, a woman on interviewing panels and it had not sought to implement this item.

The company took the view that the recommendations of the tribunal had been overtaken by events in that the company had begun a cooperative exercise with the EOC to examine recruitment and promotion practices and the development of equality of opportunity within the organisation. As we understand it, the joint exercise with the EOC was not prompted by the circumstances leading up to the tribunal, although both events were closely related in time. We gained the impression that the joint exercise had been highly significant for the development of equal opportunity policies within the company, but that, due to the company’s belief that the tribunal had reached a wrong decision, no attempt was made to learn any specific lessons from that case. The tribunal had been ‘of minor importance’ and an ‘unfortunate incident’ which the company wanted to put behind it.

The company informed us of a number of developments in the implementation of its equal opportunity policy since the time of the tribunal. We list these developments below.

- (1) The larger corporation of which the company is a part had issued a Policy Statement on Equal Opportunities to all regional companies. 1,200 senior staff from the company (that is, all 250 senior management and 1,000 staff in staff officer grades 1-7) had been invited to a half-day training course to launch the statement and to emphasise its importance.
- (2) The company itself had set up ‘awareness training’ on equal opportunity issues and all personnel staff throughout the region had been on a two-day training programme.

- (3) A staff training course on selection and recruitment methods attended by officers at staff officer 4 level and above had been revised to take account of the new policy and a new recruitment manual had similarly been updated and amended. Two teams of management consultants had been appointed to advise on the contents of the manual and one of these was a recognised expert in the field of equal opportunity policy development.
- (4) Following the introduction of the new policy it was now standard practice to include a representative from the personnel department on all interviewing panels.
- (5) The organisation had sponsored a Women's Networking Group open to any woman in the organisation on payment of £3 subscription. The aim of the group was to promote female staff development. The organisation provided the facilities for the group to meet but meetings had to take place out of office hours.
- (6) The organisation recognised the existence of a 'Women in Personnel Group' which functioned as an advisory group to the personnel director and consisted of one representative from each region. Issues currently under discussion by the group included single sex training, occupational testing, age-related discrimination, the corporate image of the company, the job appraisal system and job-sharing.
- (7) The company were supporters of the Women into Science and Engineering (WISE) project and participated in the EOC's Equality Exchange1 programme of conferences.
- (8) A Skills Retention Programme had recently been set up so that women leaving the organisation could be kept in touch with vacancies. One element of the programme was the 'career break' which allowed women to leave the organisation for up to two years with the right to come back at the same grade. This element was restricted to women in staff officer grade 4 and above and to women in manual trades.

This group of initiatives had undoubtedly set a new agenda for the promotion of equality of opportunity within the company. The personnel officer's view was that things were now moving but not fast enough. It was too early yet to see any significant changes in the position of women within the company. This was because there had been heavy job losses throughout the company which had reduced recruitment and promotion opportunities. In addition, it was difficult

to change attitudes overnight in what was still a male-dominated engineering industry.

A contrasting view of the prospects of improved opportunities for women was provided by a union official. In his view the obstacle was not the personnel department but line management. The company regarded the personnel department as advisory only and the real decisions were taken elsewhere. A recent reorganisation within the company would only further reduce the authority of the personnel department. The number of areas had now been reduced from 6 to 3 and this made union access to personnel officers much more difficult.

Training in equal opportunities for line management had been instituted only at a junior level: those making important management decisions were not involved. Senior management in the company was drawn exclusively from those who had had a technical background and career within the company. Typically, men gained experience in technical trades and women in office skills, but technical experience was considered essential for promotion to senior grades. The only way forward was for women to have access to technical training. In addition, there had to be some re-evaluation of the qualities that were necessary to carry out a senior management role. In his view the insistence on technical qualifications was indirectly discriminatory against female employees.

There had in his view been no progress in the appointment of women to managers of the company's retail outlets since the tribunal. He knew of qualified women who continued to apply for jobs but with no success. He claimed the company had an unofficial policy that women would not be appointed to the four most important retail outlets in the region because it took the view that male managers presented a better image.

In his view the career re-entry scheme was window-dressing because it applied to only a minority of more senior officers, that is, those at staff officer 4 level and above. Indeed it was his understanding that the company intended only to implement career breaks for specialist officers with particular skills in demand by the company, thus further reducing its scope. There had been no commitment to proper monitoring of the skills retention programme which had in any case been approved only as a three-year pilot project. A qualitative analysis of the barriers that women faced in pursuing a career with the company was essential but all that had been agreed was a statistical

exercise counting the number of women utilising the career breaks scheme.

The union had been campaigning for workplace nurseries and improved childcare facilities for four years but had made no progress with management on this matter. In the union's view the Women's Networking Group was a 'divisive issue' which did not improve the prospects of women at lower grades but had been of benefit only to a few female 'highflyers'.

Conclusions

This case study is unique in that it is the only example in our research of an organisation which had been involved with the EOC in a joint exercise focusing on equality of opportunity. That exercise was not a formal investigation of the company under section 57 of the SDA and the company emphasised that it had been invited by the company to carry out its review and that the EOC had been given full cooperation. Nevertheless the review covered much the same ground as a formal investigation might have done and access to recruitment documentation was provided. In addition, the EOC commented in its report on those aspects of the company's recruitment and promotion procedures which it considered were discriminatory.

It was clear that the joint exercise had made a much more significant impact on policy and practice than the tribunal's decision. Had there not been a joint exercise we doubt if progress would have been as rapid. Apart from the disciplinary action taken against the manager who had made sexist comments, the company had reacted unfavourably to the decision of the tribunal and had resented its interference in making recommendations which it in any case chose to ignore.

The tribunal had, however, successfully highlighted aspects of company practice which required improvement. Its understanding and analysis had been pertinent and cogent but it could be argued that the task of the tribunal is first and foremost to issue judgement on the facts of the application. It may be too hopeful to expect a single decision of the tribunal to have remedied the serious deficiencies that were highlighted in its discussion. It probably needed a more conciliatory approach and a more comprehensive overview such as was provided in the joint review.

P4: Surley Council

Surley is an upper-tier local authority with in excess of 10,000 employees. We focus primarily on the department of social services which is one of about 14 council departments, each of which has its own personnel section. The council itself has a small personnel unit which acts as a central advisory service for the various departments. The council is divided into six area management divisions. We can draw attention to some contrasts with Carlton Council. First, the case was defended with great vigour not only by departmental headquarters staff but also by the central personnel unit. Secondly, the political make-up of the council is Conservative.

For this case study we carried out interviews with the personnel director at council headquarters, a social services residential manager, a manager of a hostel run by the authority, a social services department personnel officer, the applicant and a trade union official.

The tribunal's decision

The tribunal stated that there had been an element of sex discrimination by the interview panel in the selection process for the post of instructor in a social services day centre managed by the authority. The tribunal took the view that the discrimination had been unintentional and, in its decision, the panel mentioned that it had no general criticisms to make of the council's selection procedures. The tribunal made no recommendation and left it to the parties to sort out a remedy by mutual agreement.

At the tribunal the applicant was represented by an official of her trade union and the employer by the council's personnel director. The applicant was legally assisted by the EOC.

Case history

The applicant was an employee of the authority when a post of instructor became vacant at a centre run by the authority. The post was advertised internally and the applicant applied for the post along with four others, three women and a man. The candidates were interviewed by the authority's residential manager and by a manager from the receiving centre. The male candidate who was several years younger than the applicant, and who had been working alongside the applicant for a period of about six months, was appointed to the post. The interviewing panel said they preferred the man because, although

much younger, he had had experience of an instructor post in a temporary capacity in the recent past. The applicant, however, took the view that her qualifications as a nurse and her broader social service experience made her a better candidate than her colleague.

The applicant took the matter up with her union representative and various meetings followed with council officials in an attempt to resolve the matter but these failed. The applicant's case rested on what she alleged one of those on the interview panel said to her when she telephoned to enquire why she had not been appointed to the post. The applicant claimed that she was told that it had been a very close thing between herself and the man appointed but that there was a need to balance the sexes at the centre. The interviewer denied at the tribunal that she had said this but the panel preferred the account of the applicant.

However, there were other aspects of the selection process which in the view of the panel led to the applicant being discriminated against. First, notes made at the interview were examined and it was found that the words 'one child' had been recorded in respect of the applicant's personal circumstances. Secondly, the panel found that the arrangements for taking up references had worked against the applicant and in favour of the male candidate and that, in the particular circumstances of this appointments panel, these arrangements had the effect of reducing the applicant's chances of success. Both candidates had provided the names of two referees as requested, the man who was eventually appointed putting down the names of two internal referees and the applicant putting down one internal and one external name. However, since it was the practice of the authority to contact only internal referees, the interviewing panel had before them two references for the male candidate but only one for the applicant. The panel therefore took the view that the person appointed was unfairly assisted by the presence of two good references.

Effects and consequences

Following negotiations between the council and the union, the applicant received £200 in compensation. Apparently the negotiations were quite protracted with the council at first being reluctant to pay any money at all and taking the view that the applicant's side should have been content with the terms of the circular described below. However, once compensation was agreed the applicant received the

money quickly. She was still working for the council at the time of our interview and had been promoted to manager of a day centre. She was therefore able to speak to some of the changes that have come about since the tribunal.

The council's personnel department had issued a circular to all departmental heads after the tribunal which sought to draw out the lessons that should be learned. A copy of the tribunal's decision was enclosed with the circular and all recipient heads of department were asked to ensure that managers involved in appointments procedures were aware of its contents.

We were given a copy of this document which drew the attention of departmental heads to two items. First, interviewers were advised to take care when discussing with candidates the reasons for non-appointment. Interviewers were advised to keep a written note of any such conversations so that a record of what was said could be produced if there was any dispute.

Secondly, candidates for interview were to be better informed of what the practice was with respect to taking up references. Although the personnel unit offered no instruction to departments about best practice with regard to taking up references, departments were told that if external references were not to be taken up, then candidates should not be misled into providing them for no useful purpose. In other words, if the department's practice was only to take up internal references it should so inform applicants.

In consequence, then, the county left it up to individual departments to decide whether to accept external references. When we tried to find out about current departmental practice consequent to the tribunal the department's residential manager (who had been on the interview panel which considered the applications) said that there had been no change in practice, that is, the department continued to take up only internal references. However, the applicant understood that departmental practice had changed and that both external and internal references were now taken up as a result of new instructions issued after the tribunal. She had understood the tribunal to have made a recommendation to that effect, but there was in our view no such specific recommendation made in the written judgement. The applicant's version of current practice was confirmed by a departmental personnel officer who said that the practice was to take up both external and internal references, but we found it difficult to

know how much credence to give to her version since she went on to say that this had always been departmental practice anyway (a view clearly contradicted by the facts as disclosed at the tribunal).

We formed the view that the circular issued by the central personnel department had been of limited effectiveness in drawing the attention of staff to the tribunal's decision since the residential manager said he did not know of the existence of any such circular.

There had been some progress in the development of the council's equal opportunity policies although we heard from various interviewees that these had been coming anyway prior to the tribunal. For instance, the application form had been redesigned to exclude questions about marital status and children. However, the applicant believed that her case had had something to do with the new form being introduced.

We heard too that a group of women managers had been formed within the social services department with the aim of promoting equal opportunities. This in turn had led to the officers of the council setting up an interdepartmental committee on women with representatives from each department. We were told that progress on the development of equal opportunities had been slow because of the political make-up of the council which did not regard the issue as a high priority.

Conclusions

The council never fully accepted that the decision of the tribunal had been a correct one. It took the view that the chairman of the panel had been biased against the council and that the panel had been clutching at straws by making such an issue of the practice with regard to references. The authority took the view that there was nothing inherently discriminatory about the reference procedures since the candidate with only one reference could in other circumstances have been a man.

The circular issued by the council reflected this overall view in that no attempt was made to introduce a uniform policy on references and the circular was at pains to point out that the personnel department did not believe that there had been any sex discrimination. Given the tone adopted in the circular and the discretion left to departmental managers, it is not surprising that there was confusion about what current practice now was in the social services department.

In the absence of any political initiative to promote equality of opportunity it had been left up to a group of council officers, concerned about the lack of progress the council was making, to carry the banner. The tribunal did not hear evidence on the council's equal opportunities policies and it could be argued that such evidence was not central to deciding on the question of discrimination. However, the tribunal went on to say in its judgement that the decision did not imply criticism of the council's overall policies with respect to discrimination and such a statement permitted the council to regard the application as a 'one-off' with no general implications. Remarks such as those made by the tribunal give legitimacy to policies and practices which have never been subjected to critical appraisal, and the effect of such remarks is likely to be to excuse employers from commencing any more general review of policy and practice even when it seems an appropriate course of action.

P5: Shepley Transport Company Ltd.

The employer is a privately owned bus company created consequent to the Transport Act 1985. It employs in excess of 3,000 people, but in the recent past when under the control of the local authority it was a much larger company, and 2,000 employees had been shed over a period of a few years. There is a small personnel section at headquarters consisting of a personnel director and up to three personnel officers. Each of the eight garages has a personnel clerk.

Over 90 per cent of employees are members of a major transport union which has recognised negotiating rights with the company. There are 70 female bus drivers compared with 1,100 males but there are no women at all at inspector level or in the management grades.

For this case study we interviewed the personnel officer who handled the case for the employer, the applicant and a trade union official.

The tribunal's decision

The tribunal found that the employer had discriminated against the applicant contrary to section 6(2) of the SDA by failing to offer the applicant access to the opportunity for promotion. With regard to remedy the panel made full use of section 65(1) by issuing an order declaring the applicant's entitlement to be considered for promotion, by awarding the applicant compensation by way of damages

amounting to £100 and by recommending that the respondent interview the applicant for the next available promoted post and, if she failed to gain promotion, to provide her with written reasons for that failure. At the tribunal the applicant was represented by a trade union officer and the respondent by a solicitor.

Case history

The applicant was a bus driver who had made four separate attempts over a period of four years to get promotion to the rank of inspector. On the first occasion she was informed in writing by the district manager that, although she had not been appointed, she had had an exceptionally good interview and should continue to apply for future inspector vacancies.

This letter had given her a lot of encouragement about her career prospects which had led her to take up the employer's offer of a day-release course in order to improve her promotion prospects. But the employer claimed that the same encouraging letter had been sent to all unsuccessful applicants and that there had therefore been no intention to single out the applicant. The tribunal took the view that a letter couched in such terms could be misleading to recipients if candidates had not in fact had good interviews.

The applicant failed even to be shortlisted for any of three subsequent inspector vacancies and, incensed at what she considered to be senior management male chauvinism, she consulted her local union representative for advice on what to do. Apparently these initial contacts with the union were not very helpful. She considered the union branch to be in collusion with management over the allocation of senior posts. It was only when a full-time union official became involved that progress was made.

The personnel manager confirmed the prevalence of prejudice and sexist attitudes at senior levels within the company. He said the company had been doing a lot to combat racial prejudice but the issue of sex discrimination was in his view more intractable. He agreed that senior staff were inclined to favouritism and to promoting their 'mates'.

The tribunal was of the view that the applicant's experience had been as long as that of some of the men promoted to inspector posts, and furthermore that the applicant was better qualified by virtue of her course of study than some of the men shortlisted. Of greater

significance in proving that there had been discrimination were written comments made against the applicant's name on a document listing the names of all the candidates for the inspector post. This document had been sent by the personnel department to two chief inspectors for their comments on the suitability of the candidates. The document was produced in evidence by the applicant and against her name one chief inspector had written 'No more women Inspectors please!!'. A second chief inspector had written, 'Another female?'. The respondent argued that these remarks were not taken into consideration when the decision not to shortlist the applicant was made, but the panel took the view that those who did the shortlisting must have been aware of the views of chief inspectors on the appointment of women inspectors.

Effects and consequences

We can first consider the applicant's situation. She remained in the employment of the company but, some three years after the tribunal, had still not progressed to inspector grade. We received conflicting reports from the applicant and the employer on whether there had been any promotion opportunities subsequent to the tribunal. It was clear that the company had been shedding labour for a number of years and it was therefore likely that there had been fewer promotion opportunities than in the past. Yet the applicant claimed that there had been one round of promotion interviews since the tribunal while she was absent on holiday. She claimed the interviews had been so timed to exclude her from consideration. We were unable to resolve these conflicting accounts. However, the applicant had received her £100 as awarded by the tribunal but she considered the amount to be an 'insult' and the personnel officer himself described it as 'derisory'.

Both the applicant and management were in agreement that disciplinary action had been taken against the two chief inspectors who had written the discriminatory remarks. The applicant said they had been 'dragged over the coals'. She was also aware that they were no longer in post and supposed that they had accepted redundancy. The personnel officer said that they had been reprimanded and prevented from having any say over future appointments.

What impact did the decision have on the development of equal opportunity policies within the company? A union official described the incident as 'a useful lesson' for the company, but according to him management 'was, and still is, dominated by white middle class

males'. The tradition was that inspectors had to be men in order to deal with unruly passengers and senior management had typically been recruited from the inspector's rank. We therefore came to the view that without positive action policies which sought to train women for senior posts or which recruited women directly into senior management posts, the male stranglehold on senior positions would continue.

Management was keen to tell us about its equal opportunities policies for ethnic minorities. Monitoring of employees' ethnic background had begun about one year after the tribunal decision; statistics were kept and regularly updated on the ethnic composition of job applicants and recruits, of those promoted and those on training courses, and of those being made redundant.

There was no equal opportunity policy statement although the company claimed to have been 'concerned' to promote equality for at least ten years and it described itself as an equal opportunity employer in job adverts. This concern seemed to date from the days when the company was a department of the local authority, an authority which had a political commitment to employment equality. There was, however, no longer any direct political pressure being exerted.

Conclusions

The tribunal's recommendation that the applicant be considered at the next promotion board may well have been flouted, if we accept the applicant's version of events. For whatever reason she remained unpromoted three years later. Even if some way had been found of promoting her, a more radical solution to remedying the absence of women from responsible positions in the organisation was necessary. Neither was there any evidence of an organisational commitment to making sex equality a reality.

The company had clearly been embarrassed by the decision of the tribunal and there had been a lot of local publicity at the time which gave prominence to the discriminatory remarks of the two chief inspectors. This would have probably served as a temporary caution for others inclined to assess candidates in a similar discriminatory fashion. It seemed to be fairly widely known in the company that two chief inspectors had been disciplined (although we found it difficult to discover precisely what measures had been taken against them) and

knowledge of such disciplinary action would have assisted in changing the definitions of what was acceptable management behaviour.

We concluded, however, that equality of opportunity was less of a priority than it had been in the past. When we consider that the applicant has remained at the same grade, and that she was left only £100 better off after the tribunal, it is quite difficult to argue that in this instance going to tribunal had been worthwhile.

P6: Frinkley Council

The employer is an upper-tier local authority with an education department which in itself has more than 10,000 teaching and non-teaching staff. At the time of writing the employer has a hung council with the Labour party being the largest single party. The department has a divisional structure which in common with other upper-tier authorities bears a resemblance to local authority district boundaries.

For this case study we interviewed the chief officer of the education department, an equal opportunities officer employed by the authority and the applicant.

The tribunal's decision

The authority was found guilty of three separate breaches of the SDA. It was found to have been in breach of section 6(1)(a) of the Act by failing to shortlist the applicant for a post of head teacher which it had advertised. Another application alleging discrimination for failure to shortlist in relation to a separate head teacher vacancy was rejected as it was found that another female applicant had been shortlisted. The authority was found to have been in breach of section 4(1)(d) of the Act (victimisation) on two occasions by treating the applicant less favourably in the selection process because she had made allegations that members of appointments committees regularly practised sex discrimination against female teachers. The applicant received a total of £600 by way of compensation.

The tribunal was unable to find that the applicant would have been appointed to the posts had she been shortlisted. No recommendations were made to the respondent organisation. Both respondent and applicant were represented at the tribunal by solicitors and the applicant's case was legally assisted by the EOC.

Case history

Apart from a break of about four years for child-rearing, the applicant had been in the continuous employment of the authority for about 25 years and had, prior to her period of leave, reached the position of deputy head in a large secondary school. When she returned to the employment of the authority she was again made deputy head.

The applicant had on several occasions consulted with officers of the authority as to what she ought to do to improve her promotion prospects. Officers had told her that it was more difficult for women to convince appointments panels that they were capable of running secondary schools. It had been acknowledged to her in private that appointments panels favoured men as head teachers but that she could improve her own position by taking more qualifications, and, to this end, she studied first for a Bachelor's degree and then for a Master's degree. In addition, she took several in-house courses for senior teaching staff with the intention of improving her promotion prospects and showing the authority her capabilities.

Over a seven-year period prior to her application to the tribunal, the applicant had applied for about 20 head teacher vacancies, but, with one exception, she had never been shortlisted. The instance when she was shortlisted was unusual in that she was put on the shortlist and interviewed only after writing a letter of complaint to the authority in which she pointed out that she considered the authority was discriminating against her because of her sex. Having at first been told she had not been shortlisted, she received a telephone call on the morning the interview panel was meeting inviting her for interview. Not surprisingly she did not perform well and was not appointed.

Due to her continual failure to be appointed despite her qualifications and experience in curriculum development and school management, the applicant became involved in a national group of women involved in education whose aim was to campaign on behalf of women teachers and to combat discrimination against women teachers in the educational system. The applicant took an active part in this group which received publicity at both local and national level. Her involvement in the group was known to officers of the authority.

The appointments procedure for head teachers is as follows: applications for head teacher posts are dealt with initially by the district education officer for the district in which the receiving school is sited. A Joint Appointments Committee (JAC) is convened which consists

of four councillors from the education committee (including typically the chair of the education committee) and four representatives from the board of governors of the receiving school. The district education officer and an educational adviser will attend the sessions of the JAC but only in an advisory capacity, and neither will participate in decision-making. The JAC initially meets to draw up a shortlist from all the applications received and meets later to conduct interviews of the shortlisted group of candidates. The JAC is typically chaired by the councillor who is chair of the education committee.

The two vacancies which formed the subject of the applicant's complaint came therefore at the end of a long period of successive applications to the council for head teacher vacancies, none of which had resulted in appointment, and only one of which after protest had resulted in the applicant being shortlisted. In the first instance named in her application the applicant was one of 18 candidates who responded to the advertised vacancy. She was the only female. Six candidates were selected by the JAC, all of whose members were men, in a first-round procedure and this was then reduced to four who were invited for interview. The applicant was not included on the first list. The tribunal came to the view that the adviser's evidence and notes taken at the shortlist indicated that he regarded the applicant as better qualified and more experienced than the other 11 candidates rejected with her at the first stage, and equal to the four candidates selected for interview.

The second case happened within a few months of the applicant's failure to be shortlisted for the above post. On this occasion there were 54 candidates as the vacancy was also advertised outside the authority, and a number of these were female. Eight candidates were selected at a first round by the JAC. The applicant was not amongst these but one other woman was. Amongst those shortlisted was another deputy head teacher at the school where the applicant worked. The JAC were advised by the adviser and the district education officer that he should not be shortlisted since in their opinion the applicant was a better candidate. However, the JAC chose to ignore that advice.

The applicant felt she had done everything possible to further her career prospects with the authority and had taken all the advice she was given by officers as to how to improve her chances. Following this last rejection she became convinced that the authority would never appoint her because of her work with the 'women in education' group.

She further believed that the council had a long history of discrimination against women teachers of which her case was only one example. She resolved therefore to take a case to the industrial tribunal and contacted the EOC for advice and information.

Effects and consequences

The tribunal found that the applicant had been victimised by the appointments panel but we could find no evidence that any attempt had been made to discipline anyone for this victimisation. In fairness to the council, this would not have been an easy process as no evidence was produced as to who had been responsible for the applicant's exclusion from the shortlist.

The applicant took the view that her chances of promotion had not been assisted by taking on the authority at the tribunal. She was convinced that she would never be appointed head teacher although she might have succeeded in getting invited to interview panels. So much bad feeling had been caused by the case that the applicant resigned her post as deputy head teacher and pursued another career.

It seems clear that the council had treated women teachers less well than other councils over a period of years. Figures were produced at the tribunal which showed that less than 2 per cent of head teachers in mixed secondary schools in the county were women compared with a national figure of 16 per cent. Such figures indicated that women had not been reaching senior positions in the county.

The appointments procedure for head teachers is complicated and involves many different individuals including school governors, councillors and officials of the education department. The combination of individuals will change from one appointment to another. Education department officials are the only ones to provide continuity in the appointments procedure, but they largely take a back seat in decision making. School governors will have only a very infrequent opportunity to appoint a head, and, although they can exercise a great deal of power, their experience of senior appointments is therefore very limited. Although some councillors may take a special interest in educational appointments, the electoral process means that councillors come and go. These factors make it more difficult to ensure that appointments are carried out free from bias and that equal opportunity guidelines are met. In describing changes that have taken place in the authority's procedures since the tribunal, it has

therefore been difficult due to the complexity of the appointments procedure to assess the extent to which the relevant weaknesses in practice have been identified and put right.

The authority's education department has been the respondent in four different complaints (including the case being considered here) to industrial tribunals since 1981. (At least three of these have been sex discrimination complaints but this case was the only one lost by the authority.) However, we were told by the chief officer that the cumulative effect of the four cases had been to 'focus minds more sharply on translating theory into practice'. He was clear that one effect of the tribunals had been purely defensive: the authority was now in a better position to reply to a tribunal application than it had been in this instance. His education officers had been informed to take a more interventionist approach by issuing a spoken reminder at shortlisting and interview panels of the obligation on the panel not to discriminate. The authority could no longer assume that all members of panels were aware of their obligations in relation to anti-discrimination legislation and they therefore had to be reminded on each occasion.

In addition, applications for promoted teaching posts were now monitored so that information on male and female candidates and appointees can be analysed. It is now the authority's policy that a note should be kept of the proceedings of the interview panel including reasons for appointment and non-appointment. However, it was made clear that the authority cannot change the procedure for appointing head teachers as these are laid down by Act of Parliament. Although the authority is ultimately responsible for decisions taken by interview panels, the ability of its officers to influence decisions is limited.

There was in the chief officer's view a major problem in ensuring that school governors acted in a non-discriminatory manner; one reason for the lack of women in senior posts was that attitudes in that part of the country were, in his view, generally more conservative.

Since the case there have been major developments in the council's equal opportunity policy, although a year prior to the case the council had already appointed a race equality adviser in the chief executive's department. Six months after the case the council adopted an equal opportunity statement, and at the same time set up an equal opportunities subcommittee. However, it was felt that the education department needed its own equal opportunities input, and a special

equal opportunities subcommittee of the education committee was formed with the ability to co-opt from the wider community. The majority on this committee were women. An equal opportunity officer post was created and this officer, a woman, reports directly to the equal opportunities subcommittee of the education committee.

It seems clear that the various tribunal cases provided a stimulus to equal opportunity activity which then became self-sustaining due to a strong institutional position. Once a structure was in existence the authority began to set objectives and goals which were broader and more wide-ranging than the specific issues raised in the tribunal. The tribunal decision in the case we are concerned with here was the culmination of a longer campaign that had been fought by the applicant over several years and which served to highlight a fundamental problem of opportunity blockage for women. It seems that officers of the county had been aware that there had been a major problem but had over a period of years taken no action to tackle it. The cumulative effect of several tribunal cases had provided, along with other developments, a stimulus to action.

Were the equal opportunity measures introduced likely to eradicate the factors leading to the discriminatory actions of the appointments panel? We heard that a programme of equal opportunities training had been implemented by the education department. Most main grade teachers were appointed by head teachers without intervention by the authority and so a course entitled 'An Introduction to Equal Opportunities' had been set up for heads and deputy heads of all schools run by the authority. The course was primarily intended to raise awareness using examples and role-play.

Making progress with school governors had been a bigger problem. A pilot programme of equal opportunity training had been started but since discontinued. The course had to be arranged outside work hours and getting governors to attend had been a major problem. We heard that training for governors was going to be even more necessary under the new regulations for school governing bodies which will give lay governors exclusive rights in the appointment of head teachers. All interviewees expressed concern that the new procedures were likely to diminish the already limited ability of the education authority to ensure that no discrimination took place in the appointments process.

A statistical examination of the teachers in the authority had been conducted which showed that there was a lot of bunching of women teachers at scales one and two. The EO officer felt that women lost out on promotion opportunities due to childcare responsibilities. The absence of women as head teachers was primarily a consequence of their absence from promoted positions from which it was possible to launch a bid for head posts. (However, the present case showed that this was only part of the problem.) As a result of the statistical exercise the authority had seconded a female teacher to devise a pilot careers re-entry scheme for women which would make it easier to return after a career break. This it was hoped would help solve the supply side of the equation, that is, not enough female candidates presenting themselves for promotion. At the time of the research, the career break scheme had yet to be approved by the education committee.

The new Education Act will make the implementation of equality of opportunity more difficult as it will devolve appointments to school governors and weaken the scrutiny of the authority. The Act is likely to prove a retrograde step unless training programmes for school governors incorporate equal opportunity guidance. The ability of the authority to honour the undertakings it makes as part of the career break scheme (in essence to support the applications of teachers for service re-entry if they have attended training and undertaken 10 days supply teaching per annum during their break) will therefore be threatened by the 1986 Education Act.

We heard that the next phase of the equal opportunity programme was to introduce a new recruitment and selection programme which would include the production of detailed job descriptions and specifications for each vacancy. This would enable those involved in the selection process to match candidates to jobs in a more objective manner. It would allow selectors to assess the management skills of applicants as required for senior posts. Less emphasis need then be given to length and continuity of service, factors which generally worked against female candidates.

Conclusions

When the application to the tribunal is the culmination of a long period of unfair and discriminatory treatment as in this case, one has to look more widely than the immediate repercussions of the tribunal to find out if the causes of the treatment have been removed. The situation is

further complicated by the sharing of responsibility for senior teaching appointments. Progress therefore requires that all those involved have taken steps to change attitudes and behaviour.

There was evidence that the council is now taking more seriously its remit to ensure that the selection of head teachers is carried out in an impartial manner. Specific instructions were given to education officers subsequent to the case and considerable progress had been made in the implementation of an equal opportunity policy in the education department. A plan was available for making further progress throughout the authority.

The tribunal decision resulted from a closely argued analysis running to some 33 pages of text, one of the longest and most comprehensive judgements we have seen. It seems all the more unfortunate that having made such a close scrutiny of the circumstances which gave rise to the discrimination, the tribunal was not able to sum up or draw conclusions as to how the discrimination might have been avoided. Given that the authority was found to have breached the Act on three separate counts which cumulatively had the effect of destroying the applicant's teaching career, an award of £600 seemed inadequate as recompense.

P7: Easterly Health Authority

The employer is a regional health authority (RHA) with around 6,000 staff if ambulance drivers (of whom there are about 3,000) are included. Apart from consultants, the authority does not itself directly employ medical and nursing staff; these are the employees of the region's 13 district health authorities (DHA). However, the RHA is directly responsible for the contracts of about 1,500 consultants throughout the region.

For this case study we interviewed an administrator responsible for medical staffing, a senior personnel officer and the applicant.

The tribunal's decision

The tribunal decided that the applicant had been unfairly treated by not being put on the shortlist for interviews for the appointment of a consultant. The applicant, it was judged, had been discriminated against because of her sex, but it was also found that there had been racial discrimination, the applicant being a woman of Asian origin. In her application to the tribunal the applicant had alleged sex and race

discrimination in relation to her failure to obtain appointment to consultant posts on three other named occasions, but these applications did not succeed.

The tribunal decided that the question of remedy should be the subject of a separate hearing but the respondent appealed the decision of the tribunal before this took place. The respondent's appeal was dismissed by the EAT and further leave to appeal was not granted.

Both applicant and respondent were represented by counsel at the original tribunal and at the EAT.

Case history

Since coming to Britain, the applicant had held a number of senior medical posts in hospitals and, at the time of the application, she was a senior registrar. She had for a brief period held a post of locum consultant, but, despite several applications to a number of adjacent regional health authorities, had failed in all her attempts to obtain a full-time consultant position. It is important to note that, in addition to the case we are considering here, the applicant had cited another RHA as respondent in a separate application to the industrial tribunal. That application alleged racial, but not sexual, discrimination.

The applicant therefore felt that over a period of several years she had been refused employment as a consultant due to either her sex or her race or, most likely in her view, to a combination of these two factors. The applicant had undertaken a large part of her medical training abroad and it was part of her case that she believed that the medical establishment in Britain did not regard her training as of equivalent value to the training received by medical students and doctors in Britain.

Although the tribunal found that there had been discrimination in only one of the four instances cited by the applicant in the case under consideration here, the panel considered that various aspects of the appointments procedures for, and decisions made with respect to, the other three instances were relevant to its finding of discrimination in the fourth instance.

The appointments procedure for consultants is laid down by Parliament in Statutory Instrument 1982 No 276 and in an explanatory circular from the Department of Health. The regulations provide for the establishment of an Advisory Appointments Committee (AAC) which consists of nominations from the Royal Colleges, from the RHA

and from the DHA. Most of the nominees are eminent medical experts, very often professors, who are nominated because of their ability to assess the qualities and expertise of candidates for consultant posts. The AAC is serviced by an administrator from the RHA (usually that person has a medical background) who is responsible for setting up and convening meetings of the AAC and who acts as chair when the committee meets.

Members of the AAC are each sent copies of all applications received for vacant consultant posts, these generally having been advertised in medical journals. Each member then selects his or her own shortlist of applicants and sends or telephones the list to the RHA. The list may or may not express a preference order, and this is left to the discretion of AAC members. The final shortlist is drawn up by the RHA and may include candidates not shortlisted by members of the AAC, or may omit candidates considered worthy of shortlist by the AAC. Shortlisted candidates are then invited to an interview before the committee. Shortlisted candidates are also offered the opportunity to visit the hospital or unit which has the vacancy with a view to finding out more about the vacant post.

On the three occasions on which the applicant was shortlisted by the RHA she was not offered the post, and although the applicant complained to the tribunal about non-appointment, as we have said, the tribunal was unable to find evidence of discrimination on either racial or sexual grounds with respect to her non-appointment in these instances. However, the tribunal noted that on the first two of these three occasions the applicant had been marked as number 2 for the posts following her interviews and that, if the candidate offered the post had not accepted, she was likely to have been offered the post instead. The tribunal formed the view that her performance at these previous interviews, if nothing else, justified her being shortlisted on the fourth occasion.

It was also considered relevant by the tribunal that various statements made by the respondent in the notice of appearance which sought to explain *inter alia* the reasons why the applicant was not shortlisted were untrue. For example, the notice of appearance stated that the applicant was not shortlisted because that particular vacancy attracted many more high quality candidates than other vacancies, but the panel found this not to have been the case. In addition, the notice stated that the applicant had obtained the lowest grading at the previous

interviews when in fact it was clear that on two occasions she was the second choice. The respondent's case came apart at the tribunal when one of the respondent's witnesses (himself a consultant and a member of the AAC) registered disagreement with the reasons for non-shortlisting given in the respondent's notice of appearance. The notice had been written, as we understand it, by the officer of the RHA who had been responsible for drawing up the final shortlist and who had chaired the interview panel. That officer did not appear as a witness for the respondent and we gained the impression that he had been purposely excluded so as not to damage the respondent's case.

The tribunal's decision was particularly critical of the appointments procedures for consultant posts. In particular, it criticised the subjective nature of the judgements made by members of the AAC about suitability for shortlisting, and the lack of information provided by the respondent about the procedures for arriving at a final shortlist once members of the AAC had submitted their recommendations. It inferred that the respondent's inability to provide this information indicated an absence of objective criteria for selection resulting in the respondent's inability to justify why some and not others had been shortlisted.

The criticisms of the appointments procedures were accepted and added to by the EAT in its judgement dismissing the RHA's appeal. At the appeal hearing the EAT made reference to criticisms of the appointments procedure made by an industrial tribunal in a separate case the applicant had taken against another health authority. The EAT also accepted those criticisms and took the view that, even although the appointments procedure had been set up by statutory provision, it had the potential to give rise to unfair discrimination due to personal bias or prejudice.

The applicant took the view that appointments procedures for consultant posts were shrouded in secrecy. She felt that applicants being appointed to consultant posts were often less qualified and had less experience than herself, but when she had sought to enquire of the RHA as to the reasons for her non-appointment, she had suffered only a rebuff and had been accused of trying to put pressure on the RHA. She felt that AACs ought to keep written notes of reasons for appointment and non-appointment and that the RHA ought to be able to justify its shortlists. The RHA had refused to have any dialogue with her about her position and she had been forced into taking things

to the tribunal in order to expose what she regarded as the shortcomings of the appointments procedures. She was sure that even if she did not win the case the publicity would force the RHA into a rethink about its procedures by bringing things out into the open.

The applicant claimed that, in a case she had taken against another RHA, where the application related solely to race discrimination, there had been elements of sex discrimination as well. She said that the opportunity afforded her to visit the receiving hospital had been turned into another interview. She had been asked why she had declined to answer questions on nationality and marital status when completing the application form for that post, and then asked about childcare and domestic arrangements. The person showing her around was oblivious to the discriminatory nature of such questioning as well as to the abuse of what was intended to be an informal visit.

The personnel officer we spoke to considered that the appointments procedure for consultant posts was controlled by senior figures in the medical profession which operated 'a network of personal connections' and handed out posts on a patronage basis. We formed the impression that lay administrators and medical officers in the RHA were at odds on the emphasis that should be given to ensuring that equality of treatment could be demonstrated in the appointments process.

Effects and consequences

The effects of this case cannot be considered in isolation from the implications of the parallel case (concerning race discrimination) which the applicant raised against another health authority (which we can call Uppertown). Many of the conclusions arrived at by the panel in that case have implications for the practices of AACs generally and there has been cross-reference between the two cases in subsequent appeals heard by the EAT. In the Uppertown case the industrial tribunal made specific recommendations which had implications for the procedure to be adopted by the RHA in making future appointments. Uppertown RHA appealed the decision to the EAT, the EAT upheld that appeal and the recommendations of the tribunal were therefore laid aside. However, the applicant was appealing against the decision of the EAT to order a fresh industrial tribunal hearing, and the outcome of that appeal was at the time of writing not

yet known. If the applicant wins that appeal it would have further implications for appointments procedures in Easterly as well.

A further complication was that the applicant had not at the time of writing yet received any compensation from Easterly. The EAT in the Uppertown case found that the amount of compensation ordered by the industrial tribunal (£5,000) was excessive; this ruling has also been further appealed by the applicant. Easterly and the applicant will not be able to agree on suitable compensation until the new appeal in the Uppertown case has been heard and guidance given.

We heard of important changes in the RHA's personnel policies since the time of the tribunal. A personnel officer felt that the case itself had not prompted these changes because the authority was moving in such a direction anyway. Managers, in this case study and in others, commonly made such statements to us but we believe such statements ought to be treated with some scepticism. Managers do not like to admit that they have been goaded into action by outside agencies, and, if at all possible, would much rather be seen as the initiators of progressive changes. Within six months of the EAT decision the authority had introduced a policy statement on equality of opportunity, was describing itself in job adverts as an 'equal opportunity employer' and had set up an information system to analyse existing staff groups and job applicants by sex, ethnic origin and disability.

Job descriptions and personal specifications were now being introduced in order to 'eliminate the arbitrary, irrational and unlawful' from decision-making at appointments panels. We also heard, however, that the attempt to make the recruitment and selection process more professional had not yet been extended to medical posts, although there had been much discussion about how it could be. It was said that one problem was that AACs were governed by regulations laid down by statutory instrument and that these were therefore not within the power of RHAs to change.

That view may be only partially correct since aspects of the selection process for consultants which were criticised by the tribunals, such as the candidate's visit to the receiving hospital and the failure of the RHA to keep notes of shortlisting decisions, do not come within the ambit of parliamentary regulations but are amenable to reform by the RHA. The applicant confirmed for us that there had been no questioning of her domestic circumstances when she had

applied for (and subsequently been appointed to) a consultant's job in another part of the country. Neither had that interview panel glossed over or ignored her medical experience outside Britain.

We should note as an additional effect of the tribunal decision, the view of the personnel manager that the experience of being brought before a tribunal and being asked to give account had in the main had a 'salutory effect' on the RHA; in his view, the odd adverse finding could be quite a good thing. Moreover, the tribunal's methods of operation had ensured that the motives of the individuals concerned with the case had been fully explored and cross-examined. This had, in his view, been an effective but 'most painful' way of learning lessons.

It is necessary to acknowledge the existence of other initiatives which are likely to affect the development of equality of opportunity in the National Health Service. We have not been able to establish the extent to which these wider initiatives have stemmed from industrial tribunal decisions, although it is unlikely, given the publicity surrounding this case, and the one related to it, that the tribunal decisions and the subsequent appeals would have gone unnoticed by health service managers, having, as they did, implications for the Department of Health's regulations on medical appointments. There has, for example, been the King's Fund task force on racial discrimination and the National Steering Group on Equality of Opportunity for Women in the health service.

Conclusions

Our overall assessment would be that the decision of the industrial tribunal has had the effect of adding extra pressure to demands coming from other parties for improvements in personnel procedures at least in the regions affected by the decision and more likely further afield. The decisions have helped create a climate which is more favourable to progress on equality of opportunity. However, changes are likely to be slower in coming about where powerful professional interests are involved as in the appointment of medical consultants.

The case we have been examining, when considered along with its 'sister' case, does, we believe, help to demonstrate that the final outcome of the case, that is, whether the applicant wins or loses, may not be a crucial determinant of impact, especially if a case for better equality of opportunity policies is being made out by other bodies at

the same time. In the Uppertown case the applicant lost the appeal but the spotlight had already been turned on the authority's practices by the industrial tribunal. In addition, the appeal body did not seek to disagree with the observations made by the tribunal on the authority's selection process even though it disagreed with the way it had reached its conclusion. A thorough examination of the circumstances of the case which draws attention to bad practice but which results in the application being rejected may be more effective in initiating change than a decision in favour of the applicant.

Other promotion cases

We now turn to an examination of data we have collected on four promotion/transfer decisions from the secondary group of case studies. We consider the data on each employer in turn before arriving at some conclusions about the group of four as a whole. The group consists of a local authority, a department of central government, a private sector trading company and a voluntary organisation.

P8: Ford Council

The employer has a staff of approximately 8,500 of whom about two thirds are female. It is interesting to note, but not central to the case, that, as with other authorities, part-time female staff outnumbered full-time female staff by a proportion of about 3:2. The authority was taken to an industrial tribunal by a woman who had initially been employed by the authority as a part-time cleaner, but who, at the time of the complaint, had been working as acting caretaker in a centre run by the authority pending the post being advertised and filled on a permanent basis. The previous holder of the post had been a man who had retired early on grounds of ill-health. The applicant complained that the authority had discriminated against her by failing to appoint her to the post of caretaker.

The tribunal found that the applicant had been discriminated against in not being offered the job of caretaker. It took the view that she was the most qualified applicant for the job due to the fact that she had been acting caretaker for a period of some fourteen months and that there had been no complaints about her performance. No remedy was proposed at the hearing but the parties were encouraged to reach settlement, failing which there was to be another hearing to decide on remedy. The applicant was represented at the tribunal by a solicitor

and the case was legally assisted by the EOC. The respondent was represented by the personnel manager.

The applicant had been interviewed for the job, along with seven other candidates, five men and two women, by a panel of three men. One of the male candidates was offered the job. In its decision on the case the tribunal noted that it preferred the evidence of the applicant to that of the respondent on a number of points where there had been a dispute as to the facts, and found evidence given by the respondent to have been unreliable and evasive. At the interview panel the applicant had been asked questions about her ability to climb ladders, questions which it was found were not asked of other candidates. In addition, she had been asked questions about her domestic arrangements. The respondent admitted in evidence that one of the reasons the applicant had not been offered the post was that it was thought her husband was ill, and that the required hours of work might conflict with her domestic arrangements.

Once all the interviews had been conducted, the applicant was called in by the interview panel and informed that the job had been given to someone else. She was told that she had been doing an excellent job but that the successful candidate had been picked because 'we want to give the boy a chance' and because they thought she would have difficulty climbing ladders.

In reaching its decision the tribunal noted that no regard had been paid by the authority to the guidance given to employers on interview procedures in the EOC Code of Practice. The applicant had never been issued with a job description; no notes were kept by the interview panel as to how the interview was conducted nor of the reasons for appointment and non-appointment; the respondent could not provide any record of the questions that had been asked at interview. Furthermore there was evidence that discriminatory questions had been asked of the applicant contrary to the Code of Practice.

We heard from the personnel manager who represented the authority at the tribunal that he had been misled by a line manager as to the reasons for non-appointment. The authority had taken the decision to defend the case believing that the applicant had been unsuitable for the job, that her performance had been poor, and that she had frequently caused offence to others by using abusive language. During the tribunal the respondent's witness changed his story

completely and it became clear to the personnel manager that discriminatory questions had been asked at her interview.

There had been some important consequences following from the tribunal hearing. First, it seems that the applicant and the authority were able to solve the case reasonably amicably. The line manager had been instructed to find the applicant a caretaker's job. She had been taken to several centres where there were current vacancies in order to find the one that suited her best. She was now in the employment of the authority as a caretaker.

Secondly, we were informed that the line manager and those involved in the interview had been reprimanded. In the words of the manager they had been given 'a kick up the pants'. We understood this to mean that stern words had been used but that there had been no further adverse effect on their material conditions of employment.

Thirdly, the tribunal's decision had been reported to the full council which had expressed concern about the authority losing the case and had decided that action should be taken. A fuller report on the decision had also been discussed at the establishments committee, and as a result, a memo was sent to all chief officers giving guidance on selection and interview procedures with particular emphasis on potentially discriminatory lines of questioning. We were given a copy of this memo which, without referring to the tribunal decision, covered each of the criticisms of appointments procedures made by the tribunal.

The personnel officer took the view that the decision had given him leverage to do something positive about promoting equality of opportunity. There had been important contemporaneous developments in this area, which, we heard, could be accounted for by changes in the political control of the council which had until two months before the tribunal hearing been in the control of the Conservatives. When Labour became the majority party there was a higher profile for equal opportunity policies: a policy statement was adopted; the authority began to describe itself as an 'equal opportunity employer' and copies of the EOC and CRE Codes of Practice were sent to chief officers. Labour's majority on the council was insecure and further developments (such as the appointment of an equal opportunity officer) were likely to be hotly contested.

P9: Popham Plastics Ltd

The employer is a small privately-owned company of approximately 130 employees which fabricates plastic goods. The company has two directors who are the joint owners, and who play an active role in the day-to-day management of the company. There are no trade unions. For the most part there are three types of occupation in the factory: machine operators, all of whom are men, packers, all of whom are women and fabric machinists, all or nearly all of whom are women. Each machine has to be set up to make a different type of plastic moulding and this is the job of the male machinist. A woman packer works in conjunction with the male operator removing and packing items when they come out of the machine. Tasks are in this way sex-segregated, and it has never been known for a woman to have the job of machine operator.

An industrial tribunal found the company to be in breach of section 6 (2)(a) of the SDA by failing to consider the applicant, who at the time was employed by the company as a packer, for the position of machine operator when three vacancies became available. The applicant was awarded £50 by way of compensation for injury to feelings. In a separate incident, which took place two months after the applicant had been notified that she could not be considered for the vacancy, the applicant was dismissed by the company. The applicant had also complained to the tribunal that her dismissal amounted to sex discrimination, but this part of the application was rejected by the tribunal at the same hearing. The applicant represented herself at the tribunal and the company was represented by one of its directors.

An advertisement for the vacancy had been placed, while the applicant was on holiday, and when she returned (five days afterwards) she enquired directly of the director if she could apply for the position as an internal applicant. She was told that three people had already been chosen, and the applicant alleges that she was then told that the director would not be prepared to consider a woman for any of these jobs. The jobs had been advertised as suitable vacancies for trainee operators and it was not a necessary qualification to have had experience of machine operation.

The tribunal found that the company had been inconsistent in the reasons it had variously provided for not considering the applicant for the jobs. It had been maintained that the reason was that the applicant did not have the relevant experience or mechanical aptitude, but it

became clear that the company had not sought to find out what the applicant's experience was, and so could not have known whether or not she was unsuitable. It was later maintained that the applicant's enquiry had come too late and appointments had already been agreed. The tribunal therefore concluded that, bearing in mind these discrepancies in the employer's reasoning and the fact that the company did not employ women in machine operator roles, the most likely reason for not giving consideration to the applicant had been because she was a woman.

The employer gave us his view that the applicant had been a troublemaker whom it was necessary to dismiss at a later date when she refused to do a job when asked by the production supervisor. From the evidence given at the tribunal, and from what we were told at our interview with the director, it did not seem to be the case that the applicant was sacked as a direct response to her application to the tribunal. This had not been her claim at the tribunal in any case. It seemed, however, that the negative response by the company to her request for consideration as a candidate for the machine operator position, had precipitated the later incident. The director was very clear that he had been happy to get rid of her. Unfortunately we were unable to trace the applicant and so we do not have her version of events.

It was clear that there had been no changes in company procedures since the time of the tribunal. The director thought that the company had really won the case since the award had been so small and his solicitor had told him that the decision should not be taken too seriously. In the director's view tribunals had to come up with a quota of decisions in favour of applicants in order to justify their existence and he had just been one of the unlucky ones.

The decision had not commented on the company's recruitment, promotion or transfer procedures, nor had it indicated any concern about the way posts were sex-segregated. No recommendations were made. Through these omissions the tribunal had passed over an opportunity to influence clearly discriminatory selection arrangements. Given the director's view that the case had not really been lost, the only outcome of the case had been to reinforce the company view that procedures were in order, and that the episode had originated due to the applicant's bitterness against the company.

P10: Homebuild Association

The employer is a national housing association which manages about 5,000 homes and bedspaces in three main areas of fair-rented housing, sheltered housing and hostel accommodation. There are about 500 staff, with 50 of these being in the association's headquarters and the remainder located throughout the country under the control of regional managers. The association employs a varied group of professions and occupations including residential care workers, project managers, social workers, catering and domestic staff as well as clerical and administrative workers. The association has a small personnel unit at headquarters with one full-time personnel officer. That officer acts in an advisory capacity to line managers and is also responsible for pay and conditions.

The tribunal found that the applicant had been discriminated against when the association took into account the fact that she was pregnant in its reasons for not appointing her to the position of temporary warden. The applicant was awarded £250 by way of compensation, a sum which the decision notes was agreed jointly by both parties after the decision was issued. Both parties were represented by solicitors and the applicant was legally assisted by the EOC.

Following the decision, there was an appeal by the association to the EAT on the grounds that the decision seemed to be contradictory as to the precise role that the applicant's pregnancy had played in the decision not to appoint. After consideration the EAT referred the matter back to the same tribunal for clarification. When the tribunal met on the second occasion it took the view that the applicant's pregnancy had been a prime factor in the decision not to appoint her. The decision of the original tribunal in favour of the applicant remained in place.

The association runs a hostel at which the applicant worked as a senior residential worker, and, in effect, as second-in-command to the warden of the hostel. It became necessary for the regional manager to ask for the resignation of the warden of the hostel, and it was decided to appoint a temporary warden until such time as a new permanent appointment could be made. No advertising took place, and the regional manager decided (in consultation, it was claimed, with headquarters) to appoint a male colleague of the applicant as temporary warden. The applicant alleged that in a telephone

conversation between herself and the regional manager, in which he explained to her how the appointment had been made, the regional manager said to her that the reason she had not been appointed was due to her pregnancy. The manager denied having made such a statement although he agreed to the tribunal that reference had been made to her pregnancy in the conversation.

The association had since appointed a new personnel officer and within 9 months of the first tribunal decision (and before the result of the appeal was known) the association had adopted an equal opportunity policy statement. We found it difficult to ascertain how the policy was being implemented. Regional and area managers enjoyed a high degree of day-to-day autonomy and recruitment remained decentralised except for jobs at headquarters where procedures came under the direct supervision of the personnel officer. The induction training programme for new employees now included guidance on the new equal opportunities policy. Existing staff had all been sent copies of the policy but no additional attempt had been made to inform and train those directly involved in the recruitment and appointment of staff.

All job adverts now indicated the association's commitment to equality of opportunity both in recruitment and in the provision of housing, and all job applicants are sent copies of the policy statement. The association had set up a staff working party to review the workings of the policy and there had been a staff conference on the subject. A new application form had been introduced which asked for information on sex, ethnic origin and disability.

We heard from the personnel officer that the tribunal had increased the organisation's awareness of the need to promote equality of opportunity. The tribunal decision had been a great embarrassment to the association and it wanted to avoid another at all costs. The association's experience of operating as an equal opportunity employer was relatively recent and in the view of the personnel officer attempts were being made to get procedures right. In her view procedures were now a lot better but there was scope for improvement.

We gained the impression that the application to the tribunal had been instrumental in raising awareness and in getting a policy set up. That policy was in need of consolidation, but the organisation's resources were limited. Of course, the existence of the policy would not in itself guarantee that similar instances of discrimination did not

occur and recruitment procedures remained for the most part decentralised. The tribunal had given no assistance to the association by way of advice or recommendation. This is unfortunate because the association would have been willing to receive advice. Nor had there, it seemed, been any follow-up action or contact from the EOC to assist policy development and implementation.

P11: Government department

The employer is the central government department responsible for the administration of prisons. The application originated from a female prison officer who claimed that her transfer to another prison as a laundry instructor was not put into effect because she was a woman. The applicant argued that had she been a male she would have secured the laundry instructor job. The tribunal found the department to have discriminated against the applicant contrary to section 6(2)(a) of the SDA by refusing her 'access to opportunities for...transfer...'. The tribunal made a declaration of the applicant's right to take up the position she had applied for, ordered the department to pay an agreed amount of compensation, and recommended that the department take action to enable the applicant to take up the position. The applicant was legally assisted by the EOC and both parties were represented by counsel.

The difficulty in appointing the applicant to the post arose from her trade union's insistence that she would only be allowed to take up the post if she would agree not to do overtime duties. She had undertaken overtime duties as part of her contract of employment at the establishment where she was currently working. Most prison officers carried out overtime duties and it would have involved a loss of income if she had been confined to laundry instructor duties only with no opportunity for overtime permitted. However, the Prison Officers' Association (POA) refused to sanction her appointment, believing she would not be able to undertake the full range of overtime duties which male officers were expected to undertake. The POA made its objections known to the prison governor and the department wrote to the applicant saying that it could only offer her the job of laundry instructor if she agreed not to take on overtime duties. This was unacceptable to the applicant who following contact with the EOC then raised the application to the industrial tribunal.

In order to put this case in context, it is necessary to bear in mind that prison establishments are referred to under section 7(2)(d) of the SDA as establishments where being a man may be a genuine occupational qualification (GOQ) for the job. In practice this has been interpreted to mean that only male officers would be assigned to establishments with male inmates, and only female officers assigned to establishments with female inmates. The precise interpretation of the GOQ has been the subject of discussion and debate between the department and the POA over the years, and local arrangements had been worked out, particularly at establishments which had inmates of both sexes, or at establishments where female prisoners were received on remand. It should also be noted that from time to time the EOC has had discussions with the department with a view to removing rigidities which were having negative effects on the careers of women within the prison service generally.

We need to draw attention, then, to the direct involvement of the EOC in this case, not only in the sense that the Commission gave the applicant legal assistance, but also because it had taken an interest in the application of the SDA to the prison service for some time. It would be accurate, we believe, to describe this industrial tribunal case as only a part of an ongoing interest on the part of the EOC in the affairs of the department. This case is then atypical and we need to bear this in mind when considering and interpreting any effects it may have had.

Since this case was raised there has been an agreement between the department and the POA on opposite sex postings which is designed to improve opportunities for female staff to transfer to establishments previously staffed by only male officers, and vice versa. As a result, applications from both male and female discipline staff are considered for postings in any of the department's penal establishments irrespective of whether the inmate population is male or female. Officers so placed are expected to carry out a full range of duties, including overtime duties, excepting those which impinge on privacy and decency and to which a GOQ will still apply. When considering requests for transfer or promotion, applications from both sexes are considered, whereas the former procedure was to consider applications from men only for male-inmate establishments and from females only for female-inmate establishments.

In a separate case raised by a male prison officer, a tribunal had found that the operation of separate seniority lists for male and female officers with different seniority dates was discriminatory against the applicant, in that it required men to have served a longer period before they could be considered for promotion. As a consequence of this decision, and as a parallel development to the case we are considering here, common seniority lists now operate. This change has inevitably meant that promotion procedures are now lengthier and more time-consuming because the new procedures increase the numbers of staff eligible for consideration.

Officials of the department were, however, of the view that such changes were necessary and were to be welcomed. The decisions of the two tribunals had been effective in surmounting the resistance there had been to opposite sex postings. The decisions had been used in negotiations which had been taking place with the POA on these and related industrial relations matters. The cases had been useful in focusing the minds of negotiators. It was put to us that decisions of courts and tribunals carried considerable weight with the POA and that management had been able to use the decisions to pursue its goal of creating establishments which were open to both sexes.

We have considered the wider implications of industrial tribunal decisions for equality of opportunity within a government department in Chapter 5.

Summary: Cases P8-P11

We can conclude that the decision of the tribunal was effective to varying degrees with respect to three of these employers but was completely ineffective with respect to a fourth, namely Popham Plastics. At Ford Council there were at least three immediate practical consequences: the applicant was found a job, the officers were reprimanded, and a memo with guidance on interview procedures was circulated. We believe that more thorough changes should not be attributed to the decision but to changes in the political make-up of the council.

At Homebuild the case seemed to have prompted the introduction of a formal policy on equality of opportunity. However, there were indications that this was still largely a paper policy and that its penetration throughout the organisation was fairly limited. We gained the impression that the factors which got the association into trouble

at the tribunal, that is, the informal nature of the promotion procedure and the lack of central supervision, had not been removed.

The case taken against the central government department was an unusual one because of the interest shown by the EOC. Leaving aside the effects of the Commission's involvement, which we believe were likely to have been considerable, the decision seems to have been used constructively by management in industrial relations negotiations, and the objections which prevented the applicant taking up the post are less likely to be made in the future.

Summary and conclusions

In this chapter we have examined industrial tribunal decisions made against eleven employers whose promotion and transfer procedures have been found to be in breach of the SDA. Five of these decisions were made against local authorities, two against other public sector bodies (a central government department and a health authority), one against a voluntary organisation and three against private sector commercial organisations. In eight of these cases applicants were provided with legal assistance by the EOC and in one other case in which the complaint was of both sex and race discrimination, the applicant was legally assisted by the CRE. Tribunals made recommendations to employers in four cases.

City Council is the case amongst this group where we can be most certain that positive changes were introduced. Such changes were likely to safeguard the jobs and protect the immediate prospects of women leaving to go on maternity leave. There had it seemed been quite a shake-up in personnel policies consequent to the case. The applicant was doing well within the organisation and she had been promoted. The case had been vigorously supported by the staff association and the applicant herself had taken an active role in subsequent efforts to promote equality of opportunity.

The case against Shepley had had a less dramatic effect. Despite the recommendation of the tribunal the applicant had not been considered for promotion to inspector, but there was a conflict between the employer and the applicant as to whether there had been any opportunities for promotion. It was clear, however, that staff numbers were declining and that in such circumstances women in general were unlikely to make it to promoted posts without positive measures being taken. It seemed that the decision of the tribunal had increased

awareness of the pitfalls in current selection and promotion procedures.

Carlton Council had taken specific steps to ensure that new arrangements would govern the promotion procedures for the type of post at issue. A freeze on appointments in this subject area had, however, meant that there had been no opportunity to try out the new procedures. The applicant was still employed by the authority but had not been promoted. The authority itself had been making progress with the implementation of its equal opportunities policy and a working party had addressed the issues as they affected the education department. It is unlikely that the decision of the tribunal had of itself led to these developments.

The applicant who took the case against Surley Council had, after several unsuccessful attempts, now been promoted. The council had never fully accepted the decision of the tribunal and this was made clear in a circular sent to departmental heads. The same circular had, however, sought to give advice on procedures for taking up references but this advice appeared ambiguous, and did not seem to have reached all those involved in making selection and promotion decisions. The promotion of equal opportunities was not a priority for the council and the tribunal decision had not encouraged any wider review of practices and procedures.

At Power Supplies an officer had been disciplined as a result of the case, but, leaving this aside, the decision itself had had no direct consequences, and the company refused to accept that there had been any discrimination in the particular instance. The company had little regard for the recommendations of the tribunal and had taken legal advice on their status. The applicant had now left the company, and, although we have not discovered under what precise circumstances she left, her position in the organisation must have become difficult during and after the case. This case was unique in that the company had been involved with the EOC in a joint voluntary exercise, as a result of which there had been a radical reshaping of the company's policies on equality of opportunity. Although the company's commitment and sincerity on this issue had been seriously called into question by a union officer, the topic was clearly on the negotiating agenda and a momentum had been established.

The case against Frinkley Council resembles that against Carlton in a number of respects as it involves teacher promotion. However, in

Frinkley, the applicant left the employment of the authority worn out by her battles with the employer, and convinced that she would never win promotion. She had engaged in a long dispute with the authority which had attracted local and national publicity, and in which the authority's procedures had been criticised. Specific steps had been taken by the authority to ensure that promotion boards were aware of their responsibilities under the SDA, but aspects of the promotion process remained outside the direct control of the authority's officers, and the potential for discrimination still existed. However, it should be noted that discrimination happened in Carlton over a long period of time, even although the promotion process, unlike Frinkley, did not allow for the involvement of lay governors. As in Carlton, a far reaching review of the authority's equal opportunity policies had been undertaken, and specific steps to remedy the under-representation of women at senior teaching grades were being put into effect.

The applicant in the case against Easterly health authority had also over a period of time been rejected by promotion panels, and she had in addition taken a case against another health authority. This case was also distinctive amongst the sample because it involved both race and sex discrimination. Due to what she regarded as persistent discrimination, the applicant had given up her attempts to get jobs with Easterly, and had had to find employment in another part of the country. It was not within the scope of the authority to radically alter the appointments procedures for consultants, but the authority could have tried to interfere more than it had been doing, in order to ensure discrimination was not taking place. There was little evidence that it had sought to do so in relation to consultant appointments. However, it seemed that close scrutiny of both procedure and motive carried out by the tribunal might have a beneficial impact on the small circle of people involved in appointments procedures for consultants. Easterly has made general progress in developing an equal opportunities policy but the impetus for this was unlikely to have come from the tribunal decision.

In the four remaining cases we concluded that the decision of the tribunal had been, on balance, effective to varying degrees in three of these cases and completely ineffective in a fourth.

With a few exceptions tribunals are reluctant to arrive at conclusions, far less formal recommendations, even when an exhaustive examination of the circumstances of the case has drawn

attention to clear evidence of discriminatory practices. Often what is missing is merely a summing up and a pointing to the obvious steps which an employer could take in order to remedy deficiencies in practice. Many tribunals pass over the opportunity to influence the employer when it is within their grasp to do so and even when, as in the case against Frinkley Council, the tribunal has drawn incriminating inferences from general statistical data on promotions which has been presented in evidence.

If we are right in thinking that a well argued and presented case can be of benefit in drawing the attention of the employer to practice deficiencies, and that the experience of the tribunal may be as effective in changing attitudes and behaviour as any findings or remedies proposed, it follows that even cases which the employer wins can be effective in persuading him to look again at, say, promotion procedures. This may be particularly true in cases which have gone to appeal and where the employer's practices have been subject to detailed examination on a number of occasions. Comparison of the separate cases against two health authorities suggest that the case which the applicant lost had been as useful as the case which the applicant won.

There have been further indications that constructive follow-up action by the employer is not dependent on the applicant winning the case, since there have been examples of employers reviewing practice even before the case is heard by the tribunal.

Finally, it has become apparent in this chapter that a tribunal finding against an employer is likely to be more effective if it is combined with pressure or argument from others.

Notes

1. The Equality Exchange is an organisation set up by the EOC to enable employers and training and advisory bodies to exchange information, experience and expertise on equal opportunities initiatives.