

*Dismissal*

## 4 Dismissal

Under section (6)(2)(b) of the SDA it is unlawful for an employer to discriminate against a woman 'by dismissing her, or subjecting her to any other detriment'. In this chapter we consider eight cases of dismissal and one of detriment. Three of the cases considered here were also successful under the Employment Protection (Consolidation) Act 1978, (EP(C)A), it having been decided by the tribunal that the applicant had been unfairly dismissed. Of the eight cases, two were public sector employers and of the six employers in the private sector, two were non-profit-making charitable organisations.

### **D1: Dinkworth and Son Ltd**

The employer supplies goods and equipment to the building and plumbing trades. It has about 25 branches throughout the country employing some 300 people in total. Dinkworth is a subsidiary of a larger holding company, which we can call A&B Holdings, and which is responsible for personnel matters and training. The branch from which the application to the tribunal was made employed 28 people at the time of the tribunal, although by the time we carried out the research this had fallen to 19. The company does not have recognition agreement with any trade unions, although at the time of the interviews about 5 of the 19 employees were members of trade unions. We learned that this was a lower proportion than at other branches.

For this case study we collected data by way of interview with the group personnel director, an area manager with responsibility for the branch and the applicant.

***The decision***

The tribunal found that the applicant had been unfairly dismissed by her employer. The company had acted unreasonably by failing to inform the applicant that she had the right under the company's disciplinary procedure to be represented at the interview in the course of which she was dismissed. The company had further discriminated against the applicant in contravention of section 6(2)(b) of the SDA. In dismissing the applicant the company had treated her less favourably than men who had engaged in similar types of behaviour. The parties were left to reach agreement on a financial settlement, but the tribunal ordered that any compensation be reduced by 50 per cent since the applicant had through her own actions contributed to her dismissal.

The applicant was represented by a solicitor and the company by the group personnel manager.

***Case history***

The applicant had been employed by the company as a clerk for almost three years prior to her dismissal. She was dismissed by the company when she returned to work after lunch having consumed alcohol to such an extent that she was unable to carry out her duties. Prior to the events leading to her dismissal the applicant had during the period of her employment been disciplined by the company for similar occurrences. The first of these occurrences took place eighteen months prior to her dismissal. The applicant had been absent from work for one and a half days and had completed the standard form used by the company giving reason for periods of absence, in which she had written that one of the reasons for absence was due to a hangover. No specific disciplinary action was taken against the applicant at that time other than the loss of one and a half days wages.

Two further incidents followed some six months later. In the first, the applicant had been drinking alcohol in a public house at lunchtime with other female employees and had failed to return to work. Along with the other women involved, she was interviewed by the manager the following day and, because, in his view, she did not have a satisfactory reason for her absence, she was sent a letter issuing her with a warning about her behaviour and alerting her to the fact that a reoccurrence would result in a final warning. In the second incident a few weeks later, the applicant failed to report for work and the

following day completed an absence form giving her reason for absence as being caused by a hangover. This led to another letter from the manager issuing her with a final warning and informing her that any further incidents would result in her dismissal.

There then followed, some nine months later, the incident which led to her dismissal. That day was the applicant's birthday which she celebrated in the customary manner with other employees in the pub at lunchtime. She and her female colleagues were joined there by her own immediate manager who bought her drinks. It seemed that the occasion turned into a party with many of the works staff joining in, including several of the managers. She returned to the office, but became ill and incapable of continuing, due to having had too much to drink, and she had to take the rest of the day off.

There was by this time a new branch manager who, it seemed, was keen to establish his reputation. Having become aware of the previous warnings issued to the applicant, he decided that the time had come for some firm action and discussed the incident with the applicant's line manager. He resolved to invite the applicant for interview the next morning and this took place in the company of the line manager. According to the company's disciplinary procedure the applicant should have been informed of her right to be represented at that interview, but no such information was given and the tribunal considered this to have been unreasonable. Furthermore, the tribunal decided that the manager had failed to carry out a proper investigation into the circumstances of the incident, and if he had done so, he would have discovered that several male managers were also present at the pub, and had been responsible for getting her drunk by buying her alcoholic drinks. A second interview with the applicant took place that day and it was at this interview that the applicant was informed of her dismissal. At this interview she was informed of her right to be represented but not of her right, under the disciplinary procedure, to appeal against the company's decision to dismiss her. The tribunal found that this failure to inform amounted to unreasonable behaviour by the company, and that the dismissal was therefore unfair.

The tribunal also found that, had the applicant been a man, she would not have been dismissed by her employer. It was found that male employees including the applicant's own line manager did not have disciplinary action taken against them in similar circumstances, and that, if the branch manager had conducted a fuller investigation of

the circumstances of the case, he would have found that drunkenness at work had been a fairly common occurrence.

***Effects and consequences***

It was clear that the whole episode had brought to light serious management problems at the company which A&B Holdings had not previously been aware of. The applicant's view was that the company had been foolish in defending the case, because many other problems were as a consequence brought out into the open. The personnel director at A&B Holdings told us that he had the applicant to thank for bringing about a review of the group's operations. Although the director was representing the company at the tribunal, he claimed only in the course of the tribunal to have found out the full story about the malpractices and slackness that had been a feature of the company's operations under different managers.

The company had been trading very badly and making a loss, but A&B Holdings had put this down to the depressed state of the local economy. Several facts came to his notice during the tribunal which led to the affairs of the company being scrutinised more closely. The regional manager was replaced and the branch manager at the company left prior to dismissal. The police were called in to investigate 'organised crime' at the company and five employees were dismissed following criminal charges, including the applicant's line manager. A new manager was now in place and the company was trading with a surplus. The director was therefore grateful that the tribunal had provided an occasion for sorting out the company's affairs.

The tribunal had also highlighted a number of failings in the company's personnel procedures which A&B Holdings sought to rectify. Although the company had a disciplinary procedure, it was clear that very few employees were aware of its existence. Instructions were given that all employees were to be made aware of grievance procedures and a copy of the code was to be placed on company notice boards and issued to all employees. The case was discussed at a meeting of regional managers and instructions were issued to regional managers to communicate to branch managers that no one was to be dismissed without reference upwards first. If there was some urgency, an employee was to be suspended pending further enquiries.

The applicant was asked by the tribunal if she wanted her job back but she told the panel that life would be very tough for her if she returned. A figure of £5,000 was agreed between her solicitor and the company and this was reduced by 50 per cent due to the tribunal's finding that her behaviour had contributed to her dismissal. The applicant believed that she had been cheated of £700 by the company, receiving in the end only £1,700. The company acknowledged to us that her solicitor had made an error in the calculations, but that it was not up to the company to draw this to the other party's attention.

The applicant told us that it was part of the agreement with the company that the company would provide her with a job reference. Her concern was that she would never be able to get another job if she had a record of drunkenness from a previous employer. She said the company had complied with its agreement and no mention of the dismissal was made in the reference provided. However, at the time of our interview (some two years after the dismissal) the applicant had not yet managed to obtain another job.

There was no evidence that the company had embarked on any wider review of personnel policies. Nor had it sought to give a higher profile to its equal opportunity policy statement which consisted of a few lines in the staff handbook ('to develop the full potential of all employees...with no discrimination against sex, race, colour or creed'). The director had had some previous experience of tribunals. A few years prior to the present case the company had lost an equal pay claim at another branch. He claimed the loss of the case led to a visit from an EOC officer, but there had been no longer-term consequences, and the officer had seemed content with his assertion that it had been a one-off case.

### ***Conclusions***

The case had precipitated a wide-ranging investigation into the affairs of the company by the group personnel department. The police had been called in, a number of employees were dismissed and the company had been set on a more profitable footing. None of these developments would, however, of themselves have ensured future compliance with anti-discrimination legislation, although, as a result, dismissal procedures were tightened up and knowledge of the company's grievance procedure became more widespread.

The applicant did not want her job back but she felt she had been cheated out of some of the compensation to which she had been entitled. She had not found alternative employment.

The company had an undeveloped equal opportunity policy which the director admitted had been included in the staff conditions of service handbook without thought to implementation. The case itself had not prompted any wider review of that policy.

## **D2: Woodgate Area Courts Committee**

The Woodgate Area Courts Committee provides a court clerk and administrative service to a group of local magistrates courts. The case we are concerned with arose at one of the courts in the Woodgate group. Due to a reorganisation of local government since the time of the tribunal, the courts committee has been reconstituted into various smaller courts committees serving one local court only. Although the respondent at the tribunal was the (now abolished) committee named above, for the purposes of the case study we concentrate on its replacement which we can call the Dalton Courts Committee. This is where the applicant would now be working, had she not been dismissed by the committee and had she chosen to stay with her employer.

Dalton Court employs 30 staff excluding the magistrates (who technically are not employees of the court). There is a professional court clerk staff of eight including the Clerk to the Justices and the remaining staff are administrative, being employed in, for example, the scheduling of cases, the collection of fines and court usher duties.

For this case study we interviewed the Clerk to the Justices at Dalton, the applicant and her legal representative.

### ***The decision***

The applicant claimed that she had been dismissed by her employer due to the fact that she had become pregnant and claimed that this amounted to sex discrimination. An industrial tribunal found that the employer had not discriminated but the applicant appealed to the EAT. The EAT referred the case to a newly constituted tribunal for a re-hearing and that tribunal ruled that the applicant had been discriminated against in being dismissed by the courts committee. The tribunal left the parties to agree compensation. Although the tribunal did not order the reinstatement of the applicant, nor was any formal

recommendation made, the tribunal expressed the hope that the committee would re-employ the applicant if a suitable vacancy occurred.

For her appeal to the EAT the applicant was legally assisted by the EOC. She was legally represented throughout all the hearings as was the courts committee.

### ***Case history***

A courts committee is typically appointed annually at a general meeting of all magistrates attached to a particular court (or, in the case of Woodgate, a particular group of courts). Its function is to act as a kind of staffing, personnel and house committee and to ensure the smooth functioning of court business. One of its tasks is to appoint all court clerk staff and in this task it sits with the Clerk to the Justices who is, so to speak, the head clerk. Administrative staff will normally be appointed by the clerk alone, but with account given to the courts committee.

The applicant was appointed by the Woodgate Area Courts Committee to work as a trainee court clerk at the Dalton Court. The applicant was a recent law graduate and the training period for court clerks who were graduates was two years, but it was often possible for astute trainees to complete the training in one year only. It was likely that the applicant, had she stayed, would have completed in one year. Appointment of trainees involved a six-month probationary period.

The applicant had been employed for only six weeks when she discovered she was pregnant. She applied to the courts committee for four months leave to cover a period before and after the birth. She did not intend to take this leave immediately, and by the time she went off on leave she would have completed seven months of what had now become a 12-month training period. The committee refused her request for leave and terminated her employment taking the view that becoming pregnant during the training period was a frustration of her contract. The applicant was allowed to make an appeal to a special meeting of the courts committee, but her appeal was refused and because she was still on probation, she was not permitted to use the courts committee's grievance procedure.

At the second tribunal the employer agreed that the applicant had been dismissed by reason of her pregnancy. It justified the failure to grant the applicant leave to have her baby on the same grounds that it

would have refused, and in the past had refused, a request from a male employee for extended unpaid leave to visit a relative abroad. The employer also claimed that it would have treated a male employee who had to have four and a half months off for a complicated operation in the same way by dismissing him. It therefore denied sex discrimination. However, the tribunal took the view that discrimination against motherhood, including mothers-to-be, amounted to sex discrimination and since the employer had produced no evidence to show that it had acted similarly by dismissing a male who required a similar period of absence due to illness, the action in dismissing the applicant amounted in this case to sex discrimination.

### ***Effects and consequences***

The applicant received £1,200 in compensation. Because the EOC decided not to provide the applicant with legal assistance once the appeal had been won at the EAT, she had herself to find money to pay for a barrister at the second tribunal hearing. This she managed to do by borrowing money which had in the end to be paid back from the compensation received. The applicant felt aggrieved at being dropped by the EOC, once it had succeeded in getting a legal point proved at the EAT.

Despite the tribunal's hope that the applicant would get her job back at the court the applicant had no intention of, as she put it, 'demeaning herself' by reapplying. She had by this time changed careers in a direction which offered the possibility of part-time work, enabling her to have time to look after her child.

The case seems to have only confirmed the court clerk in his reservations concerning the appointment of women staff. He told us it was his view that men made better court clerks because they could cope much better with a broader range of cases than women, who, he considered, tended to become emotionally involved in a case. Women were alright for some cases where a conciliatory approach might be appropriate. He was therefore always faced with the problem of asking himself whether a female court clerk was suitable for a case. This sort of dilemma did not arise with respect to male court clerks.

The case had in his view shown up the difficulties of appointing female staff of child-bearing age. The court was taking a great risk by appointing such women because it meant temporary staff had to be appointed while they were off on maternity leave, and this often

resulted in the work not being done properly. In his view, the best way to avoid a recurrence of this type of case would be for him to enquire at the appointments interview into how the applicant saw her career with the court developing, and to discuss with the applicant her personal circumstances in order to find out if marriage was a possibility. There was no awareness on his part that such questions could themselves be found to be discriminatory.

In his view it was very unlikely that the courts committee would ever make the mistake again of dismissing an employee on grounds of pregnancy. It could, if it so wished, decide to do so, but it would be up to him as clerk to advise the committee of the implications of such a course of action in the light of the tribunal's decision.

The case had had no wider implications. There were no changes in appointments procedures, nor in how dismissal decisions were taken. While the case was in progress the Woodgate courts committee was abolished, and there was therefore no opportunity even to consider the implications of the decision for the employer. We were of the impression that a courts committee is in any case a rather odd kind of employer, being comprised of part-time magistrates who get together only on a rather irregular basis and who are only required to act in concert for ad hoc decision-making. The court clerk at Dalton (who had been a deputy at Woodgate when the application was made) took the view that he was starting afresh with a clean slate. He saw no need to affirm a commitment to equality by describing the court as an equal opportunity employer, believing such affirmations to be 'window dressing'. We formed the view that what happened in the court was very much the personal prerogative of the clerk. Consequently other courts may operate according to a quite different set of priorities and practices depending on the personality of the clerk.

### ***Conclusions***

We found little evidence of practical consequences as a result of this case. In so far as practices had changed at all, these were likely to have been regressive changes resulting in the exclusion of competent and qualified female applicants of child-bearing age from consideration. The case had, it seemed, only reinforced the clerk in all his prejudices about the risks of appointing females.

We believe that Dalton is unlikely to make the same mistake that its predecessor did and dismiss a trainee in the same circumstances,

but this may only be because in recruiting new staff it avoids making appointments which it considers are likely to create problems.

Although the tribunal considered the fate of the applicant and advised the employer to reappoint the applicant, there was clearly scope for stronger practice recommendations to the employer.

### **D3: Trust Centre**

The employer is a voluntary organisation with charitable status. It currently employs 2,500 people mainly in employment training programmes, and at the time of our research it was, in the main, reliant on government funding through the Manpower Services Commission. There is a headquarters staff of 120 with a senior management team of four. Two major unions are recognised for purposes of negotiating rights and about 80 per cent of HQ administrative staff are members of trade unions.

For this case study we interviewed the Director of the centre, the applicant and a trade union representative.

#### ***The decision***

The tribunal found that the applicant had been unfairly dismissed by the employer in that, although the dismissal had been carried out for a valid reason, namely redundancy, the Centre had acted unreasonably by failing to consider the possibility of alternative employment for the applicant. The tribunal also found the employer to be in breach of the SDA in selecting the applicant for dismissal, when it found that a male employee was treated differently in similar circumstances. The applicant was awarded £1,700 as compensation for the dismissal and a further £350 in respect of injury to feelings arising out of sex discrimination.

The employer appealed the decision to the EAT but the decision of the tribunal was upheld. The EOC agreed to advise the applicant but not to give her further legal assistance or representation. She represented herself at the tribunal but employed a solicitor before the EAT. The employer was legally represented at both the original tribunal and the EAT.

#### ***Case history***

The applicant had been employed by Trust Centre as an administrative officer for just over two years at the time of her dismissal. Since it

was dependent on grant income to fund specific programmes of work, the Centre was required from time to time to make staff redundant when funding for specific programmes was not forthcoming or was cut back. About seven months after the applicant started employment the second administrative officer who worked alongside her at headquarters, and who had been appointed shortly after her, was made redundant, but was immediately offered and accepted alternative employment as a training officer. He was transferred without any break in his employment. The applicant took over many of the tasks previously carried out by the second administrative officer after his transfer.

About one year later another training officer post became vacant, and shortly after, the director discovered that further redundancies were going to be necessary. Discussions on how to manage these redundancies took place with the union representatives, and it was decided that four staff posts including that of the applicant would have to go. At that stage a union representative sought to intervene in the situation on behalf of the applicant by suggesting that the applicant should be transferred to the vacant training officer post as her former colleague had been at the last round of redundancies. However, the director took the view that the applicant was not suitable for this post.

The applicant felt aggrieved that she was being made redundant when there was a vacant post for which she regarded herself as suitable, but which she was not even considered for. She took the matter up formally with her union and further representations were made on her behalf to the director. The director continued to insist that the applicant was unsuitable for the post, but, unknown to the applicant, that the post had already been offered to another person without going through either an internal or external process of advertising. This new officer took up his post two weeks before the applicant became redundant. As a result of continued negotiations with management by the union on her behalf, the applicant was invited to apply for a new post for which the Centre had just received funding. The applicant agreed to apply for this post, but was not optimistic about her chances, since it was in an area of work where she had no experience. She applied, but as expected was unsuccessful. From the director's point of view this should now have been the end of the matter, as he believed he had tried to secure another post for the

applicant. At this point, too, the union decided that it could do no more for her and the applicant left the employment of the Centre.

It is relevant to note here that there were very close links between union and management at the Centre, this being one of the complaints of the applicant. The director was himself a member of the same union as the applicant, and indeed he was a divisional office representative. It seemed that these links made it difficult for the union to take up the applicant's case. The applicant took the view that it was a union 'mafia' which ran the Centre, and that being male amounted to an entry qualification. The new training officer was, she believed, appointed through this grapevine. These perceptions of how the Centre was, in her view, mismanaged increased her resolve to pursue her grievance after she had left.

In arriving at its view that the applicant had been unfairly dismissed, the tribunal considered that the Centre should have looked internally to fill the vacant training officer post. It took the view that the applicant had the experience and qualifications which entitled her to consideration for that post, but that the recruitment was carried out in such a way as to preclude her from consideration. The dismissal involved sex discrimination because a male had earlier been shown preferential treatment when he was made redundant. In addition, the applicant had produced evidence of incidents involving sexist behaviour by the director in the past, and the tribunal was entitled to draw inferences from the fact that the employer's replies to the section 74 questionnaire were evasive and equivocal.

### ***Effects and consequences***

Although this was a dismissal case it raised as many questions about the employer's recruitment methods as it did about redundancy procedures. The director agreed that it would have been better to have advertised and interviewed for the disputed training officer post. He felt it was right that the Centre should be seen to be acting fairly. Nevertheless, he regarded interviewing as a 'rigmarole' because he generally knew whom he wanted for the post and it was, in his view, unfair to invite people for interview when this was the case. As a result of the case the Centre would be more inclined to advertise and interview. With the recent expansion in staff, there was now a personnel department which relieved him of some recruitment decision-making. As a result of the case things were now done 'by

the book', and the informal approach formerly adopted by management, which he considered made for a friendlier and more relaxed working environment, had now been tightened up. The director had now learned that the proper way to have dealt with the affair was to have had an interview board for the training officer post, and rejected the applicant consequent to interview. This would have protected him from any accusation of unfair treatment.

However, the Centre took the view that despite the tribunal decision it had acted fairly and properly. It had lost the case because it had not been properly prepared, and no one, including the solicitor, had taken the time to get briefed up prior to appearance before the tribunal. In addition, the director felt that the chair of the panel, a woman, was biased against the Centre and had gone out of her way to be helpful to the applicant. Another panel might have found quite differently. For these reasons there was no need to over-react to the decision.

The case seemed to have had very few direct consequences for personnel practices. Apart from making greater use of formal recruitment procedures, the director did not believe that further changes were necessary. It was his view that there was no need to carry out any special review of the operation of the Centre's equal opportunities policies. The tribunal in his view had found unfair dismissal and thrown in sex discrimination for good measure, but the fact that the EOC had not 'supported' the case indicated to him that there was no real equality issue involved. In addition, the trade union had not supported the applicant and had exerted no pressure for change consequent to the decision. This latter point was confirmed by the trade union representative we spoke to, who believed that management would now put more effort into resolving disputes internally, and not allow things to reach the state they did with this case.

### ***Conclusions***

Despite having no success with the case at the EAT, the employer continued to believe that the decision had been a wrong one, and the failure of the EOC to assist the applicant and the lack of any follow-up action by the EOC only served to confirm the Centre's management in this view. The decision to tighten up on recruitment procedures and to play by the book was carried out almost vindictively ('I've tried to be nice to you but look where it's got me').

#### **D4: Government department**

The employer is a large department of central government with in excess of 10,000 employees. The department's personnel matters are the responsibility of its establishments division, which has policy sections dealing with issues such as equal opportunities and staff development and training in addition to administrative sections which deal with the affairs of particular staff grades.

For this case study we carried out interviews with two officers from the establishments division of the department, with an officer from the Office of the Minister for the Civil Service (OMCS) and with a trade union official.

#### ***The decision***

The tribunal ruled that the department had discriminated against the applicant by imposing a requirement that she return to work on a full-time basis after the birth of her child. Such a requirement was judged to impose conditions which adversely affected women and with which the applicant could not comply, because of her duties to her child. The requirement disadvantaged the applicant in such a way that it could be construed as a detriment under section 6(2)(b) of the SDA. An appeal against the decision of the tribunal by the department was rejected by the EAT.

The applicant represented herself at a first hearing of the tribunal, a request for legal assistance having been rejected by the EOC. At a subsequent hearing and at appeal she was represented by counsel with financial support from her trade union. The respondent was legally represented at all appearances.

#### ***Case history***

It took nearly two and a half years for this case to be resolved from the time of the originating application until the judgement of the EAT, one of the most prolonged cases in the sample. The applicant was employed as an executive officer by the department in a branch located outside Westminster. There were in excess of 1,000 employees in this branch, of whom 300 were executive officers employed on similar casework to the applicant. All officers at this grade worked full-time whereas, in the clerical grades below the applicant, part-time working was quite common. For example, about 25 per cent of clerical assistants had part-time contracts. This situation had come about due

to an experiment conducted by the department to try to recruit suitable staff during a period of shortage. It was the view of senior officers in establishments division at that time that the experiment had not been a success and a decision was taken not to extend part-time opportunities to other grades.

The applicant had two children and was a single-parent. While she was on maternity leave for the birth of her second child she wrote to the department explaining that her position as the mother of two children would make it difficult of her to return to work on a full-time basis, and requesting that she be allowed to work part-time. The department did not discuss the applicant's request with her. Nor did it try to find out how many hours the applicant was seeking to work. Instead, a letter was written refusing the applicant's request and informing her that she only had the right to return under the same contractual terms as before. The applicant returned to work on a full-time basis, and shortly after submitted her application to the tribunal, but within two months of her return she went off on sick leave for a period of some six months.

There had been ongoing discussions within the department and throughout central government for at least 10 years prior to the tribunal application, about creating better opportunities for women within the civil service. In 1971 the Kemp-Jones report had noted that the expectation of an unbroken period of service from entry until retirement raised problems for women wanting to make a career in the service. The report recommended the expansion of opportunities for part-time working. More than ten years later a Joint Review Group of management and trade unions published a report on employment conditions for women which noted the failure of the management to implement the Kemp-Jones report and called for greater flexibility in contracts of employment and extension of part-time working to all levels in the civil service. This latter report had been published at the time of the first sitting of the tribunal and was referred to in evidence by the applicant.

At the tribunal the department had argued that less than full-time working was not possible for staff at the applicant's grade since the post involved casework and supervising other staff for which continuity of presence was essential. A manager in the applicant's office who was also a trade union representative gave evidence, however, that in his view part-time working by executive officers need

not be a problem. In his view, and this was confirmed when we spoke to him, management had been dragging its heels over part-time working for years. It became clear during the tribunal that management had made no effort to find out whether the office where the applicant worked could have accepted her back on a part-time basis without disruption to office duties. In these circumstances, the tribunal took the view that without having made such an enquiry the department could not reasonably insist that the requirement to work full-time was justifiable. It became clear, too, that the applicant had all along been wanting to work four days per week rather than five. The department had made no effort to discover the hours the applicant wished to work and was therefore unable to estimate the amount of disruption her request would cause.

### ***Effects and consequences***

There has been a noticeable extension of part-time opportunities for women in the civil service since this decision. One problem is in discovering the extent to which the tribunal decision promoted these changes. It is necessary to record our view that if the request to work part-time had come from another officer, it is quite possible that it would have been treated with more sympathy than the applicant's request and might have been granted. The department was not opposed to part-time working as a matter of principle, but the position at the time seems to have been that it would only be granted at the department's convenience. This seems to have led to a situation whereby a request for part-time work would be entertained only if the officer's skills were in great demand or s/he was regarded by the department as a 'high-flyer'. The applicant was apparently not thought of as being in either of these categories and her skills and experience were seen as expendable.

There has undoubtedly been a change of attitude by the department to part-time working and while there is no automatic right for a woman to return to work after child-birth on a part-time basis, the philosophy now is that every request for part-time status is considered on its merits. We were told that since the tribunal the department has not turned down as single request for part-time working. The emphasis had now changed in the direction of trying to communicate with officers requesting part-time status to find out how the request could be accommodated. The department had produced a leaflet ('How to

cope with changes in domestic responsibilities and still have a job') which was evidence of this change in emphasis.

There had been an active union campaign to keep part-time working on the negotiating agenda after the case. In addition, it was clear that the department was experiencing recruitment difficulties in various areas of work and more emphasis was being given to retaining existing staff on terms that were suitable to them. Greater publicity was being given to advertising the possibility of reinstatement for officers who resigned but wanted to return to work. The latest departmental figures showed that there were 900 part-timers up to and including grade 7 (principal) and 21 sets of job-sharers. We were unable to find out what jobs part-timers were doing, but the view was put by a union officer that these were unlikely to be in central policy-making areas.

There had been other developments aimed at making it easier for women to further a career. A job-share register had been set up following a staff notice asking officers to notify the department if they would like to be considered for job-sharing. Consideration was being given to setting up an 'in-touch' scheme for officers who had resigned or who were absent on maternity leave. Apparently, at least one other department operated such a scheme, and there had been a recommendation from the Management and Personnel Office (now the OMCS) that such schemes should be set up by departments. Aspects of an 'in-touch' scheme were, however, in existence and women on maternity leave were informed of their right to return from leave to attend promotion boards.

It is clear that in some areas there has been less progress. The civil service unions have been trying to negotiate with the department to have a formal agreement on part-time working which would protect the 'moral argument' for part-time work, if it became less of an economic necessity. So far the department has resisted such negotiations.

We should record that consequent to the case being resolved at the EAT the applicant now works as an executive officer on a part-time basis.

### ***Conclusions***

In an organisation as large and complex as a central government department, it is not entirely appropriate to look for the kind of

response to a tribunal decision that one might expect with respect to a smaller, more cohesive work unit. Working patterns within the department vary considerably from one area of work to another and for different professions and career groups. A response which is appropriate for one set of career grades may not be appropriate for another.

It seems to be beyond dispute that the department has been considering a variety of ways in which the career prospects of women can be improved. A number of measures have been implemented, and attitudes have changed in such a way that the circumstances which gave rise to this case are unlikely to be repeated.

Pressure for change has come from different directions: through parliamentary scrutiny, through a tradition of active trade unionism, through women having a presence at senior levels, through encouragement and direction from the personnel office of the Civil Service Department and, not least, through the indignity of losing a case (or two) at an industrial tribunal and then having that indignity turned into embarrassment on appeal.

### **Other dismissal cases**

In this section we analyse interview data with respect to five further dismissal incidents deriving from the secondary group of case studies. All the organisations considered here are in the private sector, although one of these is a non-profit-making trust.

#### ***D5: Chorley Motors Ltd***

An industrial tribunal decided that the employer had discriminated against a male employee by dismissing him following his refusal to remove an ear stud. The tribunal took the view that the employer had applied to the applicant a requirement or condition which would not normally have been applied to a female employee. The applicant was awarded £550 by way of compensation of which £50 was a payment for injury to feelings. Both applicant and employer were legally represented at the tribunal hearing.

The applicant had been employed with the company as a van driver for a period of only four months before his dismissal, and so a claim under the EP(C)A for unfair dismissal was not possible. He decided to have an ear stud inserted, but this gave offence to his immediate manager who asked that it be removed on the grounds that it

constituted a health and safety hazard, and because it was thought to reflect badly on the company image when he was visiting customers. The applicant refused to remove the stud and his refusal was brought to the attention of the branch manager who again asked him to remove it. After further refusal the applicant was dismissed. The applicant maintained that he would have been willing to remove the stud while at work but that it was necessary for it to be kept in place for a period of three weeks to enable the pierced hole to heal. The employer was unwilling to countenance this line of argument.

The employer sought to argue under section 51 of the SDA that its action could not be construed as discriminatory because it had been done with the purpose of complying with another Act, in this case the Health and Safety at Work, etc., Act 1974, which imposed on employers a duty to ensure that there was an absence of risk to health in connection with the handling and transport of articles in and around the workplace. However, the tribunal took the view that an ear stud could not be said to constitute a hazard although pendulous earrings could be hazardous under certain working circumstances. It was clear that women van drivers wore earrings of various sizes in the course of their work, and this presented no problems for the employer. Had the applicant been a woman the employer would not have issued an instruction to remove the earstud, and he would not have been dismissed.

The company employs in excess of 5,000 people at various depots and garages throughout the country and has various semi-autonomous divisions which deal with car rentals, garage services, etc. It has a central legal department and it was here that the decision seems to have been made to contest the case on the basis that the company fights all such claims as a matter of policy. A case can thus take on a life and impetus of its own once removed from the immediate workplace setting. The company's legal department even instructed a barrister to present the case at the tribunal. The personnel manager expressed to us some regret that the company could probably have settled out of court for less money, but he had been advised by the legal department that the company had a good case under the health and safety legislation. As it was, the company regarded the award of £550 as 'not an inordinately large amount', and so there was no question of appeal. It was clear to him, however, that the applicant's immediate manager

was the type of person who objected to men wearing earrings and that this was the real origin of the case.

The consequences of the case had been minimal. There had been a hint in the tribunal decision that the company's case would have been stronger, if there had been a company ruling about men not wearing earrings or studs, and consideration was given to making a company rule to that effect in an attempt to prevent such a case happening again. However, the personnel manager came to the conclusion that the case was probably unique, and that making a general ruling was unnecessary. Although taken under the Sex Discrimination Act, this case will have had no impact on the employment situation or job prospects of the women who worked alongside the applicant.

***D6: Carelle Kitchens Ltd***

The employer makes, supplies and fits kitchen units from 30 outlets throughout the UK. It was until recently a small locally based company but has now been bought up by a large British multinational organisation which has new directors on the company board and has appointed a personnel officer. There is a workforce of some 300 directly employed by the company but many more who work for the company on a self-employed basis. At the tribunal the applicant represented herself and the employer was represented by a director.

The tribunal found that the company had discriminated against the applicant by dismissing her because she was pregnant. The applicant had been employed by the company as a part-time canvasser for some time, but, at the time of her dismissal, she was working full-time for the company as a receptionist at one of its branch offices. She had been in that post for only two months when she was dismissed. There was very little agreement between the applicant and the employer about the circumstances of the dismissal, and when we spoke to the personnel officer he continued to uphold the version of events presented by the company at the tribunal. This version was that the applicant had been dismissed from her employment because she was inefficient. The applicant's version was that when it became known shortly after she joined the branch as a receptionist that she might be pregnant, the branch administrator reported her pregnancy to a regional manager. Both of these officers apparently took the view that the applicant should have made it known to the company that she was pregnant at the time of her job interview.

The applicant believed that if there had been anything wrong with her performance, it should have been brought to her attention earlier, but no complaint had ever been made, and she had not received any warnings from the company about her behaviour. The applicant alleged that she had been told by a regional manager on a routine visit to the company that he was giving her notice because she was pregnant. When the applicant let it be known that she was considering the possibility of tribunal proceedings, she was later told by the manager that her dismissal was not to do with her pregnancy, but because of her general performance. The company insisted throughout its evidence that nothing had been said about her pregnancy. The tribunal seems to have had little doubt in preferring the evidence of the applicant, and found the employer's witnesses to be 'most unsatisfactory'. It took the view that the employer had dismissed the applicant simply because she was going to have a baby and for no other reason. The applicant was awarded £200 in remedy.

This was an example of a rapidly expanding company whose personnel policies and procedures had failed to keep pace with its economic growth. There had been some recognition of this problem in the decision to appoint a personnel manager who defined his task as being to come to grips with employment legislation. This appointment was not directly connected with the tribunal decision, but had more to do with the take-over of the company and the introduction of new management. There was a very low level of awareness of anti-discrimination legislation which had not been significantly heightened by the tribunal.

The company had put the case aside quite easily. As in other cases, we were told that the award had been so insignificant that the offence caused by the company's action could not have been grave, and the tribunal had offered no recommendations. If the breach of legislation had not been all that serious, there was certainly no need in the company's view to embark on a review of procedures. The company did not have an equal opportunities policy statement, and we were told that no thought had been given since the tribunal to introducing one. The personnel manager had not heard of the EOC.

***D7: Wellmade Brick Co.***

The employer is a small brickmaking business employing at the time of the dismissal only 12 people, six of whom were brickwork

labourers, 3 men and 3 women. The applicant was one of these three women who were all made redundant together due to a downturn in the company's business and the lack of new orders. She was the company's longest serving employee having been with the company for 14 years and was the only one of the three women to submit an application to the industrial tribunal. She had lay representation at the tribunal, and the employer was represented by a solicitor.

Although both men and women worked on the brickmaking process as labourers, there was some differentiation of tasks, and the tasks performed by men and women had varied over the years depending on the type of kiln being used. The women had, however, at one time or another, carried out most of the tasks involved in the brickmaking process apart from two heavy tasks, namely, the transfer of raw materials into the mill and the crushing of raw material through the manual use of a hammer. When the employer realised that he was in a redundancy situation he took the view that it was necessary to retain only those members of the workforce who had the most flexible work skills. In his view, the male workers could do all the necessary tasks if required whereas the women were capable of carrying out only a limited range of duties. The decision therefore seemed clear, and all three women were made redundant.

After hearing evidence about the brickmaking process at other establishments, the tribunal formed the view that it was only by tradition that the women did not perform certain tasks. It was felt that they were capable of doing so, and evidence was given that the applicant would have been willing to have done a wider range of duties, if she had been asked to do so, and as she had done in the past when a different kiln was in operation. The tribunal's view was that the employer had failed to look at the relevant qualities, experience and length of service of each individual applicant and had looked on them as a class of employees to be treated in the same way. The dismissal had therefore been unfair. Consideration should have been given to the applicant's length of service, and to enquiring into her capability and willingness to perform the full range of duties. Had the applicant been a man she would have been treated on a more individual basis, and the method of selection for redundancy was therefore discriminatory. The applicant was awarded approximately £1,600 as compensation for loss of earnings and a further £500 for injury to feelings.

We interviewed the proprietor of the company who considered that the decision would have gone the other way if there had not been two women on the panel. The decision had not been a unanimous one and the employer's representative on the panel disagreed with the majority decision. However, being a small company on a very insecure financial footing he could not afford to appeal the decision. His instinct was to put the incident behind him and get on with trying to secure the future of the business. The only impact of the tribunal was to make him aware how difficult it was for a small business to comply with an enormous amount of employment legislation. He could not himself keep up to date with it, nor could he afford to employ someone to do so. It was cheaper in the long run to pay up if things went wrong. In his own mind he knew he had not discriminated against the women. It was simply that they had less all-round experience than the men and the most cost-effective solution was to make them redundant. When he found out that the applicant was taking a case to the tribunal, he had found it necessary to make a journey to the job centre to find out about the legislation.

***D8: Samson and Co. Ltd***

This is a small private company specialising in the treatment of dry rot, woodworm and other building infestations. The company has never employed more than 20 people and, at the time of the dismissal, there were only ten employees. The applicant was employed as an office administrator and had worked with the company for about four years. She claimed in her application to the tribunal that she had been unfairly dismissed and, in addition, been discriminated against in the way she had been dismissed. The tribunal found that she had not been unfairly dismissed but that there had been an element of sex discrimination, and she was awarded a payment of £100. Both applicant and respondent were represented by solicitors.

The company found that, due to an increase in the number of companies working in the timber infestation field, the amount of business was contracting and it had been required to lay off both surveyors and joiners. It became apparent to the director that a similar reduction might be necessary in office administration since in addition to the applicant he employed a junior typist who had joined the company two years after the applicant, and he felt overstaffed in the office in comparison with the amount of work to be done. It was the

director's evidence that he had discussed his difficulties with the applicant and asked her if she would be prepared to work part-time in the future if it became necessary. He claimed that she had indicated that she would be willing to do so if it became necessary. The applicant denied having been involved in any such discussion of her prospects.

About this time the applicant became ill and there was a period of absence from the office of just over two months. The company found that it was able to manage its affairs without the applicant, and when she returned to work the director asked her if she would work part-time. She said that she would not be able to do so, having, she told us, recently taken out a mortgage. However, the director tried to persuade her of the benefits of working part-time by referring to the fact that she was a married woman with two children. In his view working part-time would give her the ability to devote more time to her children. The applicant continued to refuse to work part-time and was dismissed by the company by reason of redundancy.

The tribunal found that there had been no unfair dismissal because the employer had clearly been in a redundancy situation. The method of selection for redundancy had in its view been fair, and no agreed procedure had been broken. The employer could have managed without the applicant, but he had been generous in offering her part-time employment. In addition, the tribunal found that the fact that the applicant was a married woman with children played no part in the reasons for selection for redundancy. However, it was of the view that the director would not have sought to persuade a man of the value of part-time working by referring to his children, and that there had therefore been an element of discrimination in referring to the applicant's role as a mother. The tribunal considered that this discrimination was minimal and awarded the applicant £100.

The employer believed that the tribunal had really come down on the company's side by 'reluctantly' finding him guilty of sex discrimination. The amount awarded was less than the amount offered to the applicant in settlement prior to the tribunal. In his view, she had been a good employee, and he had found it difficult to make her redundant. He had only tried to make it easier for her by mentioning the benefits that might accrue if she went part-time. It had been a caring rather than a discriminatory remark and the tribunal, he believed, had perceived that this was how it was meant. The main

effect of the case had been to make him more careful about recruiting employees. He had become ‘hardened’ by the case, since he had always believed he treated his employees well; he realised he would have to be more careful about who he took on, as he had not appreciated the applicant’s capacity for what he saw as vindictiveness.

He had, he said, expected some follow-up from the ‘women’s equality people’ but no contact had been made. He saw no need to make any changes although, if the tribunal had come out firmly against him, he would have taken it all more seriously. The applicant told us she had got another job in a solicitor’s office soon after her redundancy. It was here that she had managed to get advice about how to pursue the case. She continued to feel very badly treated by the tribunal which, she believed, had failed to appreciate that she should have been retained in place of the other office worker who had been with the company for a shorter period.

***D9: Clearways Trust Ltd***

The employer is a registered charity which carries out building conservation work. Most of its income comes from donations or subscriptions, and it employs only two full-time permanent staff. The Trust has from time to time employed various people on Manpower Services Commission (MSC) sponsored training schemes, and the applicant was employed on one such scheme as a general building labourer. Being a member of the Trust, she had for some time done voluntary work, and had got to know the manager of the Trust who offered her work doing, among other things, bricklaying, when the MSC money became available.

However, within six weeks of her beginning work on the MSC scheme, the manager who had appointed her left the Trust, and a new manager was appointed to oversee the building works. His attitude towards the applicant was quite different, and he was less tolerant of her lack of bricklaying experience. Some of her work had to be done again and some youths working on the site who had even less experience of bricklaying than the applicant objected to having to take orders from a woman. The manager came to the conclusion that it was inappropriate for the applicant to be doing building work outside, since he thought the work was too heavy for a woman. He told her that she would have to leave and gave her the rest of the week off to find another job. The applicant took the view that if the manager had not been happy

with her bricklaying, or with her ability to carry out heavy duties, he should have offered her other lighter tasks on the site, but no such offer was made. She believed it to have been part of her contract of employment made with the previous manager that she was only to be employed on light work.

In coming to its conclusion that the applicant had been dismissed because she was a woman, the tribunal also considered remarks made by the manager to the effect that he did not want any more women employed on the scheme. In the view of the tribunal the manager was opposed to women working on building sites, and this attitude had led him to seek the dismissal of the applicant. The tribunal formed the view that a man who had a contract which specified that he was to do only light work would not have been dismissed.

The tribunal made an award of compensation based on the amount of time that the applicant would have been employed had she stayed with the MSC scheme for the full year. She was awarded approximately £300 with another £50 for injury to feelings. No recommendation to the employer was made but the panel expressed the view that 'the respondents would no doubt be more careful in the way in which they approach similar situations in the future.'

We found no evidence that the attitude of the Trust had changed or that it had become more careful, despite the fact that another new manager was now in post. The scheme the applicant had worked on was no longer in operation, but the Trust was planning to participate in the Employment Training (ET) initiative and would in the future be carrying out work under that scheme. The new manager was a retired construction engineer, with views similar to those of the previous post holder, and he took the view that women should not be permitted to work on building sites. He said that if he had any control of the selection process for the ET schemes he would try to ensure that only men were taken on.

The findings of the tribunal had produced no positive effects. The decision had only served to reinforce the manager's views that employing women on building sites inevitably caused trouble. We concluded therefore that tribunal proceedings could perhaps do little by themselves to undermine such ingrained sexist attitudes. There is clearly a need for pressure to be exerted from other directions to ensure that training schemes operating with public funds comply with equal opportunity legislation and provide training for both men and women.

***Summary: cases E5-E9***

In this section we summarise the findings in relation to the five secondary group cases considered above.

Chorley Motors considered the incident to have been an isolated one, and therefore to have responded to the tribunal decision by issuing instructions or guidelines would have been, in the view of the company, an over-reaction. The applicant, a male, had been dismissed largely due to the attitude of the local manager, and not because of any company practice. The case had taken on a life of its own because the legal department had given what turned out to be wrong advice. It was unlikely that the company would ever react to a similar set of circumstances in the same way.

At Carelle Kitchens there had been rapid growth in the recent past but little attention had been paid to developing an effective personnel function, or to learning about the implications of employment legislation. This had begun to change but probably not as a consequence of the tribunal. The employer regarded the minimal award of £250 as an indication of the lack of importance the tribunal attached to the discrimination.

The director at Wellmade took some comfort from the fact that the decision had not been a unanimous one, and that the majority on the panel were two women whom he considered biased. He considered that he had not discriminated, and the employer on the panel was of the same opinion. The compensation awarded was the price a small business had to pay for falling foul of employment legislation. It had been an extra cost on top of the costs of making the women redundant, which he resented.

In a similar case at Samson the tribunal had found that the dismissal had been fairly carried out, and in the employer's view, this was an exoneration. The tribunal had been on his side, and this seemed to him to be clear from the meagre amount of compensation awarded (£100). The director believed there was no need to take any action apart from being more careful in future not to take on employees who might turn against him.

At Clearways the possibility of the tribunal's decision being studied for lessons to be learned was reduced by a change in management after the tribunal. The new manager was aware of the tribunal decision, but his attitudes towards women working in outside manual work were if anything more extreme than those of the previous

manager. These views made it most unlikely that women would ever be employed again in the type of job the applicant had when she made the dismissal complaint.

### **Summary and conclusions**

In this chapter we have examined the consequences of nine tribunal decisions, all but one of these being dismissal cases. Of the eight dismissal cases, four also included applications of unfair dismissal under the EP(C)A, and all but one of these four dismissals were found by the industrial tribunal to have been carried out unfairly under the terms of that legislation. The remaining four dismissal cases were brought under section 6(2)(b) of the SDA only, none of the applicants having been employed long enough to commence proceedings under the EP(C)A.

Section 6(2)(b) of the SDA states that it is unlawful to discriminate against a woman 'by dismissing her, or subjecting her to any other detriment'. In addition to the above eight dismissal cases, we have considered in this chapter a case of 'detriment', this being an application by a woman whose contract of employment required that she work full-time. All but two of the applications considered in this chapter were against private sector employers.

The application brought against the builders' and plumbers' supplier Dinkworth and Son was successful under both the EP(C)A and the SDA and the applicant, unemployed when we interviewed her, received approximately £1,700, although she felt that due to 'trickery' this was less than she was entitled to. The tribunal application had uncovered widespread dishonesty and corruption in the local branch where the applicant worked, and this resulted in a police investigation and a number of dismissals or resignations. A director took the view that this investigation would not have happened without the applicant's complaint. There had been some changes in personnel procedures following the case. Most notably, the procedures for dismissal had been tightened up, and employees were now informed of the company grievance procedure. The company had an equal opportunity policy statement, but the incident had not led to any review of the statement, nor of how it was put into practice.

The applicant who was dismissed by Woodgate Area Courts Committee when she became pregnant in a case brought only under the SDA received £1,200 by way of compensation. She was now

happily employed in another career. It was unlikely that this employer (or rather the employer's successor) would dismiss anyone again in similar circumstances. However, the case had only served to reinforce reservations which the court clerk had about employing female staff, especially those of child-bearing age. It seemed likely that women who might become pregnant would be screened out through discriminatory questioning at a recruitment interview. The court did not describe itself as an equal opportunity employer, and no wider review of personnel policies had been carried out. Such a review was made difficult, however, because of a general reorganisation of the administration of magistrates courts in that area shortly after the application was made.

The case against Trust Centre was taken under both the EP(C)A and the SDA, and the applicant, successful on both counts, was awarded approximately £2,000. Since the tribunal had ruled that the applicant had been unfairly made redundant and that she should have been considered for another post which became available at about the same time, the attention of the tribunal was focused as much on the employer's recruitment procedures as on the dismissal arrangements. The employer was aware that the applicant would probably not have won the case if more formal recruitment procedures had been in existence. These had now been introduced, although with considerable cynicism on the part of the employer, and solely in an attempt to protect the Trust from future claims. The Trust had an equal opportunities policy statement but no review of this had been carried out. The employer set great store by the fact that neither the EOC nor the trade union had supported the applicant. This indicated to him that there was no real equality issue involved and that another decision could have been arrived at by a different (and, in his view, less biased) panel.

The application brought against the government department for refusal of a part-time contract of employment could have become a case of constructive dismissal, as the applicant was finding it increasingly difficult to carry out full-time duties, and was absent from work for long periods. Since the tribunal's decision there had been a considerable change of attitude towards part-time working in the department and indeed throughout the civil service generally. Within the department this had resulted in an extension of part-time opportunities, and no request for part-time working, we were told, had

since been turned down. The unions saw scope for much more progress, and the extension of part-time work and other equal opportunity measures such as job-sharing were now on the negotiating agenda. The industrial tribunal decision and, moreover, the decision of the EAT would have played a part in this change of attitude, but pressure for change was being exerted from other sources as well. It could nevertheless be argued that the department's decision to contest the case even to the EAT was inconsistent with its claims to be promoting equality of opportunity.

In the remaining five secondary group cases two applicants (at Wellmade and Samson) were offered protection by, and made applications under, the EP(C)A in addition to the SDA. Both EP(C)A and SDA applications succeeded in the case of Wellmade, but the decision was not a unanimous one, and the employer felt he had been let off the hook. At Samson the unfair dismissal claim was not successful and the tribunal took the view that the sex discrimination had been minimal. Both of these companies were small family employers who considered themselves unlucky and the victims of embittered applicants and oppressive employment legislation. No changes were made by either employer. Clearways was also a small employer, although in this case a small charitable trust, making use of government-funded trainees for building works. It was unlikely to employ female trainees again if it could avoid doing so.

Carelle Kitchens and Chorley Motors were much larger employers. Carelle was in the process of trying to come to terms with a period of rapid expansion and was setting up a personnel function, but the company showed little inclination to learn anything from the case. There was a very low level of awareness of equality legislation. In the Chorley case, a male applicant had successfully used the SDA to establish unfair treatment by a local branch manager. There had been no change in company policy regarding dismissal decision-making so it was possible that such a dismissal could happen again. However, it was unlikely that a local manager would again be supported to the same extent by the company's personnel and legal departments.

In this chapter there have been a number of examples of employers who have sought to sidestep the wider implications of the tribunal decision by ensuring that they do not again employ women for the positions that have got them into difficulty. Sometimes an effect of

losing the case is that the employer becomes even more entrenched in his attitudes and pursues a course of action (for example, excluding women from consideration for certain jobs) which is counter to good equal opportunities practice.

Such employers act in these ways knowing that it is unlikely that there will be any further scrutiny of their actions or follow-up after the tribunal decision. Some kind of minimal intervention at this stage by the EOC might reduce the likelihood of employers frustrating the tribunal decision. The tribunal itself could give greater consideration to the scope for recommendations since such recommendations might facilitate intervention by the EOC.

The absence of any intervention by the EOC during or after the case is certainly interpreted by some employers as an indication that the EOC have not been able to assist the applicant legally and few employers appreciate that such a failure to assist is not necessarily a comment on the merits of the applicant's case.