

Working Paper 6

**The Unorganised Worker: Problems at Work, Routes to Support and
Views on Representation**

**The Unorganised Worker: Problems at Work and Routes to Resolution
with the Citizens Advice Bureau.**

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Introduction

In 21st Century Britain, the vast majority of workers have no collective representation at work: in 2005 only 29 per cent of employees were union members and in the private sector this was just 17 per cent (DTI, 2006a). In industries such as wholesale and retail it was only 11 per cent, business services 10 per cent and hotels and restaurants 4 per cent. Although New Labour introduced statutory union recognition procedures (Employment Relations Acts 1999, 2004), these are highly complex (Bogg, 2005) and have not reversed the decline in union recognition. The most recent Workplace Employment Relations Survey (WERS 2004) shows that, compared with 1998, when union recognition existed in 33 per cent of workplaces and among 53 per cent of employees, in 2004 this had dropped to 27 per cent and 48 per cent respectively (Kersley et al, 2005: 13). Thus, over 70 per cent of employees are non-unionised, and 52 per cent work where there is no union representation.

Most workers are thus dependent on individual employment rights for protection at work. The individual employment relationship, prioritised over collectivism, has remained central to Britain's New Labour government. Since entering office in 1997 it enacted a substantial number of new individual employment rights, including a National Minimum Wage (1998), but most have been compulsory ratifications of European Union Directives, and these have been minimalist in their implementation (Smith and Morton, 2001: 123). The government's priority is the maintenance of Britain's 'flexible' labour market, its *Better Regulation Task Force* advocating 'best practice' through voluntary standards in preference to statutory employment regulation (Cabinet Office, 2002). A recent parliamentary policy statement claims the success of this approach in creating a 'sound' industrial relations climate and reiterates. The government is determined to 'resist any reductions in our flexibilities in areas like working time. And we have no intention of changing industrial action laws or taking other measures that would damage employability or competitiveness in the UK' (DTI, 2006b: 5).

The same policy statement also expresses the government's intention to ensure that 'the most vulnerable workers' gain their rights. A 'vulnerable worker' is defined as: 'someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability, but that is only significant if an employer exploits that vulnerability' (DTI, 2006b: 25). It cites various high-risk industries, such as retail, hotels, restaurants, care homes, textiles, construction, security and cleaning. It also identifies non-unionism as a risk factor, but does not make the connection between weak collective representation and greater risk of vulnerability in the sectors mentioned. Non-unionism is listed along with other factors associated with 'risk', such as individuals' capacity to 'protect themselves', their financial resources, level of wages, awareness of employment rights¹ and the existence of HR departments. It is given no more explanatory weight than anything else.

This language avoids the inherent asymmetry of the employment relationship, which is graphically illustrated by unequal resources when individuals seek redress in Employment Tribunals (ETs). Government research on ET applications in 2003 found that 72 per cent of *employers* were legally represented at tribunal hearings compared with 42 per cent of *employees*. And while 46 per cent of workers did not use a solicitor because they could not afford it, only 15 per cent of employers did not use their 'desired' advice source because they could not afford it (Hayward et al., 2004: 34).

The DTI's approach to 'vulnerability' is premised on employers who 'exploit'. But this provides no insight into the processes which underlie unequal power relations in the workplace, or the types of intervention which are needed to prevent them. To be sure, there are examples of 'bad' employers who openly exploit vulnerability in the accounts below. But many narratives are far more

¹ The DTI's own research has identified the low-level of understanding of individual employment rights (Meager et al, 2002, Casebourne et al, 2006).

complex and subtle. The objective of the research reported here² is to probe vulnerability *as a social process* in which the inequality of power in the employment relationship is revealed.

This paper focuses on one aspect of a wider project - the experience of unorganised workers who approached the major free advice source in Britain, the Citizens Advice Bureau (CAB).³ It examines the quality of these problems and the difficulties for the CAB, as a 'new industrial relations actor' in the context of de-collectivisation (Abbott, 1998) in helping to provide support and redress. Vulnerability is defined by two criteria: non-unionisation and low pay.⁴ Having had problems at work illustrates vulnerability as a lived experience⁵.

The Citizens Advice Bureaux in Britain

For the unorganised, low paid worker in Britain, access to support for employment problems is heavily dependent on the voluntary sector. Most resort to free advice provided by welfare and employment rights organisations, Law Centres, and the Citizens Advice Bureaux (CABx). They also use leaflets, such as the Trades Union Congress's 'Know Your Rights' series and its telephone helpline (although its website suggests its primary use is to send individuals leaflets on their rights, rather than in providing individual advice) and telephone helplines by statutory bodies, such as the

² This is based on the British ESRC Project R000 23 9679; 'The Unorganised Worker: Routes to Support and Views on Representation' 2003-2006.

³ 'The Unorganised Worker: Routs to Support, Views on Representation' funded by the ESRC. This analysis of CAB users complements a structured questionnaire survey of 500 low-paid, unrepresented workers, which is analysed in other papers (Pollert and IFF, 2005, Pollert 2005a, b, c and Pollert 2006).

⁴ 'Non-unionised' and 'unorganised' are used interchangeably here. In the case of the workers who approached a CAB, there was information on workplace union coverage (unlike the Unrepresented Worker survey). Except for those cited who were union members, all others were Unorganised in the full sense of the term, meaning non-unionised workers in non-unionised workplaces. Low pay is defined as earning below the median pay level in 2004, when interviews were conducted.

⁵ Estimating who has 'problems' at work and what they are has so far been largely confined to those making an ET application, but this narrows the remit of study, since very few of those with problems do so (Pollert, 2005). Broadening the scope to other workers, a government study of workers' knowledge of employment rights estimated that 42 per cent of its sample had a problem at work (Casebourne et al., 2006: 98), but this over-sampled the better organised public sector (ibid. 16)

Advice, Conciliation and Arbitration Service (Acas)⁶, the Equal and Human Rights Commission (replacing, since October 1st 2007 the Equal Opportunities Commission and Commission for Racial Equality, with the inclusion of Disability Rights) also provide advice. Government information on rights has become electronic, with the phasing-out of leaflets, seriously disadvantaging poorer people without home internet access and printing facilities (Pollert, 2005: 226).

The CAB is the major free source of advice for those with employment problems (Genn 1999: 89, Meager et al 2002: 185). Its precarious and limited resources, however, belie this central role. Originally set up by volunteers to deal with civilian problems during wartime Britain in 1939, the CABx mushroomed in response to unmet need in the absence of any core state funded provision of citizens' advice (Richard, 1989, Citron, 1989). In 2007, CABx operate as charities from 433 UK offices (Citizens Advice 2007) and about 3000 outlets, including outreach surgeries in shops and medical practices. They belong to the national co-ordinating and training centre, Citizens Advice (formerly the National Association of Citizens Advice Bureaux), which is part government-funded by the Department of Trade and Industry, but increasingly reliant on heterogeneous sources of private funding ranging from trusts, lottery funds, private companies and individuals.

Financial support has been a problem from the CAB's inception, with recent reductions in local council funding to bureaux (Citizens Advice 2003: 17) and a 10 per cent cut and no further inflation-proofing by the DTI to headquarters in 2006/07, forcing a £4 million (20 per cent) savings programme to reduce annual expenditure. This would 'inevitably have an impact on the levels of service' (Citizens Advice, 2006: 4). Fundraising is impinging on core service provision with planning undermined by precarious financing and already over-stretched resources are diverted to short-term funding, including EU grants (Citizens Advice. 2003: 17). With minimal resources, the CABx are reliant on

⁶ While the role of Acas used primarily to be in conciliating in collective disputes, with the decline in collective disputes its work has become increasingly engaged with individual disputes. As well as giving individual advice it has a statutory duty to attempt conciliation before Employment Tribunal applications go to a hearing.

volunteers. In 2006, of 26,082 bureaux workers, 20,264 (78 per cent) were trained volunteers of whom 63 per cent (12,734) were advisers (Citizens Advice, 2006: 5). Further strains emanate from the bureaucratic requirements of Community Legal Service (CLS) funding for those bureaux that receive it (Pollert, 2005: 225).

Interviews with advisors in fifteen CABx in the Midlands in 2003/04 confirmed that they were struggling with too few advisors, too little time, and declining resources: 'multiple source funding is the name of game' (interview, CAB manager, Midlands, September 2003). Not surprisingly, there is unevenness in CAB provision across the country. Respondents to a 1999 survey, *Paths to Justice*, experienced difficulty in accessing bureaux, because of limited opening times, waiting times for an appointment and difficulty in making telephone contact (Genn, 1999: 76, 89). Most CABx have general advisors and referral to specialists has become increasingly problematic. Few workers with employment problems qualify for free legal-aid solicitors, not only because of stringent means-testing, but also because of complex eligibility rules for bureaux with CLS funding (Pollert, 2005, 2007). The rules have resulted in large numbers of solicitors leaving the legal-aid service, leaving 39 per cent of CABx claiming to be in an 'advice desert', with nowhere to send clients whose problems cannot be dealt with by their own staff (Citizens Advice, 2004a: 12). This forces clients to resort to conditional fees, 'no-win, no-fee', arrangements, which, as this research illustrates, deters many. Although the 2001 Review of ETs was concerned about lack of regulation in the profit-oriented employment advice market (Leggatt, 2001, Part II, para. 8), expansion of the conditional fees system was a deliberate policy objective in so-called 'Access to Justice' legislation (Lord Chancellor's Department, 1998: 24).

New legislative hurdles to statutory individual employment rights

The majority of workers with an individual problem at work do not apply to an ET. The 1998 Workplace Employee Relations Survey found only one in ten

employee dismissals went to an ET (Cully et al. 1999: 129). Genn (1999) calculated that between 1992 and 1997, only 18 per cent of employment problems with potential legal redress reached tribunal application. Only 2 per cent of those with any problem at work did so in the Unrepresented Worker survey. The CAB reports large numbers of aggrieved workers who, even when advised of their rights, fail to take them further (Citizens Advice 2001a, 2001b).

This trend is likely to increase. In 2001, new regulations deterred workers from making tribunal applications by exponentially increasing the maximum court cost a tribunal could impose on either side of a case from £500 to £10,000 (Employment Tribunal Regulations 2001, details Pollert 2005, 2007). The criteria for imposing costs were also broadened from behaving 'vexatiously, abusively, disruptively or otherwise unreasonably' to 'the bringing or conducting of the proceedings by a party (being) misconceived' – the vague meaning of which opened a vast new agenda for the tribunal to adjudicate. These new rules were highly intimidating to workers, promoting 'an explosive increase in the making of costs threats to applicants – and even to CABx representing them – by employers' lawyers' (Citizens Advice, 2004b: 3). Raising the hurdles still further, the government passed the 2002 Employment Act, which, from October 2004, barred application to an ET and/or reduced compensation, unless statutory workplace Dispute Resolution and Tribunal regulations were fulfilled, beginning with submission of an official form, setting out in writing the grievance, sending it to the employer and then waiting for 28 days for a response which must include a meeting, and the chance for an appeal. The legislation also required a three-stage dismissal and disciplinary procedure from employers of a written warning, a meeting and an appeal stage (for detailed critique, including the reversal of previous case-law on automatic unfair dismissal, Hepple and Morris, 2002, Colling 2004, Pollert, 2005). The Tribunal Regulations (2004) extended the costs liability to advisors, heightening the intimidatory climate yet further.

By 2006, it appeared that the 2004 Disputes Resolution Regulations had deterred individual workers from applying to ETs. From 2004-2005, there was

a decrease in the number of single claims received from just over 55,000 to fewer than 52,000 in 2005-2006, 'suggesting an underling downward trend' (ETS, 2006: 8). However, a DTI-commissioned review of the effects of the regulations suggested that they had not improved internal workplace resolution, as intended, and recommended repeal of the legislation (DTI, 2007). This highlights all the more the need for 'evidence-based' research on the types of practices which occur during individual disputes at work, to which this research makes a contribution.

Research method

Access to CAB clients with workplace difficulties depended on the co-operation of Citizens Advice nationally and on local bureaux. The first stage of research was contacting CAB managers in the Midlands, London and the South East and the North of England in 2004 and interviewing them about their experience of providing advice on employment problems. They were asked if they would assist the research by asking their advisors to distribute to clients with employment problems a brief letter explaining the project and a freepost return envelope in which they could provide a contact telephone number if they were willing to be interviewed. Thirty CABx agreed to co-operate. To be comparable to the broader survey of 500 workers with a problem at work, workers had to be non-unionised and on low earnings (at or below the median in the year of interview) – a criterion easily met, since most CABx clients are non-unionised, low-paid workers. The normal guarantees of anonymity were given, together with the offer of a small £10 gift voucher. Although the response rate was initially slow, a total of 50 people were interviewed – 35 women and 15 men⁷, with a mixture of ages. Their regional representation was spread between 13 from the North (primarily Newcastle, Doncaster, Sunderland, Scarborough and Leeds), 20 from London and the

⁷ The higher percentage of women in this sample is similar to the pattern in the survey of 501 unrepresented workers, in which 61 per cent of the sample were women, compared with the 48 per cent female representation in the labour force. In view of the low-pay threshold of the latter (below the median), the over-representation of women is predictable. The CABx do not, however, generally report a higher percentage of female than male clients with employment problems.

South East (mainly Yarmouth and Norfolk) and 17 from the Midlands (the West-Midlands conurbation of Birmingham, Dudley and Wolverhampton, Worcester, and towns in Staffordshire, such as Leek and Stoke-on-Trent).

The interviewees were asked a series of semi-structured questions about the problems experienced, how they obtained help, the process of seeking redress and the results, if any. Where possible, they were also asked their opinion on the quality of advice obtained, their views on trade unions, whether they felt the problem might encourage them to join one, and wider civic engagement and political views. Interviews lasted from between half an hour to over an hour, and were tape-recorded after permission was sought. The names of all respondents, workplaces and companies have been changed. An ethical issue arose when some respondents mistook the researcher for advisor. In these circumstances, the TUC Know Your Rights leaflets, as well as Acas, were mentioned, but the distinction between research and advice was emphasised. Nevertheless, we explained that the project was endorsed by Citizens Advice, as a contribution to its social policy development.

While telephone interviews do not benefit from the visual interaction of face-to-face interviews, they can, nevertheless, establish rapport. The most striking quality of the interviews was the difficulty in following a semi-structured sequence in the context of stressful recall, since the problems and experiences rarely followed a chronological narrative, but jumped between painful moments, past and present, in often jumbled ways. Events were highly personalised for most, so that workplace structures and processes were expressed by people's names and the interviewer had to reconstruct from idiosyncratic accounts a comprehensible story. This process in itself told something of the difficulties faced by unsupported, unorganised workers: in complex organisational settings with workplace problems, there may be an overwhelming sense of disorientation.

The unorganised worker, problems at work and the CAB.

The Unrepresented Worker Survey of 500 lower paid, non-unionised workers found that 86 per cent attempted some form of action and the majority (69 per cent) tried to solve matters with an immediate manager and/or a senior manager (43 cent) (Pollert, 2006). Only a minority sought outside help – 9 per cent went to a CAB and 6 per cent approached a trade union. Rather more resorted to a CAB with a problem that they thought infringed their rights (14 per cent) and with problems with pay, dismissal, redundancy, discrimination or working hours (between 15 and 20 per cent).

The support process offered by CABx advisors on employment problems follows a standard format. Case notes are taken, and the client is always asked if he or she belongs to a trade union and if so, is referred back to it. However, while most clients are not union members, some are: those who cannot obtain union help on individual disputes because they have recently joined (usually with less than six month's membership) return to the CAB, while others sometimes return if they find union support inadequate. However, if the CAB is publicly funded by the CLS, the rules proscribe supporting such a worker. Workers are routinely referred to the Acas help-line for individual advice – although interviews reveal that the helpline also refers them back again. Although some CABx have a specialist employment advisor, these are rare and becoming rarer. Most advisors are generalists and with complex cases, attempt to refer clients to specialists. In some areas, CAB telephone help-lines have been set up; in others, such as the West Midlands, there is a fairly dense network of voluntary sector advisors and employment specialists who cooperate with each other and the CAB. There is also a specialist employment advice centre in the West Midlands to which non-specialists refer their clients. In other areas resources are very stretched and workers have to travel miles in order to get advice. The general approach of the CAB is to 'empower' individuals to deal with problems by providing information, helping to write letters and referring them to experts (Abbott, 1998). Increasingly, however, workers require direct support, intervention and representation and only in bureaux with sufficient resources can this be offered.

The CABx monitor the types of employment problems encountered with case notes, from which monthly reports are compiled and sent to Citizens Advice central office. Although selections submitted depend on the prioritisation of each bureau, the collated information provides data on CAB location and clients' gender, age, race, workplace and problems, which allows Citizens Advice to deduce a broad national picture of employment problems dealt with (Table 1).

Table 1. Citizens Advice Bureaux employment problems in 2004/05

Employment Issues	Total	Percentage
Employment debts	12,637	3 per cent
Discrimination	22,805	5 per cent
Unemployment schemes	4,836	1 per cent
Self-employment business	12,014	3 per cent
Terms & conditions	173,722	40 per cent
Dismissal	83,078	19 per cent
Redundancy	40,522	9 per cent
Other employment issues	88,029	20 per cent
All Employment Issues	437,642	100 per cent

Source: Citizens Advice Social Policy Organiser, 2005.

The research approach here differs from the CAB's own publications on employment problems (e.g. Citizens Advice, 1997, 2000, 2001c), which are thematically lead by breaches of employment rights, although they too illustrate the types of difficulties and abuses that clients experience. The purpose of the present study is to probe problems as lived experience and focus on the *process* of attempted resolution. This depicts the workers themselves, the employers' behaviour and the interventions of the CAB and other support-resources, where relevant.

The majority of workers came from industries and occupations similar to those reported by Citizens Advice reports (e.g. Citizens Advice, 2000), the CAB advisors interviewed and the DTI (2006b). However, employment extended beyond these well-known sectors to large organisations in both the public and private sector, including multinational companies. The problems reported ranged from summary dismissal, forced redundancy and resignation, prolonged bullying and victimisation, unpaid wages, no paid holidays, sexual and racial harassment and discrimination (the former often pregnancy discrimination), dismissal during sickness and injury caused at work, unlawful contract change and dismissal during takeover. Some problems were brutally brief, others dragged on without resolution for over a year. Most people were interviewed only once, although those with ongoing problems were re-contacted a year later.

The experiences are explored along a spectrum from crude, brutally straightforward employer abuse of rights to more protracted and complex problems, which were either ongoing at the time of interview, or eventually led to a conclusion. They are merely indicative of a range of processes and experiences, and for reasons of space, cannot do justice to all 50 interviewed. Twenty eight of these, a broadly representative sample, are reported here and summarised (see Table 2, Appendix for summary).

Other research has found that in general, workers with employment problems, whatever their source of advice and route to resolution, do not find satisfactory outcomes. Genn (1999) found that 52 per cent of respondents

with employment problems had no agreement or formal resolution and just under half of respondents to a West Midlands survey in 2002 of advice-line users resolved their problem (Russell and Evers, 2002: 2). The author's 2004 Unrepresented Worker Survey found just 47 per cent of those who took action to solve their problem had any kind of resolution (Pollert, 2006). These findings are in line with the many unresolved problems and low level of financial settlements in the study of those who approached the CAB described below, although being a small sample for qualitative research, the aim is not to give figures, but insight into the processes involved.

Crude employment abuse

The Sack

Interviews with CABx employment specialists indicated that in a number of regions, there were notorious, serial employer-offenders, well known to the local bureau and ET service. There were also, however, examples from unexpected quarters, such as a Labour Club. A frequent pattern was generally poor employment practice, bullying, followed by dismissal or resignation, usually to avoid providing employment rights, such as the year's service to qualify for unfair dismissal protection, the minimum wage and pregnancy rights. For some, unfair dismissal, constructive unfair dismissal and/or discrimination would have been the potential legal redress, although few actually reached a tribunal application, while for others, less than a year's service left them exposed to dismissal with no protection.

Marge was 53 years old, single, and had worked for 20 years as a cleaner at a Labour Club earning £5.30 per hour for a 14 hour-week. One day, the club treasurer accused her of stealing from a lottery machine box - for which she had no key - and without warning, sacked her in front of others in the bar. She sought help from the CAB, who believed she had a strong case for automatic unfair dismissal on procedural grounds, but at the time of interview she still did not know the outcome, was now out of work and shocked. She thought a Labour Club, and the Labour Party, would 'look after people'. While she

'agreed with unions', it never occurred to her a cleaner could belong to a union. Her arbitrary treatment, and the accusation of 'stealing' is a frequent theme in other instances of dismissal.

Tina was an 18 year-old hair-stylist working a 35-hour week for a 51 year-old salon owner. She had no holiday pay or lunch breaks and although she should have earned £80 per week, she was paid as a 'helper' at £1.57 per hour - less than half the national minimum wage for her age.⁸ On discovering the minimum wage and asking for a rise, was told it was 'up to her accountant'. In addition, the salon-owner, resenting *Tina* attracting her clients, began harassing her by forcing her to manage the salon alone while she went on holiday, making her return to work while ill and undermining her in front of customers. *Tina* was then sacked just as she was about to complete her first year.

Tina's mother and friends all advised her to contact the CAB and it successfully obtained unpaid wages and holiday-pay under unlawful dismissal⁹ and *Tina* was happy with its service. When asked if she thought a union would have helped her, she replied that she knew 'nothing about that'. She now worked in a large retail chain store, and was happier here since she 'knew more about her rights' and there were 'people to talk to, a committee and elected departmental reps'¹⁰.

Dismissal occurred in two cases of pregnancy.¹¹ *Becky* was in her twenties and had worked full-time for seven months in a small off-licence shop belonging to a large retail chain staffed by two sales workers and a female boss. She came, accompanied by her fiancée, to claim two weeks' unpaid

⁸ The UK National Minimum Wage for adults over 21 was: £4.84 in 2004, £4.50 in 2003, £4.20 in 2002 and £4.10 in 2001. For young workers (18-21) it was £4.10 in 2004, £3.80 in 2003, £3.60 in 2002 and £3.50 in 2001. in 2004 it was £3.00 for 16-17 year olds.

⁹ Wrongful dismissal can be claimed by those with less than a year's service if there is a breach of contract or they are dismissed without proper notice. It transpired that this salon was now notorious for routinely sacking workers before they reached one year's service, and from 2003, the local college allegedly banned it as a work-experience location.

¹⁰ Subsequent enquiries to the shop-workers' union, USDAW, however, verified that this was a non-union company, with its own in-house staff association.

¹¹ Dismissal for pregnancy or maternity leave is unlawful under the Sex Discrimination Act 1975 and the Employment Rights Act 1996 (section 99). See Citizens Advice 2001c.

wages, but her boss retorted that there was money missing from the till and that she would not be paid until this was found. Her boyfriend then asked if it was in Becky's contract that if money went missing she should not be paid, to which the boss replied that she didn't have a contract. When he stated she should have one, she replied, 'So! You've been taking advice have you? Well, I think we should call it a day' and sacked her. Becky explained only later that as soon as her pregnancy became visible, she was harassed, not given a chair when she needed to sit, told she was 'not pulling her weight' and asked to carry heavy crates at twelve weeks pregnancy – 'my midwife went mad!'. The evidence suggested that she was provoked and sacked, to avoid payment for maternity leave.

On dismissal, Becky rang several CABx, and after some difficulty went to one at some distance. Once here, she was satisfied with the service, and advised to write a letter to claim the unpaid wages and a week's pay in lieu of notice. Becky talked to her fiancée and grandparents - 'it lets my anger out. I think bosses get away with a lot and I think it's disgusting'. When asked if she might join a union, she felt she might, if 'one were available', mentioning that her fiancée was 'quite involved' with them.

Christine had worked part-time for almost a year as a waitress and cook at a small holiday camp. When she informed her manager that she was pregnant, she was told to take two weeks off, but when she returned, she found that her P45 end of contract form was ready, and the manager nowhere to be seen. Her friend had been in a similar situation and advised her to go to a CAB, who prepared an ET application for unfair dismissal and sex discrimination. However, the hearing was twice postponed, and at nine months pregnancy felt she could no longer continue and accepted a £2000 settlement. Although 'happy' with the advice service, she had hoped for between £500 and £1000, was left with no job or support, lost her home and now lived on income support. There is thus evidence that workers accept paltry remedy and are grateful for *any* help, however inadequate.

Several workers were sacked for asking for their rights.

Tony, 24 years old, had worked in a small animal shelter of twenty employees for over two years and was unaware of the fact that he was earning below the minimum wage. When he raised this, he was sacked, like *Becky*, on a fabricated charge - accused of smoking drugs. Several others had also been summarily sacked during his employment, and colleagues were prepared to vouch for him. 'So stressed out' he immediately went to the CAB, but, the wait was long, there was no employment specialist, and he saw different advisors who failed to pass on his case between themselves. However, the CAB successfully challenged the unfair dismissal, *Tony* was re-engaged, but continued to be 'laughed and sniggered at'. He finally walked out after provocation, and was too angry to return. Yet, on returning to the CAB, he was told 'not to bother with a constructive dismissal case', because this was too hard to prove since it was 'your word against theirs' – a frequent refrain. The reluctance of advisors to pursue constructive dismissal cases, observed in other interviews, may indicate a decreasing willingness to take on more complex cases, arguably associated with the decline in employment specialists and the intimidation caused by broadening the liability to court-costs to advisors, following the 2004 Tribunal Regulations.

Tony was less interested in financial compensation (he had qualms about taking money from a charity), than in righting wrongs, and exposing bad practice. He wanted the animal shelter to be investigated.¹² Asked about whether a union might have helped, he replied, 'I would *love* to join a union, but don't know the first thing about them.'

Bill was a 30-year old lorry driver working for a family-run firm in Yorkshire and was sacked after two years when he finally 'plucked up courage to complain' that he was only paid for 40 hours per week, when he worked between 50 and 60 hours. Contacting the CAB was again difficult: it took two weeks before he saw an employment specialist, and although the bureau immediately informed the employer that the dismissal was illegal, *Bill* was 'a

¹² As Citizens Advice (2001b) argues in its recommendation for a 'Fair Employment Commission'.

bit upset and anxious' with lack of continuity of advisors, as in Tom's case, and the fact that the bureau lacked the resources to represent clients at tribunals. He lacked the funding for a private solicitor, which he would have preferred, but it was only because a friend worked for a law firm that he was able to pursue a case. He finally went through an ET, which ruled in his favour and he was awarded £1000 for loss of earnings.

Asked about his experience of support, Bill respected the CAB as a voluntary organisation, but felt that while it did 'a wonderful job, the government should give enough funding so it can go through with someone from day one'. He had found Acas conciliation 'a pain in the proverbial' and was concerned that the mediator only sought information on his hours from his employer and not from a joint meeting with him and was unhappy because he felt the mediator did not believe him. As for a union, he felt it was not appropriate for a small company – 'small companies prefer to get rid of them'. Like others in this study, he was glad to get another job, even though it took him two months to find one and a further five to find work with similar pay, which was only the minimum wage.

A similar fate met *Iqbal*, who had worked for over a year at a small garment manufacturer on an embroidery machine, earned just above the minimum wage and had never had a paid holiday. When he asked for his entitlement, he was instantly dismissed as a 'trouble-maker'. He did not, however, take immediate action, since he had to find other work, and could not pursue another job and his rights at the same time. When he finally approached the CAB two months later, he found problems with no after-work opening hours, long waits for an advisor, and little help on proving his case, since he could not find all his pay-slips. Although attempting compensation for unfair dismissal, he accepted a £350 settlement. Like Bill, he was worried about joining a union and felt that if he did, he would not find a job.

Unpaid wages

Unpaid wages were reported by two employees from security companies. *Jacque*, a French speaker from Burundi, found work in a security company in

the Midlands, having been unemployed for seven months. After two weeks he was paid only £100 instead of £380 owing and a week later, he left along with three others who decided this was a 'rubbish company'. His supervisor directed him to Acas for advice, who recommended he contact the CAB, where an advisor entered an ET application for unlawful deduction of wages. No respondent appeared at the hearing and although he won his case and was awarded £289, non-enforcement is a growing problem and the employer refused to pay. Two months later, Jacques was still waiting to apply to a County Court for enforcement, for which he had to find £30 to apply.¹³ His dire financial circumstance was conveyed by his asking me if I could write to the County Court or help him with this cost. Meanwhile, he had found another part-time job, earning £5.10 per hour in another security company, where he was again finding life difficult, sometimes called in for work, sometimes not. Yet, in spite of his zero redress and continuing unfair treatment, like others he was grateful for the CAB help he received. It was the only support in an otherwise isolated life, in which those he knew were mainly unemployed. Jacques had no wider civic social engagement: he had never voted in any election, had no contact with trade unions or a community group or club, had never signed a petition or joined a meeting or demonstration.

Graham, a 20 year-old Nigerian student, had been in the UK for three years and was more confident, assertive and integrated into a university circle of friends. He worked part-time as receptionist in a large security company operating at major sports stadiums around London. After eight months in the job, his wages (£5 per hour) stopped – a problem experienced by others. Communication with management comprised monthly meetings in which the Director spoke to workers, and otherwise, if there was a problem, there was a phone where one could leave a message, and a manager would come 'to sort it out'. In spite of repeated attempts to communicate the unpaid wages by this means, there was either no response, or a vague promise that they would be paid. When Graham had still not been paid for three months, after numerous complaints, he finally left and approached three different CABs.

¹³ Since he was now employed again he was not entitled to a free application form.

He declared all these 'a waste of time' claiming that all they offered was discouragement, telling him that in Britain it was extremely easy for employers not to pay unpaid wages. He was given no advice on his rights and simply encouraged to find another job. Other workers, he reported, had also simply left for other jobs, with their wages unpaid. He, however, ascertained his legal rights from the internet and the library and decided to find a no-win, no-fee solicitor. However, his satisfaction with the lawyer was no better. After Graham sent a grievance letter and a month's non-response, he filed an ET application, but after four months of no further news from the solicitor, he ended ringing him every two weeks on progress, received no reports and felt he was doing most of the solicitor's work, the latter having suggested he track the employer by finding his car-registration number, which he duly did. He too received nothing, and was grateful to find another job¹⁴.

Graham's reaction to his experience, as well as that of his law student friends, was cynicism about British employment law: 'It makes me wonder at UK law'. He was angrier about this than with the employer, or the CAB. When I offered him the £10 voucher for the interview, he quipped that a voucher to the House of Commons would be the best, where he could tell them what he thought. He now worked in a public library, receiving the minimum wage, but at least paid regularly.

The two cases of unpaid wages demonstrated the same result of no redress, although different reactions: one defeated and isolated, another angry and combative. One was grateful for any help, including the CAB, the other highly critical of both the CAB and a solicitor. Yet both ended up grateful for any low-paid work they could get, with one already experiencing new problems as he started.

¹⁴ Dissatisfaction with no-win, no-fee solicitors, is a common theme in this study, which endorses the concerns of the Leggatt report noted above (Leggatt, 2001, Part II, para. 8).

Sudden Redundancy

Tom, a 28 year old building plasterer in Stoke-on-Trent, had worked for two years in a small company of eight men and was suddenly redundant in April 2004: 'One minute you've got a job, next minute you get a phone call and letter through the post that you've got no job. You can't do that, it's not right'. He went straight to a CAB, but although he completed an application for an unfair dismissal and deduction of wages ET claim, found the company had been liquidated. The CAB tried to find out who the liquidator was, helped him write letters, but got no response. His only option was to apply to National Insurance funds for redundancy pay and a week's wages,¹⁵ which he only received six months after being sacked. He tried to obtain £1000, but received £700 – feeling this was 'better than a smack in the mouth'.

He remained unemployed for this period, on anti-depressants and found it impossible to both pursue his claim and find another job:

'You can't keep taking time off, or they say, "he's only been here five minutes and he's having time off". It's like a Catch 22 situation – you either forget about it and carry on with me life, or you won't let him get away with it. But no, I'm not letting him get away with it because he owes me.'

In fact, the liquidated company did 'get away with it', since his compensation was funded by the state, not the company. Asked whether those who had not lost their jobs were worried, he replied – 'They just carry on - you just go with the flow, don't you'.

He himself had found the CAB 'excellent', but as he admitted, he was now sacked and had the time to visit the office. Interviewed in late autumn 2004, he hoped to find work again in the New Year. A strong sense of injustice and anger was combined with depression. Tom wanted a union:

(A union) would stop them doing this. You can't mess people's lives up. One minute you've got a life, and then you go from that, from having

¹⁵ Under the 1996 Employment Rights Act, a claim for redundancy from National Insurance fund can be made if a company is insolvent. <http://www.insolvency.gov.uk/pdfs/rp1april2003.pdf>.

money in your pocket every week, down to dole, you've got no job...I've worked all the time, weekends...I've had to go to the doctors, it's really taken me back. I'm on anti-depressants, I'm really bad, I worry about my flat, what am I going to do, I can't pay my girlfriend any money for my little boy, I've got no money. I get £100 a fortnight. He's 7 years old, you know what kids are like, it's hard...'

When pressed whether he might join a union in his next job, a complete lack of information was apparent: he knew nothing about them, and when asked how he might find out about joining, replied, 'Acas, I suppose'. The lack of representation is apparent both in his own case of injustice, and among his friends, who fatalistically continued with this employer.

Abrupt redundancy also occurred after management change, or transfer of undertakings cases. Two examples in large pub chains demonstrate that redundancy without warning is not confined to small enterprises but can occur in large organisations, with collusion at senior levels.¹⁶ For several years, *Sheila* had a part-time 26 hours per week job in a Staffordshire pub and was sacked overnight after its manager left and was replaced next day by another. Although she was seen immediately at her local CAB and 'could not fault them', along with other casual staff, she was paid cash-in-hand and obtained no compensation. *Jane* had worked as a part-time barmaid in a Worcester pub for eleven years, and arrived early one morning to find no work for her and a new Brewery tenant. He disclaimed all responsibility for her, by declaring he was not 'really a tenant, but just looking after the place', and 'did not employ people, but just had people to "help him out" on £4 an hour'. When she telephoned the brewery area manager, he responded that it was 'nothing to do with him and he couldn't do anything about it'.

Jane could not pay for a solicitor, visited her local CAB and was shocked that the general advisor did not even have a computer. She was in great difficulties for proof of hours or time worked, since, although she had a P45

¹⁶ Restaurants and pubs were strongly represented even in this small survey - out of 50 interviews, 9 were in the hotel and catering sector (including two clubs), 5 of which were unfair dismissal cases

leaving certificate, had been paid cash-in-hand for long periods and had no tax or National Insurance records. She completed an ET application form with a friend with tribunal experience, and provides a further example where personal networks served her better than the CAB, which was unhelpful. Advice from Acas, which telephoned a month later, provided 'no more information on my rights and was not much help' either. Ensuing events involved interrupted and delayed employment hearings while the Chair attempted to clarify who was liable under transfer of undertakings law, while the brewery and previous and new tenant evaded responsibility by providing information too late for a hearing, or demanding more time. Jane had no representation, although her hopes were originally raised at the first hearing, where the Chair felt she had a 'very strong case and should seek compensation on redundancy, time out of work and loss of earnings in a new job'. This would amount to between £2,500 and £3,000, but the brewery's solicitor eventually offered her £100 in settlement, followed with a warning that she would have to pay costs if her case failed. Demoralised, intimidated and forced to seek evidence of her employment at the tax office, she found her case too stressful to pursue. Jane remained unemployed for 6 months, but found a new job via a friend in a local school. At the time of interview there had not yet been an out-of-court settlement, but she would have been unable to disclose the amount in any case, because of a gagging clause.

The responses to the CAB service in these cases of crude illegality among primarily small workplaces and firms were twofold. Where access to the CAB was easy (which was the case for those already sacked, since they had time during the day) and a straightforward settlement reached, they were satisfied with their help, although often disappointed in the outcome. However, others were dissatisfied with poor access, discontinuity in advice and lack of expertise with anything beyond straightforward unfair dismissal or unlawful deduction of wages, such as constructive dismissal, which was avoided. Several workers found the CAB advice sufficient only when they happened to have friends or family who were knowledgeable in employment law, or could pursue information themselves. However satisfaction with no-win, no-fee

solicitors was no better. Here, lack of interest, rather than of expertise, was the primary objection.

Complex and prolonged problems

Bullying in large companies in the hospitality sector

So far, apart from two pub-chain workers, the examples of breach of employment rights occurred in the small firm sector. In more complex cases, large companies in the hospitality sector provided several further cases of harassment, including female oppression by male managers and blatant racial discrimination, where it might be expected that the unorganised facing bad lower-level management treatment might gain the protection of a developed HR department. However, this proved not to be the case and the process of senior managers closing ranks with lower ones calls into question government confidence in 'vulnerability' being reduced by the existence of HR departments (DTI, 2006b).

Women in administrative posts with responsibility, but not status, were particularly vulnerable to male management intimidation, and BME men in 'front-of house' jobs atypical for ethnic minorities, who are often confined to the invisible 'back-of-house' jobs, were typical. While covert gender oppression occurred as part of bad practice, making discrimination almost impossible to isolate, racial discrimination was open and tolerated.

Pat, a 25 year-old student and bar-training manager, was the only woman amongst six other pub managers in a large Leeds pub, employing 30 workers, mainly students. Although officially working part-time, as an isolated senior woman, she was bullied into excessive hours and suffered verbal and physical harassment by the pub manager, who was openly discriminatory in his recruitment practice, employing nobody over 25 years old, 'never employing fat people', flaunting his employment law breaches and bullying women with bravado. He gave no breaks in eight-hour working days, forced

people into split-shifts (finishing late at night and starting early next morning) and hit people. He once hit somebody over the head with a ladle and hit Pat once, for being allegedly late, laughed that it was a joke and bragged – ‘that’s another court case against me’. In spite of this, the turnover was low: people either left after the first couple of weeks, or put up with it. The pay was ‘not bad for Leeds’: most earned just above the minimum wage and she had a bonus as trainer.

However, Pat finally decided she had ‘had enough’ after being refused a break, took out a grievance, walked out, and approached a CAB. This was a rare case in which a CAB encouraged a constructive dismissal ET application, arguably because the respondent was notorious to the ET office. Pat was helped to follow the correct statutory procedure, provided the grievance in writing and attended the formal grievance meeting with the Human Resource (HR) Manager and her ex-boss. The latter denied the long shifts, but admitted to hitting her, repeating it was a joke. The meeting was held on a Saturday afternoon, her statutory right to be accompanied (1999 Employment Relations Act) was complied with, but since Pat’s colleagues were absent, provided her with no support since she was given a list of those available on the day and told to choose from this. With no alternative, she agreed and her manager picked a ‘safe’ supervisor. The HR manager had followed the letter but not the spirit of the law.

The meeting was inconclusive and we re-contacted her a year later to establish the outcome of the hearing. She apologetically confessed ‘I could not go through with it’; she had withdrawn her case after the ET hearing, in which her boss replied to all allegations that he ‘couldn’t remember the incident’. Although the CAB encouraged her to proceed, she found the situation too intimidating and stressful to pursue. Later, although Pat had heard that the manager had left, no case was ever held against him, and she received no compensation. The HR department had avoided the cost and embarrassment of ‘justice seen to be done’.

Pat appreciated the support of the non-specialist CAB advisor, but felt it adequate only because she herself was confident and knowledgeable. Her boss was obviously used to going to other tribunals and usually 'got away with it' at work because 'all the other managers were men, and were scared'. She cited other students who were less assertive: one had been put on shifts, which prevented her from attending lectures, but she could not afford to quit. Pat's motivation to act and to co-operate with the research was altruistic – she had a strong sense of injustice and a desire to push others into challenging abuse. But collective action never took since students 'would rather not have the bother of a confrontation'.

A similar account of bullying was given by *Penny*, a 33 year-old 'Fast Food Senior Team Leader' in a large motorway service station chain. A single parent, she worked a 70-80 hour week but was proud of 'working her way up' after four years, knew her job 'inside-out', had trained her staff and won their respect. The bully was a young, new catering manager who was inexperienced, unqualified and, as a friend of the site director, made other male managers 'very wary of him'. While sexually and verbally harassing female staff, he targeted Penny by publicly undermining and humiliating her and following her around. She finally 'let rip', told him 'where to stick his job' and informed the site director she could not continue working with him. The latter told her to 'calm down' and return to work when she had 'had time to think about it'. Worn down, she walked out and was signed off sick for two weeks by her doctor: 'I had worked so many hours, I was so tired, I wasn't in the right state of mind to do anything'.

On her return, the site director, whom she was meant to see to resolve her problem, was on holiday: 'I was faced with the idiot who had caused all the trouble in the first place!' Meanwhile, he had taken advantage of her absence, downgraded her post and responsibilities and changed her to 3-hour shifts: 'There was no way I could travel half an hour there and back for 3 hours'. She 'lost it again' and rang the HR manager, who patronised her and sent her home. She 'went back on the sick and eventually never went back again',

although her colleagues 'begged her to stay'. Once more, HR failed to challenge bad practice.

Had she possessed the money, she would have employed a solicitor and 'gone the whole way' in pursuit of constructive dismissal. Her CAB advisor, a generalist, deterred her with the familiar refrain that it was 'his word against yours'. Like Tony, and other 'flexible workers, she received nothing and was glad of another job. The human cost was not quantifiable: 'It broke my heart. It cracked me up – because I loved my unit. I'd got excellent staff.' She remained on anti-depressants for 3 months.

Asked whether the experience made her think a trade union might help, she was negative. A union had allegedly visited the site, but 'although it was meant to remain all day, stayed for only an hour'. She felt if it 'could not be bothered to turn up' it would be of little help if there were a problem. The truth of this version of events cannot be verified, since management may have blocked the visit. In addition, however, she felt unions could not intervene in this 'type of workplace politics'.

Racist harassment was experienced by two male respondents in this sector and in each case, HR patronised, humoured or even threatened the victim and failed to stop it. *Alpay* was a Turkish worker in a leading luxury hotel chain with a full-time 'front of house' post of Hospitality Services Colleague – making guests comfortable, organising meeting rooms, giving advice and information on the hotel. Five months after starting his job another colleague called him a 'Turkish bastard', but when he complained to his Hospitality manager, the latter backed the racist (his personal friend) and told Alpay to deny that this had happened and to 'shut up' or he would 'put him in a piece of shit'. Alpay reported this to HR, who did nothing but put him on sick leave for two weeks to 'calm down'. He then faced further racist insults from the kitchen staff and returned to HR, who again told him to calm down, that they 'would take care of it'. He tried to be moved to another department, but was refused and sent home twice. On the third occasion, he contacted the General Director of HR for the whole chain, who appeared very sympathetic and

helpful, took all the information, said she would resolve it and explained that Alpay would need to use the grievance procedure. But when the a formal meeting was finally convened, the General Director of HR simply told him that he was a good employee but he did not accept there was a formal grievance.

According to Alpay, there were others who also suffered racial discrimination at this hotel, but of a more subtle type, such as being put on the most inconvenient shifts. Their response was usually to leave. He, however, felt he did not have this alternative and persisted. On his resuming work, the same racism continued. He was offered laundry work to avoid the racist colleague, which he refused, since he had no experience or training, and because he wished to retain his job. Now suffering symptoms of stress, he contacted the CAB after work, and was fortunate to find an employment specialist who, after three interviews, completed an ET application for racial discrimination. At the time of the research interview, Alpay had been signed off work by his doctor, and was waiting for a response from the company to a questionnaire on why no action had been taken by management to deal with racism. He had been referred to a free solicitor, the CAB having a contract with the CLS and although he could not afford to be represented at the planned tribunal hearing, was optimistic. He valued the help of the CAB, and was confident in the solicitor, who claimed to be familiar with many tribunal hearings from this hotel in the city.

We contacted Alpay over a year later, to find out what had happened at the tribunal. It proved that his optimism had been premature. He reported that after the hearing he had been moved to another department, but the cycle of racial harassment and stress continued. He had a small compensation payment for the initial episode – apparently around £100. The company had evidently neutralised this case – along with the others it allegedly faced – and failed to counter the racism. Alpay was by now reacting to provocation at an individual level – losing his temper, shouting and likely to face disciplinary charges himself. The victim of racism was now being metamorphosed into a ‘difficult’ employee.

Lawrence was a professional wine waiter in a London hotel – the only black worker in this ‘front of house’ work. His story was similar to Alpay’s:

A member of staff (a head waiter) made very racist comments to me. I told the line manager and he did not do anything about it. I wanted an apology. Then I went to the personnel manager – but he was not prepared to take any actions. He told me to consider my position because I had not been there very long. Then they tried to find fault with my work – which they had never done before.

Unlike Alpay, Lawrence, felt he had to leave, since management took no action, and unlike others, he did not use a CAB and paid for a solicitor (not a no-win, no-fee solicitor) – ‘the money worried me. But it didn’t stop me. I thought I had the right to do so’. He made a tribunal application for racial discrimination and after Acas conciliation obtained an out-of-court settlement which he felt was ‘satisfactory’. Asked whether he felt a union would have helped, he felt that it would in terms of advice and representation: ‘I would want to become a trade union member in the future if possible’.

Harassment in major multinational companies with HR departments

Vulnerability occurred in large organisations in other sectors, including multinationals. What has already emerged is that the politics of victimisation are nearly always confined to the workplace and departmental levels and higher-level managers proved they were unwilling to confront their local-level managers. While some HR departments may be upholders of good practice, in this study, we found that complex and prolonged problems were instigated at departmental level and perpetuated by senior-management collusion. Not only did HR not challenge poor practice, in supporting lower managers, it legitimised their actions and further isolated and weakened the vulnerable worker.

Chitra was a middle-aged Indian employee, the only woman among 80 staff in the information technology (IT) branch of a well-known multinational employment recruitment company. She had worked for several years in a

responsible position, administering IT orders and reporting to two managers, the IT director and the IT Operations manager. As far as she knew, everyone 'was very happy' with her work and she was told she was 'so good that she did not need an appraisal' – something she did not query. But a bullying manager protected by a collusive HR department transformed her life.

In 2003 she had raised the issue of an annual salary increase, but had been told to wait until later that summer. A year later, she discovered that all the other staff was awarded a 3½ per cent pay rise, except for her. She assumed that she would get a separate increase but on receiving a general letter explaining different ratings and information on a bonus, found she was not offered one. The trauma began when the Operations manager, returning from holiday in September 2004, rang her and casually asked her what was in her letter and what she thought of it. She replied she found this strange, since he had sent it, and when he asked her if she wanted to talk about it, she declined, because she felt there was nothing to say. He then asked if she wanted to go to the pub for lunch to talk about it,

'and then I really got scared, because I had seen that in the past, whenever he had taken anyone to the pub, he wanted to sack them'.

He had always quipped that there were two ways to get rid of people: the 'formal and informal' – and this was the latter. However, since Chitra was confident of her work-record, she decided that her case must be different, and went along to the pub. Here, the Operations manager again asked her what she thought about the letter, and she conceded she was surprised she had not got the bonus. He then retorted that the IT director was not happy with her work. She was 'totally amazed', and said that 'nothing had ever been said to her'. She then asked what she should do to correct any problem and was told: 'I think you should leave'. She just repeated to him how shocked she was and that she just 'didn't know what to do', but recovering herself, asked what would happen if she did not leave. He replied that he would make her life miserable and when asked how, told they would give her so many projects she would not be able to cope. She then started to cry and again asked what she should do. His reply was that he wanted her to resign, and that he was

not sacking her. She agreed, but asked if they could give her some time, such as a year. She was told to resign within two weeks, that she would get a month's salary and any holiday pay owing. She asked: 'what am I going to do? My husband is working abroad and I haven't got a job'. He replied they would help her find one. She was also ordered to tell others that she was resigning voluntarily.

Chitra heard anecdotally that her managers wished to promote a young woman to her job, but had no proof. She also discovered that if she resigned she would lose her shares in the company, which should amount to a bonus after 5 years, but would be entitled to them if she were dismissed. The Operations manager, still avoiding an unfair dismissal situation, assured her that they would make this amount up in her salary if she resigned, so she asked him why did they not make her redundant. He refused and then accused of 'talking to other workers' and of 'telling bad stories'. She explained that she had not, pointing out that if other workers saw somebody who claimed to be voluntarily resigning crying, they must wonder what was going on.

Our research interview took place four months after these events and the stress had forced her onto sick leave and anti-depressants. One of her male colleagues advised her to go to the HR department, and not to resign. Branch-level HR, ignorant of the history, assumed she was resigning because she was unhappy about the bonus, but when informed that she had been asked to leave, and that she had been threatened, told her there had been no warning and she should not leave. This did not, however, take into account the implication for Chitra, who would be returning to work under the manager who was forcing her resignation. The HR manager told Chitra she would 'see what she could do' regarding the Operations manager, which proved ineffectual, since he called Chitra, shouted at her and denied he had threatened or bullied her. His concession, after several workers approached him in her support, was to tell her she could continue to work but would be set objectives and reviewed every three months. HR now also took this line, failing to challenge his threatening behaviour or to seek evidence on her

competence from the IT director who was allegedly dissatisfied with her. After some difficulty, Chitra found the latter, who denied a problem, blamed her situation on a breakdown in communication between her and the Operations manager and left shortly afterwards.

Henceforth, HR sent a series of contradictory communications, first asking why she did not go back as it was willing to take her, then suggesting redundancy – mentioning figures from £10,000 to £20,000. Thoroughly confused, Chitra went to the CAB, and contacted Acas, who told her not to sign any agreement with the company. The CAB suggested she should apply for constructive dismissal. However, to apply for this, she was told she had to resign first before completing an ET form, but she felt she could not do this, since she was off sick. She was further confused when HR phoned to say there was a compromise agreement, but she replied she was too unwell to make a rational decision. Following this, HR wrote to her, stating that they were treating her case as redundancy and offered her £2,800 and a bonus, with the chance to discuss her shares.

The CAB responded with a reiteration of the history of the problem to the HR manager and argued she should expect a settlement of around £10,000 (based on at least 6 months pay). However, the company declined, now stating it was happy to take her back. Chitra, however, was too ill and frightened of the bullying to accept this. She was then sent an email saying if she did not return she would be dismissed. She replied that she would come back if her doctor agreed. Management sent her a form on her medical condition, which she had completed and sent back, copying it as a precaution. HR said they did not receive the form. She then sent them the copied letter.

Chitra's story continued over three months, with the HR department continually changing its position. It now conceded that what had been said regarding her performance was upsetting, but strongly refuted that the Operations manager had threatened that he would make her life a misery, or dismiss her. By December, the CAB too had shifted from proposing she must leave before putting in an unfair dismissal ET application, to advising that she

could do so while ill, but she should not rush action. Worried about any delay and the CAB's own confusion about management's shifting tactics Chitra was 'not very confident in the CAB'.

The research followed up her progress the following year, in July 2005. She had by now been referred to a psychiatrist, and after taking anti-depressants was on a course of cognitive behaviour therapy. Her doctor had provided her with sick-notes, which she regularly sent to the employer. She had left the CAB and resorted to a solicitor in February 2005, on a no-win, no-fee basis, for which she had already paid a £400 deposit. However, she was advised she could no longer claim for unfair and constructive dismissal while ill, since the company continued to claim it had received no sick-note from her. HR told her they would terminate her contract on grounds of incapacity.

Her new solicitor was preparing a tribunal application for general harassment, bullying, racial harassment and breach of contract. When I asked Chitra how he would argue the new racial harassment grounds, she had no idea. Following a new grievance letter, the company responded that, 'as a favour, they would keep her on' and persisted in claiming it had not received her sick notes. When re-interviewed, she was still waiting for a grievance meeting, but could not find a colleague to accompany her, since they were all too scared, and she was not permitted to bring her legal advisor or family member. She felt a union representative was not an option for a non-unionised worker.

The end of Chitra's story was unclear. However, her story's importance is its process, since it illustrates how an isolated individual facing a bully at work can be further paralysed by the HR department of a major multinational company. In her case, it appears that the latter, rather than simply being incompetent, was determined to save a subordinate manager as well as its own costs, preferring to sacrifice a vulnerable worker, with a variety of tactics and changes of position. The CAB did its best, but lacked the professional expertise to confront a slippery adversary. Chitra ended with mental breakdown.

Sickness at work could be both the cause and effect of problems at work. *Jasmine*, a hair-stylist for fifteen years in a major hairdressing franchise-chain, had to take three months off work with the occupational injury of tennis-elbow. On her return, she was downgraded, but upon advice from both the CAB and Acas that her job should be protected, returned to discuss this with her manager. Like others requesting their rights in this research, the response was harassment and accusations of 'trouble-making'. Stress and depression followed and she took out a grievance, preparing a constructive dismissal case. Management used the statutory requirement to hold a meeting to make demands for all her sick-notes – despite the fact that these had already been sent – a further illustration of management subverting procedural rules to its own ends, as with Pat and Alpay. Jasmine could not obtain copies, since her doctor was off sick for two months and nobody else could provide them. She referred her problems to the company HR manager, but was always referred back to the salon manager. She gave up her struggle for justice, handed in her notice, and found another job in a different salon belonging to the same company. There was no compensation and her new boss, who knew her previous one, claimed he would 'sort out' her back-pay.

A further example of harassment in a major corporation is included here in response to a research respondent who, although unionised and visiting a CAB on another issue, was keen put on record that 'Blue-chip companies' can be as bad as any small firm in employment relations. *Moir*, a senior cabin-crew director with 28 years' experience in a major airline, had always experienced good work-relations but for the past eighteen months found that her line manager deluged her with formal procedures, consisting in quantified reports on every action and ceased all personal, verbal communication. This, Moira observed, was part of a 'company clamp-down' on absenteeism, lateness and performance targets, with standardised procedures applied to all, even to those who, like her, had excellent records. The consequences were persistent fear and anxiety. After several months, she took two months off with stress, but when she returned to work nervousness made her vomit every morning. At the time of our interview, her union was intervening, although since her manager was technically not in the wrong, it was difficult to

prove unreasonable behaviour or harassment and she feared the union would prefer not to pursue her case so as not to upset relations with the company. Moira's case, of a relatively well paid, unionised worker whose union is unwilling to confront this form of corporate bullying, throws into sharp relief the vulnerability of those who only have the help of non-professional advisors in the CAB.

The vulnerable employee in the public sector: Further and higher education.

The large organisations behind these experiences were not confined to the private sector. In the public sector, there were two interviews in the further and higher education sectors – known even in its unionised sector to depend on precarious employment (AUT, 2006).

Jane was an experienced 59-year senior administrator at a university, where she had worked since 1987. The problems arose when administrative staff were forced to re-apply for their jobs after a restructuring programme. Although promised full salary and grade protection, this did not occur and she lost her grade, while many others left demoralised. Jane was 'appalled by the university's behaviour', but also dissatisfied with the union, which, according to her own later legal research, failed to challenge the university policy using the correct legal arguments. Forced to apply for another job, after interview she was offered one at a lower grade for six months and felt humiliated when assigned a 'personal development manager'. The job would be advertised externally in several months, but there was no guarantee that she would be short-listed: 'I was absolutely staggered – it's like being slapped round the face. I was numbed by the interview. I couldn't think what to say or what to do'. Should she succeed, she would be doing the same but with more management responsibilities and lower pay. Offered only a six months post, she then asked about redundancy and was refused.

She approached the CAB, but felt, 'When it came down to the nitty-gritty of it, they didn't know enough about the law. If they were putting a letter together, were they asking the right questions? I felt very unsafe in their hands'. She

had also rung several solicitors and was quoted £700 - £800 for the work needed and could not 'go down that route', so decided to accept the job: 'Being green and naïve I thought I had no option, and took it'. Jane's experience of acrimonious email correspondence, management refusal to reply to her requests for information on a redundancy package and constant 'changing the goal-posts' made her suffer palpitations and rashes, but she remained at work, against her doctor's recommendations.

She finally resorted to self-help: 'I obtained 'Croner's guide to managing fair dismissal. It was a revelation'. She found that the University had behaved unlawfully from the beginning, since it had technically made staff redundant in instructing them to re-apply for their jobs and should have provided the choice of deciding, within four weeks, whether to apply for a new job or take redundancy. The university consultant did not tell them: 'They were relying on people's ignorance and they got away with it'. However, the union did not enlighten them either. As a result of staff departures,

'they got rid of a great many good staff, who had a right to say they did not want these new jobs and wanted redundancy. They lost half the workforce. Management was extremely quick to make the staff who obtained the new jobs sign a contract, which meant there could be no further litigation'.

Jane finally negotiated a redundancy package, but since she had intended to work here until she retired in her mid-60s, was not satisfied.

John was a 38 years old college lecturer who had worked part-time at the Further and Higher Education sites of a college and had accepted a promotion to a full-time lectureship at a higher salary. Although he was told the new contract would be resolved within a month, different contracts continued so that, 'you never knew what you were doing'. After three months, during which he had no pay for the additional teaching, he was eventually paid, but only for part-time hours at the lower grade. After persistent claims for the correct pay he was placed on the lower scale of £16,000 per annum, and without the promised bonus, so that he was at the equivalent of £13 per hour,

less than before. The personnel office denied the original offer, which had been verbal. By now he was under major stress, already in debt because of a student loan for the Post Graduate Certificate in Education and 'tidying up the mess' left by the previous lecturer, who had resigned because she was disgruntled over pay. John went on sick leave for stress and depression.

For support and advice during the whole period he had contacted the personnel department, which assured him it would 'sort it out' (as with HR's assurances to Alpay and Chitra), but by May, with no further pay offer, he approached a solicitor, who proposed taking a case for constructive dismissal. But John worried about the potential cost, felt the solicitor was not really interested and did not pursue matters with him. In August, the college offered him a compromise redundancy pay offer of £3,000, but the solicitor counselled against acceptance, arguing it would undermine any constructive dismissal claim. He followed this advice and resigned. Needing free advice, he now approached the CAB. However, its advisor was unwilling to support a constructive dismissal claim - again because it was 'your word against theirs'. Instead, it proposed pursuing a 'personal injury' case for the stress and depression suffered for four months. However, for this, he would still have to use a conditional fees solicitor but could not obtain proof of credit-worthiness to pursue this because of his debt.

At the time of the research interview, John was still on anti-depressants, concentrating on writing his dissertation and taking the opportunity to 'change his life'. Like others in the complex cases delineated, he had been buffeted between different legal versions of his problem, different advisors and inconsistent solutions. The CAB was unable or unwilling to take on a constructive dismissal, but he had no better or more consistent advice from paid solicitors, some of whom he felt were more concerned with a quick profit than in resolving his case. The paid route was in any case now closed, and he appeared to be ineligible for legal aid. Like others interviewed, the search for redress was motivated by the sense of injustice, not financial compensation: 'I'll wait and see. It's not about the money. It's letting these people know that they can't treat people like that'. Asked whether the experience now made him

re-consider joining a union, he regretted not having done so and was unequivocal: 'yes, *definitely*'.

Intimidation as 'restructuring' in company takeover and management change

The DTI's (2006b) definition of 'vulnerability' refers to employers who *exploit* this vulnerability. There have been examples of this, both in small companies and large ones. In the latter, it is evident that organisational politics in which senior HR managers support their local managers require a much more sophisticated analysis than 'bad' employers who 'exploit'. Furthermore, this research demonstrated that organisational processes, such as takeover or management change, also increase the 'risk; of vulnerability – a contingency which is overlooked by the DTI approach.

Intimidation to effect resignation during a restructuring exercise was a pattern often observed. In her forties, *Joanna* was a respected worker in a women's shelter cooperative, beginning as a volunteer in 1997 and paid since 2002. Problems arose when the organisation changed to a formal hierarchy, with the new manager, Madge, stamping her authority by creating divisions between employees. Joanna became ill with stress after a fabricated rumour caused antagonism with a close colleague. On returning to work after two weeks sickness leave, she was called to 'an appraisal' meeting, where she was sacked. Claiming that under existing dismissal law this could not be done, the retort was, 'We can and we are'. She was subsequently also falsely accused by letter that she had barricaded another worker into a room.

Joanna, who had previously been a union member while working in retail, immediately contacted Acas, and joined the union, Amicus¹⁷, who could help and advise, but not represent her at a tribunal. The union wrote to the employer and advised her to appeal against dismissal, but this was rejected.

¹⁷ Amicus is the largest private sector union in the UK, formed by the merger of MSF, a union for scientific and professional staff, the engineering union, AEEU and the print union, GPMU. It is likely that Joanna had not been a member long enough to qualify for representation at a tribunal.

Madge then spread further rumours that Joanna was trying to undermine her. Amicus recommended Joanna wait for a further appeal, but she was too upset to wait: 'I wanted to do something while I still had some fight in me'. Acas advised that she might have grounds for unfair dismissal and she made an ET application (without help) for unfair dismissal and poor practice. She also compiled a case dossier, and Madge sent her a transcript of the meeting in which she accused her of the barricading incident. Joanna asked for a grievance meeting, which was at first refused, but then took place - not, however, with the intended purpose, but as one in which Madge repeated that her contract was terminated. This is a further example of the ambiguity of the 'meeting' required in the statutory Dispute Resolutions regulations and the possibility for management manipulation.

Since the union could not help Joanna with a tribunal, she now turned to the CAB, who recommended she use lack of procedure as the basis for the unfair dismissal charge. On these grounds, she achieved a meeting with the organisation's head-office and received a letter informing her that procedures had not been followed and that she had her job back. This echoes the initial interventions to uphold 'good practice' by HR departments in several other disputes described above. However, like others, this laudable role was reversed at later stages. A meeting was convened at which the union again became involved, together with Acas, Madge and a trustee of the organisation, to discuss the terms of her return. Madge, however, refused to enter the same room as Joanna. Acas, in mediating, spoke to Madge, and returned to inform Joanna that the organisation had 'various issues' with her, and did not, after all, want her return. Joanna was 'completely flabbergasted'. Senior management had reneged on its opposition to dismissal on procedural grounds and neither Acas nor the union pursued the issue. But by this time, she had 'run out of fight' and agreed to leave. The grounds for her departure were now 'mutual agreement' and part of this was a silencing clause, which prevented her from discussing it with anybody. Although told she could negotiate a reference, this was poor (a repeated theme in these stories) and while unhappy to accept it, again gave up the struggle. In February 2004 she obtained another job with the same voluntary organisation, but with poorer

pay and conditions although better relations. Again, injustice had prevailed. The union, not recognised for collective bargaining, proved ineffectual as support for the individual.

In Joanna's experience, the CAB had played a minor role. Her views focused on Acas and while she praised its advisors as 'very good', felt differently about the mediator, who, she argued, was not neutral, took Madge at her word and ignored all evidence of improper management procedure. The result endorsed the CAB's warning of, 'your word against theirs', indicating that without sufficient time, cross-examination and legal backing, dismissal on procedural ground is extremely hard to prove. Other workers, who were initially supportive, now 'kept their heads down' because Madge was intimidating and most were on a probationary period. Joanna was 'kept going by anger', and her husband's support. She suffered depression and was still on medication when interviewed.

A more commonly encountered experience of bullying leading to dismissal in a restructuring process echoes other stories here, of established women employees being ousted by new, male managers or owners. This suggested a pattern of women victimised *because* of their experience and capability by males asserting a new culture or power system – as in the example of Penny in catering. *Mary* suffered sudden dismissal following takeover by a large multinational of a small cardboard tube company. Aged 55, she had 19 years' experience as a full-time office manager, with major responsibilities for production control and transport. She felt that the new, young male management team 'could not accept that an older woman knew more about the company than they did'. She was summarily dismissed, with no procedure, and offered £29,000 redundancy pay. She found this unacceptable on the basis of her salary of £19,000 per year and length of service.

Mary determined to pursue an unfair dismissal claim. Like others with complex problems, she was unhappy with CAB advice, which she called 'shoddy', but was no more 'impressed' by her conversation with a solicitor, who was also beyond her means with an estimated £800 bill. The CAB

advised her to settle for £6000 in compensation, but she aimed for at least £15,000 and finally accepted £10,000 – half her salary, and a third of the redundancy offer. Had she not been concerned with the injustice of the original dismissal she would have been financially better off with the redundancy offer.

This again underlines that for many wronged workers, it is the principle of injustice, rather than rational economic calculation, which motivates the search for redress. Mary, like the pub worker, Pat, had a strong altruistic streak and although ‘irritated by the people who did not back her and quite shocked and lost’, she turned her inability to find further paid employment, because of her age, to use in becoming a volunteer advisor for the CAB¹⁸. Insight into the climate of fear around her was provided by her recollection of colleagues voting against joining a union some ten years previously, after an organiser’s visit, because they were afraid, in spite of another northern branch of the company being unionised.

Expulsion of a female employee following a takeover of care-home was part of a cost-cutting drive. *Jean* was 45 years old and for 15 months had worked 20 hours per week in a job-share arrangement as an administrator in an old people’s home, earning £5.50 per hour. The home had been family-run ‘as a successful business’ for about ten years, but was bought by a large company which owned eighteen others. At the takeover, many employees left because of deteriorating working conditions, lack of training on new systems and savings targets on food and inmate spending. Jean was demoralised by declining service standards:

‘It had been the best place for old people before and I was proud to work there. Now the company comes in and all they’re worried about is the money’.

¹⁸ This should be seen in the context of a family trade union tradition and left leaning politics. She felt a union would have helped her and was politically and socially involved, voting at election, debating contemporary controversies, such as the Iraq war, volunteering for the Samaritans and engaging in local school issues.

Her resignation was engineered by the erosion of hours and responsibilities. Her job-sharer, who left, was replaced by a new male administrative assistant, who worked 40 – 50 hours a week and at a higher pay-rate. At first Jean believed he was just 'getting on top of the job', but she soon realised 'he was eating all my hours up'. She was shortly 'taken into a room', told her hours were to be cut from 20 to 4 per week, lost her desk, use of the computer and given care work for which she had no training and was paid at the minimum wage. Her manager claimed, 'it had got so bad, she had to "let her go"' without explaining what 'it' was. Ordered to leave the following week, Mary requested the month's notice to which her contract entitled her. She was still 'stunned' and said she would need a reference for another job, which was promised but never provided.

Feeling 'so low', she sought advice at the CAB on her day off. Stress increased as her notice period disappeared during three weeks waiting for an appointment. She was 'not very happy' with the CAB, having to return four times, seeing a different person on each occasion and finding that her case-notes were mislaid. It should be stressed, however, that while dissatisfied with the CAB, Jean, like most others in these portraits, was no happier with conditional-fees solicitors, particularly as the 'no-fee' advertised disguised demands for deposits and/or creditworthiness and she stood to lose 50 per cent of an award to the solicitor, should she win. Appreciating that the CAB was under-funded, she was 'not very confident in the service' and shocked to be told she had 'not done herself any favours' by getting another job so quickly. On her final visit she saw yet another advisor and was dismayed to learn that 'although all along the impression was that the CAB would represent me, at the last minute he told me he was going away on holiday and I would not get much anyway'. He suggested she settle at £200 (a figure suggested by Acas), which the company agreed to.

Like Mary, Jean illustrated the influence of previous union experience and family union traditions on positive views on union utility to help resolve problems at work among the non-unionised (Charlwood, 2003: 56). She had been a union member for nineteen years in a previous banking job and

wanted to be unionised now to have 'somebody who could fight my corner'. Her next job, however, was also non-unionised and there were more problems, with a bullying manager. She too reiterated the role of fear in deterring unionisation and felt that people were even more frightened now than before.

A contrasting response by a woman to being forced out of a job - and arguably, a contrasting response to vulnerability – was *Laura's* account. She lived in the rural South East, near Yarmouth, an area of high inward labour migration and little union tradition. At 34 years old, she had worked part-time for 2½ years as a general office manager in a small manufacturing company employing seven workers. Her difficulties began a year after starting in 2003, when the company was bought by Steve, a former workshop manager, and Brian, an external buyer, who attempted to get rid of her so that his aunt could get her job. Steve wanted her to remain because of her experience, but Brian started 'getting nasty and made the job an absolute nightmare'. He sexually harassed her, cut her hours from 25 to 15 per week, narrowed the remit of her job, then criticised her for not doing things she had been excluded from and questioned her competence: 'we clashed...he was a bit of a male chauvinist, saying things like, "When are you going to come in with make-up and a mini-skirt?"'. He found the pretext for sacking her when he discovered that she had heard of another job opportunity, told her she was 'not happy and should leave' and dismissed her, although she countered that she wished to stay. When reporting to Brian that she was returning to work, after taking family advice, he told her she was redundant.

She approached the CAB, which she found helpful. Access during its 9am to 3pm opening hours was easy for her, because she was now unemployed. She filed an unfair dismissal claim and Acas advised her that she was entitled to between £1,200 and £1,500 in compensation. The CAB wrote letters to Brian on her behalf, and while she refused the initial settlement offer of £500, followed the CAB recommendations and, after the relatively short period of two months, settled at £1000. After losing her job she became a bingo caller – which she enjoyed.

Asked about wider views on social representation, Laura was the only interviewee who was anti-union. While 'sorry for people who suffered worse harassment', joining a union had 'never crossed her mind'. Indeed, she was 'not too keen on them', citing a local company with a 'bad' employee whom nobody could 'touch', because 'there was a union'. Not having voted for ten years, she discussed politics with her family, who anticipated that if they ever voted again it would be for the British National Party (BNP). Laura believed that,

Enoch Powell¹⁹ was ahead of his time, with immigration - it's a joke at the moment – so many – what are they, euro-tunnel, refugees, asylum seekers?...I do sympathise...but we see so many single men around, I mean what happens to their women and children?...They're mainly Kosovans, they don't do any work, they get cars, government cheques, they can't communicate, so they can't even get the bus.'

Laura is quoted in full, not because she directly blamed immigrants for her own difficulties, but because she was a vulnerable white worker suffering intimidation at work, was politically disillusioned and who felt the BNP was an alternative. The exploitation of the migrants vilified by Laura was central to the CAB casework in this region (Boston and Yarmouth) and has been widely documented (Lawrence, 2004, Hsiao-Hung Pai, 2006, Anderson and Rogaly, 2005, Centre on Migration Policy and Society, various).²⁰ Racist stereotypes ensured she failed to make any connection between her own vulnerability and theirs.

¹⁹ An extreme right-wing Conservative MP (1950-1974) who then switched to the Ulster Unionist Party (1974-1987) and was notorious for his racist views.

²⁰ Our interviews with advisors revealed that their heaviest caseloads were with migrant workers (frequently Portuguese and East European) suffering abuse from agencies and gangmasters – similar to the abuses documented here (illegally low wages, dangerous work, unlawful deduction of wages) but intensified by the frequently of no identifiable employer, wages tied to overcrowded housing, violence and language barriers.

Vulnerability in sub-contract employment relations

While processes such as restructuring can increase the risk of vulnerability, so can sub-contract relations. Challenging abuse here is complicated by the ambiguity as to whether responsibility for a conflict is the sub-contractor or end-user of its services. The private security sector, already noted for legal breaches, such as non-payment of wage, was again implicated in this study, although a public sector client was also culpable.

Terry had for eight years worked in a CCTV control room for a sub-contractor – a security company ('X-Security') – to a client, 'Midlands Trust', a partnership between a private company and local council responsible for the town's security. He was accused by 'Midlands Trust's' manager of stealing some CCTV tapes, suspended and finally dismissed – a pattern of fabricated charges of theft noted in several examples above. He was one of the few interviewees who found an employment specialist at his local CAB, who compiled an unfair dismissal ET application against 'X-Security', which did not challenge the veracity of its client's accusation. The case became embroiled in identifying who was responsible for the dismissal, 'X-Security's' solicitor repeatedly delaying the hearing with demands for statements and letters from both *Terry* and 'Midlands Trust', and the CAB unable to pin-down either 'X-Security' or 'Midlands Trust' for meetings. To make matters worse for *Terry*, in October 2003 'X-Security' ended the contract with 'Midlands Trust' and was replaced by 'New Security', which sacked him. *Terry* thus added a transfer of undertakings element to the previous unfair dismissal claim. However, the case dragged on for so long, that *Terry's* chief support at the CAB had meanwhile retired. When we re-contacted him a year later in June 2004, the CAB had told him to seek a no-win, no-fee solicitor, since it was partly funded by the local council, which co-owned 'Midlands Trust'.

Jenny was in her forties, had also worked for 'Midlands Trust' for several years and, the only woman in a team of male CCTV operator, had suffered a combination of sexual harassment, unsafe working conditions and dismissal. When asked during the telephone interview about her problems, she was

agitated – ‘there were so many’ – and spoke of her nervous state. Events were initially expressed confusedly, but the CAB (the same branch and advisor as Terry’s) had advised her to keep a diary, which she fetched. The problems started in January 2002, with a sexual harassment case against male co-workers. Thinking the woman manager of the client company, ‘Midlands-Trust’ would help, she found instead that ‘she turned on me from then on’. She then approached a male manager at ‘X-Security’, and the problem was ‘sorted out’ by a travelling area manager – but not for long. The next phase began three months later, with poor facilities (toilets and lighting) in the new control room and dark and unsafe parking at night (much of her work was in late evenings). After her car was broken into twice in the car park, she asked to park in the police car park next door, where she had friends and believed her car would be safer.

Jenny read out a complex story from her diary, including the formal grievance letter she wrote to ‘X-Security’ another three months later in July 2003 with CAB assistance. The grievance letter referred to feeling discriminated against in being barred from training courses, poor communication between colleagues, disruptive and upsetting communication with the client, very poor safety in the new control room and ‘pitch-dark’, frightening parking.

When ‘Midlands Trust’ was informed of these grievances, it allegedly ‘laughed behind my back’ and Jenny was forced to take eight weeks off with stress. Two months later, after she returned to work, she had a meeting with a manager in ‘X-Security’, although ‘Midlands Trust’ was responsible for employment conditions. Two weeks later, she was informed by a voicemail on her mobile phone from the client’s solicitor ‘not to report to work’, with no explanation. ‘X-Security’ instructed her to report to work in any case, but the client still sent her home. She rang ‘Midlands Trust’ to find out why she had been suspended and was told that it was because she had asked to park in the police car park. Jenny could not believe this ‘was what I was finished for’. Although she rang ‘X-Security’ to report the client’s behaviour and was told that it would be ‘sorted out’, nothing happened. ‘X-Security’ kept telling her to report for duty; the CAB advised her to do the same. However, like Terry (and

another colleague) she was sacked when the contract moved from 'X-Security' to 'New Security'. The client, 'Midlands Trust', had allegedly told the new company she did not 'want these three on site'. No reasons were given.

Jenny declared 'I haven't heard anything else. It's just been horrendous'. Her health had suffered after ten months of work-related stress and it was her doctor who, as well as prescribing anti-depressants, recommended she contact the CAB. The CAB was 'really good' – 'they have been absolutely fantastic with me'. She was seen immediately and although initially by different advisers, after the parking and lighting incidents, she was referred to the employment specialist. When interviewed, she was awaiting an ET hearing the following month for unfair dismissal and breach of transfer of undertakings law, in which the previous and current employer were to be called. The client, 'Midlands-Trust', which had caused the final dismissal, was not involved. Meanwhile, she too suffered when the CAB employment-specialist retired.

Jenny remained depressed: 'I am 41 years old - I sit and cry'. She had since taken on a job in a unionised warehouse and had joined the union. She did not, however, vote at elections, feeling they 'don't do anything for normal people like us'. While alienated, she still wished to communicate her experience and had thought of seeing her MP, but did not want to jeopardise the tribunal. She was keen that the research project tell her story – 'tell the whole world, write to the papers. Nobody knows, you see'. After her and Terry's dismissals, four more workers were sacked. Her case was finally settled out of court a year later with 'X-Security' for a compensation of £500.

Frequent changes of contracts accompanied by threats of dismissal and cuts in hours led *Mark*, a subcontracted car park cleaner in his fifties, to seek CAB support on several occasions. These threats were successfully settled out of court using transfer of undertaking law, but the CAB failed to help him on his final grievance of dismissal during sick leave, while he was recovering from an assault suffered on his way home from work. This occurred when his cleaner's uniform, a fluorescent coat, was mistaken for the locally unpopular

security guards and the beating left him with cracked ribs, black eyes and mentally shaken. He was sacked, with the cleaning-contractor arguing that 'the termination was due to "third party pressure" and as no work was currently available, his employment would be terminated'. He was told he would be paid in lieu of all benefits and could appeal, but although he requested a grievance meeting, he was sacked anyway.

He again approached the CAB, who gave him some 'booklets' and advised him to contact a conditional fees solicitor. A date was set for the ET, but two days before the hearing, both the solicitor and Acas advisor rang him and recommended he settle for £500, since he was only on incapacity benefit and was not losing that much money. He was not happy with this but agreed. He also had to pay the solicitor £100. The research interview revealed confusion about his rights and lack of understanding as to why he had to pay a 'no win no fee solicitor'. Indeed, it was not always clear in interviews whether paid advisors were solicitors or other consultants, highlighting the concerns in the review of tribunals of a growing body of unregulated consultants who were overcharging and even detrimental to their clients 'in the lurch' (Leggatt, 2001: 283). In spite of the fact that the CAB had merely provided him with leaflets, Mark was grateful to it. Yet he was unsure whether he should have accepted the settlement and appealed compelled through ignorance and intimidated – 'as I was told by legal brains, there was no point in going against it'. With no references and in his fifties, he was unable to get another job.

Discussion and conclusions

The experience of problems and support from the CAB

The stories of vulnerable workers with problems at work recounted here testify to the wide span of unfair and unlawful practices experienced by vulnerable, non-unionised workers from a range of industries and occupations. Most victims worked in small and medium-sized companies, in sectors notorious for poor management practice and familiar to the CAB: the hospitality industry,

cleaners, care homes, security companies, small factories. But, large organisations and multinational companies with HR departments were also present and although in a minority, demonstrated far more devious tactics of evading the law than small firms.

Employer practices in 'simple' dismissals often involved fabricated charges of misdemeanour, especially theft. Many of the companies involved also paid below the minimum wage, but this was rarely the issue that drove the person to the CAB. Sacking workers before one year's qualifying period for employment rights or for asking for minimal employment rights as well as unpaid wages were frequent abuses.

A pattern observed was bullying associated with management or ownership change, with new, usually young and male managers wishing to assert power over or get rid of older, experienced women. The basis of victimisation was often complex, multiple discrimination involving race, age and sex. Yet discrimination this was rarely addressed and racism was only successfully challenged by a solicitor. Most CAB advisors preferred to prove legal breaches on procedural grounds, so that potential discrimination cases, apart from pregnancy, escaped challenge. Claims for unfair constructive dismissal, which could have been the major form of redress in view of the frequency of bullying, were usually avoided as too hard to prove.

Problems in large organisations were prolonged subtle processes of changing contracts, disguising victimisation behind appraisal processes, forced 'resignation', re-engagement when threatened with letters from the CAB, further harassment, setting up intimidating meetings, falsifying records and 'losing' employees' correspondence, sick-notes or documentation relevant to the grievance. Most employers here had legal representation and in addition to sophisticated, evasive manoeuvres HR's solicitors used court costs threats to intimidate the worker. Some stories, such as Chitra's and Jenny's, resembled a cat-and mouse chase.

Workers in large organisations also had additional difficulties of thinking that they had the protection of a 'fair' HR department, only to later face the united might of the organisational hierarchy when HR closed ranks with lower management. Those working within a sub-contract relationship were caught in the ambiguous web between a subcontractor and its client, suffering not only breaches of transfer of undertaking legislation, including dismissal and pay cuts, but also harassment by the contractor's client.

The vast majority of CAB clients who responded to this study testified to the crisis in support for the unorganised worker. Most cases demonstrated that, while on paper, the new statutory Dispute Resolution regulations set by the 2002 Employment Act appear to offer clear guidance for a fairer workplace resolution procedure, the evidence illustrates how employers can pay formal lip-service to procedure, while avoiding a fair system for workers. 'Meetings' can be defined and manipulated at the employees' expense, written evidence needed for the grievance or disciplinary issue can be vague and also manipulated, fabrications can be used and crucial documents (such as on medical problems) 'lost'²¹.

Bullying was endemic to most experiences and confirmed its prevalence in larger surveys. The author's Unrepresented Worker survey of 500 low paid, non-unionised workers in 2004 found that almost two fifths of respondents (37 per cent) reported work-relation problems of stress and management bullying (Pollert, 2005b). Bullying on its own affected 19 per cent of the sample. The TUC (2005) found that 58 per cent of union representatives surveyed reported workers suffering stress, the main reasons cited being increased workloads, change at work, staff cuts, long hours and bullying. In a study of over 5,000 workers in 2000, bullying was found among one in ten workers in the last six months, one in four in the last five years and in 75 per cent of cases, a manager was identified as the bully (Rayner et al. 2002; also LRD, 2005:23, Chartered Management Institute, 2005).

²¹ Evidence that formal procedures do not moderate disciplinary outcomes in individual disputes is provided by secondary analysis of the 2004 Workplace Employment Relations Survey (Saundry and Antcliff, 2007)/

Few of the CAB clients' problems reached ETs, many were left completely unresolved and among those who settled, only two people received more than a few hundred pounds. The varied quality of support and satisfaction with the CAB was a clear illustration of the patchiness of provision, those finding and remaining with a specialist employment advisor expressing praise for the CAB, but others, assisted only by generalists, expressing dissatisfaction, particularly when advisors changed or failed to communicate case information. A fundamental problem, noted in other research (Genn, 1999) was poor telephone access and limited opening times. Paradoxically, those trying to resolve problems *in* their jobs were at a great disadvantage compared to those *already sacked*, since the latter had time during office hours to seek CAB support. However dismissed workers were then faced with the dilemma of choosing between pursuing their grievance or finding another job: time constraints meant these were irreconcilable goals.

It is important to stress that while satisfaction with the CAB service was variable, it was no more favourable with conditional fees legal advisors, to whom most workers with complex problems were referred. Many workers could not afford paid representation – as the surveys of ETs have shown (Hayward et al, 2004: 34) and the 'no-win, no-fee arrangement' had hidden costs, often demanding a deposit or proof of credit-worthiness, which low paid or sacked workers could not provide, as well the prospect of losing around half (or more) of an award, should the case succeed. More widely, the experience of some was that these lawyers were not interested in obtaining fair redress, but merely wanted a quick settlement for their financial 'cut'. By comparison, although many felt that CAB legal competence was inadequate, there was broad respect for an under-funded charity doing its best.

Nearly all stories were distressing. Workers experienced frustration, anger, financial, physical and psychological suffering. Some had been referred to the CAB by their doctor. Many were forced to take time off work through stress-induced mental illness and were unable to pursue their grievance until well enough, losing time as well as the mental stability to continue a fight.

Depression and anti-depressant medication were part of most stories. These experiences testify to the health, social and human costs to ordinary working people without collective support when faced with individual grievances at work. The evidence points to the accumulation of frustration, anger and resentment underlying attempts to achieve justice, and the usual pattern of failure.

The research underlines the need for an advice system with the professional expertise and experience necessary to match that of the employer. For this, the CAB, as it has long argued, needs proper funding for paid, professional work. An advice system based on committed, but unprofessional volunteers can do little to challenge the increasing vulnerability of Britain's 'flexible' labour force. Without the CAB, of course, most of the workers given voice in this study would have had no support at all. This raises a question: is poor support better than none? There is an argument that it is not, since it provides the illusion that a support or safety net exists, whereas the evidence suggested here is that people fall through it.

Social exclusion, collectivism and politics

This study has focused on the experiences of problems of the low-paid, unorganised worker seeking support with the CAB. Views on the services of the CAB have been integrated into the portraits and provide a mixed picture of gratitude as well as disappointment and dissatisfaction. But what emerges about wider views? One question pertinent both to CAB, union and wider policies is the insight the experiences delineated provides on the relationship between the experience of workplace problems of unorganised, lower paid workers and views on collective representation and wider politics. These views are summarised in Table 2, Appendix.

There was a fairly even split between those who favoured trade unions, or felt they would help their problem, and those who were either ignorant, disillusioned or frightened. Thirteen felt that unions could not help, for several reasons: 7 were ignorant or indifferent, 3 were too frightened to contemplate a

union, 2 were disillusioned with union behaviour and 1 was anti-union. Of the 15 who felt a union would help and/or would join one, most were from the Midlands or North of England and many of these mentioned a family or local union tradition or previous union membership, which supports theories of union-joining propensity which identify ideological factors associated with locality, family and social networks (Charlwood, 2002: 469-471). Nevertheless, four in this group came from London, including two without union traditions from hard-to-organise sectors, which highlights job dissatisfaction (expressed here as 'problems') as the key determinants of unionisation propensity (Charlwood, 2003: 54, Kochan, 1979). Yet many of those in favour of unions were ignorant of how they could join and even those with union traditions had no knowledge that there was legislation on union recognition procedures.

The majority of respondents had no social or political engagement, either in terms of voting or concerns with wider social issues. Of the 6 who did, 5 either favoured or had actually joined unions. Only 2 voted at elections or discussed politics (both in the North), their topics suggesting left-leaning views and the others had broad altruistic concerns with exposing and challenging employer abuse. However, over half (16), including those who felt a union would help, were completely disengaged with social or political issues, neither voting nor attending meetings nor taking part in activities such as consumer boycotts or signing petitions. A further 6 people, who were explicitly disillusioned by their experiences of the government and the legal process, should be added, making a total of 22 who were disengaged and/or cynical about British political representation. One of these was openly anti-union and favoured the far-right British National Party.

These wider views reflect the social and political alienation demonstrated in the lowest voting turnout since 1900 in the 2001 General Election, of below 60 per cent (Whiteley, 2003: 611) and the evidence in the ESRC *Democracy and Participation* programme's 'Citizen Audit' of 2000, which found that only 35 per cent of a random survey of 3,000 people were satisfied with democracy and 56 per cent felt they had no say in what government does (Pattie et al.,

2003: 620). The direction of ideological views among vulnerable, unorganised workers, if social exclusion continues or increases, with no reversal to de-collectivisation and rising hurdles to statutory employment rights, is a key issue for political and industrial relations analysis and policy.

From the evidence here, the CAB cannot deliver an individual solution to the British 'representation-gap' (Towers, 1997). Although half of 28 respondents reported here were satisfied with the CAB, this includes those who were grateful for support but ended with either paltry or no financial settlement and were grateful for any other job they could get. The 'satisfied' were primarily in the group suffering crude, simple employment abuse with unambiguous solutions. However almost half (12 people) found the CAB inadequate, amateur and incapable of confronting the greater power and sophistication of the employer, particularly in constructive dismissal and more complex cases. Most, therefore continued to feel angry and cheated, despite the efforts of this under-funded charity.

Whether or not the vulnerable workers interviewed here were pro-union or not, their experience provides the labour movement with an organising challenge. The sense of injustice and blaming the employer for it, encapsulated in expressions such as 'they shouldn't get away with it,' supports two key components of union mobilisation theory. 'injustice' and 'attribution' (Kelly, 1998, 27-32). However, the third, ideological component for mobilisation, a leftwing political orientation, was detected only among a few, and this is arguably where union and labour movement arguments and politics should intervene

Lacking the latter, the experiences of anger and frustration have other outlets and dangerous alternatives - the growth of the far-right in Britain. The campaigning group, Unite Against Fascism (2006) noted that the BNP vote in local elections surged from 8 per cent in 2000 to 19 per cent in 2006. In this context, the experience of the one vulnerable worker, Laura, who was both anti-union and pro-BNP, is important at a qualitative level. Her case deserves attention in terms of the potential to divert disenchantment to 'outsiders' and

foreigners. Her wider political views in 2004 should be seen in its regional context of the South East, where an increasingly strong foothold of far-right parties has taken hold.²² The BNP made gains in Northern cities too, such as Burnley and, according to a recent report (John et al, 2006), one in five people in the UK, and one in four in London, would consider voting for the BNP in 2006. The complex relationship between poor work and labour market experience, social exclusion and far-right views is beyond the scope of this paper (see for discussion SIREN, 2002, 2003), but the history of Europe in the inter-war years is replete with analysis. Laura's perceptions reveal one response to vulnerability and exclusion, fuelled by government and media rhetoric of 'clamping down on immigration', reducing the numbers of 'failed asylum seekers' and coinages such as 'bogus asylum seekers'.

While the government is now addressing the existence of 'vulnerable workers', it was forced to do so by the worst abuses of gangmasters after the Morecambe Bay tragedy in 2004, when 19 Chinese cockle-pickers were drowned ('Guardian', February 7 2004) and the.²³ Its latest policy statement on vulnerable workers (DTI, 2006b: 27) reiterates only vague intentions of 'Ensuring workers are aware of their rights; Targeting enforcement on unscrupulous employers; and Piloting a new approach to help vulnerable workers'. It does not specify how 'targeting enforcement' will be achieved, or what the 'new approach' is. It cites a new government advice web-site, which fails to register low levels of home internet access among the low paid (Pollert, 2005).

This research shows that the outside help workers received for the problems was inadequate. The proposals for a 'joined-up' approach to target the 'unscrupulous' employer has no evidence base on *how* grievances arise and are dealt with. The narratives in this research on CAB clients, as one section of 'vulnerable' workers, shows that prevention of and challenge to abuse

²² In local council elections in 2002, the BNP made gains in Essex, and in May 2006, it not only won 12 out of 13 local council seats in East London (Barking and Dagenham), but also in Epping Forest, Essex (Wikipedia, 2006).

²³ The Gangmaster (Licensing) Act 2004 was the response. It is confined to agricultural work gathering shellfish and processing or packaging agricultural products, shellfish, fish and their products. See <http://www.opsi.gov.uk/ACTS/acts2004/40011--a.htm#3>.

requires close and detailed interaction with the employer, which is often a complex organisation. This is the traditional terrain for *workplace* representatives, that is, unions. Most of those interviewed here felt that union representation would have helped them. While fear deterred many from pursuing the route of trade union membership and representation as a strategy for the future, among the majority, the chief reason for not doing so was ignorance and having no idea where to turn. The representation gap and the need for greater union visibility and accessibility clearly came across. The growing anger and frustration among those sensing the injustice of their situation showed an unmet desire for collective support among many – but only when the issue of trade union representation was raised in the interview. There is a real danger that such anger could be exploited by far-right politics, as in the case illustrated in this study. This points to the need for unions to tap into individual grievances and use this potential to turn them to collective issues.

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Appendix

Table 2: Summary of experiences of unorganised workers with problems seeking CAB support, 2003-2005

	Worker	Age	Region and/or town and date	Workplace or Occupation	Type of Problem	Resolution to Problem	CAB Access	Opinion of CAB	View of Unions	Wider Views and Civic Engagement
1	Tina	18	November 2004, Norfolk	Hairdresser	Wrongful dismissal	Settlement: unpaid wages and holiday pay	Good (already sacked)	Very good	Ignorant (I)	Interested in knowing about rights (E)
2	Marge	53	December 2004, Greater London	Labour club	Automatic unfair dismissal (procedural grounds).	Unknown	Good (already sacked)	Good	Agreed with unions; felt did not apply to cleaners (Y)	Disillusioned with Labour Party (D)
3	Becky	20s	May 2004, Stoke on Trent, Midlands	Shop	Pregnancy dismissal	Settlement unpaid wages and holiday pay	Difficult	Good	Might join if knew of one (Y)	Isolated – only friends and family. Angry (O)
4	Christine	20s	November 2004, Norfolk	Holiday camp	Pregnancy dismissal	Settlement: £200 (hoped for £500-£1,000).	Good	Good but stressed	Not discussed (I)	No views, depression (O)
5	Tony	24	December 2004, the North East	Animal shelter charity	Unfair dismissal and bullying	Constructive dismissal case not pursued.	Poor and Discontinuous	Poor	Very keen but ignorant (Y)	Wanted employer investigated (E)
6	Bill	30	November 2004, Scarborough the	Small firm (lorry driver)	Unfair dismissal for asking for	ET ruled in favour, £1000	Difficult	Respected CAB but	Frightened in small	Disappointed with Acas

			North East.		rights	with friend in legal firm.		found service poor.	firm (F)	conciliation (D)
7	Iqbal	31	November 2004, Wolverhampton, West Midlands	Small firm (clothing)	Unfair dismissal for asking for rights	Settlement: £350	Difficult	Poor	Frightened in small firm (F)	No discussion (O)
8	Jacque	20s	November 2003, in Dudley, the Midlands	Security company	Unpaid wages	Successful ET claim, but not enforced	Good	Good.	Ignorant (I)	Never voted. In elections, isolated. (O)
9	Graham	20s	May 2005 London	Security company	Unpaid wages	None	Poor	Poor (but so was solicitor)	No views (I)	Cynical about law (D)
10	Tom	28	October 2004, Staffordshire, the Midlands	Small firm (builder)	Redundant/unfair dismissal	£700 from National Insurance funds	Good	Good, but failed to get £1000	Very keen but ignorant (Y)	Doesn't vote. Depression and anger (O)
11	Sheila	40s	December 2004, the Midlands	Pub	Redundant/unfair dismissal (new manager)	None	Good	Good	No view (I)s	No views (O)
12	Jane	40s	December, 2004, the Midlands	Pub	Redundant/unfair dismissal (new manager)	Settlement amount gagged	Fair	Poor	No view (I)	No views (O)
13	Pat	25	December 2004, Leeds, the North	Pub	Bullying and potential constructive dismissal	ET application withdrawn, no settlement	Good	Poor	In favour (Y)	Did not vote, but wanted to challenge abuse. (ER)
14	Penny	33	December 2004, Worcestershire, the Midlands	Motorway service station restaurant	Bullying and potential constructive dismissal	Nothing	Fair	Poor	Sceptical for her problem (S).	No views (O)
15	Alpay	40w	December, 2004, Newcastle, the North.	Large hotel chain	Racial discrimination	ET application; £100 in settlement	Good	Good	Ignorant (I)	No views (O).

16	Lawrence	40s	December 2003, London	Hotel restaurant	Racial discrimination	'Satisfactory' but would not disclose	Went to Law Centre for ET form	Had paid solicitor	In favour (Y)	No views (O)
17	Jasmine	34	May 2005, London	Large hairdressing chain	Constructive dismissal, bullying while ill.	No compensation	Difficult	Fair, but found Acas advice most helpful	Joined GMB after problem in new salon job (Y)	No views (O)
18	Chitra	56	December, 2004, London	Multinational recruitment company	Bullying, unfair dismissal, Racial discrimination?	No outcome after more than a year	Good	Poor, changed to solicitor (not confident)	Frightened (F)	No views, depression (O)
19	Moir	40s	December, 2004, London	Major Airline	Harassment and victimisation	Union compromise	n.a	n.a.	Member (Y)	Sense of injustice (E)
20	Jane	59	December, 2004, London.,	University	Potential constructive dismissal	Redundancy package	Fair	Very poor	Sceptical. (S))	Sceptical about unions and politics (D)
21	John	38	November, 2004, Doncaster, the North	Further and Higher Education	Potential constructive dismissal	Left, no compensation, debt	Fair	Poor	Would join if returned to work (Y)	No views, depression (O).
22	Joanna	40s	May, 2004, the Midlands	Voluntary sector	Potential constructive dismissal	Left, settlement gagging clause	Fair	Fair, but union more involved in conciliation	Previous member, joined union during problem (Y)	Felt Acas advice good but conciliation unfair (D)
23	Mary	55	December 2004, Blyth, North East England	Manufacturer, takeover	Unfair dismissal	£10,000 settlement	Fair	Poor. So was solicitor. Read up about employment law herself.	In favour, would join (family union members) (Y)	Votes, political and voluntary sector engagement (EV).

24	Jean	45	December 2004, North Yorkshire	Care home takeover	Forced to leave	£200 settlement	Poor	Poor	In favour (previous member) (Y)	Voted in election (EV)
25	Laura	34	December 2004, Norfolk	Small manufacturer	Unfair dismissal	£1000	Good	Good	Anti union (N)	Supported BNP (D)
26	Terry	40	November, 2003, Nottinghamshire, the Midlands	Sub-contract security company	Unfair dismissal, transfer of undertakings	Sacked, outcome unclear	Good	Good, but adviser left	In favour (Y)	Depression, no views (O)
27	Jenny	40	November 2003, Nottinghamshire, Midlands	Sub-contract security company	Unfair dismissal, transfer of undertakings	Sacked, £500 settlement	Good	Good, but adviser left	In favour and had joined (Y)	Depression, no views (O).
28	Mark	50s	December 2004 Leeds, the North	Sub-contract security company	Unfair dismissal while sick	Sacked, £500 settlement.	Good	Good	Previous union member, in favour (Y)	No views (O)

Key: **Unions:** I=Ignorant or no views; Y=in favour; N=Against.

Civic Engagement: E=Engaged, altruistic concern to expose abuse and rights wrongs but does not vote; EV: Engaged, altruistic concern to expose abuse and rights wrongs and votes at elections; D: Disillusioned/cynical; O=Disengaged, no views, alienated from social and political process.