

11. Concluding Remarks

This study has covered a wide range of employment rights, with a complex research instrument, utilising a variety of measures of awareness, knowledge and experience of employment rights. The main findings of the study have already been presented in detail in the 'Executive Summary' and it is not our intention to repeat them here. Indeed one of the striking features of the findings is that it is difficult to find general or universal patterns which apply across different employment rights, across different groups of individuals or across different measures of awareness and/or knowledge.

It is, nevertheless, worth briefly asking what can be learned from the study in general terms about questions such as:

- Which rights and entitlements are people most (and least) aware of?
- Which groups in the economically active population are most aware and knowledgeable about their rights, and which the least aware?
- Which people are most likely to exercise their employment rights?

We present below some preliminary and, in some cases, tentative interpretations of how some of the key findings address these issues.

11.1 Which rights are people most aware of or knowledgeable about?

11.1.1 Awareness

It is notable that the three areas of legislation which were, by some margin, most frequently cited by respondents (either unprompted, or after being given an example of what is meant by an employment right) were very diverse in nature:

- One was a very specific recent piece of legislation (the Working Time Directive), some of the provisions of which have, nevertheless, been the subject of some controversy and

publicity, perhaps contributing to the wide level of awareness of its existence.

- The second was a broad set of well-established, wide ranging legislation, albeit outside the scope of this study (Health and Safety legislation), much of which goes back many years. This area of legislation is 'visible' in the sense that it has a distinctive body charged with enforcement and dissemination, and the presence of health and safety representatives is a feature of many workplaces.
- The third (anti-discrimination legislation) includes provisions, some of which date back to the 1970s (sex and race discrimination), and some of which is much more recent (disability discrimination). By definition, however, such legislation is of particular interest and concern to certain sub-groups of the population, and we might, therefore, expect higher than average awareness among those groups.

When respondents were asked directly about their prior awareness of five specific pieces of legislation, the highest recorded awareness was for the National Minimum Wage (relatively recent, but also well-publicised), followed by anti-discrimination rights and unfair dismissal rights (the latter stands out as a long-established area of legislation). Some way behind came the Working Time Regulations, a contrast with the findings regarding unprompted/partially prompted awareness, where they came top of the list. This suggests that overall, the Working Time Regulations are not one of the areas of law of which people are nearly universally aware. The regulations are, however, relatively prominent in the minds of many of those people who *are* aware of them. Last in this list came parental leave, a set of very recent provisions.

Simply on the basis of the types of legislation which came most quickly to respondents' minds (*ie* unprompted or partially prompted awareness, in the language of this study), we might hypothesise that some or all of the following factors may be relevant in influencing awareness of legislation:

- visibility and length of time established (Health and Safety legislation, for example)
- publicity/controversy attached to the legislation (Working Time Regulations, some anti-discrimination legislation)
- the existence of a visible enforcement body (Health and Safety, anti-discrimination legislation)
- whether they are of particular concern to distinct sub-groups (anti-discrimination legislation).

11.1.2 Knowledge

When it comes to substantive knowledge, it is harder to compare across areas of the law, because much depends on the particular questions used to test knowledge of specific rights.

Nevertheless, at the risk of some simplification, we can draw on the substantive knowledge questions to divide the provisions examined into two groups:

- Provisions about which the level of substantive knowledge appeared to be **generally high**. These included:
 - unfair dismissal (right to representation)
 - (lack of) length of service criterion for coverage by anti-discrimination legislation
 - applicability of NMW from day one of employment
 - right to repeated maternity leave
 - (lack of) quota requirement in DDA
 - coverage of promotion and training in anti-discrimination legislation
 - lack of employer size threshold for race and sex discrimination
 - level of NMW.
- Provisions about which the level of substantive knowledge appeared to be **generally low**. These included:
 - parental leave (duration and payment)
 - time off for dependants
 - Working Time Regulations (variety of provisions examined)
 - exclusion of age from anti-discrimination legislation
 - unfair dismissal (time limit for tribunal applications)
 - DDA employer size threshold.

There are few clear patterns to note here except that, once again, most of those provisions about which substantive knowledge is low, are relatively recent ones (eg parental leave, time off for dependants, Working Time Regulations). In addition, this group also includes specific technical provisions about which knowledge would not be necessary unless a dispute or problem had already arisen (eg the time limit for tribunal applications).

By contrast, many of those in the list of provisions about which substantive knowledge is high, are long-standing provisions (eg unfair dismissal representation, length of service criteria for anti-discrimination legislation, right to repeated maternity leave)

and/or are general provisions which might be inferred on the basis of 'natural justice' or common sense, once an individual is aware of the existence of the legislation (eg right to repeated maternity leave, coverage of anti-discrimination legislation).

A key feature which emerges from comparisons of awareness and knowledge, is that high levels of awareness (prompted or unprompted) of the existence of the legislation often do not, however, translate into substantive knowledge of its provisions. This is manifestly clear in the case of the Working Time Regulations, for example, where as we can see from the above, awareness is relatively high, and knowledge rather low.

It is also worth noting that in many cases where knowledge was low, this was not always because respondents indicated that they 'did not know' the answer. In many cases, they thought they did know, but were wrong. They were under a specific misconception about the law — eg a significant proportion of respondents not only believed that age was covered by anti-discrimination legislation, but thought, for example, that marital status was not covered.

11.1.3 Perceptions of entitlement

We also looked at a number of scenarios, three in each area of law. We examined what proportion of respondents could identify the scenario as a breach of the legislation, and of the latter we looked at what proportion based their assessment of an infringement on some knowledge of the law (rather than a general sense of fairness or natural justice).

Looking at the distribution of responses across all scenarios, we can crudely distinguish between scenarios in which a 'high' proportion identified them as lawful (say, over 70 per cent or more), and those in which a 'low' proportion did so (less than 70 per cent). Similarly we can distinguish between a 'high' and 'low' proportion making judgements about the lawfulness of the scenario based on knowledge (with a dividing line of, say 60 per cent)¹. The scenarios are categorised in this way in Table 11.1 below.

This enables us to identify those scenarios which a high proportion identified as unlawful, and which also have a high proportion who can use knowledge of the law to make such a judgement. An example is the scenario involving denial of benefits to a newly promoted Asian man; most people knew that this was likely to be unlawful, and most of those were able to root their explanation in the Race Relations Act.

¹ These thresholds are simply arbitrary means of dividing the provisions into groups of roughly even size.

These can be contrasted with scenarios which a high proportion identified as unlawful, and where this was not grounded in any knowledge of the legislation (but was rather based on a sense of natural justice or what 'ought' to be in the law). The clearest example was the scenario based on unfair dismissal on grounds of sexual orientation — 92 per cent stated that this was likely to be unlawful, but only 16 per cent of those could say why.

At the other end of the spectrum we have examples where (relatively) smaller numbers identified the scenarios as unlawful. Among these examples, there were some with high proportions of respondents who knew *why* they were likely to be unlawful. This is the case, for example, in the scenario based on sex discrimination (due to a dress code). Relatively few respondents (64 per cent) were convinced that this was unlawful, but of those, 73 per cent understood that it was sex discrimination.

Finally we have examples such as the parental leave scenario, which was identified as unlawful by only 35 per cent of respondents, and only 59 per cent of these could explain why.

Once again, there are very few general patterns which emerge from these data, to help us ascertain why some scenarios fall into one category rather than another, in terms of respondents' ability correctly and/or knowledgeably to identify their unlawfulness. Two points can, however, be made:

- It is notable that all three of the scenarios which relate to legislation dealing with **wages, terms and conditions** fall into the 'high-high' category — *ie* most respondents identify them as unlawful, and most of these, in turn, are able to provide an explanation for this which exhibits some knowledge of the law. It is perhaps no coincidence that this is a long-standing and well-established area of employment rights.
- At the other extreme, however, it is notable that two of the three scenarios which relate to **work-life balance**, fall into the 'low-low' category, and the third (relating to maternity rights) falls (just) into the 'low-high' category. *ie* compared with the other scenarios, relatively few respondents identify these as unlawful, and of these, relatively few in turn have an understanding which is based on knowledge of the legislation itself. Again it may be no coincidence that, for the most part, this is an extremely recent area of employment law, the main exception being maternity rights which, of the three scenarios in this area, received the highest scores on both counts.

Table 11.1: Classification of scenario responses

Scenario	% identifying scenario as unlawful	% whose judgement of unlawfulness is based on knowledge
High proportion identifying as unlawful; high proportion based on knowledge		
Refusal to supply contract	89	82
Payment for temporary worker	87	88
Race discrimination — benefits	78	92
Deduction from wages	78	76
Sick pay	74	73
High proportion identifying as unlawful; low proportion based on knowledge		
Unfair dismissal — sexual orientation	92	16
Annual leave	85	27
Unfair dismissal — age	83	44
Disability discrimination — promotion	73	48
Working hours	71	39
Low proportion identifying as unlawful; high proportion based on knowledge		
Release from work for ante-natal classes	66	62
Sex discrimination — dress code	64	73
Low proportion identifying as unlawful; low proportion based on knowledge		
Unfair dismissal — sickness	69	57
Time off for dependants	64	22
Parental leave	35	59

11.2 Which groups are most aware of, or knowledgeable about their rights?

Once again, it is important to stress the diversity of the results. There is no evidence, either from the detailed analysis of awareness of individual areas of legislation, or from the aggregate analysis of general awareness/knowledge, that specific personal characteristics, employment characteristics or experience are unambiguously associated with higher or lower levels of awareness and/or knowledge of employment rights.

The multivariate analysis in the Statistical Appendix, while limited in scope (and focusing only on self-assessed and prompted awareness), confirms that there are few personal or employment characteristics which consistently and significantly influence awareness in a given direction.

The matter is further complicated by apparent inconsistencies in some of the data — in some places a given characteristic is associated with higher levels of awareness or knowledge, while in others it is associated with lower levels.

The most that can be said, therefore, is that some factors appear to be important *more often than others* in influencing awareness (albeit, perhaps, in only some areas of employment rights, and with some exceptions).

We can, however, and again at some risk of oversimplification, identify at least three types of potential influence on awareness and knowledge. They are not watertight categories, and they overlap in the sense that some groups of individuals are affected by all three:

- labour market advantage/disadvantage
- relevance of the legislation to the individual and their circumstances, and
- experience.

We consider each factor briefly in turn below.

11.2.1 Labour market advantage/disadvantage

The first set of variables relates to where the individual stands on the spectrum of labour market advantage/disadvantage, broadly defined to incorporate both personal characteristics (*eg* education, ethnicity) as well as the characteristics of individuals' jobs (their occupational level, their contractual status *etc.*)

It is notable (albeit with many exceptions) that the proportion of people recording high levels of awareness and/or knowledge on many of the measures used in this report was often higher:

- Among white respondents than among those from ethnic minorities.
- Among respondents with higher levels of qualification.
- Among respondents in higher level occupations (*eg* non-manual and/or more highly skilled, managerial and professional occupations); and also sometimes among respondents with higher levels of wages.
- Among employees with permanent rather than temporary jobs; and among respondents whose employers, for example, had issued them with written particulars of their terms and conditions; and also, sometimes, among full-timers rather than part-timers.
- Among union members rather than non-members.

It is important not to stretch this argument too far, because there were also many counter examples to be found in the report. There is, nevertheless, some evidence, taking these factors together, that individuals with personal characteristics which advantage them (*eg* high educational level, member of the majority ethnic community) and individuals who find themselves in relatively protected parts of the labour market (in permanent, professional, unionised employment) are more likely to exhibit awareness and knowledge of their employment rights. Arguably, it is those who might need that awareness/knowledge the most, who are least likely to have it.

It is, for example, notable from the analysis of employment problems experienced by the sample, that some of the groups who score relatively poorly on many measures of awareness and knowledge (*eg* members of ethnic minorities, people with lower level qualifications, temporary employees, people without written statements of terms and conditions) are also people who are more likely than average to report experiences of employment problems and (potential) infringements of their rights.

11.2.2 Relevance to the individual and their circumstances

When we look at specific areas of employment rights, it is also often the case that those for whom the right is most obviously relevant because of their personal characteristics (*eg* women in the case of maternity rights, or sex discrimination, disabled people in the case of disability discrimination *etc.*), demonstrate higher than average levels of awareness and/or knowledge of the right in question.

Perhaps the clearest example of this relates to work-life balance legislation, of which awareness and knowledge were relatively low, but some groups to whom the legislation is most clearly targeted (*eg* parents, women, those in the 26-45 age range) demonstrated higher levels of awareness and knowledge of many of the rights in this area on several of the measures.

Similarly it is notable that the few measures on which respondents from ethnic minorities score higher than their white counterparts relate to issues such as discrimination.

It is important to stress that this pattern is not universal, however, and it is clear that the criterion of personal 'relevance' often interacts with that of advantage/disadvantage, such that disadvantaged groups to whom the legislation in question might be most relevant may be less aware and/or knowledgeable than others. Thus it is not the case, for example, that ethnic minorities are more aware/knowledgeable than white respondents on all measures relating to (race) discrimination. Similarly, the evidence on awareness of the NMW and knowledge of its provisions

suggested that some groups to whom the provisions are most obviously relevant — people in lower skilled occupations, in sectors such as distribution, catering *etc.* and on low wages — demonstrated lower than average awareness/knowledge on some of the measures¹.

This latter point raises a second dimension to the factor of ‘relevance’, namely relevance to the respondent’s job or its circumstances. Thus, for example, although in most cases, permanent employees tend to exhibit higher awareness/knowledge levels than temporary employees, there were examples in the study where the pattern was reversed, *ie* on certain measures of awareness/knowledge, particularly in the areas of Working Time Regulations and wages, terms and conditions, where temporary staff recorded higher levels.

Another example relates to managerial and administrative staff, where it is likely that their higher than average levels of awareness/knowledge, even of provisions of no clear direct personal relevance to such groups, may reflect not only higher levels of general education, but also a facet of their jobs. Thus, they may acquire an awareness of employment legislation and rights in their role as managers/employers of other staff.

11.2.3 Experience

Finally, it is worth noting that one of the most consistent findings in the study relates to the role of experience of employment problems. Generally speaking, those with experience of employment problems tend to rate their own levels of awareness and knowledge of employment rights *less highly* than do those without such experience. The evidence suggests, however, that in practice, on most measures such experience is associated with *higher* levels of awareness and/or knowledge.

This applies at a general level (between experience of employment problems of all types and levels of informed awareness, for example), and within specific areas of law. Throughout the report, there was an almost universal tendency for respondents with experience of a problem in a particular area to be more aware/knowledgeable of rights in that area. While it seems likely that experience influences and conditions awareness and knowledge, it must also be recognised that the causality may go in

¹ Even here the patterns were complex, however — thus low paid people indicated lower awareness of the NMW’s existence, but among those who were aware of it, substantive knowledge of the rate at which it was set, was highest among the lowest paid groups. One interpretation is that although better paid people might be aware of its existence, the level at which it is set is of less relevance to them. In contrast, a low paid person becoming aware of the NMW is likely to have considerable interest in its level.

the opposite direction. Thus those who are more aware and knowledgeable than average of their employment rights, may be also be more likely to interpret a particular situation at work as an 'employment problem' or an 'infringement' of their rights.

11.3 Who exercises their employment rights?

The research also provided a wealth of evidence on what people did when faced with an employment problem, what steps they took and how far they pursued their employment rights.

Clearly one issue of particular interest is whether those who are more or less aware/knowledgeable about their rights are more or less likely to take action in pursuit of those rights. Put another way, does lack of awareness/knowledge 'disenfranchise' people in achieving their employment rights?

Because of the relatively small numbers who had experienced infringements of such rights, the conclusions which can be drawn are limited. Thus although there was some evidence that some groups with generally lower levels of awareness and knowledge of employment rights (eg lower paid employees, non-union members) were less likely to seek advice or take action, the pattern was not a straightforward one. It was also the case, for example, that temporary workers were more likely than permanent employees to seek advice about an employment problem.

Although hypothetical questions were also asked of the whole sample about their propensities to take action when faced with an (unspecified) violation of their employment rights, virtually the entire sample indicated that it would take some action, and it was not possible from this to identify clear patterns between respondents with different characteristics (the main variation between individuals was not whether they would take action *per se*, but whether they would turn initially to external advice or support, or whether they would contact the employer first).

Of more potential interest, therefore, are the findings on the propensities to take action in the context of the specific detailed scenarios outlining hypothetical breaches of employment rights. Once again, however, these analyses, when broken down by relevant individual characteristics, showed very few consistent features. It seems that the propensity to take action depends very much on the circumstances of the presumed rights infringement. It is not the case, for example, that 'disadvantaged' groups in the labour market appear systematically more or less likely to take action in response to the scenarios. Thus, for example, in some cases, low paid workers, or non-union members were more likely than the average to take action, and in other cases, less likely to take action.

There is, therefore, no compelling evidence from the study that lack of awareness/knowledge of employment rights is a general constraint to taking action when those rights may have been infringed, nor indeed that awareness/knowledge of employment rights is a spur to action.

It is perhaps finally worth stressing, however, that although disadvantaged groups may be no less likely to take action in pursuit of their rights, the research did show that members of some such groups (those in lower level occupations, temporary and part-time workers, non-union members *etc.*) were typically less confident of achieving justice through the system.