# Chapter XX

## They All Came Floating By

### (a) The Union's Pyrrhic Victory

The ‘fish in a barrel’ interlude was coming to an end; the Weaver v NATFHE case was about to reach its legal summit. Bis Weaver received the welcome news that the CRE, disturbed by the implications of the EAT's decision, was to support her application to the Court of Appeal. The application was set down for the 7th July and Ian MacDonald, QC, was retained to represent her.[1] A week before the hearing, we headed for London to attend a conference with Ian MacDonald but, unfortunately, he was held up in court so the pre-hearing conference did not take place.

Bis Weaver met an officer from the CRE, also invited to the briefing, who told her the case was generating a great deal of interest in the TUC Race Relations Advisory Committee. Some of the members, disturbed by the tribunal decisions and angry with NATFHE, were pursuing the matters of principle through the TUC. It was reassuring to hear that some members of a TUC committee had grasped the nettle. NATFHE was having to face pressure from powerful adversaries and forced to explain its position. However, unless the decision was reversed the trade union movement would be saddled with the policy on tenure that NATFHE’s spokesperson had claimed to be common in the trade union movement.

Prior to the hearing, priming the pump yet again, a press release was circulated, headed 'CRE TAKE NATFHE TO COURT OF APPEAL, MRS B WEAVER v NATFHE RACE CASE', notifying the press that Mr Ian MacDonald, who chaired the Burnage High School race case committee of enquiry, * was to represent Mrs Weaver in challenging NATFHE’s charter for harassers. The date and time of the hearing and a brief résumé was provided of this important landmark in the struggle Black and women members were waging in trade unions.[2] ‘Race Bias case goes to the Court of Appeal’ was how it appeared in print in one of the local papers.[3] Alongside press reports on the imminent appeal hearing, Triesman’s

* The Burnage High School enquiry was set up by the Greater Manchester Council after the stabbing of an Asian schoolboy at the school. The committee found an extremely disturbing situation at the school, where masters had encouraged racist behaviour and had sported badges with pigs on them to show their contempt for Muslim pupils at the school.[4] These masters were not members of organised racist groups, which showed how deep racism went amongst ‘non-organised’ racists in trade unions – something low on the schedule of priorities in NATFHE

influence over *7 Days* - a paper he helped to found, appeared to have waned over the past ten months. *7 Days* published a letter from me setting the record straight on the implications of NATFHE's policy, contesting the claims made by Triesman in his rejoinder in that paper of August 1987.[5]

A day before the hearing, Labour Briefing, a socialist newspaper, gave space to another facet of NATFHE's policy relating to those who break the law and admit to it. Under the heading 'NATFHE Breaks New Ground', NATFHE's admission of not supporting a member who "acknowledged that his conduct was unlawful, including breaches of the Race Relations Act" was revealed. The term 'including…the Race Relations Act' was the key to this other feature because it showed that NATFHE support was not available for other types of breaches of law. A reasonable example would be of no "union support…to any member who acted unlawfully…such as secondary action in defence of jobs or conditions of other trade unionists." Should charges be "made that members were acting unlawfully, and if they acknowledged that they were engaged in unlawful secondary action (which would be difficult not to acknowledge) NATFHE's policy would preclude the provision of advice and assistance to them."[6] This was probably stretching the point but NATFHE should take more care when formulating conditions for members to have access to its services even when made off the cuff.

On the morning of the hearing, we travelled to London on the back of a series of disappointments and with hopes of a just settlement held in abeyance. Would today produce something other than the familiar frustrated expectation? Would she obtain personal justice for suffering racist harassment/discrimination and legal recognition of NATFHE's institutional racism and sexism that would bring benefits for all Black and women members? When we arrived at court we heard the case was coming up before Lord Justice May.

Inside court, the argument covered two grounds: (a) the construction and application of s1(i)(b) of the Race Relations Act and (b) the discriminatory effect of s11 of the Act. Mr MacDonald's argument was based on the premise that the condition or requirement applying to the Appellant had been incorrectly categorised or defined. The Industrial Tribunal should not have taken the complaint out of the particular context of racial discrimination by applying it across the board to five different types of complaints. Mr MacDonald contended that the Tribunal should have asked, "Does the application of this condition or requirement in the context of a complaint of racial harassment have a disproportionate impact on the same racial group as the Applicant?"

Lord May's response was to say that might stand if it was the right construction of s1(i)(b) but it was not and NATFHE's condition (policy on tenure), under the construction of the Act was not racial discrimination. Ian Macdonald put forward that it was not the construction of s1(i)(b) but its application that determined whether discrimination took place but Lord May responded by saying that before applying the Act it must be constructed. Macdonald countered by stating that the question to be answered was "when someone complains of racial harassment and racial discrimination and the union applies its policy does it result in a disproportionate adverse effect of the people of the Asian racial group." To him, this was a common sense construction of the Act. *

The second point covered the union's obligation to "afford him (or her) access to benefits, facilities and services," under section 11 (3)(a) of the Race Relations Act, which the refusal of the union to represent Mrs Weaver constituted a detriment to her and discriminated against her. It was apparent, Mr MacDonald pointed out, that under the union's current policy victims of racial harassment or discrimination would not get representation but those complained against would. He pointed out that three of the categories of complaints

* LJ May apparently favoured the literal rule of construction where words in the statute are given their plain meaning. This is unlike the golden rule which looks at the statute as a whole to find the intention of the legislators. A different conclusion could have been arrived at had the judge gone beyond the plain meaning of the words in the statute and looked at the intention of the Race Relations Act and Sex Discrimination Act, which was to prevent discrimination against ethnic minorities and women. Furthermore, proportionality in the Act was a means to prevent racial or sexual discrimination being masqueraded under the pretext of something else.

There is also a possibility of distinguishing grievance procedures from disciplinary procedures. Disciplinary procedures are brought by the employer against an employee, whereas grievance procedures deal with complaints (i) by employees against other employees or (ii) by employees against management or the employer.

The type of complaint could also be distinguished. Theft, drunkenness or drugs would involve, if not the police, disciplinary procedures brought by management against an employee(s). These types of complaint would not involve union member(s) against union member(s), therefore, the union's role would be to support the accused member against the employer. Racist and sexist harassment cases could involve an employee (union member): (i) against management or (ii) member against member, both of which would be adjudicated by the College governors. In grievances against management, union assistance could be granted to the complainant employee but not to a complainant in member against member complaints.

Moreover, complaints between members, under the grievance procedures, do not involve threat to tenure since its purpose is to establish the validity or otherwise of the grievance. The judgement might favour either party, after which the employer might invoke disciplinary procedures against the erring employee, which involves a separate disciplinary hearing, employer v employee, with the employee's tenure possibly at risk. This possibility should create no problem in providing union representation for the member(s) at fault. In the grievance procedure, itself, there is no reason why the union could not represent both parties, as neither party's tenure is at risk. A conflict of interest in the grievance procedures need not arise since officers/officials from other regions of the union could represent each party, as was the policy in the Inner London region as outlined by Triesman to Linda Milbourne[7]

mentioned by the Tribunal (theft, drunkenness and drugs) could be applied to all members across the board because it would apply equally to members irrespective of gender and race. But for sexual harassment and racial harassment, the complainants were more likely to be women rather than men or Black people rather than White, therefore, the complainants were placed in a disproportionate adverse detrimental situation by NATFHE's policy.

Lord May queried why the policy of protecting another member's tenure, as in NATFHE's policy, was a contravention of section 11 of the Act. Mr MacDonald's reply was that, upon consideration of the facts, a racial connotation was in the policy because the union did provide representation to the three persons against whom the complaint of racial discrimination was made, but did not provide representation for the complainant of racial discrimination, thereby denying her the benefits, facilities and services of the union, for which section 11 accommodated. LJ May disagreed with this proposition and gave what appeared to us, even as lay people, an unusual ground for doing so. He maintained that all four parties to that complaint were represented by NATFHE at the LEA hearing but NATFHE's rules prevented it from directly representing a person whose job was not at risk when the jobs of the others were at risk. He said that the union's prime consideration was to safeguard jobs – a situation he considered would similarly apply under the Sex Discrimination Act. He asked, somewhat rhetorically, if it was discrimination to refuse to represent a woman if a man was at risk of losing his job.

We failed to understand the Learned Justice's reasoning behind his statement; surely representation meant being there to represent, unless representation had a different meaning in Lord May's legal lexicon to what 'common sense' suggested it might mean. Perhaps, if Mr MacDonald had not turned up to present Mrs Weaver's application, Lord May might have considered that Mr MacDonald had still represented her in his absence because he had been retained to do so. Lord May's unusual interpretation of what constituted representation was at odds with the Tribunal conclusion, which had stated clearly that the union could not represent her because it would constitute a 'conflict of interest' and 'put a fellow member's tenure at risk;' even though that policy was not in the union's rules. But, notwithstanding that, Lord Justice May recognised Gates, Cave and Hartland were represented by Day, which NATFHE had denied doing. He also recognised that Mrs Weaver's tenure was not at risk, which Triesman had put forward as a possibility when making the dubious claim that NATFHE might have come to her assistance had the LEA decided to attack her tenure.

By the time Mr MacDonald had completed his case, it was obvious that LJ May had made up his mind and, not bothering to call NATFHE's counsel, he announced the reasons

for rejecting the application. He said the argument had to be brought within section 1(i)(b) of the Race Relations Act, which he felt had not been done. He summarised by saying that all parties involved in the complaint of racial harassment belonged to the same trade union, which had a rule stating that a member cannot bring a claim for assistance if the other member's job was at risk, therefore, the union decided not to assist her. * He cited two strands of the Industrial Tribunal decision: (a) there had not been racial discrimination by the union; and (b) the union could not appear on both sides. Both of these constructions were upheld by the Employment Appeal Tribunal, and he concluded that the Tribunals had taken a proper view of the principles of law. Half an hour of legal argument that was all it had taken and the application had failed with costs to NATFHE.[8]

The issue of the protection of tenure in union policy appeared paramount and unassailable - a form of judicial misogyny had determined that the interests of women of whatever ethnic origin were subordinate to safeguarding a man's job irrespective of what that sacrosanct man had done. If we had known more about the judge prior to the hearing we would have held little hope of any change of fortune. Lord Justice May seemed to live in a vacuum or was at odds with the changes taking place in social attitudes. His standpoint was not unlike that of trade union 'hacks', some of them in NATFHE, who gave the impression of women being an unnecessary appendage to the work force. **

* Lord May seemed to have taken little notice of the brief because nowhere in the union's rules was the policy on tenure mentioned and the only reference to the policy came at the Industrial Tribunal when Triesman admitted it was not in the union's rules and referred to it as custom and practice.

** Three years before, in De Souza v AA,[9] a woman was referred to in her absence, by a fellow employee as the "wog." Lord Justice May presiding over the case decided she had not been subjected to a detriment under 4(2)(c) of the Race Relation Act. He adjudged that to "Racially…insult a coloured employee was not enough by itself, even if the insult caused distress; [because] before the employee could be said to have been subjected to some detriment the court or tribunal had to hold that by reason of the act or acts complained of a reasonable worker would or might take the view that he [or she] had thereby been disadvantaged in the circumstance in which he [or she] had thereafter to work…" Ms De Souza, according to LJ May, could "not properly be said to have been treated less favourably by whomsoever used the word, unless he intended her to overhear the conversation…, or knew or ought reasonably to have anticipated…she was overhearing it, or…become aware of it in some other way."[10] LJ May's last condition - becoming aware of it, was not beyond the bounds of probability because it could be argued that the perpetrator could reasonably have anticipated it would come to Ms De Souza's knowledge by being told by a member of staff who heard the comments – as in fact happened, and that would cause a detriment to Ms De Souza in her employment situation.

LJ May had also ruled against an unmarried woman co-habitee of 19 years. She had acted as a homemaker performing domestic duties and making financial contributions to household bills and redecorating. He said she was not entitled to a share of the house as she had not made financial contributions to the acquisition of the property, such as mortgage installments.[11] He also judged that a male who had a sex change operation was still a man – the argument put forward that Greaves was "philosophically, psychologically and socially a woman" was rejected by LJ May and his co-Justices without hesitation.[12]

The bourgeois courts, held in such contempt by the 'Left', had come to the aid of the brothers in NATFHE. It had been a long hike from her initial complaint and Day's enquiry; from bureaucratic insensitivity to judicial insensibility; and after three years and five months that appeared to be that. Instead of thrusting a stake into the Dracula lying inside NATFHE's crypt, the Lord Justice had opened the coffin lid to expose Black people and/or women to more of the same treatment and to curb their reasonable expectation of being treated fairly and justly by the trade union of which they were members. His Lordship had hoisted NATFHE's petard from the flagpole on the Appellate Court and it would fly for a long time in the legal world as a universal trade union policy. As a result of the back-handed favour bestowed on NATFHE by the judiciary, NATFHE's 'anti-racists' sought sanctuary in union-style 'patriotism'; the strategy of a pseudo-leftist radical oligarchy under threat and diverting discontent into sub-patriotism; * and they found a last refuge among Dr Johnson's scoundrels, which appeared more to its taste - my union right or wrong! ** However, NATFHE would be taken to task by the non-judiciary in the world at large within the next three months, after which NATFHE would gorge itself on issues of greater importance to NATFHE officials than racism – issues that concerned the self-interest of officials.

The doom and gloom accompanying the party on the way back to Birmingham was a re-run of December. Our disappointment, despite our previous experience with this emotion, was still considerable but press releases and letters to the press had to be written and by the time the train pulled into New Street station in Birmingham, they were ready. The press release, headed 'COURT OF APPEAL UPHOLDS UNION's DISCRIMINATORY POLICIES', and a number of letters on the decision and its implications for women and ethnic minorities were pushed out the same day. However, the response was less than anticipated. Continually losing eventually becomes no news at all.

Those newspapers covering the story used headings like 'An Untenable Situation' and 'Union Courts Discrimination'. These letters dealt with NATFHE's policy and the practices resulting from this policy. The "detrimental effect of NATFHE's policy, not addressed by the Appeal Court since the Court considered only the legal aspects of the case was brought into

* Apologies to Anatole Lieven, for playing around with his observations on oligarchies: "The Classic modern strategy of an endangered right-wing oligarchy...is to divert mass discontent into nationalism"[13]

** The author, David Edgar, made observations on the political far left. He wrote of their authoritarianism and manipulation, their contempt for allies as 'useful idiots, their insistence that the end justifies the means and their refusal to take anything anyone else says at face value.[14] The Broad Left Coalition could hardly be described as 'far left', but these observations seemed just as applicable to members of the Coalition as they did for the 'far left'

the open. These revelations covered the actions of union officials "assigned to represent those members' complained against, [who]...negotiate with City Council officers to change, to the complainants detriment, the Council's grievance procedures without the complainant being informed…"[15] Another newspaper mentioned that "The Court of Appeal decision...prevents NATFHE from claiming...to have a policy of supporting and protecting members of racial minorities and women from harassment/discrimination in the workplace [as] Any such claim would be a misrepresentation of its policies..."[16]

Despite the limited response from the press, new ground was being broken with the items being published, which had a definite cutting edge. The paper for whom Triesman was never available for comment, *The Voice*, an African-Caribbean paper, published an article on the 19th July. The reporter, who had followed the case for some time, wrote a robust, no punches pulled, report on the case. He said:

> Race bullies can harass their black workmates and get union backing for it, warned a Commission for Racial Equality (CRE) chief after a legal judgement last week.
> Bis Weaver, from Selly Oak, Birmingham, and the CRE took the lecturers' union NATFHE to an Industrial Tribunal for racial discrimination because it refused to help her with complaints of racial and sexual harassment.
> Her union instead backed Bournville College lecturer, David Gates, after she lodged complaints of one-and-a-half years of hassle against him.
> But a recent appeal court upheld a decision by a Tribunal in June 1987 that the union's duty was to help Mr Gates because the complaint could mean his sacking. This was despite the Tribunal agreeing that he did harass his fellow worker.
> The CRE's top complaints officer, Don Calvert commented: "The victims of racial discrimination are now defenceless. It really must be a matter of considerable concern. On the surface it looks a commendable policy but when you apply it to Mrs Weaver and other black people in similar circumstances then the situation can become so fraught it could stop them working. Any union member guilty of racial abuse would know that the union would not help the victim."
> [Bis Weaver]…is angry about the union hierarchy which she feels bent the rules to protect Mr Gates, a senior union officer himself. She told the Voice: "At one time I was so ill that I was in danger of losing my job. Despite what the trade unions say about anti-racism and equal opportunities, their own policies show they are unable to deliver."
> Bill Morris, the number two of the biggest union, the TGWU, has taken an interest in the case and will bring it up at...the Trades Union Congress.
> A TUC spokesperson said: "We cannot constitutionally intervene in a union's relationship with its members unless we are requested to."[17]

The effect that the harassment had on Bis Weaver, referred to in the article, seemed beyond the comprehension of Triesman and his lay officer acolytes whether at head office or in the West Midlands region. By declaring a policy protecting the tenure of harassers, NATFHE had shown a cavalier disregard for victims and the consequences to them as a result of the actions of harassers. For Bis Weaver this meant facing Gates, and those over

whom he exercised considerable influence, as they brought the weight of the union down on her.

On the day that *The Voice* published its article on NATFHE, Bis Weaver received an invitation from the BBC to appear on 'You and Yours', in a programme featuring race discrimination and trade unions. Also appearing was a national trade union leader, Ken Gill, of the MFS and member of the TUC Race Advisory Group. The programme was to be broadcast on the 21st July, the day she was due to leave the country for a holiday. As a result, the BBC pre-recorded an interview with her at the Pebble Mill studio on the 20th. This gave her the opportunity to 'air' her experiences at Bournville College and the problems she had faced with NATFHE.

Bis Weaver referred to the details in her complaint, covering various facets of the harassment from February 1985 and its consequences: the steady deterioration of her health through stress; the constant expectation of further harassment in the workplace; and the harasser's knowledge as an officer of the union that senior management was reluctant to intervene on her behalf. She related how the union refused to deal with the issue of racial harassment as well as the unwillingness or, more accurately, the outright opposition of the so-called 'alternative radical network' to assist a Black woman against one of their own. The union was also indicted for trivialising the complaint and in blaming her – the victim, for, as the regional official put it, insensitivity in bringing a complaint against a union officer.

She explained how the case against NATFHE arose out of its refusal to assist her in pursuing a complaint against the harasser submitted to the employer; and that she decided to challenge what was in reality a racially discriminatory policy because it left Black people vulnerable in the workplace and without union assistance. She suggested that trade unions should adopt the rules of natural justice and also listen to Black people, who knew the reality of racial harassment and racial discrimination. In conclusion, the TUC and its affiliates, should address themselves to the Weaver v NATFHE case otherwise their statements on anti-racism were meaningless.[18]

The opportunity had arrived to demolish the false and often malicious impressions given by NATFHE officials and officers and she seized it with both hands. This was the *coup de grace*, after the forty-plus months of an almost interminable trek through NATFHE's arid environment of bureaucratic deceit and prevarication after she refused to submit to the interests of its officers and officials. Furthermore, NATFHE's vigorous denials in its October 1986 Tribunal submission were now in shreds. NATFHE officialdom had produced a supreme example of how not to win.

The legal decision may have gone against Bis Weaver but there was no glory in NATFHE's victory. Exposure and condemnation of its policy were to be NATFHE's windfall from anti-racist organisations and the labour movement. No longer would NATFHE be taken seriously when claiming any commitment to anti-racism - its anti-racist rhetoric was decidedly at odds with its practice as the LEA had pointedly described the behaviour of two of the Bournville 'trio' following its 1986 enquiry. The hostility Black people constantly faced in the workplace and in their everyday lives was definitely beyond the comprehension of NATFHE's officials, officers, representatives of its national anti-racist * and women's panels, and on equivalent committees in the West Midlands.

NATFHE, and Triesman in particular, should have recognised the grave injustice inflicted on Bis Weaver prior to and after the case went to an Industrial Tribunal. However, that seemed to be an extra mile much too far for Triesman to travel and something on which neither Bis Weaver nor anyone else should have held their breath. As far as we were concerned, NATFHE was a lost cause and the whole tawdry business with NATFHE was virtually over. It was up to the TUC and NATFHE members to put NATFHE's shoddy house in order.

The day of the broadcast was also the day the TUC held its conference on *Black Workers and the Trade Unions* originally destined for NATFHE's headquarters. At the conference, impatience and scepticism towards the trade union movement was expressed by Black delegates. The outcome was that a hundred or so activists and officials reached a consensus that "Unions must work harder to convince Black workers that they have instituted the organisation, the procedures and the structures to deal effectively with the particular problem of workplace racism."[19] In one of the workshops, the Weaver v NATFHE case was raised and both Ken Gill and Dipak Rai expressed their considerable dissatisfaction with NATFHE's policy.[20] NATFHE did not appear to be having any success in promoting itself as an anti-racist organisation other than trying to conceal the existence of racism within its ranks.

The following day the Times Educational Supplement wrote a brief report on the case and published a letter from me, in which it was said:

> I write with reference to the Court of Appeal decision, in the Mrs B Weaver v National Association of Teachers in Further and Higher Education race discrimination case, which...confirms that victims of racial (and sexual) harassment cannot obtain union advice and assistance when registering these complaints. It also means that if NATFHE were to provide such advice and assistance to a victim of racial harassment then the

* The ethnic minority members on the ARNP can be excluded from this assessment

> harasser could take legal action against the union for a breach of its obligation to the harasser.
> The Court of Appeal decision also prevents NATFHE from claiming, until it changes its existing principal obligation to members, to have a policy of supporting and protecting members of racial minorities and women from harassment/discrimination in the workplace...[21]

(b) NATFHE Sups at the Last Chance Saloon

Shortly after Lord Justice May had delivered his judgement, the Shipley Branch, still awaiting a response from Dawson, received one from Triesman, yet again delegated the task of delivering the undeliverable. He regretted the delay but claimed to be "highly restricted because the case is still before the courts and...[he] will respond when the lawyers tell [him he is] free to do so." However, this restriction did not prevent him from taking the opportunity to "say that it is a pity that the branch passed a resolution prior to hearing the information – rather an odd way of proceeding." He added that "The text [of the motion] leads [him] to believe that [the Branch] have been seriously misinformed as to the facts."[22] Triesman omitted to tell the branch secretary that the application to the Court of Appeal had been held on the 7th July, four days before this letter was sent. The case was over as far as the legal system was concerned and there was no legal restriction on him whatsoever. Not only that, he did not feel in any way restricted by legal proceedings when his rejoinder was published in *7 Days*, or sending out grossly misleading letters to MPs, and others, misrepresenting the case. Triesman seemed incapable of acknowledging the gross injustices NATFHE had committed against Bis Weaver or telling it as it is. Nothing ever really changed with NATFHE officialdom. We wondered how many copies of letters in this vein had been distributed around the branches.

When we returned from holiday, we scanned the newspapers for anything published while we were away and several items had found their way into the press. One letter was of special interest and it was evidence, if that was the appropriate word, that Triesman was determined to travel that extra mile to have the last word. On this occasion, his determination was shown in a public forum despite the predictably hackneyed and unrealistic account of his contribution. NATFHE officialdom must have felt itself in a tight corner to take such an unusual course of action – a letter to a newspaper read by virtually everyone in education.

On the receiving end of a hundred or so letters and reports published over the previous twelve months, NATFHE officialdom girded its loins, brandished its lances and stirred itself to tilt at windmills. It moved out of the cloisters of behind-the-scenes myth-

making on to the national stage but without any change in the message - the same worn out, 'time warp' defence, repeated so many times that it appeared to have become part of the folk-lore for NATFHE officials. Another example of how NATFHE constructed its version of social reality. This time it was trotted out in a less vitriolic and rancorous style, maybe more to do with the audience - readers of the Times Educational Supplement, than any sign of NATFHE mellowing. The usual imaginary brew conjured up from the sorcerer's pot at Britannia House was reproduced for the national press. A reincarnated Elvis Presley, viewed from a flying saucer, was riding on the back of the Loch Ness monster! These self-appointed doyens of the anti-racism movement were naught but the cocks who thought their crowing created the dawn.

The letter to the TES, written by David Triesman, in reply to my letter, went:

> Both your account of the Weaver vs National Association of Teachers in Further and Higher Education case and Mr Weaver's letter about his wife's case (TES July 22) are sadly inaccurate.
> First, our position has been that while we have a general duty to protect our members' jobs, and that dismissal and discipline are the remit of employers, we would under no circumstances defend members who admitted they were guilty of racial or sexual harassment. We never have. We never will.
> To allege, as Mr Weaver does, that a harassed member "cannot obtain union advice and assistance" flies in the face of the day-by-day work of all my full-time colleagues.
> Second, and this seems to be an issue of no concern to the lawyers at the Industrial tribunal or the Equals (sic- Employment) Appeals tribunal or elsewhere but of great concern to NATFHE, there was no evidence of racist harassment in respect of the other member involved. The member against whom the allegations were made had an exemplary record of anti-racist work.
> It is not enough for someone to allege racism against a member, provide no evidence, and expect this union to hound the member from their job. Racism is too important an issue to be treated in that way.
> Finally, there was no Court of Appeal hearing of the case. The Court of Appeal simply refused Mrs Weaver leave to Appeal.[23]

The NATFHE bureaucracy, on whose behalf Triesman was carrying out his duties, had turned the world upside down but unlike the Levellers, who wanted to change the world for the people, the bureaucrats' aims were to protect themselves. Triesman was trying to re-package NATFHE's evident failings as an example of success but his first point was contradicted by his own evidence given at the Industrial Tribunal. His second point merely confirmed how inadequate was his understanding of racism.

The reasons for the court's decision, based on Triesman's evidence establishing NATFHE's discriminatory policy as a legal precedent, had been completely ignored by him. Instead, he regurgitated the same canards that advice and assistance were available to victims of racial and sexual harassment. He tried to further his case with the deflective mechanism of

rallying to the defence of the accused harasser. Triesman's concern for not 'hounding members' from their jobs did not sit easily with Bis Weaver's experience because Triesman had ignored how the union officer with "an exemplary record of anti-racist work", aided and abetted by a full-time colleague of Triesman's, had sought to hound her out of her job, which had very nearly succeeded when her health had deteriorated considerably between 1985 and 1987. This was a feature of the case of which Triesman was well aware.

Triesman could not be accused of not being right on everything since he was right on two points. He was right in recognising that "racism was too important an issue" but this could be attributed to mere rhetoric. A cursory glance at NATFHE's performance between 1985 and 1987 involving Day, Triesman and the compilers of NATFHE's Industrial Tribunal submission, in which Bis Weaver was accused of playing the 'Race Card', * had shown that racism did not occupy a place of any significance in NATFHE. The other correct point was Triesman's reference to the hearing at the Court of Appeal being an application and not a full hearing – one of the very few valid comments we had ever seen in writing from a NATFHE official concerning Bis Weaver's case. In itself, Triesman's observation on the status of the hearing was trivial in comparison with the real issues involved but NATFHE officials and officers appeared obsessed with trivialities at the expense of the significant. NATFHE officials inhabited a narrow and peculiarly partisan world without taking any heed of the changes taking place around them.

Triesman seemed incapable of accepting that he could be wrong. NATFHE had spent considerable time trying to cover up the Weaver case from the time of Day and Triesman's involvement; using the invalid accounts in NATFHE's submissions and in their evidence to the Industrial Tribunal; and reconstructing facts in the letters to *7 Days* and MPs. This led us to think that NATFHE officialdom might have had a hand in some of the activities carried out by the branch, liaison and REC members. If NATFHE was so keen to discredit Bis Weaver after the Industrial Tribunal, as Triesman had shown a tendency to do, could this possibly be a continuation of a role of *eminence gris* adopted when Bis Weaver turned down Triesman's re-hash enquiry. This was something the public will have to deliberate upon for itself.

NATFHE's continual dissembling was tedious and we had become well attuned to the

* Playing the race card is used in two ways to disadvantage Black and ethnic minority people: (i) it is an allegation against Black and ethnic minority people of deliberately and falsely accusing another person of being a racist to gain an advantage,[24] as NATFHE tried to do in its submission against Bis Weaver; and (ii) it is used by someone to exploit prejudicial attitudes against another 'race' in an effort to devalue and minimise claims of racism [25] to gain an advantage, such as, accusing a Black person of only raising the issue of race in a complaint after an original complaint had been rejected

swashbuckling antics of NATFHE officials with swishing sabres and thrusting lances to drown out the noise of the skeletons rattling in NATFHE's empty anti-racism cupboard. Had its officials already forgotten the boycott of NATFHE's Anti-racism Conference in December 1987; the threat to picket the TUC Black Workers' Conference by *Black Rights* if it was held at NATFHE headquarters; and the threat by *Black Rights* to call on Black members to leave NATFHE if it did not change its policy? * Did these officials, not one of whom was competent in race issues according to Triesman, consider all Black activists and non-NATFHE anti-racists to be wrong and only they were right? Did they not realise or could they not accept that while NATFHE had the 'bourgeois' judiciary's vote it had lost the election among real anti-racists? Maybe the fear of admitting a mistake that might cause the union's whole hypocritical edifice to collapse around them influenced their action. Once again it had been left to Triesman to do Dawson's job and not very effectively; and soon it would become known to all and sundry that Triesman wanted to do Dawson's job full stop' This came to the notice of NATFHE members and trade union leaders when Thatcher's trade union laws visited NATFHE and an election had to be held among the membership for the post of general secretary.

Triesman's letter to the TES came in the wake of NATFHE's recently proposed draft guidelines for combating racial and sexual harassment, partially drafted by Triesman. It might reasonably be expected that this draft prescription for combatting harassment would have enlightened NATFHE officials and officers to the fact that the treatment meted out to Bis Weaver, from 1985 to 1987, corresponded with the treatment NATFHE had identified as potentially racist and sexist. If this logical conclusion had been drawn by the officials and officers, yet instead of adopting this logical conclusion, they continued to pump out of their bile against her. Did NATFHE bureaucrats believe that: (i) Bis Weaver did not make a complaint citing racism as a factor; (ii) had not provided any evidence of continuous harassment; (iii) unreasonably wanted the union to take action against Gates; and (iv) had played the 'Race Card' in both of its variations? They acted as if when a tree fell in a forest they were never around to hear the sound of it crashing to the ground or recognise the sounds waves emerging from it.

Did Triesman think that a Black person would deliberately submit a complaint of racist harassment if the issue was as insignificant as Triesman had tried to make it out to be? For a reputed anti-racist with a long history in the anti-racism movement, according to

* These two threats were unknown to us at the time but they were known to NATFHE officials

NATFHE's submission, Triesman thought little of disparaging a Black woman making a complaint of racist harassment. He had portrayed a Black woman as using racism for her own ends - yet another example of how racism, a problem created by White people, is made out to be one conceived in the minds of Black people. He seemed to forget his previous proclamation in front of an audience of NATFHE members that racism was a White problem.[26]

Why he chose to go to such extremes to protect a harasser appeared to go much deeper than "not bringing the union into disrepute," although we never could completely figure out what it was. What motive could explain the failure to take steps to curb the intimidation and harassment of Bis Weaver which had left her as an open target in the local union? The connivance of officials in the distasteful and unfounded accusation made in NATFHE's Industrial Tribunal submission invoking the 'skin game/race card' was no expression of a commitment to anti-racism and underestimated the resolve of a Black complainant. The way officials and officers hung together to protect each other was enough of an explanation for us and it would be more than enough for some leading figures in the trade union movement. NATFHE's 'commitment' to anti-racism could be taken with a pinch of salt but NATFHE bureaucrats were obviously trying to resist any conclusion not of their own making. Their efforts were to be of no avail!

The contents of Triesman's letter came as no surprise, other than they were made in a specialist newspaper dealing with education. By churning out the same discredited line, it was apparent that NATFHE was incapable of changing. It looked like an outdated party manifesto that no one believed in but had to be voiced to try to convince themselves they stood for the principle of equality among peers. Previously, such a mischief-laden fabrication would have caused considerable concern to us but now it was more than welcome. There was no difficulty in picking up on NATFHE's infertile contribution to anti-racism – it was much easier than shooting fish in a barrel.

NATFHE's comatose reaction had prised the door wide open for a challenge to be mounted by Bis Weaver in what would be the first letter sent to the press under her own name – another 'Thank You' card for Triesman would soon be on its way via the TES.

Bis Weaver's reply to Triesman's letter was published in the TES on the 2nd September. She wrote:

> For some time, NATFHE officials have chosen to misrepresent the case I brought against NATFHE (Mrs B Weaver v NATFHE). Mr Triesman's letter is no exception.
> The industrial tribunal addressed the issue of racial harassment and criticised Mr Triesman for coming to the conclusion that the member I complained against was not a

> racist. The regional official was also criticised by the tribunal for not investigating my complaint properly and for not dealing with the issue of racial harassment. NATFHE's action in treating me less favourably than those complained against was considered deplorable.
> The tribunals found that NATFHE's policy had a racially discriminatory impact, but that NATFHE's principal obligation was to protect tenure irrespective of the merit of any complaint. This was based on Mr Triesman's own evidence when he stated to the tribunal that even when complaints have merit NATFHE would still seek to protect the tenure of the accused.
> If, as Mr Triesman now claims in *The TES*, that NATFHE officials do provide advice and assistance to complainants of racial and sexual harassment, then he is contradicting his own evidence to the tribunal and upon which the tribunal based its decision.
> There is no confusion about the issues raised by this case, as pointed out by a senior officer of the Commission for Racial Equality, who when commenting to the press on my case against NATFHE in July 1988, stated "The victims of racial discrimination are now defenceless...Any union member guilty of racial abuse would know that the union would not help the victim."[27]

Having the last word was not to be Triesman's privilege and it was not only the response from Bis Weaver that settled this as there was more on the agenda. There were bigger guns trained on NATFHE from inside the labour movement than a few fireworks thrown by a solitary Black woman with a few supporters in the West Midlands and, as it would now seem, a few others in different parts of the country. NATFHE had nothing to cause Bis Weaver any real concerns now, unlike the dark days of 1985 to 1987, after all, how many people would swallow Triesman's 'story' in the face of overwhelming evidence contradicting his revisionist version of history. There would be very few outside NATFHE, other than those living in the 'Alice in Wonderland' world inhabited by NATFHE's own Tweedledums and Tweedledees.

Triesman's attempt to diminish the contents of the Weaver v NATFHE case had singularly failed because there was an additional bonus alongside Bis Weaver' letter, in the TES, written by the Director of Black Rights (UK). He wrote:

> For David Triesman to attempt to defend the appalling behaviour of his union, the National Association of Teachers in Further and Higher Education, in not supporting Mrs Weaver in her complaint against a union member who was a regional official of the union, clearly shows why black people should cease to be members of that union (*TES*, August 5)
> To suggest, as Mr Triesman does, that only if the members complained against admitted they were guilty of racial or sexual harassment, then the union would not defend them is really too much. But, even if that was a proposition his black members were prepared to accept, what NATFHE told the industrial tribunal were the reasons they declined to assist Mrs Weaver were on two major grounds.
>
> 1. That it was their policy not to support a member of the union where the tenure of employment of another member of the union was at risk.
> 2. The union did not believe that there was any merit in the applicant's (Mrs Weaver's) claim of racial discrimination.

> The tribunal considered the latter point and concluded that, having heard all the evidence, that was a conclusion to which the union was not reasonably entitled to come. (Source: EAT decision 551/87 page 2)
> In this particular sad case, if NATFHE was prepared to admit it made a mistake and would ensure it does not happen again, it would have done it credit, but to attempt to justify its actions shows just how serious it is in eliminating racial discrimination within the union.[28]

Triesman, for the first time, had openly put his head above the parapet in a national publication, apart from his article in the small circulation *7 Days*, but it was unlikely he would do so again on the Weaver-NATFHE issue. NATFHE's gaffe had been blown and would be shown at the forthcoming TUC conference. Soon there would be not a single chicken left to come home to roost.

This surely was NATFHE's first and last public attempt, nationally, of trying to defend the reprehensible. The union, more often acting in the shadows, had shown itself capable of doing or saying anything against a member, who had exposed the decayed fruit concealed under the union's superficial, glossy outer skin.

In his letter to the TES, Triesman, in the same vein as the right wing Birmingham Conservative party councillor a few months before, had written of "Mr Weaver's letter about his wife's case." It should have been obvious to Triesman that my letter to the TES was sent as Mrs Weaver's representative not as her husband. Could it be another attempt by Triesman to minimise the contents of my letter?

In the light of this, Bis Weaver revisited the women's movement in NATFHE for the first time in a long while. Her experiences with this movement had been less than favourable on the issue of harassment but the point made by Triesman might be likely to bring action from the feminists as it involved semantics and the way men expressed their perceptions of women. These male sentiments appeared to have more significance for NATFHE feminists, with whom she had come into contact, than the issue of the harassment of Black women. Therefore, she wrote to women members of NATFHE's National Executive Committee and the Women's National Panel; and to the West Midlands Region and Birmingham Liaison Committee women's officers.

Bis Weaver referred to Triesman's comment and made it known that the initial letter to the TES was sent by Gordon Weaver as her representative not her husband and he was acting in this role "because NATFHE refused to provide…representation under its policy of not providing advice and assistance to members who bring complaints, such as racial and sexual harassment and physical abuse that threaten the tenure of other members." She

included ‘physical abuse’ on this occasion for those who knew of the fracas at the 1987 Annual Conference to remind them that the officer Triesman was defending had also physically assaulted a woman.

Suspecting that these prominent feminists thought as much of terminology as actions, she described it as disgraceful for Triesman to “refer to a woman member of NATFHE as someone else's wife.” To enable them to appreciate the level of consciousness at which NATFHE officials operated in the specific fields of gender and race, she likened Triesman’s “lack of understanding of gender equality...[as] on a par with his previously admitted lack of competence in making pronouncements on racially motivated behaviour.” She matched Triesman’s attitude with that of the West Midlands regional official, who when producing a report on her “complaint of harassment,...stated Mr…* may not altogether appreciate the image he presents to his colleagues particularly women who are naturally sensitive to appearances of domination.” When she had “challenged [the official’s] statement as presenting a particular and prejudicial view of women, he replied that his masculinity debarred him from seeing it as such.” She deduced from these examples “that some NATFHE officials are not competent to deal with equal opportunities issues...[and suggested] someone should have a word with them.”[29]

These women were the vanguard of the women's voice in NATFHE as well as being activists in the wider women's movement, yet not one of them contacted her about the contents of her letter or the policy on tenure or for details of the harassment. This was further endorsement of Bis Weaver’s, and other Black women’s, assessment of the sterility of the mainstream women's movement when confronted with issues affecting Black women. On the most favourable interpretation, these feminists stood on the side-lines in the struggle between the powerless (a solitary Black woman) and the powerful (NATFHE officialdom); or, as was more likely, they had consistently stood alongside the powerful, shoulder to shoulder with their male comrades in the union – a form of union jingoism, my union right or wrong. Another alternative was that they thought it was an ‘interpersonal dispute’ between Bis Weaver and Triesman, or between Bis Weaver and Day, or between Bis Weaver and Dawson, or between Bis Weaver and anyone else they might want to bring in to rationalise the reasons for their inaction. Who could tell what they thought as there was little evidence on hand to suggest they had thought about anything affecting a Black woman to her detriment

* Gates was not identified but it was highly unlikely for these women activists not to know the identity of the officer involved

over the previous three and a half years. Only a few months before, at a fringe meeting during the Annual Conference, it had been recognised that the oppression of Black women on racial grounds should not be subordinated or ignored in any women's fora and that there was a need to involve more Black women as activists. The arena considered to be of vital importance in advancing this objective was NATFHE's regional women's panels.[30]

If the rest of NATFHE's women's panels were like the one in the West Midlands then a substantial amount of work needed to be undertaken to bring them up to the required standard. In the West Midlands panel, a Broad Left member had accused Black women of being reactionary; Ms Frew had carried out a *McCarthyite enquiry* aimed at a Black woman; and Ms Welch, a close colleague of the accused harasser, tried to get the victim to accept an investigation carried out by her. Feminist REC members had supported the new WMARC constitution that had effectively excluded several Black women, active in the WMARC, from membership of that committee along with several Black men. These women's organisations certainly needed a spring clean because not a whisper was heard from any of them on the consequences of NATFHE's policy - at least not in the open.

The wretched example set by NATFHE on the issue of racist harassment came to a climax a few weeks later at the TUC Annual Conference. Leading trade unionist, Ken Gill, member of the TUC General Council and leader of the MSF, spoke on the topic of *The TUC and the Struggle Against Racism in the Workplace*, which had its dress rehearsal at the TUC's Conference on Black Workers in July. Ken Gill, in a less than disguised warning to NATFHE, drew attention to the daily discrimination faced by Black trade unionists in the workplace, who are demanding that the trade union movement tackle those unions who are not providing support in the fight against discrimination at work. He expected trade unions "to examine their own structures, procedures and policies in order to improve the confidence of Black members" and the unions were told to confront "racism in their own structures as well as the workplace [by] respond[ing] to legitimate criticism." He reinforced this 'advice' with a threat to name those unions failing "to come up to scratch" in the future.[31] Taking into consideration the letters circulated by us to trade union leaders and the intervention of *Black Rights*, there could be little doubt in anyone's mind which racist issue was the focal point of Ken Gill's speech and of one particular union that did 'not come up to scratch'.

A NUPE delegate underwrote Ken Gill's stance by admitting that "Trade unions have been failing not only effectively to represent Black members but [also], more fundamentally, [a failure] in confronting racism in their own structures as well as [in] the workplace." The delegate, who had shared a platform with Bis Weaver at the SERTUC Race Conference in

1987, added that the unions "were still one of the bastions of racism [and] sometimes it may be easier to convince management than your trade union colleagues of the need for change."[32]

What the NATFHE members, attending the conference, made of this and the call for unions to represent higher numbers of Black members at Industrial Tribunals was anybody's guess. They were hardly in a position now to regurgitate the Triesman version of events or parade 'IPDism' as an alternative interpretation of racist harassment. But if you wait long enough the chickens will come home to roost or turn up to have their necks well and truly wrung. NATFHE's chickens finally came home to roost or more aptly came home to roast. And "thus the whirligig of time brings in his revenges."[33]

The Weaver v NATFHE case had made an impact at the TUC Conference but Ken Gill's contribution, reported in the broadsheets, failed to get a mention in *NATFHE Journal*, although the *Journal* did mention Ken Gill and Norman Willis stressing "the deep rooted nature of racism and the clear role of enforcing employers to eradicate it in the workplace."[34] But nothing was said about Ken Gill specifically pointing out the impatience and scepticism voiced by Black workers towards the labour movement; or his caveat to those unions failing its Black members; or his 'warning' that the trade union movement's "credibility is on the line."[35]

Nor did such a significant racial discrimination case as Weaver v NATFHE receive a mention in *NATFHE Journal* not even an announcement to celebrate NATFHE's triple 'victories' at the Industrial Tribunal, the Employment Appeal Tribunal and the application to the Court of Appeal. NATFHE's silence could not be attributed to magnanimity on its part, since the slurs and misrepresentations had flown freely, if rarely in public, from Triesman's pen and it was unlikely that NATFHE would have missed an opportunity to laud it over this thorn in its side if they could have done so without showing what the union really represented. NATFHE's muteness was an indication of a marked reluctance to 'advertise' that it had secured a victory and in the process had reinforced racial discrimination in the workplace. The editor would also have to produce an account that tallied with the evidence and a number of members would know that the policy expounded by Triesman on oath was not the union's policy. What did feature in *NATFHE Journal* was a by-line: "It's time to give women a fair crack of the whip,"[36] which seemed a most appropriate slogan for NATFHE to adopt provided the word 'fair' was omitted.

The West Midlands Women's Panel was also concerned about the treatment of women in NATFHE, although it was unlikely that their concern covered all categories of women. They

had already submitted a motion to the regional council to show its dissatisfaction with NATFHE‘s recent attempt at producing a sexist and racist harassment policy. When the motion reached council a fourth draft of NATFHE’s guidelines had been published but that still did not satisfy some delegates. There was also a similar motion from the anti-racist committee, also dissatisfied with NATFHE. Therefore, a composite motion was passed and sent on to NATFHE’s national council.

When it was discussed at national council it received little support and was defeated. However, “it was agreed

(a) that the reservations of the West Midlands Women’s Panel could best be ‘tested’ by a review of the effectiveness of the guidelines once in operation and,
(b) that a letter be sent to the Regional Council Secretary requesting that, should he be called upon to activate the guidelines at Regional level, he should involve a member of the Women’s Panel.”

It had taken the women’s panel a long time to recognise the inadequacies of NATFHE’s policy but they still did not seem to recognise that harassers, who were NATFHE members, were outside of any policy guidelines that NATFHE threw up to the membership. This appeared to be something that they wished to avoid acknowledging or perhaps they had swallowed Triesman’s line in the Times Educational Supplement.[37]

The Weaver-NATFHE case was virtually over but it had a few extra miles to go with others. Although killed off in the courts it was alive and kicking among those concerned about the implications of NATFHE's policy. The more radical anti-racists in the TUC, Ken Gill and Bill Morris, had NATFHE and its policy well within their sights; the Equal Opportunities Commission’s Education Department was discussing the issues of principle raised by the case and to be taken “into account when considering requests for assistance from individuals who find themselves in similar circumstances…”; [38] the CRE had already made its views known publicly; and a lecturer in trades union studies in Birmingham – a member of the Indian Workers Association was using Weaver v NATFHE as a case study to illustrate racism in trade unions and the implications of NATFHE’s policy on tenure, at the college where three of the Birmingham ‘NATFHE Six’ were employed. *

The final flourish before Bis Weaver laid it to rest included appearing on the Ed Doolan show on local radio to discuss both the NATFHE and LEA dimensions to the case; speaking on her case at an EOC meeting in Manchester in October 1988; providing details to the BBC, which was considering addressing the issues raised by the Industrial Tribunal and

* Avtar Jouhl (IWA) at Hall Green Technical College, October 1988[39]

the background events in the programme *Rough Justice*.[40] There was an exchange of letters between Harold Mangar, the Director of *Black Rights,* and myself in October and November 1988, which included copies of the May/June correspondence between *Black Rights,* the TUC and other trade unions. This correspondence brought the July activities of others to our attention.[41] NATFHE's policy, now incorporated in law, was included in *Harvey's Employment Law* bulletin in October 1988, and the EAT decision was fully reported in *Industrial Cases Reports*.[42] A full-page article was published in the Asian Times on the background and implications of the case in February 1989.[43] A local 'freebie' newspaper, the *Clarenden News,* devoted the whole of its front page as well as inside coverage to the Weaver case.[44]

In 1985, in the aftermath of the West Midlands regional official's deplorable actions, Bis Weaver was forced on the difficult path of challenging NATFHE's bureaucratic strata. When NATFHE's grossly inadequate procedures for safeguarding women and Black people in the workplace became evident, she fought for the implementation of adequate procedures. Now was the time for her actions to reach fruition. However, this was the task of others because for Bis Weaver the act of placing a cuckoo's egg in NATFHE's nest had been achieved and was a feat she would not wish to repeat.

(c) One Last Flight Into the Cuckoo's Nest: Cracking the Rule 8 Egg

NATFHE, reluctantly, was forced to 'take its finger out' on the race issue, to paraphrase, but less crudely, what a NATFHE officer had said to Bis Weaver almost forty months before – an officer who was defended unequivocally by NATFHE officials and officers for almost as long. Nonetheless, this officer, unwittingly, had achieved more for the anti-racism cause in NATFHE than he could ever have realised albeit at the expense of one Black woman's peace of mind and health for a considerable time. In the years since the first shots were fired at Bis Weaver by 'the all-conquering hero with a long history in the anti-racist movement' a lot of water had flowed uphill but out of it NATFHE members were made aware of the inadequacies of NATFHE's policies on sexist and racist harassment – at least those who did not inhabit the last refuge of the scoundrel.

Inside the cuckoo's nest, NATFHE's internal procedures were transparently clear as not offering anything in the way of redress. Rule 8 procedures were for use by the bureaucracy – paid or unpaid, against recalcitrant members but totally unsuitable for complaints by members against other members at various levels of the union bureaucracy.

In January 1986, Triesman had said "the union is not a court of law"[45] and then tried to fob Bis Weaver off with an unofficial, outside the rules, enquiry. NATFHE certainly lacked a procedure equipped for fairness, impartiality and natural justice; it had a 'procedure' fit only for its impoverished appreciation of those values. Even then, it might be expected that a complainant registering a complaint against a branch committee would be given access to relevant documents and correspondence held by the branch committee and other offices in the union – a form of discovery of documents. Between the hearing of Bis Weaver's Court of Appeal application and when the curtain finally fell on this 'testing' of Rule 8 procedures a bout of correspondence passed between the complainants and head office.

We used this correspondence to record some of our observations and give officials an opportunity to comment on them – a form of 'right to reply.' We felt on extremely firm ground because how could officials mount a challenge when they had remained silent on the facts since 1985. Unsubstantiated comments had been the hallmark of NATFHE's defensive mechanism until the brittle foundations upon which its version of the truth was built began to crumble under the weight of publicity generated by the Weaver v NATFHE case. Needless to say none of the observations were challenged and the on-going saga of Rule 8 continued until May 1989 when we let it fade into obscurity.

In July 1988, Bis Weaver informed NATFHE that "correspondence between the Branch Executive/Committee and the Regional…and Head Office officials,…and other lay officers, at Liaison, Regional and Branch level, with regard to the alleged reasons for producing and distributing the statement on the 28th/29th April 1986"; and "Minutes of the REC meeting of the 14th May 1986," were documents particularly sought after. As for NATFHE's question asking what rights had been removed, she referred them to the document *What 'Ism is this?* circulated at the June 1987 regional council meeting – "a copy of which had been sent to Mr D Triesman."[46]

I requested the same documentation but as for the query on the rights issue I explained that "the Branch was misled…into passing a motion against me on the pretext that correspondence sent…to the Branch Executive/Committee was concerned with another member's complaint" against a co-member. I had actually written to the branch about the actions directed against me by Mr Gates and Mr Cave and "The reasonable person might conclude that the motion…included me…[to protect] both Mr D Gates and Mr N Cave from the consequences of their actions..."[47] Acknowledgements for these two letters were received within a few days.[48]

No reply had been received by October 1988, so off went a reminder to Britannia House, pointing out that Bis Weaver had been previously informed by the Bournville branch secretary, Heather Stretton, that if she "wanted access to [her] casework file…[she] should write to Head Office and NATFHE's solicitor would be asked if the casework file could be released..." * She wrote of this being "an unusual way of providing a member with access to her casework file when information from that casework file had been discussed at a Branch meeting, in [Bis Weaver's] absence, [and] in front of members from another union." She asked if "the failure to release...the documents...is the result of advice from NATFHE's solicitor? [who] The reasonable person might consider...has been influenced by [her] action in taking a case of racial discrimination against NATFHE." A further query asked if it was "NATFHE's intention to victimise [her] by refusing to provide...details that were available to those against whom [she had] made a Rule 8 complaint and, therefore, treating [her] less favourably than them."[49]

A response came two weeks later to say NATFHE was endeavouring to obtain the correspondence. More significantly was the comment that "At no time has it been suggested…that you should be refused material as a consequence of your action in taking a case of racial discrimination against NATFHE [and] The Rule 8 Tribunal…will deal with your complaint on its merits and will not be influenced by other matters."[50] Bis Weaver thanked the NATFHE administrator for the news that the failure to deliver up material was not a result of her complaint against NATFHE but she reminded them "that a NATFHE Head Office official placed certain conditions" on her access to documentation. To show how NATFHE officials had shown partisanship towards some of the people named in her Rule 8 complaint, she placed brief details on the record. She referred to Day's revelation at the Industrial Tribunal of implying "partisanship towards Gates" by describing her request for the union to investigate Gates' harassment as "lacking in sensitivity" on her part. This partisanship had also been shown in his letter to the Bournville branch executive "which might be considered to have prejudiced the attitude of some Branch officers and Branch Committee members against [her]."[51]

Day had also shown partisanship by acquiescing in Gates' request to amend Day's report "to state clearly that there was only one (19th February 1985) of the several incidents cited in [her] complaint...that A Day could uphold."[52] Day's acquiescence in this false claim

* This disclosure had shown head office to be controlling access to information that might have assisted Bis Weaver in the Rule 8 complaint. It also showed who might be the external forces pulling the strings in the Bournville branch

was compared with Gates' evidence at the LEA enquiry in October 1986, where he did not dispute being involved in a number of incidents directed against her. NATFHE could confirm this information from the notes of the LEA hearing, which had been promised to NATFHE during the grievance hearing. *[53] Both Bis Weaver and I realised that the material requested from NATFHE would not be released since the actions of the branch committee - the subject of the Rule 8, were inseparable from the actions of the regional official, against whom a complaint was earlier submitted and rejected by the general secretary.

This expectation provided a further opportunity in a follow up letter to reveal her previous experiences at the hands of NATFHE. Bis Weaver brought in her complaint against Day and its subsequent demise at the hands of Dawson, who likewise refused to release any documentation and, therefore, "placed [her] at a disadvantage vis-a-vis Mr A Day, a member of the ASTMS, who had had access to that material." The general secretary's actions were unfavourably compared with the findings of an independent Industrial Tribunal, who had unanimously "found that Mr Day, an experienced official.., had not properly carried out the enquiry into [her] complaint against Mr D Gates nor had he investigated the issue of racial harassment..." She noted that "These conclusions, by three independent assessors, confirmed the validity of [her] complaint against Mr Day." However, despite these findings, Dawson had sent "a two line letter...claim[ing] that [her] complaint against Mr Day was not substantiated." Having linked the background information of Day's enquiry to the Rule 8 complaint, another link was forged in that chain when she mentioned that the "communication sent by a Head Office official to Mr A Day in June 1985, before Mr A Day agreed to carry out an enquiry...and a letter from Mr A Day to the Bournville Branch, after completing his enquiry...are...of particular relevance to the...Rule 8 complaint." ** NATFHE was then reminded of the "considerable concern [shown] throughout the trade union and labour movement, and other relevant institutions" over the Weaver v NATFHE racial discrimination case; and "other matters, including [her] complaint against Mr A Day and the...outstanding Rule 8 complaint."[54]

Six weeks later, NATFHE sent six items of correspondence held in its file. Four items

* These were the notes asked for by Day at the LEA enquiry and which Geoff Hall had also promised to send to Bis Weaver. Bis Weaver never received a copy after the Birmingham Labour group had directed the LEA not to release the findings. It was highly unlikely, given NATFHE's links with the Birmingham Labour group, that NATFHE did not get copies

** Day had told branch committee members "not [to] involve themselves directly in the affair" (The Weaver case). This was a bureaucratic way of saying 'keep out'

consisted of Bis Weaver's and Gates' letters to Day and Day's reply following his enquiry – all of which had been submitted to the Industrial Tribunal; another was the 28th April 1986 statement and a letter dated 6th May 1986 from the branch secretary to Triesman accompanying the statement.[55] Four days later, it was my turn to receive the fruits of NATFHE's endeavours. My bundle consisted of the 28th April statement and the 6th May letter to Triesman; a letter from me to the branch secretary (20th October 1986) and the branch secretary's letter to Triesman, (3rd November 1986) enclosing my letter, in compliance with the branch motion; and a letter from Cave to me (dated 10th March/10th April 1986).[56]

Sandwiched between these two letters, a letter was sent to head office in my capacity as Bis Weaver's representative. This was a lengthy letter on an issue that had taken up a lot of time after the complaint was initially submitted. Considerable information had been provided about the way

> NATFHE officials responded to...complaints...Mrs Weaver made against so-called NATFHE anti-racists and anti-sexists, one of whom was responsible for threatened and actual violence against another delegate (a woman) at NATFHE's 1987 Annual Conference at Blackpool. Needless to say no action was taken against him, which appears consistent with NATFHE's approach towards this kind of behaviour from its officers and he turned up again at the 1988 NATFHE Annual Conference as a delegate from the Yorkshire Region.

I added that "He must have some influential contacts in NATFHE, which might provide an explanation for a lot of what has happened since June 1985."

This was linked to Mrs Weaver's

> experience of being abused, insulted, intimidated and harassed by NATFHE officers and NATFHE's unsuccessful, though vigorous and vicious, attempt to cover up that harassment, and the way Mrs Weaver's complaint of negligence against the West Midlands Regional Official was dealt with (another cover up)...

To Mrs Weaver, this

> demonstrates the necessity for complainants, especially those from vulnerable groups – members of racial minorities and women, to approach NATFHE officers, officials and NATFHE procedures with the greatest caution.

Despite NATFHE's assurance

> that no one would have the opportunity of interfering in the Rule 8 procedures [However] If NATFHE's past form is a standard by which this statement can be measured then that statement would hardly inspire any confidence.

Information already provided should have shown "the ineffectiveness of NATFHE's procedures as well as seriously questioning the integrity of those whose task has been to

apply those procedures" but, if it had not, "a few more examples" were offered up. The first example dealt with Day's negotiations with the LEA to change the statutory procedures thereby breaching "Mrs Weaver's contractual rights to have a grievance heard under [those] procedures" – a deal arranged with the knowledge of a head office official, and the Birmingham liaison committee and the West Midlands regional secretaries.

The second example covered the influence exerted by head office on a Bournville branch officer (Ms Deeson) not to appear as a witness for Bis Weaver at the Industrial Tribunal. This witness had evidence

> to show the falseness of NATFHE's claim, in its written submission to the Industrial Tribunal...that Mrs Weaver had never mentioned racial harassment until after Mr A Day had carried out his enquiry...that is, to provide evidence for Mrs Weaver to challenge NATFHE's accusation that she (Mrs Weaver) had played the 'skin game.'

This witness "could have been crucial to Mrs Weaver's case" and the witness had initially agreed to appear but then she suffered a loss of memory following a conversation with a NATFHE head office official, who told the prospective witness that "should she appear as a witness for Mrs Weaver she would not get NATFHE support but if she appeared as a witness for NATFHE she would get full union support." The witness declined to appear and "'told' Mrs Weaver that she...would get legal advice if Mrs Weaver attempted to use any information...that had been provided either orally or in writing." However, "the implied 'threat' was never converted into action" when Mrs Weaver used the documentary evidence in her possession at the Industrial Tribunal. This evidence established "without question...that (Mrs Weaver)...had not played the 'skin game', as NATFHE was claiming." Nonetheless, "it was fortunate Mrs Weaver had the documentary evidence otherwise the attempted smear by NATFHE officials might have been successful."

An explanation was provided "for those not familiar with the term," namely,

> the accusation made against Black people that they use the issue of race when they are unsuccessful in obtaining interviews for jobs, or fail to be promoted or don't have complaints upheld.

This accusation is made

> by those whose attitudes are particularly unfavourable to Black people (commonly known as racism) and who are seeking to deflect attention from their own discriminatory practices or who are attempting to cover up issues such as racial harassment.

Attention was drawn to NATFHE's submission, which would confirm the way NATFHE

used the 'skin game' and "Whichever official was responsible for providing [this] information was...seeking to discredit Mrs Weaver by accusing her of playing the 'skin game.'"

The third example was Mr Triesman's "gross misrepresentations of Mrs Weaver's complaint against NATFHE; of the decision of the Tribunal; of her complaint against Gates, Cave and Hartland; and of other matters" that he had sent to MPs and newspapers. Apart from

> the short-sightedness and immaturity of making claims...where substantial information was available to show the claims...were gross misrepresentations, [it did] indicate the lengths that NATFHE is prepared to go in order to exonerate itself for failing to deal properly with a complaint of racist harassment...[by] smearing the victim of harassment.

The overall conclusion from the impropriety of NATFHE officials was that it

> would make the reasonable person consider that NATFHE members would be extremely unwise to place any confidence in NATFHE or to believe that the influences...operating in such a wide arena and with such effectiveness...would not also be operating yet again with regard to this [Rule 8] complaint...

Reference was made to the

> recent publicity concerning NATFHE officials, whose various claims and counter claims against each other...which [had] required an enquiry to establish who was telling the truth; * merely confirms what Mrs Weaver and myself have been saying for a long time about some NATFHE officials.

These officials had publicly demonstrated that NATFHE is

> an institution capable of any kind of action against the interests of its members. Bearing this in mind it would be difficult to see how anyone in the Branch Committee, however disreputable their action.., could by such disreputable action bring NATFHE into disrepute.

To support this claim against officialdom, reference was made: (i) to the comment by a leading Labour MP, who expressed no surprise at the difficulties faced by Mrs Weaver judging by "his own experience with what he called 'NATFHE's racist track record'"; (ii) to the threat by *Black Rights* to picket the TUC Conference on Black Workers; and (iii) to a further "threat [from] a leading trade unionist at the 1988 TUC Conference."

The observation made was that "NATFHE officials and local officers, as others had done in the not-too-distant past, will claim that they were only doing their duty and following orders." The rhetorical question was asked "Do things really change, or is it only the scapegoat, or target, groups that change?" NATFHE officialdom was also advised to "take

* Dealt with in section (g)

careful note of...the last four years" (the Weaver case) because if it did "they might learn something" but as was said of "the White House during...the Irangate affair, the only thing it (the White House) learned from...Watergate was to burn the tapes. Perhaps, NATFHE officials have learned that particular lesson…"

In view of this and "given the actions of NATFHE officials, can Mrs Weaver ever expect to receive the relevant documentation...or will it be yet another instance of NATFHE officials intervening to subvert the rights of NATFHE members?" However, Mrs Weaver's negative expectation might be dispelled "by sending the relevant documentation as requested or will the influence of NATFHE officials again prove to be too pervasive."[57]

Ten days later our very last words on the Rule 8 were sent off in two letters. We had already decided not to pursue the Rule 8 complaint further so a few more home truths found their way into the correspondence. In the first letter, a number of general points were made on the documentation we received. The impression gained from dealing with NATFHE Head Office

> is of dealing with an apparatus of the state...[as] It appears that NATFHE does not subscribe to the principle of freedom of information when [the] information requested...reflects on the actions of full-time officials and lay officers.[58]

The letter, written as Bis Weaver's representative, covered the material that had been sent to her, which was already in her possession and NATFHE was informed of this. In the second, I disclosed that informed sources in NATFHE had suggested

> that some of the documentation...might well show that NATFHE officials...gave implicit approval...for the actions taken against Mrs Weaver by lay officers. However, some members of the [Bournville] Branch Executive, in their eagerness to defend close associates, went beyond what was apparently implied.., hence the 'request' by a NATFHE Head Office official, on the 12th June 1986, for the Branch Committee to withdraw part, and only part, of the action against Mrs Weaver.

Furthermore, one of the documents sent to me – a letter of the 3rd November 1986 (from the Bournville Branch Secretary to Triesman) shows

> that after Mrs B Weaver made a complaint against NATFHE under the Race Relations Act (1976) NATFHE Head Office continued to vet correspondence sent to the Branch Committee from Mrs Weaver. This might be considered interference by NATFHE Head office in Mrs Weaver's attempt to obtain information for her...case before a statutory established Industrial Tribunal.

A request was made for Day's notes of his meeting with (i) Mrs Weaver; (ii) Gates; and (iii) the witnesses at Bournville College; and (iv) a copy of the 12th June letter sent to Dawson, which had a note on it suggesting a course of action to be taken by the regional

official. In the event of these documents not being sent, I asked if the reason for not providing them was because it would implicate NATFHE officials in yet another act of impropriety.

We did not doubt that junior officials at head office had tried conscientiously to discover the documents but we thought senior officials did not want to release documents showing their involvement in events at Bournville branch and the West Midlands REC or, perhaps, the documents did not exist and they had not tried to influence the actions of local officers.

The purpose of our letters was to get all of this on the record and give the officials involved a chance to respond. There could be little doubt that these letters would be referred to the officials for information. By now NATFHE must have realised that the Rule 8 was at an end. After the treatment Bis Weaver received at the hands of NATFHE officials, she would be extremely unwise to put herself in the hands of any internal NATFHE enquiry. Bis Weaver may have been somewhat naive in 1985 to trust NATFHE but three and a half years later any naiveté had been ground out by NATFHE's bureaucratic machinery. Nonetheless, the Rule 8 had served its purpose and in effectively winding it up, NATFHE officials had been confronted with their own discreditable actions.

Three months passed before NATFHE acknowledged the letter. The chair of the impending Tribunal, a member of the NEC and of NATFHE's women's panel – two bodies hardly covering themselves in glory during the Weaver case, suggested the complaints should move to a Tribunal and for us to "consider the benefits of an early hearing."[59] After two years and seven months, 'an early hearing' was on the cards. We never bothered to write to NATFHE again on this issue and NATFHE never did send dates for the hearing. *

During our sojourn in the cuckoo's nest, NATFHE was still trying to spread its wings for a maiden flight into the flock of anti-racist organisations. At a NATFHE Anti-racism National Panel meeting in October, attended by Gus Jones, ** NATFHE's solicitor, Michael Scott, was on hand to outline the union's new procedures to deal with sexist and racist

* As mentioned earlier, in February 2000, following another race discrimination case taken against NATFHE - this time with the Applicant being successful,[60] NATFHE decided to review the operation of Rule 8. [61] Considering this rule was criticised by Mackney in April 1986 as an inadequate procedure, the wheels of NATFHE not only ground exceedingly slow but they seemed to have fallen off. Interestingly, many of the criticisms of NATFHE in the Shahrokni case had been only too evident during the Weaver case. (see Chapter XXI sect (c)(i) & (ii)

** Gus Jones was a commentator and writer on race issues

harassment, supplemented by Triesman's observation that the union would assist victims of racist harassment. However, several members were equipped with the Industrial and Employment Appeal Tribunals reports, and Scott's and Triesman's contributions did not pass without comment. The majority view was that the new procedures did not take into account NATFHE's policy of protecting only those whose tenure was at risk. Gus Jones spoke on the Burnage High School enquiry, * on which he had been a member, and of that committee's intention to publish the report of its findings independently because the local authority had refused to do so. **[62]

The Bis Weaver case, still not openly acknowledged, made its influence felt even in the West Midlands women's panel – one of the bastions of opposition to Bis Weaver. When NATFHE's new guidelines for dealing with harassment were presented at its October 1988 meeting, the panel rejected them because "the issue of complaints of harassment against other NATFHE members" was not addressed.[63] This decision had its effect in Bournville branch, too, because at its October meeting it was announced that the branch would have "to review its policy on racial and sexual harassment because of the present policy of supporting the tenure of the [member] complained against and not supporting the complainant."[64]

NATFHE produced yet another revised draft of procedures *Actions Against Sexist and Racist Harassment.*[65] This was the fourth draft in two years and showed NATFHE was unable to keep up with the changing circumstances shaped by the Weaver case despite Triesman's previous denial. *** As with previous drafts - out of date before the ink had dried, this latest instalment in NATFHE's sexist and racist harassment melodrama still could not resolve the implications thrown up by the legal decisions.

A new condition had been inserted; one that was crucial for members seeking legal services in harassment cases. This inescapable proviso was "that all relevant matters are taken into account when deciding whether to grant legal assistance" as the union was "bound to have regard to any potential conflict of interest...between two or more members." NATFHE would still not spell out clearly that if they chose to give advice and assistance then "all relevant matters" were governed by the policy of protecting tenure and could only be provided for the accused. They were hiding behind 'conflict of interests' to avoid spelling it

* The chair of the Burnage Committee, who supported publishing the committee's report was Ian MacDonald, who recently represented Bis Weaver in her action against NATFHE. It is a small world and for a long time NATFHE did not think Bis Weaver was part of it.
** Local Authorities had considerable reluctance to release reports of racism within their jurisdiction
*** Triesman in the Birmingham Post in December 1987[66]

out because the term gave the impression advice and assistance was available for only one party but leaving out who that party would be.

There was no fanfare or glossy pack accompanying the new draft guidelines and, at a National Council meeting, some members, perhaps acquainted with the press reports but not up to speed with the implications of NATFHE's policy, expressed concern about only the alleged harasser getting representation. The motion introduced to ensure equal representation for victims of harassment was defeated notwithstanding that if the motion had succeeded it would be legally unimplementable.[67]

Bis Weaver addressed NATFHE's latest edition of knee-jerk policy-making in a letter to *Spare Rib*, the feminist magazine – her second and last letter to the media on the issue. She described NATFHE's policy on tenure and the limitations of its new guidelines on sexist and racist harassment. Should the union disregard its obligations to provide union assistance only to the harasser, by providing "assistance to the victim or both parties [the union] would be [in] breach of its obligations to the accused and its obligation to avoid a conflict of interests." The concluding point was that "If the trade union movement is to fight sexism and racism in the workplace it must do more than package existing discriminatory policies in new terminology."[68] None of the feminists in NATFHE decided to follow in Triesman's plodding footsteps by trying to defend NATFHE's sexist and racist policies in this journal.

In time for the next meeting of the ARNP, amongst whom Bis Weaver had several supporters, a letter went to the secretary, Triesman, and all the panel's members, suggesting where the problem lay and a possible solution. I explained that NATFHE's policy on tenure "makes it virtually impossible for NATFHE to offer assistance to victims of racial harassment...[unless] harassers take the unusual step of admitting that they have harassed someone." The article in the *Asian Times* was included to "show…where part of the problem lies, that is, with NATFHE full-time officials, and what members of racial minorities in NATFHE are up against from lay officers and Regional and National officials." The ARNP was called on "to do something...to ensure that no other member of a racial minority (or woman) has to suffer the kind of racial harassment that Mrs Weaver suffered from members (officers) of NATFHE and the disdain shown by full-time officials…" While confidence was expressed in some members of the ARNP being prepared to eliminate "*NATFHEism* from NATFHE", attention was drawn to the secretary's method for determining racists, that is, "to ask the harasser to write a letter stating whether or not the harasser is a racist." They were directed to the "Industrial Tribunal Report…which gives an example where this method was used."[69]

A branch that was up-to-date with NATFHE's policy was Shipley branch, which resubmitted its motion to the Yorkshire and Humberside Region in March 1989. Objections were made to the wording of the motion as it was thought to be an "implied criticism of a NATFHE employee," which the proposer thought to be "a rather broad interpretation of the phrase 'the failure of NATFHE.'" After a 'heated debate', the phrase was deleted and replaced by "and insists that the union takes seriously all complaints of racial or sexual harassment." * Despite the amendment the motion met with the same fate and was "overwhelmingly defeated." What became apparent from this meeting, according to our Shipley correspondent, was that many delegates had insufficient information on the implications of the case.[70] This suggested that some branch secretaries, to whom details had been sent, had not even released the details to branch committee members let alone the membership.

Confirmation that the message on tenure had not penetrated to all of the NATFHE membership came from a contributor to *NATFHE Journal*, who was less than satisfied with NATFHE's new guidelines. He criticised the proposal that "Branch officers should 'assist only the complainant' in cases involving racial or sexual harassment…(as it was) a violation of the norms of natural justice and a denial of members' rights to boot." He certainly had a point about "a violation...of natural justice..." in assisting only one member – a situation that no reasonable person could support. However, had he read more widely on the issue he would have seen that the only person eligible for assistance was the alleged harasser - in itself a denial to the victim of those very rights he was concerned about. This correspondent wanted the pamphlet and NATFHE's present policies to be withdrawn and thoroughly overhauled before they bring discredit to the union. A caveat coming a mite too late since the union's policies had already been discredited at the highest levels of the labour movement.[71] Another criticism concerned the interpretation of the word 'harassment', which he claimed "refers to actions which are repeated [as] One incident cannot constitute harassment." To him this displayed a lack of care in the way NATFHE's guidelines were formulated. He may have had a point under the 'literal rule' of construction but this construction was due to change as the law caught up with changing social circumstances and in line with the intention of the Race Relations Act. In Darby [1990] and in Head [1995] "a single incident of sexual harassment,

* The original motion was: "This meeting of the Shipley College Branch deplores the failure of NATFHE to support the case of a member at Bournville College in a case of racial harassment and insists that the union actively supports all members making complaints of racial or sexual harassment."

provided it is sufficiently serious, is a 'detriment' to the complainant on the grounds of sex" as is a single incident of an offensive remark made to the victim in a meeting of colleagues if "severe enough" or "sufficiently serious…This is a form of bullying and is not acceptable in the workplace in any circumstances."[72]

A few months later, in a complaint between two members, NATFHE granted assistance to the member against whom the complaint was made. As an afterthought, it was mentioned that the union should offer assistance to the complainant as well.[73] How the union would have addressed this afterthought and avoided the Tribunals and Court decisions was not revealed. This came across as another belated expedient fashioned by NATFHE officialdom to avoid admitting the limitations on representation. Notwithstanding this, NATFHE did make a big splash on anti-sexism when it took on the employer for a group of women in an outpost in North-east England.

(d) NATFHE Tackles Sexist Discrimination in the North East

NATFHE was ultra-quiet on its victories in the Weaver racist discrimination case but it went to town in the pages of *NATFHE Journal* on its defeat in the North East when NATFHE went to the assistance of complainants of sexist discrimination.[74] Who could forget the great lengths, those extra miles, NATFHE officialdom had allegedly travelled, according to Triesman, to 'amicably' solve the Weaver harassment case in June 1986. Or the similar lengths and extra miles trudged to invent evidence at the Industrial Tribunal only to see its claims of no merit in Bis Weaver's complaint rejected by the Tribunal as unsustainable. In this new case of sexist discrimination involving four women at Newcastle-upon-Tyne Polytechnic, NATFHE rallied to the cause of the 'Newcastle 4', as the women came to be known, fully prepared to fight on their behalf.

This was a *cause celebre* for NATFHE, more in line with its sensitivities, as the target was an employer and concerned alleged discrimination in promotion opportunities – matters related to employment opportunities with their pecuniary and status gains. * Double

* The irony was not lost on either of us when recalling the comments made by a senior NATFHE officer in the West Midlands to a close contact of 'the Weavers' in April 1987, which the *Newcastle 4 case* might present a dilemma for him.[75] In supporting women to get promotion and increased salaries, it might put them above the 'means-tested' level for assistance, mentioned indirectly by this officer, and, subsequently, should they have the misfortune of becoming workplace victims of harassment from NATFHE members, this promotion and salary increase might put them outside the criterion for assistance

standards were the order of the day in NATFHE and the plaudits given to the *Newcastle 4* and its criticism of the Polytechnic management provided an interesting backcloth for comparison with its lamentable actions and destructive smears exhibited throughout the Weaver harassment case. The laudable actions of the *Newcastle 4* were in response to a type of complaint more suitable to NATFHE rather than supporting NATFHE women members – Black or White, who were seeking a harassment-free environment.

During their struggle, the *Newcastle 4* revealed that from the very beginning they felt their case of sexist discrimination was not taken seriously by many of their colleagues at the Polytechnic * - a situation Bis Weaver could easily identify with from her own experiences with staff at Bournville College but, in her case, this also applied to NATFHE officers and officials at regional and head office level.

When the '4' lost their Industrial Tribunal case an appeal was submitted to the Employment Appeal Tribunal but subsequently withdrawn. A Polytechnic management representative, Mr Roper, claimed NATFHE withdrew the appeal because the charge of discrimination against the Polytechnic lacked merit – another example of 'two legs' better than 'four' because NATFHE used the same slogan against Bis Weaver as did the Newcastle management against the '4'. However, when NATFHE's claim of 'no merit' against Bis Weaver was shown to be spurious, NATFHE officialdom continued to assert the discredited claim with considerable malice, unlike its response to the same claim of 'no merit' made against the '4', which NATFHE decided not to appeal.

The Assistant Editor of *NATFHE Journal*, the mouthpiece of NATFHE bureaucrats, leapt to the defence of the '4' by stating,

> To presume that the withdrawal [of the Appeal] was on the basis of legal advice [stating] that the case lacked merit is to be guilty of the same sort of oversimplification and innuendo of which Mr Roper himself complains – a view borne out by reading the lengthy Tribunal decision. If there was a total lack of merit, why bother to lodge an appeal – or take the case on in the first place.

NATFHE also played on the fact that the Equal Opportunities Commission had viewed the case as of considerable importance in combating endemic discrimination in the institution and thought the case "worth taking on in spite of the difficulties involved in proving allegations of this nature."[76] NATFHE's reason for claiming merit in the *Newcastle 4* case was based on the same logic of merit as applied by Bis Weaver in her complaint. She had taken her 'case on in the first place'; had lodged and attended two Tribunal hearings,

* H Douglas of the 'Newcastle 4'

including an appeal considered not unreasonable by Justice Popplewell; and the CRE, a body similar to the EOC, had thought her case sufficiently important to support and finance the appeal to the EAT; and an application to the Court of Appeal with a QC as lead counsel. NATFHE's newly-discovered ground rules for assessing merit should have been sufficient for NATFHE to admit that Bis Weaver's grievance was meritorious. Another case of different strokes for different folks.

The Assistant Editor also revealed that prior to the job interviews, from which the sex discrimination claim arose, a member of the Polytechnic appointment's committee had previously been accused of sexist discrimination for using "threatening and sexist behaviour towards a female Head of Department [and] had never treated a male employee in the same way." NATFHE's one-dimensional perspective prevented it from making a similar point about the circumstances surrounding the harassment of Bis Weaver. Knowing of the Weaver and Butchere incidents, and the later Frew incident but of no incidents involving males – NATFHE had vigorously defended Gates at the Industrial Tribunal and to Members of Parliament; and to others.

The *Journal* also referred to gossip circulating in the Polytechnic against the *Newcastle 4* just prior to the Industrial Tribunal hearing, due to commence around Halloween, when the women were branded as the four witches. While it was unpleasant, this seemed a rather insipid form of gossip compared to the malicious and spurious allegations made against Bis Weaver by NATFHE in its Industrial Tribunal submission and the actions of branch officers in the *Beider affair* just prior to the original listing for her Tribunal hearing; the *McCarthyite enquiry* and the Bournville branch's racially discriminatory motion all of which were carried out prior to other dates listed for the Tribunal hearing.

The individual members making up the *Newcastle 4* were all quoted on their experiences and the *raison d'etre* for taking the case to the Tribunal – all of which were commented on favourably by the *Journal's* Assistant Editor. Another novelty worthy of comparison because no such favourable comments were ascribed to Bis Weaver, who could easily rely on these very same arguments. But how could the *Journal* report on the Weaver case, being as it was the voice piece of the NATFHE paid and unpaid bureaucracy.

One of the '4' explained that "We would not have gone through the procedures we did – which involved having our careers dissected in public…unless we had a commitment to the justice of the case." * Another said that

* C Buswell

> Although there is nothing in it for us any more, we genuinely believe that we are right and someone has to win sooner or later. If we can't, who can? We owe it to future women – to our daughters, and even our boss's daughters – to take a stand over this, as they are bound to face similar problems." *

The case highlighted the weakness of the procedures in the Polytechnic and of how "It is almost impossible to prove discrimination with the way the law stands at present." ** Thus had spoken Bis Weaver on her experiences and reasons for pursuing her complaint but her observations fell on deaf ears in the West Midlands, at NATFHE head office and at *NATFHE Journal's* editorial office.

The '4' were "full of praise for their Regional official, John Kirk, who, while the Tribunal was in progress, gave them moral and practical support and dealt with the press on their behalf. Similarly, "At grass roots level, people were behind" them as shown by "the cards, letters and phone calls received." *** They all "expressed gratitude to NATFHE and the EOC" for taking on the case. This was in sharp contrast to the actions of the West Midlands regional official, head office officials and local officers and members, who had done everything possible to obstruct Bis Weaver when she was the victim of harassment by someone who wanted to oust her from her job. The *Newcastle 4* could be thankful they were not in the West Midlands where the complaint was not for being denied promotion but protecting the job of a woman employee seeking to work free from harassment.

In response to the article in *NATFHE Journal*, a Newcastle Polytechnic representative accused the Assistant Editor of producing "an unattractive blend of selective quotations, half-truths and innuendo, not aided by heroic leaps in logic" in an "attempt to smear the Polytechnic in the face of the Tribunal's unambiguous finding" that the *Newcastle 4* allegations lacked merit.[77] There was a peculiar familiarity resounding in our ears from his criticism of NATFHE and the way he described NATFHE's response.

NATFHE had presented the case of the *Newcastle 4* by endowing the women with "well earned praise" for their courage in taking on the might of their employers and those in its institutional structures. How very different from the way the union responded to Bis Weaver and the horrendous behaviour she faced in Bournville College between February 1985 and June 1987. NATFHE had no hesitation in condemning those within the Polytechnic structures yet those within NATFHE's own structures - officials and lay officers alike, had maliciously

* J Phylactou
** C Buswell
*** H Douglas

condemned Bis Weaver for showing similar courage in taking on the might of the union and for these valiant efforts NATFHE had hurled at her "an unattractive blend of selective quotations, half-truths and innuendo." Sauce for the goose was certainly not sauce for the gander in NATFHE.

(e) Bending Over Backwards to Benefit from Thatcherite-law

NATFHE had come under attack from within its own ranks, not over the stinging criticism directed at NATFHE * at the TUC conference for its lip-service to anti-racism, but for its disdain for the struggle of its members in the Hereford and Worcester area.

The members in this area had been struggling against the employers for some time, involving "a variety of different actions including strikes,...all officially sanctioned by [Dawson, and] a succession of presidents plus the National Executive Committee." Yet, "Despite the seriousness of the situation and...that the membership voted 4 - 1 in favour of industrial action, [Dawson] and other senior lay officials [officers] decided that the vote was insufficient to take action." The committee compared this decision with a recent "political ballot [where] the vote by a much smaller percentage of the national membership than voted in Hereford and Worcester, was hailed as a great success" by the same officials and officers. At a liaison committee meeting in the Hereford and Worcester region, a NEC member informed the committee "that all industrial action was to be discontinued in the county...without any discussion with the liaison committee or the local branches."

A fleeting reference was made by the committee to Dawson's all-expenses paid trip, accompanied by NATFHE's President, to a conference in Melbourne. They doubted that Dawson made any significant contribution, which they considered was "in keeping with [his] personal contribution to this dispute." They added that if "Hereford and Worcester was located in Australia [he] might have managed to visit [them]." NATFHE was described as "a pathetic, inept, incompetent, disorganised trade union" and Dawson's "non-action [as] craven cowardice…"[78]

NATFHE's performance in local matters, and the outcome of negotiations over 'pay and conditions,' aroused considerable dissatisfaction among the membership. This was the atmosphere in which an internecine struggle erupted between the two senior officials responsible for the debacle in the Weaver case - Dawson and Triesman. Their conflict was

* NATFHE was not named but everyone knew against whom Ken Gill was making his comments

over the post of general secretary, now up for grabs under Thatcherite trade union laws. This struggle exposed the restricted perspective of democratic participation held by NATFHE officials and members of the Broad Left Coalition, who had previously been unvarying in their denunciations of Thatcherite trade union law. Now some of them demonstrated their eagerness to embrace one of the requirements of those laws. The personal interests of officers and officials were torn from the mask of ideology behind which they previously nestled and were now placed in full view. The Broad Left Coalition had assumed crucial importance for endorsing the voting procedure for the election, which made it necessary for candidates not to alienate the Broad Left lest it upset the balance of power in the union. The West Midlands Broad Left brigade in 1985 had been far-sighted enough to see the significance of not 'splitting the left'. *

The voting procedure favoured by NATFHE officials and left-wing lay officers was to restrict the vote to the 139 members of NATFHE's national council rather than extend the franchise to the 70,000 plus fee-paying union members. However, the NEC rose to this challenge by rejecting this undemocratic scheme to offer its own version of the democratic process by demanding an uncontested election with Dawson as the sole candidate.[79] However, the law stipulated that the constituency for electing the general secretary lay with the total membership.

NATFHE's two leading lights, Dawson and Triesman, appearing to be indistinguishable during the Weaver case, rose to the bait of senior office – Dawson in retaining his position and Triesman to acquire it. Triesman, eyes on the crown, when declaring his intention to stand made a searing attack on Dawson's leadership but praised

* NATFHE's Broad Left contained an amalgam of various strands of political ideology and/or the personal interests of its members. This 'pot-pourri' of radicals, revolutionaries and fellow travellers from the 1960s had become tired symbols of their previous zest, clinging to views to which they paid lip service but which were naught other than political 'loyalty cards' in their struggle to dominate the union. The 1980s 'leftists', whether Marxists, neo-Marxists, Marxist-Leninists, Trotskyists, Stalinists, non-Marxists, labourites or whatever brand of socialism was on offer in the supermarket of political theory, were vocal in their proclamations for a radical restructuring of the union and society to redress disadvantages – w*orkers of the world unite* . Or did they see the struggle against racism as merely an adjunct to the 'main' struggle against the bourgeoisie and capitalism in general; with racism as merely another form of proletarian or petit-bourgeois false consciousness, which would wither away when the objective conditions changed.[80] Or was the struggle for these comradely, elitist pedagogues of the new world order, merely a means to get control of the existing structures in order to provide some of the 'Left's' members a route into the bureaucratic apparatus in education or the union – the road of the 'history man' or woman, in the scramble for a share of the potage

head office's "excellent team of staff whose work is dissipated by a lack of coordination from the top."[81] However, this was not to be a two-horse race, joining the runners were two other candidates. Geoff Woolfe, one of the candidates, launched a scathing attack on NATFHE's establishment and on Dawson for ineffective management; ineffective negotiations; ignoring conference policy decisions; and treating members' conditions of service with contempt.[82] Fawzi Ibrahim, another candidate, denounced the smear tactics that labelled him a Maoist and he attacked both Dawson and Triesman - the latter for being prepared to take up an appointment as Head of Industrial Relations with the polytechnic and college employers [83] – a further move to the right for Triesman now being accused of joining the 'class enemy'. * Triesman, who did not favour litigation in trade union matters, responded by threatening legal action against Ibrahim and other NATFHE officials over their comments [84] - another example of the 'bourgeois' courts offering a service of which Triesman was only too ready to avail himself. However, nothing came of the threat.

Not averse to using Thatcherite anti-trade union law, Triesman incurred the displeasure of NATFHE's "regional officials for using Government legislation to challenge Dawson."[85] Nor was Triesman's eagerness to use Tory legislation, which he previously attacked, to the liking of the TUC, disturbed about the fight between two officials and angry about trade unionists using Tory legislation to fight each other.[86] Triesman had already alienated the union's political left for reaching an early settlement of the lecturer's new contracts, which included extra work loads, and he in turn was critical of the anti-democratic elements on the left [87] – an assessment with which we could readily concur albeit we might have included Triesman as part of the anti-democratic forces in NATFHE.

Dawson received the backing of 35 of the 39 NEC members; of the Broad Left; and of full time officials, and Triesman, as a result of the intense pressure applied on him, reluctantly withdrew.[88] When withdrawing from the contest Triesman declared "I am not going to be the person who takes the union under – and I think there is a real risk of that," after which he pointedly refused to support any of the other candidates. **[89] Not allowed to be captain of the team, Triesman refused to play on either the left or right wing. It was a good

* One old comrade of Triesman said that when Triesman heard of his success in securing an appointment with the employer's organisation, he "bounced in and presented his resignation letter to a surprised and offended NATFHE…However, the new job fell through that very same day, and before sundown he [Triesman] found himself crawling back in to beg for his old job back."[90] An interesting addendum to this came from the New Statesman, in "that the job was running the hated college employers' organisation[91]

** Triesman was to be given the epithet of the *axeman* for his activities as the chair of the Football Association twenty years later [92]

job it was not his ball otherwise no one would have been allowed to play.

Triesman, according to the press at a later date, drew vastly different reactions from those with whom he had dealings. His detractors thought of him as slippery; with Machiavellian tendencies; and referred to him as 'David Treason.' His fans acknowledged his skills as a negotiator; his abundant charm; the best speaker of his generation; described him as a 'star'; and praised his humour. *[93]

Dawson appeared to be more astute than Triesman, whether in his negotiations with the employers or in understanding the mood of the labour movement. His ear appeared nearer to the ground of opinion by not putting at risk his own personal interests and not upsetting the Broad Left Coalition or full-time officials. Triesman had definitely not read the Tarot cards whereas Dawson obviously had.

There was an indisputable element of satisfaction watching these 'giants' of NATFHE, who between them had caused so much distress to Bis Weaver, emerging from the Cuckoo's nest to expose their 'professionalism' to the public, especially in watching Triesman using Thatcherite laws to try to unseat NATFHE's incumbent general secretary. We felt like sending Triesman yet another *Get Well Soon* card.

Described as a pre-Thatcherite consensus trade union leader "when nearly everything was solved in the smoke filled rooms," Dawson was apparently so confident of success in the election that he decided on a low profile campaign.[94] As shown by his dealings with a solitary Black woman, he underestimated the strength of the opposition and was ill-equipped

* The compliments showered on Triesman from some quarters may have been well deserved in certain areas of educational, trade union and social activity but, as far as Bis Weaver and I were concerned, they slid off the slippery spoon upon which they were served.
Bis Weaver's dealings with Triesman were experiences she would have preferred to have missed. There was little of Triesman's charm or humour in: (i) his actions when offering her another *Kangaroo Court* investigation and, when this 'sleight of hand' was detected, trying to stifle her every attempt between February and July 1986 to seek redress for racist harassment; (ii) his massaging of the truth at the Tribunal hearing in June 1987; and (iii) his smears made against her in his offerings to the press and MPs in 1987/1988. Triesman had shown his skills by negotiating NATFHE into an Industrial Tribunal case with its considerable negative publicity for NATFHE and for the trade union movement. This created was a paradoxical situation for NATFHE, deeply suspicious of the legal system but prepared to hide behind a misrepresented version of a bourgeois court's decision.
Perhaps the problems could be attributed to Triesman being mistake-prone. In 2006, Triesman, elevated to the peerage, stated: "As far as we are aware, Foreign and Commonwealth Office officials have not held meetings with United Nations officials since 1 November on extraordinary rendition." Subsequently, the Foreign Office admitted Triesman's answer was incorrect. Lord Triesman "misled peers when he told the House of Lords that no such meeting had ever occurred." Lord Oakeshott accused the government of presiding over a "culture of concealment and cover-up." Shami Chakrabarti, director of Liberty, accused the government of "bending over backwards not to ask questions" about rendition.[95]

to take on the threat from members dissatisfied with the outcome of the 1987 pay talks [96] and who now had the vote. His Tarot card reading had been confined to NATFHE bureaucrats, and although Triesman may have been the architect of the pay agreement, it was Dawson, who suffered the consequences. In NATFHE's first democratic election, Woolfe was elected general secretary and Dawson was discarded with his career almost certainly in ruins, according to the THES. *[97]

In the context of the 'democratic' system associated with NATFHE officialdom, Dawson resorted, in defeat, by claiming the "result has been affected by grossly misleading information," while his supporters blamed the defeat on ballot fatigue.[98] An acolyte was on hand to 'explain' Dawson's defeat. Ex-President Whitbread's explanation was that "His professionalism has brought credit to the Association, but has left him personally vulnerable to mischievous, populist criticism in a contest as alien to his life style as to traditional trade unionism. After 20 years in NATFHE's service he had become a casualty to Thatcherism…."[99] If standing for election, where every member was enfranchised and candidates were allowed to address the electorate, was alien to Dawson, what kind of contest was not alien to him? A system without a free vote opened up the prospect of determining the type of contest that Ms Whitbread thought would be favourable to him. The outgoing general secretary received a eulogy from Ms Whitbread, who said:

> As Chief Servant of NATFHE and loyal to its democratic processes, he had eschewed usurping democratic leadership while accepting the duty to give his best professional advice to the NEC, National Council and Conference. I have valued his charity and integrity as well as his respect for the right of elected members not to accept his advice.[100]

Perhaps, she was unaware of, or had forgotten or deliberately ignored, Dawson turning down the motion from the West Midlands region - a motion arrived at within NATFHE's limited *Herrenvolk* democracy, calling for a full investigation into Bis Weaver's complaints; and Dawson's imbalanced and partisan decision, in the face of the Industrial Tribunal's negative comments about Day, to reject any enquiry into Day's deplorable actions.

Ms Whitbread's narrow vision, so evident in her dismissive letters to Bis Weaver, was picked up by other members when her denunciations of NATFHE's electorate was revealed

* Dawson was kept on the union's payroll with responsibilities for pensions,[101] despite NATFHE's serious financial difficulties. These difficulties were described by NATFHE's Finance Manager, Minta, several months before, in December 1988, as "Technically speaking we're in the shit."[102] Minta was later accused of irregularities in his expenses and a Tribunal was set up.[103] Minta resigned on grounds of ill-health, but the negotiating secretary, Triesman, who laid the complaint against Minta said that a hearing to consider whether to pursue the complaint would still go ahead. [104]

to a public audience and she did not escape unscathed this time around. One correspondent thought Ms Whitbread's comments "a slur on the majority of members who voted for G Woolfe [and an] insult to the intelligence and integrity of members." Another believed "the patronising diatribes by Nan Whitbread and *NATFHE Journal's* anonymous editorials" gave the impression, alluding to Brecht, that some people would like the NEC to dissolve the membership and elect another.[105] Yet another felt that "certain of the NATFHE 'establishment' are not best pleased by the democratic decision of Association members [and the] professionalism talked of has been little more than a cover for either a smug complacence or unbridled arrogance or both." The old guard had continued to sing from the same old song sheet but democracy and democratic accountability, a previously alien concept in NATFHE, had brought Dawson's downfall. Democratic procedures can be the 'Grim Reaper'.

When NATFHE's 1990 Annual Conference was held in Birmingham, the THES, reporting on the conference, described the union as "political theatre, an entertainment in four weary acts, not a serious exercise in policy making" with NATFHE at its nadir, displaying powerlessness and behaving like a union of the dispossessed. While to the TES, "NATFHE's Conferences increasingly resemble life in a banana republic where reason and reality long ceased to rule."[106]

We had been sitting on the river bank for a long time. Some of those floating by were eventually to be wrapped in ermine and/or enjoying the pecuniary benefits of being part of the bureaucracy – a reward for a role in preserving traditional liberal imperialist ideology lacing it with the usual dose of paternalism; others would be shrouded in their own less than convincing anti-racism rhetoric, which they would proclaim whilst evading any substantive action; and yet others would embrace a form of 'Freire-neutrality' to cover their disinterest in anti-racism by presenting it as a concern for fairness. One thing they all had in common as they floated by was the hope that the oppressed would not recognise them for what they were and they would not sink into the depths of the river without trace.

(f) The Courts Grasp the Nettle of Harassment

As the Broad Left Coalition had floundered on tackling racism, the enemy of the people – the 'bourgeois' apparatus, had grasped the mantle of responsibility. Judicial decisions, trade union and local authority guidelines, and European Commission codes of

practice dealing with racist and sexist harassment developed considerably over the coming years.

Prior to and during the Weaver v NATFHE case, the courts had started to address the hazards women and ethnic minorities faced from employers and fellow employees in the workplace. Judgements moved from generalisations about harassment/discrimination to more complex interpretations to prevent harassers from avoiding the consequences of their actions.

Courts began to ease the wrinkles out of the definition in the SDA of behaviour consisting of "unwanted and bullying behaviour…undermin[ing] the victim's dignity at work, [and] creating an offensive or hostile environment for the victim."[107] The changing attitudes within the social milieu towards sexist and racist discrimination, and the way defendants tried to disguise harassment/discrimination as general workplace disputes between employees led to judgements more in line with the spirit of the Acts by adopting a golden rule construction rather than the literal rule. MacDonald was overcoming May.

One problem that confronted complainants of harassment was the absence of direct evidence as the perpetrators often adopted means to disguise their intention to harass, * therefore, verifying complaints of sexist or racist harassment could be problematic for complainants. However, the absence of direct evidence did not debar a finding in favour of the victim since the courts recognised that this type of evidence was rarely available. To overcome this, courts and tribunals were allowed to draw inferences of discriminatory behaviour from the circumstances, especially as alleged harassers/discriminators were unlikely to admit to harassing or discriminatory behaviour.

The courts decided that if adjudicator(s) were not given the opportunity to make inferences of discrimination then the object of legislation against discrimination "would be largely defeated." In the event of "a finding of discrimination and a difference of race [was] followed by an inadequate or unsatisfactory explanation [of the accused's behaviour]…, usually the legitimate inference will be that the discrimination was on racial grounds."[108]

In circumstances where the accused denied harassment, the outcome could be determined by the procedure used in a judgement by Lord Justice Neill.[109] He stated: (i) "that it is unusual to find direct evidence of racial discrimination" because few employers [or fellow employees] will "admit such discrimination even to themselves" or "in some cases [it] will not be ill- intentioned;" (ii) consequently, "the outcome ...will usually depend on what

* A common practice was to try to pass it off as a personality conflict; or subject the victim to un-witnessed intimidation, bullying, abuse and threats; or enrolling like-minded colleagues to participate; or a combination of these

inferences" can be drawn "from the primary facts" and (iii) make findings [from]...the primary facts and draw such inferences as they consider proper from those facts." Peter Gibson LJ [110] stated that **"**More often racial discrimination will have to be established, if at all, as a matter of inference" and it was "of the greatest importance that the primary facts from which such inference is drawn are set out with clarity...so that the validity of the inference can be examined...A mere intuitive hunch...is insufficient without facts being found to support [any] conclusion."

Mummery J, President of the EAT, said that "The process of inference is itself a matter of applying common sense and judgment to the facts, [in] assessing the probabilities on...whether racial grounds were an effective cause of the acts complained of or were not." When making this judgement, an "assessment of the parties and their witnesses...also form an important part of the process of inference."[111]

There was never a satisfactory explanation from Gates for the months of harassment of Bis Weaver when giving evidence at the LEA enquiry (in October 1986) or in his dealings with the union, (Day in August 1985 or Triesman in April 1986). He told the LEA he was against racism and sent a letter to Triesman claiming to be an anti-racist. Day also deliberately neglected the race issue and Triesman was determined to avoid dealing with it. This was followed by Triesman closing down every avenue to her in the union after she declined his inadequate investigation or the inappropriate and laborious Rule 8. With all the incidents of intimidation, bullying, harassment and the subsequent evasions used by NATFHE to deal with the complaint, what inferences might the reasonable person draw from these facts?

In between the courts' clarification of the criteria for assessing harassment, the subjective perception of harassment made its appearance in a British case in 1997 as an important consideration to be taken into account. It was judged that "it is for [the complainant] to decide what is acceptable or offensive…[and] not what (objectively) the Tribunal would or would not find offensive." Nor should the "Tribunal...carve up a course of conduct into individual incidents and measure the detriment of each; once unwelcomed sexual interest has been displayed, the victim may be bothered by further incidents which, in a different context, would appear unobjectionable." *

* While this deals with sexual advances, it would also apply when it related to behaviour that "undermines the victim's dignity at work and constitutes a detriment on the grounds of sex; lack of intent is not a defence." Foul-mouthed abuse, intimidating behaviour, attempts to undermine the victim in the presence of students or other employees – would all qualify.[112]

The subjective element in sex discrimination cases was linked to the alleged discriminator's understanding, motive and intention. This point was left to the "recipient (victim) to decide what is acceptable to them and what they regard as offensive,"[113] which fell into line with the subjective definition produced by the European Commission.[114] In race cases it was further decided that "a number of successive incidents" even if some of the incidents were not based on racial grounds could lead to a finding of racial discrimination because they may constitute a cumulative effect.[115] These decisions were later refined so that two elements had to be established: (i) the targeting of the person being harassed, and (ii) causing distress to the target.[116]

Despite the fact that greater clarification came after the Weaver v NATFHE case, this should not deflect attention from the guidelines laid down in the *Porcelli* case. This was available for NATFHE and Birmingham city council at the time of the harassment of Bis Weaver and sufficiently clear for the union and the city council to reasonably arrive at a conclusion of harassment against the Bournville trio. The harassers in *Porcelli* had subjected Mrs Porcelli to sexual harassment "with the specific intention of forcing her to transfer to another school"[117] – a similar situation to Bis Weaver's albeit in her situation the intention was to remove her from the post she occupied in the college. The attempt by NATFHE officials and lay officers to explain away the harassment of Bis Weaver as a 'interpersonal dispute' would not have found favour by the court in *Porcelli* because "The behaviour experienced by Mrs Porcelli was quite different from a personality conflict…[as it was being] used…as a means of maintaining or exercising power over her."

Defendants who sought to diminish the seriousness of the offence by claiming the behaviour occurred on only one occasion, could not rely on this as a defence since "a single incident of sexual harassment, provided it is sufficiently serious, is a 'detriment' to the complainant on the grounds of sex" - a single offensive remark made to a victim in a meeting of colleagues constituted harassment if "severe enough" or "sufficiently serious." *[118]

In 1988, a hostile working environment received a legal definition. In Pellicciotti (1988) it was established that "a hostile [workplace] environment...must be determined on a case by case basis...[and] To establish whether the situation is actionable the 'totality of circumstances'...[must determine] that the harassment...was sufficiently severe or pervasive

* Day had tried to diminish the seriousness of Bis Weaver's complaint in his enquiry by reducing numerous incidents to a single incident – Gates calling someone a fucking liar and again telling her to take her fucking finger out in two meetings with management and other colleagues present could reasonably be considered 'severe enough' and 'sufficiently serious'

to alter the condition of the victim's employment and create an abusive working environment."[119] "The behaviour must be frequent, severe and pervasive. It is not enough that a single such incident, or a few isolated incidents, have occurred, or that only one employee engages in such conduct (unless that employee is in a supervisory capacity). In addition, the harassment would detrimentally affect a reasonable person of the same sex." When taking action against management, it must be shown that it "knew about the harassment, or should have known, and did nothing to stop it." *

The European Commission produced a document on sexist harassment, within which it identified the practice of harassers of singling out a particular woman to harass, not women in general, to try to give the impression it was not a gender related matter. The Commission decided that this did not make the behaviour any less a case of sexist discrimination as "it is sufficient to show discrimination against the complainant because of her membership of the group" and the victim's subjective perception of the behaviour.[120] This was a factor also applicable in cases of racist harassment.

Birmingham city council, which had shown no commitment to its 1986 policy on racist harassment when the Bis Weaver case dropped in its lap, at least began to recognise that "Perpetrators of racial harassment often use indirect ways of harassing the person…[They] try to disguise harassment as something other and less serious than what it actually is. It is important to recognise that some racial harassment can appear on the surface to be…about something other than racial harassment. **[121]

The CRE produced a document dealing with union representation and grievance procedures. Unfortunately it appeared that the author was not familiar with the CRE-backed Weaver v NATFHE case. The advice given was that "A union representative should always accompany a victim of harassment to meetings with management or the alleged culprit. If the allegations are against another union member, both members are usually entitled to union support...If the investigation finds against a union member, the union can choose not to represent him or her, or give further support.[122] ***

* In Bis Weaver's case there was constant harassment by members of staff. In addition to that, branch *kernels* exerted considerable pressure on her in the college by influencing branch members to pass hostile union motions against her. Management was fully aware of this as were the officers and officials at various levels of the union hierarchy.

** A major problem affecting its racial harassment policy was the interference for political ends by Birmingham Labour councillors and the lack of interest by Conservative councillors

*** The CRE, which had supported Bis Weaver, seemed to have overlooked the Weaver v NATFHE decision on complaints between members

In 1997, Parliament passed the Protection from Harassment Act making harassment a criminal offence.[123] This covered a range of activities including racial harassment and bullying at work but it also needed a course of conduct of at least two incidents of harassment and the harasser must know or ought to know it would amount to harassment. In 2001, an amendment clarified that the Act protected an individual from collective harassment by two or more people.[124]

The more progressive elements in the trade union movement addressed harassment in unequivocal terms, incorporating those factors also identified by the judiciary. The MSF defined bullying behaviour as "open aggression, bawling out, threats, shouting, swearing, abuse, constant humiliation, ridicule, belittling effort – often in front of others. Withholding information, ostracising, marginalising, spreading rumours." It is "Unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual and may be persistent or an isolated incident…[and] is perceived by the recipient to be offensive, regardless of whether or not it was meant to cause offence."[125]

As mentioned previously, just as tuberculosis existed before the discovery of its causes by Koch, racist and sexist harassment existed before the formulation of more adequate judicial definitions.

Could there be any doubt that Bis Weaver's experiences fell within the parameters of judicial judgements and trade union definitions? Time had exposed the attempts to disguise the treatment Bis Weaver had to endure by referring to it as a 'falling out between colleagues' or 'an interpersonal dispute/personality conflict'. Those attempts involved leading feminists and so-called anti-racists on the various NATFHE committees; the West Midlands regional official with his prejudicial view of women; and a host of others at various levels in the union, including Dawson, Triesman and Ms Whitbread. These so-called 'leaders of the gang of NATFHE anti-sexists and anti-racists', should have been able to draw the correct interpretation of the behaviour and, therefore, suitably protect the victim and serve justice but they failed to do so. These bureaucrats looked at racist and sexist harassment as issues satisfactorily addressed by a few policy pronouncements and guidelines while their practice continued in a pre-1960s time-warp. There was neither the will nor the interest amongst the co-called anti-racists and anti-sexists to risk upsetting the balance of forces within NATFHE.

The way NATFHE's 'gang leaders' addressed racist situations and their belligerent attitudes to Black activists seeking meaningful action might be explained by the research conducted into crypto-racism (hidden racism) and aversive racism. "Crypto-racism is apt to

become manifest when a person's feeling of superiority is threatened. The result is invective against a successful rival…"[126] Aversive racism refers "to the 'subtle, unintentional form of bias…[among] a substantial proportion of White liberals'…[who] have internalized liberal egalitarian values" and consider themselves non-prejudiced, even though they

> have unconscious, unavoidable racist feelings or judgements of which they're typically unaware… [and] express these racist feelings in situations where a non-racialized justification to do so exists. 'Thus, aversive racists are able to discriminate without acknowledging their prejudice because they excuse or justify their behaviour on 'reasonable' grounds.[127]

When progressive change is consciously or unconsciously resisted by those giving an impression of welcoming change it is wise to consider the words of the French critic, author and journalist, Jean-Baptiste Alphonse Karr, who said "*plus ça change, plus c'est la même chose* " - the more things change, the more they remain the same.[128]

'Bourgeois' law and guidelines from other 'institutions' had caught up with events to put Bis Weaver's experiences, as the reasonable person might see it, within the definition of harassment – both racist and sexist, at Bournville College and neither management nor the union had done anything to protect her. The river had run all the way to the sea.

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[1] AR to BW/GW 24 Jun 1988 File K 26
[2] GW to the Press 25 Jun 1988
[3] E & S 27 Jun 1988
[4] McDonald, I [1988] Murder in the Playground: Report of the Macdonald Inquiry into Racism and Racial Violence in Manchester Schools, New Beacon Books
[5] 7 Days 25 Jun 1988
[6] Labour Briefing 6 Jul 1988
[7] LM to AR 26 Oct 1987 File J 22 - 25
[8] Notes of C of A Application 7 Jul 1988 File H 62 - 63
[9] De Souza v AA [1986] IRLR 103 CA
[10] Times 20 Dec 1985
[11] Burns v Burns [1984] 1 All ER 244;
[12] Times 11 Feb 1983
[13] Lieven A, (2004) America Right or Wrong: An Anatomy of American Nationalism, Harper Collins, London
[14] Edgar D, Guardian 19 Apr 2008
[15] DN 20 Jul 1988; CN 29 Jul 1988; AT 22 Jul 1988; CT 22 Jul 1988
[16] 7 Days 20 Aug 1988
[17] Voice 19 July 1988
[18] Interview, BW with L Hartsman of the BBC, 20 Jul 1988 File K 34 - 36
[19] K Gill Times 9 Sep 1988
[20] Contact to BW Oct 1988 File Y 13
[21] TES 22 Jul 1988; THES 15 Jul 1988
[22] DTr to Shipley Branch 11 July 1988 File X 58
[23] TES 5 Aug 1988
[24] Playing the race card: Trump or joker?" BBC News 24 Apr 2001.
[25] Dei, Sefa & Karumanchery (January 2004). Playing the Race Card: Exposing White Power and Privilege, Peter Lang, New York:
[26] NJ March 1984
[27] TES 2 Sep 1988
[28] Ibid

[29] BW to women mbrs of NEC, WMREC, BhLC & the WNP 24 Aug 1988 File K 37
[30] NJ May 1988
[31] Guardian 9 Sep 1988; Times 9 Sep 1988; DTel 9 Sep 1988
[32] Gloria Mills (NUPE) Times 9 Sep 1988; Ind 9 Sep 1988
[33] Feste the Clown, Twelfth Night, Act 5 (i) 385
[34] NJ Oct 1988
[35] Times 9 Sep 1988
[36] NJ Oct 1988
[37] WMWP Mtg, 15 Nov 1988 File X 24/25
[38] EOCom to BW 22 Dec 1988 File V 49; BW spoke at EOC Manchester 18 Oct 1988 File Y 12; GW to DP 2 Jan 1989 File V 50
[39] Contact to GW 22 Oct 1988 File Y 13
[40] T/p conv BW & BBC 8 Nov 1988; and T/p conv GW & BBC 11 Nov 1988; File Z 40
[41] GW & HM 4 & 27 Oct ;and 8 Nov 1988 File K 38 & 40 - 51; and Y 13
[42] Weaver v NATFHE [1988] ICR 599 EAT Part 7
[43] AT 2 Feb 1989 File V 66/7
[44] CN 11 Feb 1989
[45] DTr to BW 13 Jan 1986 BW IT Bundle 32
[46] BW to NATFHE 7 Jul 1988 File K 27 - 28
[47] GW to NATFHE 7 Jul 1988 File K 29 - 31
[48] NATFHE to BW & GW 14 Jul 1988 File K 32 - 33
[49] BW to NATFHE 29 Oct 1988 File K 39
[50] NATFHE to BW 15 Nov 1988 File K 52
[51] AD to SN 13 Aug 1985 File A 19
[52] DG to AD 12 Nov 1985 NATFHE IT Bundle 74
[53] BW to NATFHE 8 Dec 1988 File K 54 - 55
[54] BW to NATFHE 29 Dec 1988 File K 56 - 57
[55] NATFHE to BW 10 Feb 1989 File K 58
[56] NATFHE to GW 14 Feb 1989 File K 64
[57] GW (BW) to NATFHE 12 Feb 1989 File K 59 - 63
[58] GW to NATFHE 24 Feb 1989 File K 65 - 66; GW (BW) to NATFHE 24 Feb 1989 File 67 - 70
[59] NATFHE to GW 15 May 1989 File K 71 - 72
[60] Shahrokni v NATFHE 11880/96 and 44988/96, and in relation to the victimisation admitted by the union, 2203069/97 and 2205178/97; EAT/232/98 & EAT 989/98
[61] NATFHE Says, Feb 2000
[62] ARNP Mtg 6 Oct 1988 in t/p conv KS to GW 10 Oct 1988 File Y 12
[63] Conv WP mbr, 20 Oct 1988 File Y 12 – 13
[64] B/V Br Mtg 26 Oct 1988
[65] NJ Jan/Feb 1989
[66] Post 17 Dec 1987
[67] NJ Jan/Feb 1989
[68] SR No 202 Summer 1989 p45
[69] GW to ARNP 22 Feb 1989 File K 73
[70] T/p conv JM (Shipley Branch) and GW 17 Mar 1989 File Y 13
[71] NJ March/April 1989
[72] Bracebridge Engineering Ltd v Darby [1990] IRLR 3 EAT; (1) Insitu Cleaning Co Ltd and (2) Brown v Heads [1995] IRLR 4 EAT
[73] NJ Summer 1989
[74] NJ May/June & Summer 1989
[75] AB & NATFHE Sen Off reported by AB to GW 8 Apr 1987 File Y 11
[76] NJ Summer 1989
[77] Roper, NJ Summer 1989
[78] H & W to PD 18 Nov 1988 File K 53
[79] THES 7 Oct 1988
[80] Robinson C J [1983] Black Marxism: The Making of the Black Radical Tradition, Third World Studies, London; Davies R, The White Working Class in South Africa, New Left Review No 82 Nov-Dec 1973, London.
[81] THES 2 Dec 1988; TES 13 Jan 1989
[82] TES 12 May 1989
[83] THES 3 Feb 1989

[84] Ibid
[85] Ibid
[86] TES 12 May 1989
[87] Ibid
[88] Ibid; and THES 21 Apr 1989
[89] THES 17 Apr 1989
[90] Norman M, Guardian, 10 Aug 2001
[91] Beckett F, New Labour and Proud of it, New Statesman 1 Oct 2001
[92] Martin S, Times 21 Aug 2008
[93] THES 14 May 1999; Guardian 27 Jul & 10 Aug 2001; THE 6 Jul 2007
[94] TES 12 May 1989
[95] Woolf M, Political Editor, Independent on Sunday 22 Jan 2006
[96] TES 12 May 1989
[97] Ibid
[98] Ibid
[99] NJ May/June 1989
[100] Ibid
[101] THES 2 Jun 1989
[102] THES 23 Dec 1988
[103] THES 26 Jan 1990
[104] THES 9 Feb 1990
[105] NJ Summer 1989
[106] THES 1 Jun 1990; TES 2 Jun 1990
[107] SDA s6, 4A (1a & 1b)
[108] Wallace v South Eastern Education and Library Board [1980] IRLR 193, NICA; Noone v North West Thames Regional Health Authority, (No 2) ]1988] IRLR 530 CA; Baker v Cornwall CC [1990] IRLR 194 CA
[109] King v Great Britain-China Centre [1992] ICR 516 at 528-9
[110] Chapman v Simon [1994] IRLR 124, 129 paragraph 43
[111] Qureshi v Victoria University of Manchester at [2001] ICR 863 at 873-876)
[112] Whitley v Thompson EAT/1167/97, 14 May 1998
[113] Driskel v Peninsula Business Services [2000] IRLR 151; (1) Reed and (2) Bull Information Systems Ltd v Stedman [1999] IRLR 299
[114] European Commission Code of Practice [1993] p25
[115] Derby Specialist Fabrication Ltd v Burton [2001] IRLR 69
[116] Thomas and another v Robinson [2003] IRLR 7
[117] Porcelli v Strathclyde Regional Council [1986] IRLR 134 CS
[118] Bracebridge Engineering Ltd v Darby [1990] IRLR 3 EAT; (1) Insitu Cleaning Co Ltd and (2) Brown v Heads [1995] IRLR 4 EAT
[119] Pellicciotti, J M [1988] Title VII Liability for sexual harassment in the workplace. International Personnel Management Association, Alexandria, Va.
[120] European Commission Code of Practice, [1993] pp 25 & 32
[121] Rampal A [1995] Abuse and Harassment of Women, Birmingham City Council p83
[122] Tackling Racial-Harassment, 1995, M Jaffrey, CRE, London, p50
[123] Protection from Harassment Act 1997
[124] Criminal Justice and Police Act 2001
[125] Bullying and Harassment at Work [Nov 2001] Labour Research Dept, London, pp17 & 25
[126] Holenstein E [2003] A Dozen Rules of Thumb for Avoiding Intercultural Misunderstandings; Forum For Intercultural Philosophy no 44 s 28
[127] Leanne S. Son Hing, Greg A. Chung-Yan, Robert Grunfeld, Lori K. Robichaud, and Mark P. Zanna. "Exploring the Discrepancy Between Implicit and Explicit Prejudice: A Test of Aversive Racism Theory" in Joseph P. Forgas, Kipling D. Williams, Simon M. Laham, (eds) [2004] *Social Motivation: Conscious and Unconscious Processes*, Cambridge University Press, ss 275 and 290
[128] *Les Guêpes,* Jan 1849