

Jersey Employment Tribunal



Annual Report
1 July 2011 – 30 June 2012

Jersey Employment Tribunal Annual Report 2011/12

This is the seventh Annual Report of the Jersey Employment Tribunal and covers the period 1 July 2011 to 30 June 2012.

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Introduction

The Jersey Employment Tribunal (the 'Tribunal') is an independent judicial body set up to hear and resolve certain complaints and matters of dispute arising under the Employment (Jersey) Law 2003 (the 'Employment Law') and the Employment Relations (Jersey) Law 2007 (the 'Employment Relations Law'). The Tribunal is like a court but is less formal.

The Tribunal was established when the Employment Law came into force on the 1 July 2005 and is based at the first floor of Trinity House, Bath Street, St Helier, Jersey.

The Tribunal consists of a legally qualified Chairman and Deputy Chairman and two pools of side members. One pool of side members comprises up to 8 persons with knowledge or experience of, or an interest in, trade unions or matters relating to employees generally. The other pool comprises a group of up to 8 persons with knowledge or experience of, or an interest in, employers' associations or matters relating to employers generally. All appointments to the Tribunal are made by the States of Jersey upon the recommendation of the Minister for Social Security.

Once appointed, lay members remain totally independent of their background; they do not represent any organisation that they are associated with or indeed even the employee/employer side of the panel. The practical knowledge and experience that these people bring to the Tribunal discussions is greatly valued by the Chairman and Deputy Chairman. The Chairman and Deputy Chairman can sit alone to hear disputes but generally, whenever the Tribunal sits to consider issues at an interim hearing or a full hearing, it will consist of a panel of three persons being the Chairman or Deputy Chairman, together with one person from each pool of side members.

The Tribunal's hearings are generally held in public (although there are certain circumstances when hearings are held in private) and anyone can observe Tribunal hearings. The Tribunal's decisions are issued in writing and are available to the public for reference on the Tribunal's website:

www.jerseyemploymenttribunal.org

The majority of Tribunal decisions are now published on the Jersey Legal Information Board (JLIB) website

www.jerseylaw.je/Judgments/JET

Chairman's Comments

Membership of the Tribunal

I was appointed as Chairman of the Tribunal on the 1 June 2012 upon the resignation of Advocate David Le Quesne. Advocate Le Quesne was the founding Chairman of the Tribunal and I am grateful to him for establishing the Tribunal service during his seven year term.

Following my appointment as Chairman, the position of Deputy Chair became vacant. There were also three vacancies for side members as a result of two vacancies being carried forward from the previous reporting period and the resignation of Mrs Kelly Flageul. I am grateful to Mrs Flageul for her service of almost seven years.

Following an open recruitment process overseen by the Appointments Commission, I am pleased to report that four new members were appointed to the Tribunal during 2012:

1. Advocate Claire Davies was appointed as Deputy Chairman on 1 June.
2. Mr Ian Carr was appointed as an employer representative on 1 February.
3. Mr Timothy Allen was appointed as employer representative on 1 April.
4. Mrs Angela Swindell was appointed as an employee representative on 1 February.

I was delighted that Susan Armes and Alan Hall requested that their terms on the Tribunal be extended to take advantage of the full 10 years tenure. There are currently no vacancies for Tribunal members. Details of the Tribunal members are set out on page 14.

Legislative Developments

Discrimination Law

There appears to be a real determination to introduce Discrimination legislation in Jersey and the Tribunal has been actively involved in reviewing the proposals and advising upon the impact of this new law upon the work of the Tribunal. The Tribunal has recently undertaken an informal survey to assess future workload in order that the appropriate resources can be put in place to meet demand from our users.

Redundancy Law

During the period of this Report, the full extent of the provisions regarding Redundancy contained in the Employment Law have been enacted by the States so that employees with 2 years' continuous service are entitled to redundancy pay. In addition, the collective consultation requirements of the Employment Law,

where an employee proposes to make 12 or more employees redundant within a 30 day period, are now in force. Whilst there can be no doubt that the number of redundancies in the island has increased due to the recession, the Tribunal has received very few claims concerning an employee's entitlement to a redundancy payment. In order to reflect the full provisions relating to redundancy contained in the Employment Law, the Tribunal has updated its Complaint form (known as a JET1) and Response form (known as a JET2).

Failure to provide a contract of employment or wage slip

Following a Royal Court decision in *CI Fire & Security v Browning* (2008), it has not been possible for the Tribunal to impose fines upon employers who fail to provide their employees with contracts of employment or wage slips. The Tribunal is very concerned that these important and fundamental principles of employment law should carry no sanction and has discussed the manner in which this imbalance may be addressed with the Social Security Department. It is hoped that the Minister for Social Security will take appropriate action to address this.

Administration

As a court of law, the Tribunal is independent of the States of Jersey. However the Tribunal has important links with the Social Security Department and the Judicial Greffe. The Minister for Social Security is responsible for recommending the appointment of Tribunal members, employment law policy and new employment and discrimination laws to be administered by the Tribunal. The Judicial Greffe is responsible for the administration of the Tribunal and has appointed an Assistant Judicial Greffier to oversee the administration of the Tribunal.

Tribunal Staff

Two officers of the Judicial Greffe, Mrs Louise Cave and Mrs Jo Hickey, undertake the role of Registrar of Appeals and Tribunals (the 'Registrar') on a job share basis with the assistance of a part-time receptionist/administrator.

In addition to responsibilities under the Employment Law and Employment Relations Law, the Registrar also has responsibilities for appeals and claims in connection with other legislation, including Social Security and Health and Safety laws.

The Registrar's duties in connection with employment legislation include arranging hearings, assisting the parties in regard to tribunal procedures and providing general information to members of the public. The Registrar has no direct role in the legal proceedings before the Tribunal and cannot provide legal advice, direction, views or opinions on matters relating to proceedings and have no influence over them. The role of the Registrar is to work for both parties and the Tribunal in an impartial manner.

Providing a user friendly service

We are aware that we have a responsibility to ensure that our documentation and terminology is easily accessible to all parties. We recognise that some of the Tribunal's users do not speak English as a first language and we will provide interpreters at any of our hearings, at our cost, as required. During this reporting period, 19 parties required an interpreter. In a step to making our service even more accessible, we intend to produce documentation in the Polish and Portuguese languages.

The Tribunal strives to deal with its cases using non-legalistic terms so that parties feel confident in representing themselves. The Tribunal does not award legal costs at the end of a hearing and each party must therefore bear any costs they have incurred. The majority of complainants appearing before the Tribunal are unrepresented. This is in accordance with our aim of providing swift, accessible, cost effective decisions to employment disputes.

Tribunal Members' Training

On the 3 February 2012 the Tribunal members received training on Tribunal panel skills. This course was designed as a refresher for existing members and as an introduction to these important skills for new members.

Website

I am aware that the Tribunal's website is not user-friendly and the information is quite difficult to find and decipher. The Tribunal is actively seeking to improve this important resource for its users. Until this issue has been rectified, interested parties are encouraged to contact the Registrar directly, or a professional adviser, for information about the Tribunal's procedures. The majority of Tribunal decisions are now published on the Jersey Legal Information Board (JLIB) website and persons wishing to access a previous decision of the Tribunal are encouraged to use that website www.jerseylaw.je/Judgments/JET.

Tribunal procedures

The Tribunal looks to the Judicial Greffe for guidance in respect of setting its procedures. For example, following a request from the Tribunal, the Judicial Greffe prepared a procedure to be followed by complainants in respect of an appeal to the Royal Court from the Tribunal, a process which is not established in the existing employment legislation. In addition, the Judicial Greffe has worked closely with the Registrar in order to set out procedures to ensure that casework is dealt with effectively and in a timely manner.

Case Management Hearings

In order to improve the efficiency of our service, the Tribunal has introduced a system whereby a Case Management Meeting (CMM) will be held in connection with most complaints to the Tribunal and before the main hearing is held. These meetings are short, fairly informal hearings of the parties with the Tribunal Chairman or Deputy Chairman, where the complaint and response are reviewed

for administrative purposes with the aim of ensuring that the issues of dispute are clearly identified and understood by the parties and the path towards the hearing date is clearly identified. Experience has shown that the information contained in the complaint and response forms can be incomplete or inconsistent which can have an adverse affect on the course of the final hearing if it is not clarified at an early stage.

At the CMM, directions are given by the Chair for the parties to seek to resolve certain issues before the main hearing and also to attend to matters such as the exchange of evidence or the involvement of witnesses. A date for the main hearing will also be set at the CMM although sometimes it becomes apparent that an Interim Hearing has to be held before the main hearing in order to resolve a matter of law which is directly relevant to the complaints made, for example whether the complainant is an employee or not. The Tribunal is also aware that the parties have usually not met since the termination of employment and the forum of a CMM can provide the basis for a future conciliation. Once a hearing date has been set, a complaint will be case managed by the Tribunal office in order to ensure that the hearing date is not lost due to poor preparation of the case for hearing. In addition the Chair will actively case manage complaints that are complicated, involve multiple claims, or where the parties appear to be particularly antagonistic to each other.

Strike out application

It is possible for a party to make an application to the Tribunal for a complaint made against it under the Employment Law to be struck out (cease to exist) at an early stage if such party believes the complaint to be vexatious in nature or to have no reasonable prospect of success at a full hearing. Where such an application is successful, this saves the respondent the time and possible expense of defending a claim which is unfeasible at a full hearing. However, a good reason for such application must be shown; it is not enough to be offended or insulted that a complaint has been made.

Tribunal hearings

It generally takes about eight months for a case to reach a full hearing following the filing of the response form. However, if there are special circumstances in which a party needs to have their case fast-tracked because, for example, their former employer is in liquidation and they need to register the Tribunal's decision with the liquidator, their complaint can be progressed more quickly.

All decisions of the Tribunal, following an Interim or Full hearing, are given in writing stating the reasons for the decision made. The Tribunal endeavours to release its decision to the parties within 2 weeks of the hearing date.

It is intended to install recording equipment in the Tribunal rooms so that a recording of all proceedings is maintained. I welcome this advancement.

Nicola Santos-Costa
Jersey Employment Tribunal Chairman
25 October 2012

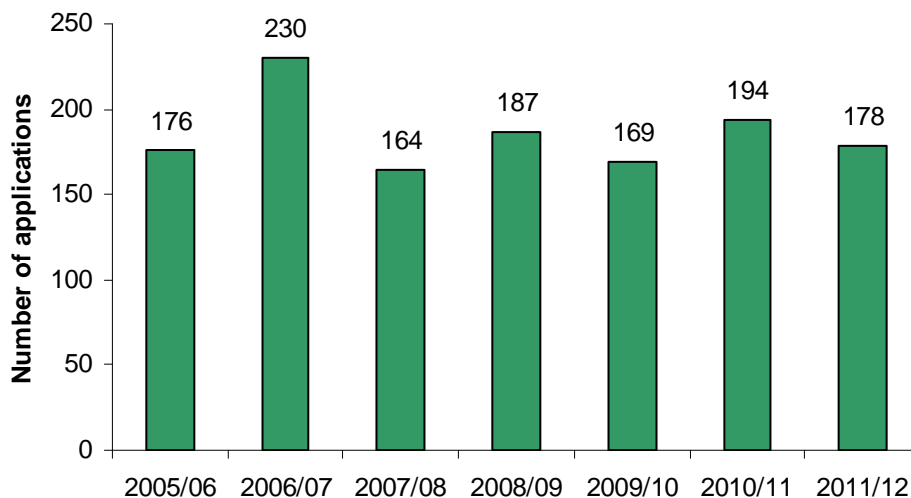
Tribunal Statistics

Complaints received by the Tribunal

During the period 1 July 2011 to 30 June 2012, the Tribunal received 178 complaints, 16 fewer complaints than in the previous reporting period, a decrease of 8 percent.

The Tribunal received 2 more complaints in this reporting year than it had received during its first year of operation (2005-2006).

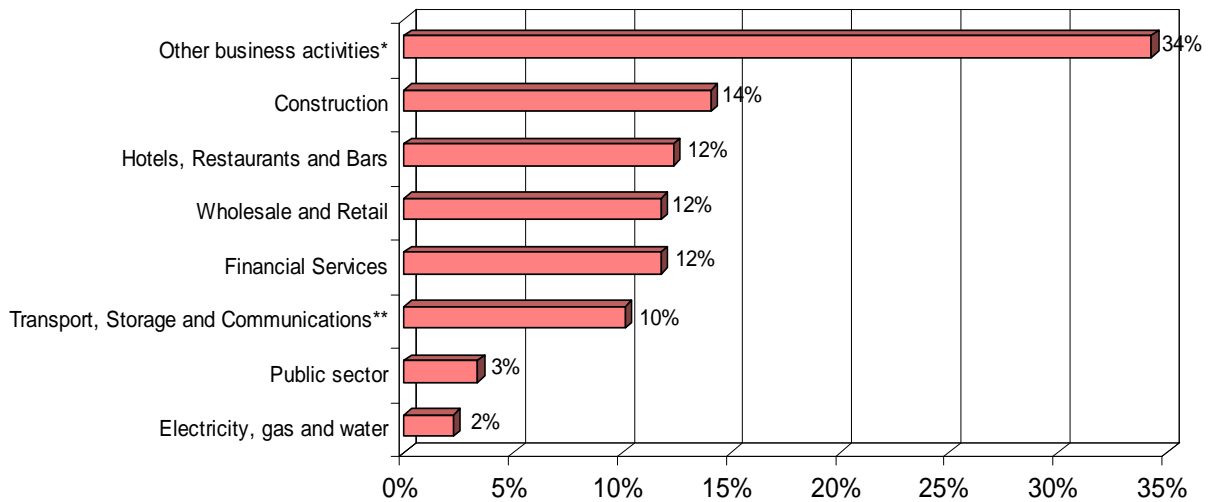
Figure 1 – Total number of complaints received by the Tribunal in each annual reporting period



During this reporting period, 12 out of the total 178 complainants had representation; in 9 cases this was legal representation and in 3 cases this was trade union representation.

The complaints were made by employees across a wide spread of Jersey's employment sectors and occupations.

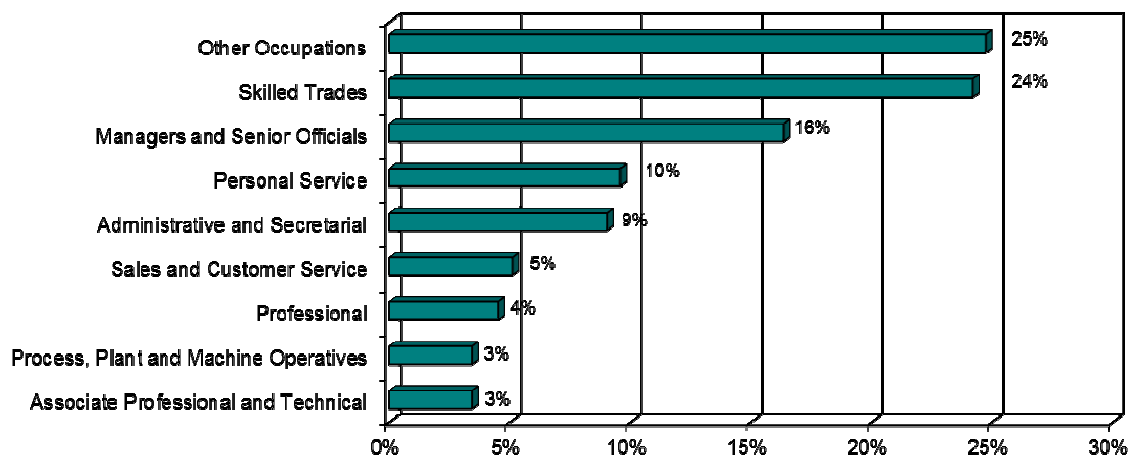
Figure 2 – Complaints to the Tribunal, as a percentage of the total number of complaints, broken down by the business sector in which the complainant worked.



* 'Other business activities' sector includes 'Miscellaneous business activities' and private sector 'Education, health and other services'.

** 'Transport, storage and communications' includes Jersey Airport, Harbours, Postal Administration and Jersey Telecom.

Figure 3 - Complaints to the Tribunal, as a percentage of the total number of complaints, broken down by the occupational classification of the complainant (Based on the Standard Occupational Classification (SOC 2000))



Issues identified in complaints

In most complaints there is more than one issue to be addressed by the Tribunal. Consistent with previous reporting periods, the majority of complaints (88% of all cases that were registered with the Tribunal during this reporting period) coming before the Tribunal relate to unfair dismissal.

There has been a marked increase in complaints citing termination of employment as a grievance (64% of all cases that were registered during this reporting period). The termination of employment category includes claims for notice pay and redundancy pay.

Figure 4 – Percentage of complaints received during the reporting period that contained each issue

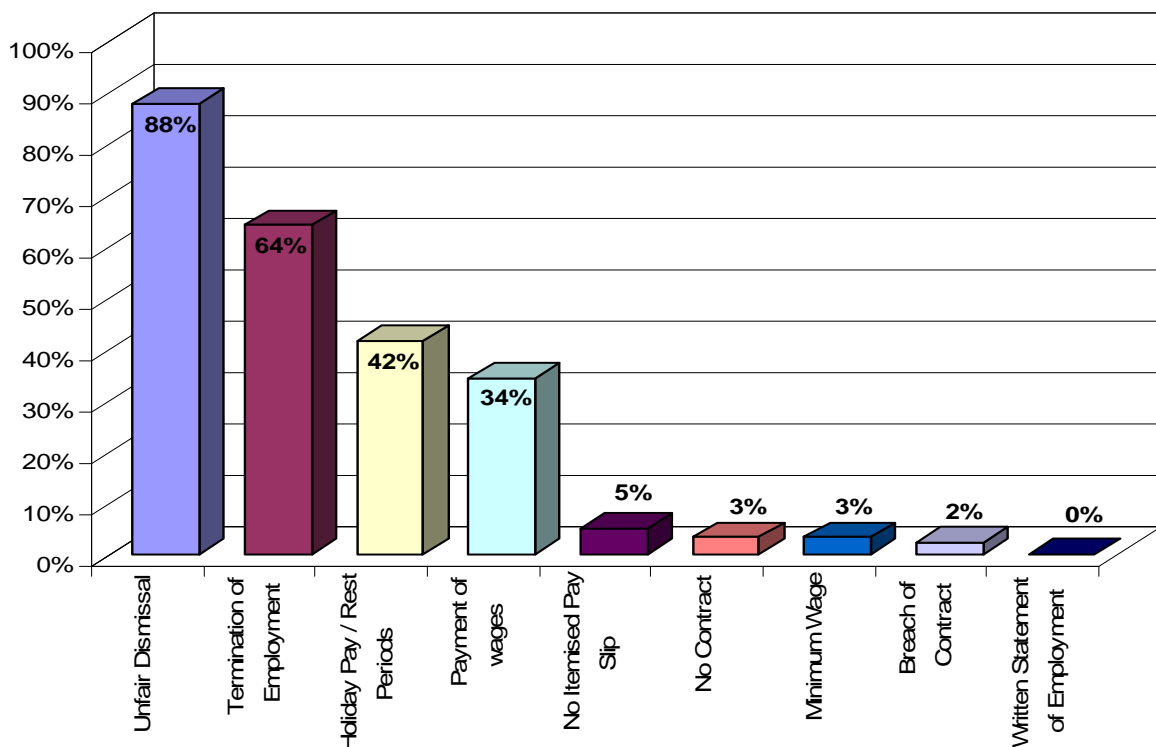


Figure 5 – Issues contained in complaints received by the Tribunal

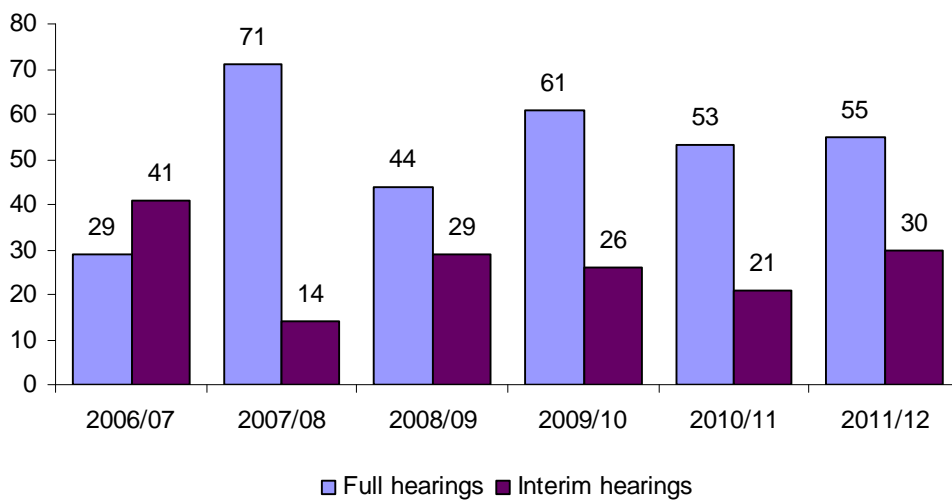
	2009/10	2010/11	2011/12
Unfair dismissal	139	148	156
Payment of wages	80	71	61
Minimum rest periods and annual leave	47	61	74
Termination of employment	73	59	114
No Contract	23	3	6
Breach of contract	3	3	4
Minimum wage	2	3	6
No itemised pay slip	8	0	9
Written statement of employment	0	2	0

Tribunal hearings

During the period of this report, the Tribunal sat on 85 occasions: 55 full hearings and 30 interim hearings, an increase of 11 hearings compared to the previous reporting period. In addition, 29 case management meetings were held.

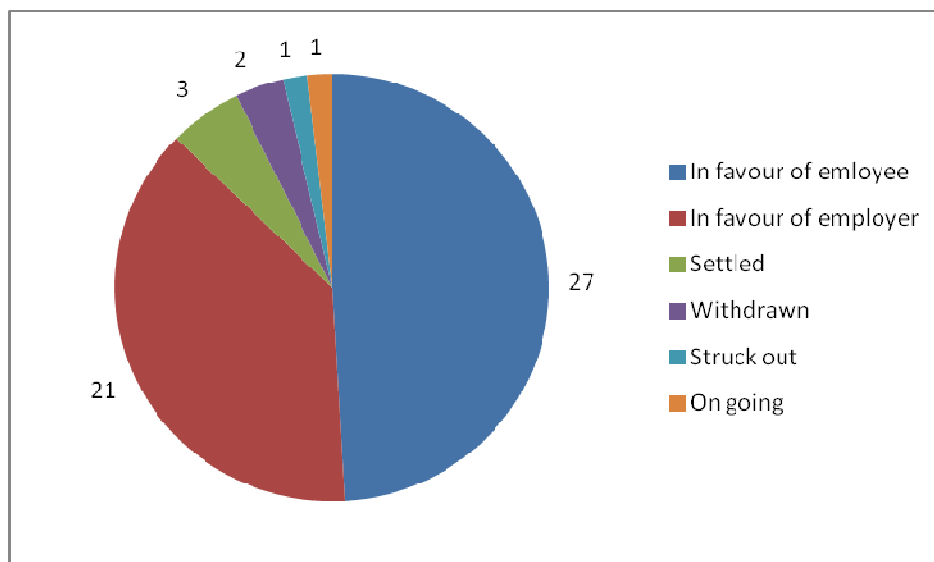
These hearings were not necessarily in relation to complaints that were received during this reporting period and may include cases that have been carried forward from previous years.

Figure 6 – Total number of Full and Interim Hearings held each year during the current and previous annual reporting periods



Of the 55 full hearings, 50 were heard in 1 day, 4 lasted 2 days and 1 lasted 5 days. Judgment was given in favour of the Employee on 27 occasions and in favour of the Employer on 21 occasions. The remaining cases were dealt with as shown in Figure 7.

Figure 7 – Outcomes of Tribunal hearings held during the reporting period



Outstanding complaints from previous reporting periods

From the period 2005, there is one complaint outstanding. There are two outstanding complaints for the period 2008, one for the period 2010 and one from the first half of 2011. All of these cases are dependent on the outcome of related cases before the Royal Court.

Outcomes of complaints

The 178 complaints that were received during the reporting period were dealt with as follows:-

Figure 8 – Outcomes of complaints received by the Tribunal during the reporting period

Settled by the parties prior to Full Hearing	65
Withdrawn by the complainant prior to Full Hearing	19
Tribunal hearing, found in favour of Employer	4
Tribunal hearing, found in favour of Employee	8
Struck Out prior to Full Hearing	5
Rejected prior to Full hearing	10
On going	67
Total	178

Unless a party indicates that he/she does not want conciliation, all complaints and responses are forwarded to the Jersey Advisory and Conciliation Service (JACS) at the same time as being admitted into the Tribunal’s process.

The Tribunal actively encourages both parties to meet an Officer of JACS but does not affect conciliation itself. Cases only come to the Tribunal if no conciliated settlement has been reached. Some cases are adjourned for conciliation during a hearing. Cases continue to move through a waiting list towards a hearing date regardless of whether they are currently being conciliated via JACS.

Every complaint to the Tribunal must be concluded by the Tribunal. A complaint may be withdrawn by a complainant for a number of reasons, including that a Compromise Agreement has been reached before or during a hearing.

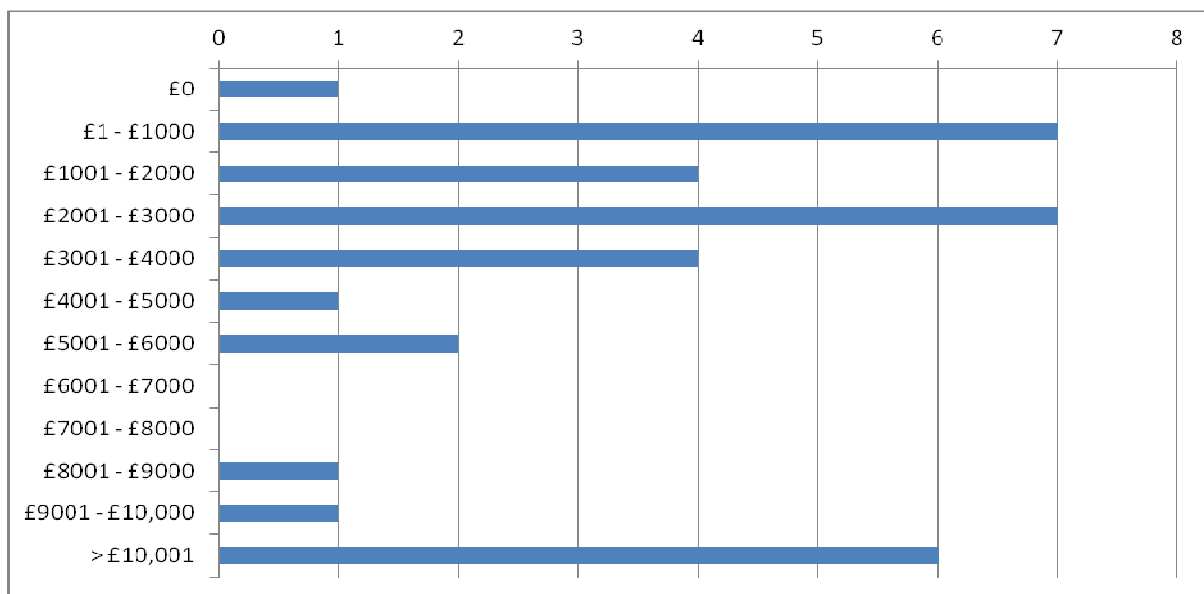
Compensation awards

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The Tribunal can make the following types of Awards:

Unfair Dismissal	Compensation is based on weekly pay at the end of employment and years of continuous service to a maximum award of 26 weeks' pay	Uncapped but subject to principles of reduction contained in the employment law
Statutory Notice pay	Compensation is based upon weekly pay at the end of employment and years of continuous employment to a maximum award of 12 weeks' pay	Uncapped
Redundancy pay	Compensation is based upon one weeks' pay per complete year of continuous service, subject to a minimum of 2 years' service	Uncapped but subject to a maximum amount of weekly pay currently set at £650
Statutory Holiday pay	All employees are entitled to receive a minimum of 2 weeks' paid leave and to be receive a paid days' leave on all bank and public holidays	Uncapped
Right to representation at a Disciplinary or Grievance hearing	Compensation is 4 weeks' pay	Uncapped
Minimum Wage	The Tribunal will award the amount necessary to bring the wage earned up to the minimum wage, currently £6.48 per hour	Uncapped
Failure to comply with a Direction for re-employment	Compensation of up to 26 weeks' pay in the Tribunal's discretion (uncapped) plus in certain circumstances the original unfair dismissal award	
Other employment contract disputes		Capped at a maximum award of £10,000 for all other contractual claims

Figure 9 – Amount of compensation awarded by the Tribunal (where applicable) in complaints heard during the reporting period



Membership of the Jersey Employment Tribunal 2011/12

During the period of the report, two Tribunal members resigned; Advocate David Le Quesne (resignation effective 31 May 2012) and Mrs Kelly Flageul (resignation effective 31 March 2012).

As of 30 June 2012, the members of the Tribunal were:-

Chairman

Mrs Nicola Santos-Costa

Deputy Chairman

Advocate Claire Davies

Members with experience as representatives of employers

Mrs Susan Armes

Mrs Louise Cram

Mrs Mary Curtis

Mr Stewart Mourant

Mr Mark Therin

Mr Peter Woodward

Mr Ian Carr

Mr Timothy Allen

Members with experience as representatives of employees

Mr Michael Baudains

Mr Alan Hall

Mr Patrick Kirwan

Mr Timothy Langlois

Mr Sam Le Breton

Mr James McCartan

Mr John Noel

Mrs Angela Swindell

Contact details

**The Registrar:
Mrs Louise Cave
Mrs Jo Hickey**

**Jersey Employment Tribunal
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Office hours

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