

Kenyan Jersey Committee (For Kenyan Jersey Community);
Kenyan Community submission to Jersey Work Permit Holder Welfare Review
Scrutiny Panel 2023 (Royal Square, States Building – Le Capelain Room May 2023)



Introduction (

Jersey Kenyan Committee Members;

Maggie Turner and Joshua Muchiri

Committee Purpose;

Offer representation for Kenyan work permit workers in matters affecting their welfare. (*roughly Kenyan 600 workers*)

Providing advice on how to navigate island life for Kenyans and other work permit holders new to the island.

Organising social and networking events, hosting social media pages to support the Kenyan community and other work permit holders.

Collaborating with other organizations with an aligned purpose.

Mutual Benefits - Jersey <>> Kenya

English speaking, highly qualified, hardworking, cheerful, commonwealth member workforce providing labour while improving standards in the island's hospitality industry, as well as other industries.

Improved economic status for workers.

Work Permit Holder Welfare Terms of reference

1.To examine and consider the process of obtaining a Jersey work permit, to include;

a) the relationship between Jersey work permits and UK visas; and

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UK/Jersey Visas can now be issued in Nairobi – Kenya (previously South Africa), which allows a swifter process.

Grievance

The UK offer longer working visas leading to settlement, with workers enjoying full access to government services, pension, and benefits. The UK also have a less stringent requirements for granting skilled worker permits.

Kenyan Community remedial Proposal

Introduce longer permits which will provide stability and economic viability for both employer and employee.

b) the information provided to applicants during the application process;

Exploitation Grievances

Contracts offered at interview stage are not always honoured on arrival.

Information on deductions (accommodation, tax and social, travel costs) and take home wage not provided to employees to inform their decision.

Employees are unaware of Jersey labour laws and their rights.

Kenyan Community remedial Proposal

Consider introducing a minimum contractual standard for work permits or employer guarantee that the contract will be honoured eg. guaranteed wage, minimum hours, guaranteed role/position, payslip deductions sample etc.

Provide information and sensitization to new work permit employees on their rights through meetings/social events and information pamphlets.

Mutual Benefits

A motivated work force and less JACS cases.

Accommodation Grievances

Workers are currently housed in unsuitable sharing and living conditions without cooking facilities. There has been a case of a double bed being shared.

Unpractical distances to travel between accommodation and work in-between split shifts without transport.

The employee is not party to the rental lease for their accommodation, which means their tenancy rights are not protected like other islanders.

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Kenyan Community remedial Proposal

With growing numbers and reliance on work permit workers, there is need to include suitable studio and bedsit accommodation as part of the island's housing plan.

Employers to abide to rules governing Jersey landlords.

c) the funding requirements of the Jersey work permit application process.

Circa £2k is required for every application or renewal. Currently financially unviable for a 9 month permit considering other costs incurred when relocating and the cost of maintaining yourself for 3 months (renewal break) without employment, and being paid minimum wage with restrictions to working part-time. Even more unviable for employees forced to leave earlier than the full 9-months to suit their employers' seasonal operating model.

Are Kenyan Jersey work permit workers being subjected to more stringent/expensive application requirements based on UK visa requirements, rather than Jersey immigration work permit requirements?

The expenses incurred through the work permit application process (Circa £2k - known costs) should be claimable on tax returns as annual employment expenses.

Kenyan Community remedial Proposal

Employees are happy to fund work permit fees based on current prices, once they take ownership of their work permit post the initial 9/6 month season.

Introduce a six month grace period for first time work permit migrants, where employee is tied to the work permit granted by the employer. After 6 months of service the employee can own the work permit and be free to engage other employers for part-time or full-time positions.

2.To examine Jersey's Work Permit Policy and determine its effectiveness in:

- a) ensuring the welfare of work permit holders;
- b) protecting work permit holders from exploitation and 'Modern Day Slavery';
- c) providing guidance in relation to supplementary employment, variation of employment contracts, termination of employment, accommodation, and employment disputes.

Under the current policy – The employer applies for the work permit and gives the permit to the employee to apply for a visa.

Servitude Grievances – Immigration Policy

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Restrictions on work permit employees from accessing supplementary employment in their free time or engaging other employers has comparisons to the Kaffala system in the middle east. Is that discriminatory considering no other workers have the systems restrictions on the island?

If an employee falls out with their employer, they are required to obtain other employment within 7 days or be expelled from the island.

The work permit employee cannot do part-time work in their free time without written consent from the employer. *(Jersey Immigration Policy)*

The worker cannot engage another employer without written permission from their employer. *(Jersey Immigration Policy)* This is a very unusual rule in 2023.

The current immigration policy has denied employers the right to promote their employees, and employees the right to be promoted. *(Jersey Immigration Policy)*

The current immigration policy does not allow workers to access “Skilled” jobs (e.g Care work), despite the employer committing to employ the worker, while clearly stating “no experience required”. Workers already on the island have to meet immigration department’s “skilled” criteria to access the jobs, despite being deemed suitable for the job by the employer. *(Jersey Immigration Policy)*

Many work permit employees have reported welfare grievances to JACS, FOA and our committee, in desperation and a state of disorientation. Without support the employees have a major struggle to navigate Jersey redress channels and can feel very vulnerable and isolated.

(Jersey Human Rights Act 2000 Article 4)- Prohibition of slavery and forced labour

1. *No one shall be held in slavery or servitude.*

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(The Human Rights Act 1998, Art 4) Definitions of Slavery, **Servitude** and Forced labour; - Slavery is when someone actually owns you like a piece of property. **Servitude** is similar to slavery – you might live on the person’s premises, work for them **and be unable to leave**, but they don’t own you.

Does the current immigration policy comply with the Jersey Human Rights Act 2000 law on **servitude**, considering immigration rules state the employee cannot engage another employer without written permission from the current employer?

Work Permit employees require written permission from their employer to engage another employer for part time work. Employees have been dismissed and work permits cancelled for not seeking written permission prior to working part-time.

Servitude Grievances – The right to promotion

For more than 15years the immigration department has denied employers and employees the right to promote work permit workers to become skilled workers eg. Managers.

Some employers have had to device work arounds where they pay their employee as a manager but maintain their job title as waiter, to avoid being found in breach of immigration policy.

Kenyan Community remedial Proposal

- (i) Introduce a six month grace period for first time work permit migrants, where employee is tied to the work permit granted by the employer. After 6 months of service the employee can own the work permit and be free to engage other employers for part-time or full-time positions.
- (ii) If the employee is successful in seeking an opportunity in a different industry covered by the work permit policy, they can be allowed to access that opportunity.
- (iii) If the employer closes their hotel before the end of the initial 9 month permit, the employee can take ownership of the work permit with permission to engage any employer.
- (iv) Allow work permit worker the right to being promoted to skilled positions, as is guaranteed to all other Jersey workers.
- (v) Allow work permit workers the right to pursue opportunities in other industries, as is guaranteed to all other Jersey workers.

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- (vi) Review the work permit policy against the Jersey and UK Human Rights Acts, to stop placing work permit workers under servitude.

Mutual Benefits

Current numerous employee welfare grievances reported to JACS and our committee reduced or eradicated. If employers no longer have a monopoly over the employee, employment conditions will improve to attract and retain employees. e.g. Paying more than minimum wage, decent accommodation, sociable rotas, upskilling, and promotions.

Work permit workers can help plug the shortage of workers by doing part time work and switching to other industries.

3.To identify and assess the welfare obligations placed on employers of work permit holders and to examine:

- a. any relevant guidance or support provided by the Government;
- b. any relevant legislation;

Legislation Grievances

Work permit workers have no protection as tenants since no leases are signed.

Most work permit workers are not paid for extra hours worked based on their contracts, they are instead asked to take the time back lieu in some cases being given 4 days off in a week, with no permission to engage other employers for part-time work.

Kenyan Community remedial Proposal

Consider introducing a minimum contractual standard for work e.g. guaranteed wage, minimum hours, guaranteed role/position, payslip sample to include deductions, suitable accommodation etc.

Provide information and sensitization to new work permit employees on confidential and legal channels to direct any grievances, through meetings and information pamphlets.

Require employers who provide accommodation to register as landlords and adhere to Jersey law governing landlords i.e., provide leases and suitable accommodation.

Ensure employers are compliant to Jersey employment law.

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- c. how fulfilment of the obligations is reviewed.

Kenyan Community remedial Proposal

Involve and continuously engage the Kenyan Jersey community and other work permit workers on legislation and policies affecting them.

4.To identify and assess:

- d. the financial obligations that employers and work permit holders have to the Government; and
e. any Government services or benefits available or not available to temporary work permit holders.

Grievances

9-month work permit workers are treated as new arrivals every season which means they only receive 3 months of health services per 9-month season, despite paying social security and tax, for decades.

Can work permit workers claim sick pay?

New arrival work permit workers receive a tax rate on arrival despite having no previous year's tax liabilities.

Considering; - the annual £17k threshold required to be liable for Jersey tax,

- minimum wage hourly rate most workers receive,

- only being liable for 9 months' worth of tax liabilities which can be spread over two tax years,

- claiming for dependents in Kenya etc.

work permit workers will very rarely qualify to pay income tax. Most work permit workers are currently paying 10%+ tax despite the considerations above.

Work permit workers are also having Long Term Care (LTC) tax deductions despite the fact they are only permitted to be on the island for 9 months, and can never claim LTC.

Kenyan drivers' licences are not valid or exchangeable in Jersey while other African countries and European countries are. Kenyans drive on the same side as UK and have ability to drive on motorways and expressways. This severely impacts commuting, especially in the winter and with split shifts rotas. It also locks Kenyans out of jobs that require driving e.g. care and construction.

Should Kenyan work permit workers get better value for their contributions aligned to other tax payers? Are Kenyan work permit workers owed money by the Jersey Government for unprovided services based on their social security and income tax contributions?

Kenyan Community remedial Proposal

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Review current restrictions to work permit workers accessing full Government services, to decide whether contributions should be reduced, or Government services extended.

5.To identify and consider temporary work permit holder protection practices in other relevant jurisdictions. (Maggie)

Grievances

Compared to Jersey, the UK offers much longer work permits leading to settlement options – for most industries.

Guernsey also offers longer work permits in comparison to Jersey.

Foreign workers in the UK have more access to Government services, accommodation and most employment rights enjoyed by UK residents.

Kenyan Community remedial Proposal

Introduce a total of 4 years stay for work permit workers, which will still mitigate against obtaining 5 years residency.

Consider acknowledging long term work permit workers with the right to settlement.

Consider aligning rules with Guernsey to allow free movement of work permit labour between the channel islands.

Allow the work permit holder to own their permit like most other UK jurisdictions.

Key Take-aways for Scrutiny Panel and Jersey Government

Fair Taxation and reimbursement for unjustified tax and social security payments.

Access to Government services as provided to all islanders paying social security contributions.

Protect work permit workers from servitude and exploitation facilitated by immigration policies.

Continued engagement with the Kenyan community and other representative island charities on rules and laws specifically created for work permit workers.

Servitude and stringent immigration rules are seriously affecting Kenyan work permit workers mental health, making workers feel helpless at the mercy of employers and immigration officers.