



# Work Permit Holder Welfare Review Panel

## Public Hearing

### Witness: Kenyan Jersey Committee

Tuesday, 30th May 2023

**Panel:**

Deputy B. Porée of St. Helier South (Chair)  
Deputy L.V. Feltham of St. Helier Central  
Deputy M. Tadier of St. Brelade

**Witnesses:**

Mr. J Muchiri, Kenyan Jersey Committee  
Ms. M. Turner, Kenyan Jersey Committee  
Mr. A. Nyatta, Kenyan Jersey Committee  
Mr. M. Robbins, Kenyan Jersey Committee

[15:30]

**Deputy B. Porée of St. Helier South (Chair):**

Good afternoon, everyone. Welcome to this review hearing for the Work Permit Holder Welfare Review Panel. I would like to draw your attention to the following. This hearing will be filmed and streamed live. The recording and transcript will be published afterwards on the States Assembly website. All electronic devices, including your mobile phones, should either be switched off or on silent. For the purpose of this transcript, I would be grateful if everyone who speaks could ensure that they state their names and their roles. I would like to start by introducing myself and the panel members and then we will ask you to do the same. My name is Beatriz Porée. I am a St. Helier South Deputy and I am also the Chair of this panel.

**Deputy L.V. Feltham of St. Helier Central:**

My name is Lyndsay Feltham. I am a Deputy of St. Helier Central and I am a member of the panel.

**Deputy M. Tadier of St. Brelade:**

I am Monty Tadier. I am a Deputy for the constituency of St. Brelade. I am also a panel member.

**Deputy B. Porée:**

Okay. If you could start with yourselves.

**Ms. M. Turner:**

Maggie Turner. I am a member of the Kenyan Jersey Committee.

**Mr. J. Muchiri:**

Joshua Muchiri. I am a member of the Kenyan Jersey Committee.

**Mr. M. Robbins:**

I am Mick Robbins and I support the Kenyan Jersey Committee.

**Mr. A. Nyatta:**

I am Anthony Nyatta. I am also a member of the Kenyan Jersey Committee.

**Deputy B. Porée:**

Thank you so much for that. If we are all ready, I will start by asking the first few questions and then we will take it from there. My first question is: please can you describe how the Kenyan Jersey Committee provides support to the work permit holder community in Jersey?

**Mr. J. Muchiri:**

I will take that one. We came together as a group post-COVID because there was a big migration of Kenyans and I think a combination of COVID and the numbers that came meant that there was a lot of people out there who were short on information in terms of settling into Jersey, what to expect from the employers, what to expect from the Government of Jersey. Further to that, we came together and we started providing that service. It is predominantly provided through a WhatsApp group that most of the Kenyan work permit holders working here are members of. We also have a Facebook group, which incorporates all Africans and we are widening the net for other work permit workers. The way we deliver that is we organise events where we will tell them about the things they need to know. Most of us have been under work permits so we understand the struggles that they have and that is why we felt empowered to provide that service. So it is predominantly advising them on how to navigate Island life, organising social events to give them a bit of fun, answering their questions about anything they are unsure of and the latest has been they have been directing

a lot of grievances to us, whether that be from the employer or from the Immigration Department, and also questions about the immigration policy.

**Deputy B. Porée:**

Would you say, Joshua, the setting up of the Kenyan Jersey Committee was done due to the call for support or your organisation was set up for other reasons or just purely to support the Kenyan fellows in Jersey?

**Mr. J. Muchiri:**

It is predominantly to advocate for the rights of work permit workers, for their welfare.

**Deputy B. Porée:**

Thank you so much for that. My next question is with regards to recruitment, the information about Jersey. Do you know what proportion of Jersey work permit holders are recruited via an external recruitment agency approximately? Have you got any numbers idea?

**Mr. J. Muchiri:**

I think during COVID it would have been predominantly through agencies but as more people arrive they sometimes recommend other people they know to the employer and then people will come directly through that recommendation. In terms of numbers, we had a meeting with the Immigration Department last year and they are better at providing the numbers because they issue the permits. They informed us that the number of permits issued in 2022 is about 570, going on to 600, but on top of that you have those who have moved on to skilled permits who are not captured in that final cycle, and you also have people like us who have settled here. So a rough estimate of the Kenyan local population is heading towards 1,000.

**Deputy B. Porée:**

Thank you for that, Joshua. You did mention earlier to begin with that recruitment is done by agencies maybe and then obviously afterwards maybe by word of mouth. Do you know what proportion of these agencies are based in Kenya? Are they agencies based in Kenya who find those workers, do you know, or if they are Jersey local-based agencies who make those recruitments?

**Mr. J. Muchiri:**

They will all be local and I only know of one agency because obviously the business for the need is here in Jersey or the people requiring that service are in Jersey, so it makes sense for the agency to be based here. But what I know is that the agency will have somebody on the ground helping them with their recruitment. The agency that I know about also makes partnerships with government departments like the healthcare department or agriculture department or occasional training

institutions, which they use to source the people. So, traditionally, it used to be Jersey Hospitality Association going back 10, 15 years, that had a partnership with Utalii College, which is a catering college in Kenya, a world renowned college. That is how the recruitment started between J.H.A. (Jersey Hospitality Association) and Utalii College, but obviously as time goes by and the demand becomes more than other ways of recruitment started up.

**Deputy B. Porée:**

Thank you. Have you been receiving any feedback from the permit holders about their experiences once they engage with the recruitment agencies?

**Mr. J. Muchiri:**

It is hard to judge that experience especially on their part because it will be the first time they are doing it and they have nothing else to compare it to.

**Deputy B. Porée:**

If the agencies are based in Kenya ...

**Mr. J. Muchiri:**

In Jersey.

**Deputy B. Porée:**

No, these ones particularly based in Kenya. Are there agencies in Kenya who also recruit to come to Jersey and they liaise?

**Mr. J. Muchiri:**

Now that you say that, I know of 2 Kenyans that used to work here and went back and started helping recruit, so that is the only Kenyan agency I know of but there could be more that I do not know.

**Deputy B. Porée:**

I appreciate that. Thank you. Do you feel that work permit holders who are new to the Island are well informed about their lives prior to arriving here?

**Mr. J. Muchiri:**

I do not feel that they are at all, judging from the questions and grievances that they direct to us. There is a lack of information and that is what has encouraged us to do these social gatherings to be able to give this information to them. Now, quite recently that lack of information has materialised in a very ugly way through somebody who has passed away because they could not access healthcare as they should have.

**Deputy B. Porée:**

Would you say that happened very recently or a long time ago?

**Mr. J. Muchiri:**

Very, very recently, very recently, less than 2 months ago.

**Deputy B. Porée:**

Two months ago?

**Mr. J. Muchiri:**

Yes, so I think they were off sick for a few weeks and were confined to their room. I think in this case the employer was very active in taking the employee to hospital and when they got to hospital they were checked and I am not sure whether they were given medication or not but the next appointment they were given was way ahead and this was somebody who needed treatment. I am not sure about the details of the disease but I believe it was something terminal. So because of the lack of information or access to information, this person thought because of the way they feel and how far ahead the appointment had been given, their best source of help would be to get on a flight, go to Kenya, seek treatment and then come back to Jersey when they are fit enough for work. When they arrived in Kenya they did not last the week, passed away.

**Deputy B. Porée:**

Thank you for that. Obviously the panel cannot really discuss individual cases but that is very powerful information you are giving us, so thank you for that. I will move forward with that one but obviously we have taken that into consideration. What common issues or concerns do you hear from those permit holders about their experiences of living and working in Jersey? If there is anything positive also, please tell us, but what is the most common themes you find from people who have something to say about their work experience in Jersey?

**Ms. M. Turner:**

I would say probably it is recreation facilities. When they have finished their shifts, you find that they only have their 4 walls to go to and lack of spaces for them to go and have some recreation or if they have a bit of extra time on their hands and they need to take up some supplementary work that becomes also a challenge because there are restrictions. They are bound by certain restrictions and they are not able to do that.

**Deputy B. Porée:**

Thank you.

**Mr. J. Muchiri:**

I usually hear them complaining, number one, about the length of the work permit, how long they are allowed to be in Jersey and how long they have to stay away for. That is a really big one because it makes it a bit economically unviable for them considering they come here with a debt of perhaps £2,500 in their travel and they are here on minimum wage.

**Deputy B. Porée:**

From the moment they arrive in Jersey, are you saying that they may arrive before even their first salary owing £2,000?

**Mr. J. Muchiri:**

Yes, by the time you incorporate the flight and all the relocation costs, this, that and the other, of which sometimes the employer pays for those costs. They have been paying back the employer in the 9 months and perhaps they have responsibilities back home so they are sending money. Then at the end of the 9 months they have to be home for 3 months unemployed, so they have to have money to live on for 3 months, and then at the end of that 3 months they need to spend again to come back to Jersey. If you are on minimum wage I am sure you can appreciate that might be very difficult to achieve economically. The other thing that I hear about, and this is probably the longest-running grievance, is not being allowed to seek employment from a different employer.

[15:45]

We will talk about that in a bit more detail later. Not being allowed to seek work during your free time, part-time work. Again, you need permission from the employer, according to the immigration policy, to be able to do that. So (1) you have a very short period or short season to make an income and then (2) on your free time you are not allowed to try and get more income. I know in a lot of cases the employers, when it is busy like now in the summer, they say: "Do the extra hours and you can take the time back in lieu when it is quiet" but then you cannot do part-time work, so you have worked long hours during the summer and when you are given back those hours to take back in lieu, you just sit in your room doing nothing. So there is a huge problem there. Also linked to that is the restrictions that the immigration policy puts on being promoted. So I know of somebody who has been on this Island just as long as I have, about 20 years, and for years every year the employer went to the immigration to say: "I want to make him manager. He has been with me long enough, he knows everything, he runs the place as it is" and the employer has repeatedly for a period of about 12 years been told: "No, you cannot promote him" by the immigration. You are not allowed to promote that person. I think the way the immigration looks at it is job categories, so being a manager I think is classified as skilled work and I think according to their rulebook you have to have certain

qualifications to get this. I understand that if you are in Kenya and you have never been to Jersey, you need to be vetted according to some criteria but if you are here and you have been here for years and years and then those same criteria is being applied to you, then I think that is very unfair, especially if your employer is saying: "This person is skilled, I am happy with the work they do, they can handle responsibility" and then you have the immigration policy acting as a barrier to being promoted because they are telling the employer: "This person has to go back to school, they need to do this, they need to do that." The same case applies for people who come here for example on hospitality work and they might have noticed the Island has a shortage of carers and they might also have noticed that the care agency has advertised that they are looking for people with no experience and they are happy to train them. Again, the same case happens. If you want to switch, you have gone for an interview, the employer has said: "Yes, you are the right person for this job" but then again the Immigration Department will give all these criteria that you have to fulfil to access that job. Once again, I understand if you are somebody who is not known to the Island, who is away in Kenya and never been here, you need to have a vetting process of some sort but if you have been here and the Island has accepted you and you are a law-abiding person and you have proven that you add value to the Island, then I do not see why such rules should bind you. We met with immigration last year and we raised this question and said: "How do you expect people to develop?" I know people who have been waiters for 20 years, 9 months on, 3 months off, 9 months on, for 20 years. Their reply rather shocked me because what they said is that Jersey is not in the business of developing people and if Jersey needs to fill hospitality places they just get people for hospitality or agriculture and they are not concerned about people jumping ...

**Deputy B. Porée:**

People's growth, personal, professional. It is almost like it is in the way of ... and for business development as well because if you are stopping a business person from promoting their own staff to take better positions with more responsibility and if immigration is saying no, even that business person will have to try and find that sort of person with those qualifications, which is you could use somebody who is already in your home rather than having to start again.

**Mr. J. Muchiri:**

You can imagine if you have worked somewhere for 10, 15 years and you cannot be promoted because that is what the immigration says and then every time somebody new comes for that managerial role or assistant managerial role, you have to train them to do that job that you cannot access.

**Deputy M. Tadier:**

Do you think there is an issue in terms of equivalence, because it boils down to the fact that they cannot build up residency, ultimately? Is it an issue, do you think, that somebody from Britain who

is non-Jersey born can gain their residency after 5 years or 10 years as well, 5 years for work, but someone perpetually on a 9-month visa does not have that option?

**Mr. J. Muchiri:**

Yes. We, as a committee, fully support Jersey Hospitality's view on that. I think to have somebody tied to the Island for 20 years and you are still telling them: "You have no right to be here" or they have to continue being separated from their family, in other words they cannot bring their dependants over, impeaches on human rights to an extent. I do not think any other jurisdiction, Guernsey for example, in respect to their length of work permits ... the residency thing, once you have gone for 3 months it cancels. So it does not matter if you get a 9-month permit or if you get a 4½-year permit, as long as you not here continuously for 5 years you cannot gain residency. So I think the 9-month permit was introduced when most hotels here were seasonal and they only needed people in the summer and they were worried about how they are going to pay these people in the winter, but now most hospitality organisations are all year round and they are having to suffer or to recruit more people to cover the 3-month gap when people are away. It does not work for the employers, it does not work for the employees and for me it does not even work for the residency piece because, as I said, you could be here for 4 years but as soon as you go out for 3 months that 4 years is cancelled, essentially.

**Deputy L.V. Feltham:**

Just in terms of the positions that you were talking about just now whereby there is, for example, a managerial position that needs to be filled by a local business and they have somebody who is trained, happens to be on a permit and then they are told no by customs and immigration, how do those roles then get filled?

**Mr. J. Muchiri:**

They get filled by somebody new coming or somebody local being offered that role but, as I mentioned before, the people who have been there for years are the ones who know how that place works, so all these people who have been brought in on top of them, they will still have to be trained by them. So I am guessing they would have to advertise or try and bring in somebody who meets the immigration criteria.

**Ms. M. Turner:**

They would usually probably advertise and bring somebody from England to come and take the role. I know of some individuals who have tried to move on to a supervisory role and they have not been able to and they have been told that this role will not warrant to be given to a work permit holder. After a short time, somebody is recruited, probably from England or so, and within a short time that



person leaves and it is the same work permit holders who are still training, giving training to these people.

**Deputy M. Tadier:**

Is it the case then that you will get scenarios where you have got somebody with more experience and more knowledge about the hotel and about Jersey maybe being below somebody who has just come in and does not have that experience?

**Mr. J. Muchiri:**

Yes, 100 per cent.

**Deputy M. Tadier:**

What is the consequence of that?

**Mr. A. Nyatta:**

The mindset, I think, to this is primarily based on pre-Brexit European Union workers coming into Jersey. They would come across the borders and next day they would find a job. There were lots of qualified people obviously, people from Portugal, Madeira, Romania, everywhere else. Post-Brexit now that option is not available easily, so employers find they have also to issue work permits for them as well. Having talked to some European Union friends I know, they have friends or people they know who do not want to come to Jersey, given a work permit, to do a seasonal job. They would rather be somewhere else, maybe in their home country, so they explore different places to do a different kind of job. So then you find these positions on the Island that are not filled by locals and then cannot be filled by work permit holders will be taken up locals or somebody coming in from England on a work permit and because then they do not fit in, or after a while maybe it becomes too busy for them and it is not their cup of tea, they leave after a few months. Then it goes back again to the same guy who will not get the job but he has to do it, but unofficially again, so it just becomes a repetitive cycle.

**Mr. J. Muchiri:**

What is really unfair about this is I mentioned the Utalii College as how this partnership between Kenya and Jersey started originally and that is a world renowned college. Most people who come to Jersey from Kenya have qualified, not only qualified with a Utalii qualification or other institutional qualification but they also have experience in 5-star hotels - if you have been to Kenya, you will have seen the standard of our hotels - so Jersey is a downgrade for their skills but yet they cannot access the managerial positions.

**Deputy B. Porée:**

Is it fair to say that because of the immigration strict rules in terms of job title possible exchange, people end up doing the job that they are qualified to do but without the title for less money? Is that what you are saying?

**Mr. J. Muchiri:**

Yes, because once you are a professional you are not going to settle for less. You will still provide a professional service.

**Deputy B. Porée:**

I would and I am sure most people would because if you are worth something you would. If you do that job you would want to be paid for that but due to a technical immigration issue it means that a lot of people who come and are able to do it and are qualified end up still doing those jobs but not getting paid while others in the European community would be able to and expect to be paid for.

**Ms. M. Turner:**

Yes, absolutely.

**Deputy B. Porée:**

Thank you. Okay, so we are going to move on a little bit because the time is slightly short. My next question is: the panel has been made aware of the new information pack created by the Jersey Customs and Immigration Service, which is now available to work permit holders through their employers. Has the Kenyan Jersey community been aware of this pack or what it may include? Have you ever heard about it? It is an information pack. Maybe not? Okay.

**Mr. J. Muchiri:**

Not officially. We have heard about it on the grapevine and heard that it will be translated into Swahili, but we have not heard about it officially and in fact we have separately started compiling our own following this fatal incident that happened due to misinformation. We have taken it upon ourselves.

**Deputy M. Tadier:**

Can I ask quite a narrow question about the translation into Swahili? Is that something that you have asked for and think is helpful or is it kind of unnecessary given the ...

**Mr. A. Nyatta:**

The assumption is, which we understand in one respect and we account for it, that because we are a Swahili-speaking country, Swahili is what everybody would be able to communicate in but when we go to school for our education, all of it foundational to postgraduate would be in English.

[16:00]

So English is technically our first language but Swahili equally. So it would be very hard for ... not very hard but it would be a bit difficult for most people to read it in Swahili as opposed to English. English would be a very preferred and easily understandable language.

**Deputy M. Tadier:**

I thought that might be the case.

**Ms. M. Turner:**

We all speak English.

**Mr. J. Muchiri:**

I saw one of the brochures that had been translated. I did not understand it in Swahili.

**Mr. A. Nyatta:**

It would be very generic Swahili as well and Swahili has moved on quite a lot.

**Deputy M. Tadier:**

I think there is a disconnect. It has probably been well intentioned but it has completely missed ... thank you.

**Mr. A. Nyatta:**

Exactly, yes.

**Mr. J. Muchiri:**

Swahili grammar only originates from our coast and it is very, very complex, so even people from other parts of the country cannot speak the Swahili grammar as it should be spoken. English is easier for us.

**Deputy B. Porée:**

It was well intended but maybe possibly not ...

**Mr. J. Muchiri:**

Yes, not consulted, unfortunately.

**Deputy B. Porée:**

Thank you. We will move forward. The next question is: has the Kenyan Jersey community been made aware of the employers standard oversight board? Have you been made aware of the setting up of such a board, which is called employers standard board? Okay, you are not. Okay, that is perfectly fine. Thank you on that one.

**Mr. A. Nyatta:**

We know from the past sitting with the J.H.A. they talked of introducing a gold standard for employers and that is as much as we know.

**Deputy B. Porée:**

As much as you know, okay. That is good, thank you. Please can you describe how work permit holders typically access support if they have a grievance or dispute with their employers? What normally happens in the first instance? What would an employee do?

**Ms. M. Turner:**

In the first instance, I believe the employee would be sort of in a panic but once they have come to us we would signpost them to J.A.C.S. (Jersey Advisory and Conciliatory Service).

**Deputy B. Porée:**

Okay. So you are saying in the case of a grievance the employee will find the Kenyan Association before they try and reach out to any other organisations on the Island that may or may not support them?

**Ms. M. Turner:**

Previously we have had Friends of Africa dealing with this, so because Friends of Africa is established they would have been reaching out to them in the first instance.

**Deputy B. Porée:**

I suppose a lot goes to say if you look like me, I tend to trust you automatically, so that is how you reach out for support when you are desperate and you are lost.

**Mr. J. Muchiri:**

It is mostly through the grapevine because they know we exist but there is nothing to signpost them as to where to go.

**Mr. A. Nyatta:**

Again, because of the lack of information some will directly go to immigration, which we always tell them is the wrong thing to do because immigration will do nothing for you other than try and solve

the problem as quickly as possible in their favour. So some would go to immigration, some would come to us, some would go to Friends of Africa.

**Deputy B. Porée:**

Thank you for that. You did mention immigration and that follows up with the next question I had. Which government services or independent organisations are mostly contacted by permit holder workers if they have got an issue? You mentioned yourselves as a charity organisation as well as Friends of Africa, immigration, so these are the areas where people will go to look for support. Are there any other organisations you can think of?

**Mr. J. Muchiri:**

It is all they know and if we were to direct them to Citizens Advice, for example, Citizens Advice do not know much about work permits. The gap that is there is having a Citizens Advice person who specialises in work permits and can have the information at their fingertips. It is not only Kenyans that require this information. It is everybody else who is not British who comes to work here, so there is a big need.

**Deputy B. Porée:**

So moving forward maybe that is the way. You are suggesting that should be a centre of the information to support those looking for guidance with their issues?

**Mr. J. Muchiri:**

Yes. We think that is what it is supposed to do.

**Deputy M. Tadier:**

Can I take the next section? I think we will rejig some of the order of these. We will talk about work permit policy and immigration rules, if that is okay, for the next section. We note that in addition to work permit policy, work permit holders are also subject to Jersey immigration rules and the rules of the Common Travel Area. I will put these 2 questions together. What impact do you think that these rules have on work permit holders and do you feel the impact of the immigration policy is communicated clearly enough to both employers and employees?

**Ms. M. Turner:**

I will take that one to start with. I believe that the work permit policy and immigration rules can be quite stressful to work permit holders. For instance, if one's employment is terminated they are given one week. You are given notice, termination, you are given one week to finish your notice period.

**Mr. J. Muchiri:**

To leave the Island.

**Deputy B. Porée:**

Sorry, when you say one week, is that 7 working days?

**Ms. M. Turner:**

No, it is not 7 working days.

**Mr. J. Muchiri:**

It is 7 days. If you are unemployed, if you are released by your employer, you have 7 days to leave the Island.

**Deputy B. Porée:**

Including weekends?

**Ms. M. Turner:**

Including weekends, including bank holidays.

**Deputy B. Porée:**

When most businesses would not be ...

**Ms. M. Turner:**

When businesses are closed, yes. At that particular time, this individual, the work permit holder, is still working the notice, so this individual does not have time to sort out their affairs with regards to travel, any money owed or even to compose themselves due to the fact that they have lost their job. They are required to leave the Island, the Common Travel Area. They are required to vacate the room, hand in their keys because their work is tied to the accommodation and the accommodation is tied to their visa. So, in essence, it becomes very, very stressful, especially when the end time runs into the weekend or bank holiday. There are instances whereby we have had a work permit holder having the immigration officer requesting them to turn up to the office on a bank holiday to have their permission scuttled and this is really stressful and it becomes a big struggle when it comes to that.

**Mr. J. Muchiri:**

They are supposed to find another job within those 7 days if they are going to stay on the Island. Now, you can imagine, your world is falling apart, you have been asked to leave your

accommodation. Everything is happening at once and you are supposed to be able to put on your best smile and go and look for another job.

**Deputy B. Porée:**

It is quite a task for the immigration to make sure they open their doors on a bank holiday. It is not heard of.

**Mr. J. Muchiri:**

Yes, because they do not want you to stay a day longer on the Island. They want you out of the Island within the 7 days.

**Deputy B. Porée:**

It is not a day off. Bank holidays businesses are not open. Thank you.

**Ms. M. Turner:**

It becomes quite a challenge and it ends up affecting the individual's mental health because they are lost. They do not know what to do next and they do not want to breach the immigration rules by overstaying. They have not booked a ticket, they have not got enough money.

**Deputy M. Tadier:**

Here we are talking about a situation where there is an expectation they would be here to 9 months normally but they have not been given 9 months' work?

**Ms. M. Turner:**

They have not been given 9 months' work.

**Mr. J. Muchiri:**

They have fallen out with the employer, for example, and the employer has sacked them or said they do not want to continue the contract. From that day you get sacked you have 7 days.

**Deputy M. Tadier:**

That could be for any reason. They could be sacked because they do not get on or because there is no more work; is that a reason?

**Mr. J. Muchiri:**

We have had cases where the employee still has a case in the tribunal in J.A.C.S. because of what has happened between him and the employer and they have been asked to leave within those 7 days.

**Ms. M. Turner:**

It could be for any reason.

**Mr. A. Nyatta:**

It could be the employee's fault as well. Obviously if you breach your contract the employer says they have had enough, so it can be either/or.

**Deputy M. Tadier:**

Have you ever come across a termination of a contract just simply because it suits the employer or there is no work left, for example? Does that tend to happen?

**Mr. J. Muchiri:**

It is hard to narrow it down to that. If I am an employer and I cannot afford to pay you any more, I might just tell you you are not doing your work properly because I have an obligation by the immigration to look after you while you are here and the only way for me to terminate that obligation is to sack you.

**Deputy M. Tadier:**

Thank you. It is still my question, so I will carry on. I think we may have touched on this but do the current work permit rules and the immigration rules strike the right balance between the employer's needs and the welfare of the worker? You can just say yes or no or if you need to elaborate.

**Ms. M. Turner:**

No.

**Deputy M. Tadier:**

Do they favour one group over the other or do they seek to address both?

**Mr. J. Muchiri:**

They absolutely favour the employer and I think Mick can expand a bit more on that.

**Mr. M. Robbins:**

Yes. I will rattle through this fairly quickly but to give you just some context of how we saw this, how we came into this, in May 2021 Maggie's son was arrested and held in Qatar for blogging about the conditions of the workers that he was working with. One of the conditions there was that the employee needed to obtain the permission of his current employer before he could change jobs. At that time I thought ... my mind just was racing with the horrors of what that would infringe but thinking



of that part of the world, well, we have just got to work around that. In practice, it completely shackled the employee to an employer who for whatever reason, or indeed no reason at all, refused to release the person. I remember thinking how draconian that was and that we, the free people of the West, including myself, would just never let laws be passed that placed such restrictions on us. Eventually we managed to get Maggie's son out of the country and that was a whole other story, but then when I started helping Kenyan Jersey I was rather amazed to find that we do have these restrictions, exactly the same restrictions where we place a requirement for an employee to get permission from an employer to change jobs or to work in supplementary employment during their times off. I was astounded, to be honest, because I would not have thought that we, as free people, would put a restriction like that on anybody, but we do. I am amazed that no worker has taken an employer to a tribunal stating that the restriction on being able to undertake supplementary work during mandatory rest periods, or indeed any preferred undertaking of the employee's choice, is a breach of Article 10 of the Employment (Jersey) Law because the employer is maintaining such control over the employee during that rest period that the individual cannot operate freely. That is operate freely in a manner out of the influence of the employer. There seems to be some inconsistencies here as well. A permit holder can water plants in his employer's garden during their day off but cannot water the plants at a garden centre and be paid for it. They can go drinking in a bar but they cannot work behind a bar and be paid for it. Such restrictions would just never be tolerated by the local population, so how on earth can it be acceptable for guest workers in the Island to be subjected to such a draconian regulation? That brought me to look at the law, the Human Rights (Jersey) Law 2000, Schedule 1, Article 4, "Prohibition of slavery and forced labour" says that no one should be held in slavery or servitude and it goes on to talk about forced labour, what is and is not forced labour.

[16:15]

The U.K. (United Kingdom) legislation, Article 4, Schedule 1, of the Human Rights Act is word for word the same as the Jersey law and the provided definition of slavery is: "Slavery is when someone actually owns you like a piece of property. [That is not what we are talking about here.] 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." Now, a clearer definition of servitude is from the U.K. College of Policing: "Servitude is linked to slavery but is much broader than slavery. In *Siliadin v France* [2006] the European Court of Human Rights reaffirmed that servitude is a 'particularly serious form of denial of freedom'. It includes, in addition to the obligation to provide certain services to another, the obligation on the 'serf' to live on the other's property and the perceived impossibility of changing his or her status." That is the obligation of the serf, the permit holder, to live on the other's property, namely in staff accommodation, and the perceived impossibility of changing his or her status, in other words the requirement for permission from an employer not only to change jobs but to find supplementary

work. Whichever definition you choose to look at for servitude, the requirement for the employer's permission to change jobs and the restriction placed on the permits requiring the employer's permission to undertake supplementary work is placing the permit holder in servitude and that is an infraction of the human rights law. This is exacerbated when you consider that most workers also fall into a position of debt bondage because they frequently pay for travel and flight arrangements from Kenya requiring payment back, et cetera. What I found interesting here is that all of this is based on the work permit policy, which is a document written by the Immigration Department. That document, written by a government department, places the employer in a position where they are in breach of the human rights law, so far as I can see. I cannot see any way round it for the employer unless the employer is happy to write the letters, but even the writing of a letter to give the work permit holder permission is a breach of human rights because it puts them in servitude at that point. Policy quite clearly, in my view, puts the employer in a position where they are in breach of the human rights law and of course the Jersey law in relation to immigration, I was absolutely horrified that all it says is: "We will take the U.K. Act and substitute Jersey for the U.K." and it does not say anything else. It just makes the changes to make that happen but no thought seems to have been given to the needs of the Island. When you are talking about hospitality, the needs of the Island really impact on the general population of the Island because it is such an important area that it affects the prosperity of all of us. Lastly, you were talking a little earlier about the lack of being able to promote people. What these regulations do, and it is the case with all regulation everywhere, is that employers are very adaptable, so if they have a regulation they do not like, they find a way around it. The name of the manager on the door may not be the person who is managing it. You have hit the nail on the head because somebody who is being paid as a kitchen porter for 20 years may have been running the hotel for 10 years in practicality by internal arrangement but the name on the door is somebody else. Employers are adaptable and if they do not like the arrangements they will get around it.

**Mr. J. Muchiri:**

Having listened to the J.H.A. submission, they are against it. If they are being honest, the employers are against these draconian rules, so we do not understand who it is being done for. It is very clear that over one or 2 pages of the immigration policy you will see it says "the employee can" and "the employee cannot" on each one and I will just read this as a quick example: "The employee cannot accrue time towards indefinite leave to remain [which we have discussed], switch to another temporary work permit employer [in other words, in their free time], switch employer, switch to a temporary construction work permit employer [so cannot switch industries], extend their work permit beyond 9 months or bring any dependants with them." I am just surprised somebody can sit there typing this in 2023 and not think anything is off. Sorry to interrupt.

**Deputy M. Tadier:**

Thank you. That is very helpful. While I think of it, I visualise a Venn diagram between what suits employers, what suits employees and then what the Government want. I think sometimes the Government steps into the breach, like we saw with the Swahili, and they just make guesses for what other people might want. Can I hand over to Lyndsay because Mick has given us a good ... he has touched on modern day slavery and that might take us nicely to the next section.

**Deputy L.V. Feltham:**

One of the statements within the work permit policy is that its purpose is to protect people from modern day slavery. Do you feel that it achieves this goal in line with international definitions of that term?

**Mr. J. Muchiri:**

I think Mick has just answered that.

**Mr. M. Robbins:**

Yes, I think I have just answered that. It does not, is the short answer based on what I have just said to you.

**Deputy L.V. Feltham:**

Again, we have touched on this before but I think it is important to get clear answers from you on these. In your experiences, are there adequate processes in place to ensure that work permit holders are treated equally under Jersey's employment and discrimination laws?

**Mr. M. Robbins:**

I think again I have covered the restrictions, because the average local worker is allowed to go and work in a bar at night if they want to or do whatever they want at the weekends or their days off. They can work for whoever they want. Some do need permission of their bosses but that is not in the law and it is not a government requirement. That might be an internal matter. If you work for the States of Jersey, I know that you need to get your line manager's permission to do a part-time job but that is not in the law. That is a local thing to that employer. This is a government policy. Well, it is certainly an immigration policy. I do not know quite how much government backing it has got or how much political backing it has got but I know that that is what is in the policy. So, no, absolutely there is no parity between the rights of local people and the rights of work permit holders at all.

**Mr. J. Muchiri:**

The work permit policy is promoting servitude. It is giving employers that control to do as they like with their employee because it is binding the employee to the employer, so it is promoting servitude.

**Mr. A. Nyatta:**

There are good employers. It is just that there are scrupulous ones who take advantage of all the grey issues in there, all the bad lines, but there are good employers as well. They are not all in the same ...

**Deputy L.V. Feltham:**

From what you have said, it sounds like the good employers may well be cognisant of the problems but are unable to resolve that because of the policy that you have in your hands. Obviously then unscrupulous employers could use it to their advantage. You have talked about some of the working conditions but is there anything else that you wanted to draw the panel's attention to with regard to any working conditions that work permit holders may face in Jersey?

**Mr. J. Muchiri:**

Yes. I think in terms of the policy, it is very clear that it has failed to protect the rights of employees as would be expected in this day and age. The other thing that has come to light to us quite recently is that the Tax Office is also overtaxing these work permit workers. These are people on minimum wage and I have an example with me here of somebody who has just got a response from their tax return. They arrived in Jersey in June of 2022 and from June to December the taxman is recognising here that their taxable income is £16,537. The taxman also acknowledges here that the exemption threshold is £16,550. So that would indicate that the actual taxable income is £37 for the whole year. Now, this employee had an 11 per cent tax rate for the whole year of last year, which resulted in them paying £1,700 in tax for earning £37. Once they have submitted their return this year, they are still on a 9-month permit, which makes it clear they are not going to be here for the whole year, and this year the taxman has estimated that they are going to make £28,667 - I do not know how - and based on that they have given them a 3 per cent tax rate.

**Deputy B. Porée:**

So this has increased ... this is 3 per cent.

**Mr. J. Muchiri:**

No, just 3 per cent. So when they were earning £16,537 they were liable to pay 11 per cent and I am sure in the beginning they probably paid 21 per cent for not going to get their rate quick enough.

**Deputy L.V. Feltham:**

There is a couple of questions I have got for you on that particular instance because you have a tax assessment there in front of you. Does that assessment include a payment for long-term care?

**Mr. J. Muchiri:**

It does not ...

**Deputy L.V. Feltham:**

If you cannot see it on that one, if it is long-term care ...

**Mr. J. Muchiri:**

It is £250.

**Deputy L.V. Feltham:**

So somebody that is here on a work permit is still being charged long-term care.

**Mr. J. Muchiri:**

Somebody who is only allowed to be here for 9 months.

**Deputy B. Porée:**

They will never be able to use that benefit they have paid into.

**Mr. J. Muchiri:**

Exactly. They are only here on a 9-month permission. We do not know whether they will come back next season or not and the permission they have from the Jersey Government is to only be on this Island for 9 months.

**Mr. A. Nyatta:**

Of course this is termed no recourse to public funds as well.

**Deputy L.V. Feltham:**

Then related to tax, social security contributions. We have already spoken about access to healthcare a bit, but I think it is important to clarify when they get here from day one are work permit holders paying the same rate of social security as every other worker?

**Ms. M. Turner:**

Yes, they are.

**Mr. J. Muchiri:**

Yes, but you could be coming here for 20 years and every year they treat you as somebody new. The usual system - and correct me if I am wrong - is if you are a new arrival to Jersey you have to contribute for 6 months before you can access government services like healthcare and what have

you. So there are people who have been coming here for 20 years on a 9-month permit and they only have healthcare for 3 months of the year because every year they are treated as somebody new for the first 6 months.

**Deputy L.V. Feltham:**

And they are paying in. Related to that and related to the communication and information that we discussed earlier, you mentioned in that scenario around tax in the first year the person was charged a higher percentage. What information did they have about how they could appeal or get a refund back on that tax? Do you know if they had any?

**Mr. J. Muchiri:**

None, and the other thing that is coming to light quite often is that you are getting a tax rate on arrival. They have not assessed you. Well, they could have assessed you because you are giving them a contract, which clearly states you are here for 9 months and this is how much you will be earning, so they should be able to assess perfectly. Then maybe if you do some part-time hours or overtime then they can reassess you when the normal assessment is happening, but we have come to realise that even when it comes to claiming employment expenses and dependants, work permit workers are not aware that that is something that they can get exemption on.

[16:30]

I will give you the perfect example of employment expenses. That circa £2,000 that they have to pay to come here to work, that is an employment expense. They have to pay for a flight, they have to pay for a visa application, they have to pay for something called a certificate of good conduct, which proves you are not a criminal. They have to take a medical test for TB. All those are employment expenses that they are not declaring at the moment or are not aware that they could declare. It is something we are trying to make them aware of. In one case, just about an hour ago, one work permit worker has told us they declared a dependant, they gave the birth certificate as proof but that was not included.

**Deputy L.V. Feltham:**

You have pre-empted my next question.

**Mr. J. Muchiri:**

I do not know if you want to add anything on that.

**Mr. M. Robbins:**

Understanding what the Tax Office is doing is very difficult for us because a lot of these people are coming over and working at or around minimum wage and they are declaring that when they are being taxed, at the beginning when they first start. If you look at the figures, we are dealing with people who are paying 18 and 20 per cent on a regular basis. If you take the minimum wage, £10.50 an hour this year, working 9 months for 39 weeks, they are only going to be earning, at a 40-hour week, £16,380. Using the Government's own calculator, which I know is a guide, at £17,000 earnings that would make a zero tax liability, so why are these people being put on 18, 20 per cent? Why are they being put on 10 per cent or 12 per cent? It is happening all the time, every one of them. Except for today when you mentioned that somebody was on 3 per cent this year, that is the first time I have heard a single digit requirement for the tax liability.

**Mr. J. Muchiri:**

But this person was owed a rebate, which they did not get.

**Mr. M. Robbins:**

I understand that, yes.

**Deputy M. Tadier:**

Do you think that had a knock-on effect to their next year? They seemed to have an overly low ...

**Mr. J. Muchiri:**

It does not mention. I will leave this behind because I have redacted their information, but it does not mention anywhere: "This is what you are owed and for this reason this is the tax rate you are getting."

**Mr. M. Robbins:**

From our point of view, if somebody comes along and says: "I am going to be earning £16,000 over the next 9 months in my contract" how can that be taxable because it is below the threshold, it is clearly ... and that is without talking about dependants or any other claim they may have. That is just simply I have taken those figures from a single person earning on their own just without any claims at all and it comes down to zero tax. How can they tax people? I do not understand it and I do not think any of us do.

**Mr. J. Muchiri:**

This goes back to the misinformation we were talking about. That person should have known what tax base to expect when they arrive here before they make their decision on whether to come here or not, but being left to the mercy of the taxman to decide how much you will earn or not earn just adds to the unfairness.

**Deputy B. Porée:**

Thank you for that. Do you want to ask any last questions?

**Deputy M. Tadier:**

I know we are running towards the end or we have probably overrun. I think it is probably important to get something on record about the living conditions. We have spoken a lot about the work conditions. We have talked about the human rights and the modern day servitude. What is your experience of some of the living experiences, whether it is to do with the accommodation or just the more general experience they have in Jersey?

**Mr. A. Nyatta:**

We know from experience the bigger hotel chains, the Seymours, that have been doing work permit employment for a long time have it nailed and they know how to do it properly. They have been doing it with few or minimal issues, if any, but we know, with the influx now of more work permit workers, if the smaller hotels or even smaller places like, for example a Turkish Delight, want to recruit someone on a work permit, of course the condition first by the Government or immigration would be you must have accommodation. We know of people sharing accommodation with their employer or with their line managers, for example. There is no privacy. We know of people who share rooms in some of the hotels around. They assume because you are from the same country you must get along, so they put them in one room. We all know what hotel staff accommodation looks like. You are put in a room with somebody you do not know and you are expected to get along. Everybody has their own different habits and preferences but, hey-ho, you get along, you are on a permit for 9 months, finish and go home. I would say a good 60 per cent have unsatisfactory accommodation. The only few that would say it is reasonable or acceptable would be in the bigger hotel chains and those who know how to do it properly.

**Mr. J. Muchiri:**

I do not think it is a case of knowing how to do it properly. It is just the case that they own the accommodation so they can provide it and they do not necessarily have to charge a fortune for it.

**Mr. A. Nyatta:**

Exactly, yes.

**Mr. J. Muchiri:**

However, we all know accommodation is a problem on this Island, so I also sympathise with the employers being sent out to the market to seek accommodation for their employees. I think this is a bigger problem where the Jersey Government or the Planning Department has failed to recognise



that most of the people who immigrate to Jersey for work arrive on their own and later on their family might follow. Whether it is finance, healthcare, agriculture, everyone arrives on their own. I am sure, Beatriz, you might have arrived on your own, I came here on my own, and there is just no studio or single accommodation being created here. I think that is where it has gone wrong. We know what the market is like. We cannot expect the employer to move mountains even though they have been given the obligation, but the worst case we have heard of is 2 people sharing a double bed, 2 strangers.

**Deputy B. Porée:**

A double bed. Two adults who may not know each other at all and may not even work together within the same work department, are made to share one double bed?

**Mr. A. Nyatta:**

In this day and age, yes.

**Deputy B. Porée:**

Thank you so much. I have just got one very last question that encapsulates, hopefully, a lot of what you are saying. Overall, how do you feel the structure and format of the work permit policy affects the welfare of work permit holders in Jersey? To either one, overall how do you feel?

**Mr. J. Muchiri:**

Servitude is the problem. For me, servitude is the problem. Give people freedom of choice and I believe the market will do the rest. If employees are not being looked after well, they have the choice to engage another employer. The employer they have left behind will struggle to retain people and will have to up their standards. I think key is longer work permits so that it becomes economically viable, people can start to plan their careers. They are not in panic and anguish all the time and give them the choice like everybody else has. Give them the choice.

**Ms. M. Turner:**

Yes, absolutely. If I can just touch on one bit of immigration rules, I will go back on to that. This is something that we really need to consider and think about as Jersey, whereby mental health needs to be taken into consideration. I am quite big on mental health. For there to be denial for somebody who has got mental health and for us begging for that person to stay while dealing with the mental health aspect, it impacted in a way that this individual had to leave Jersey and in transit could not make their way to their destination and had to be admitted in another country. Jersey rejected this individual, the person who has worked here for some time. This person boarded a plane, then another jurisdiction managed to get this person.

**Mr. J. Muchiri:**

On a stopover they got admitted into hospital because their body completely collapsed from the experience they had had in Jersey.

**Deputy B. Porée:**

I particularly know of the case but obviously I am not free to comment on that. On that note, I just want to say thank you very much, all of you, for being so open and wanting to share with us. For the purpose of the hearing and for anyone listening to us, the hearing has now come to a close. Thank you to everyone who has taken part in it.

**Mr. J. Muchiri:**

Thank you. The people we represent just want equality. They do not want any special treatment, just equal treatment, that is all.

[16:40]