



## **Economic and International Affairs Scrutiny Panel**

### **Family Friendly Employment Rights**

### **Witness: Jersey Advisory and Conciliatory Service**

Wednesday, 3rd April 2019

**Panel:**

Deputy K.F. Morel of St. Lawrence (Chairman)

Deputy D. Johnson of St. Mary (Vice-Chairman)

Deputy S.M. Wickenden of St. Helier

**Witness:**

Ms. P. Rowan, Director, Jersey Advisory and Conciliatory Service

[13:03]

**Deputy K.F. Morel of St. Lawrence (Chairman):**

Thank you so much, Patricia, for coming in. Yes, we are here just to explore ... I have got 3 main aims: J.A.C.S.'s (Jersey Advisory and Conciliatory Service) role, both generally and in regard to this proposed legislation; to understand whether J.A.C.S. had a role in the consultation process and to find out whether there are any elements of the law that J.A.C.S. thinks would be difficult for businesses to deal with or difficult for employees to deal with. They are the main kind of areas that we are looking at. Before we get going, we will start just by stating our names, all of us, for the record.

**Deputy S.M. Wickenden of St. Helier:**

Deputy Scott Wickenden. I am a panel member and I am Deputy of St. Helier, District 1.

**Deputy K.F. Morel:**

Brilliant. Deputy Kirsten Morel. I am Chairman of the panel.

**Deputy D. Johnson of St. Mary (Vice-Chairman):**

David Johnson, Vice-Chairman of the panel and Deputy of St. Mary.

**Director, J.A.C.S.:**

I am Patricia Rowan. I am the Director of J.A.C.S.

**Deputy K.F. Morel:**

Thank you so much for coming, it is really good. I am wondering if you could just briefly explain the role and work of J.A.C.S. in general, not to do with the legislation.

**Director, J.A.C.S.:**

We are an arm's length organisation. We were set up under law and we have a statutory duty to advise and consult and talk to employers about industrial relations, developing employment relationships, advising on legislation, offering training sessions. That is kind of what we are doing in a nutshell.

**Deputy K.F. Morel:**

That is really interesting, because I always think of J.A.C.S. having a relationship with the Tribunal as well, but am I right in that, out of interest?

**Director, J.A.C.S.:**

Our relationship with the Tribunal is the fact that they provide us with claims and we look to resolve them, but that is the extent of our relationship.

**Deputy K.F. Morel:**

That is interesting, thank you. Please can you describe J.A.C.S.'s relationship, if there is one, with the Employment Forum?

**Director, J.A.C.S.:**

They do not have one at all.

**Deputy K.F. Morel:**

None whatsoever?

**Director, J.A.C.S.:**

No.

**Deputy K.F. Morel:**

Also Social Security.

**Director, J.A.C.S.:**

Social Security fund us via a grant, so that is our relationship, and obviously when the new legislation comes in we get to look at it, because we need to train on it, we need to advise on it, we need to get documents in place and things like that, so that is the extent of our relationship.

**Deputy K.F. Morel:**

Just lastly, before I move on, was J.A.C.S. involved in the development of the proposals to extend family-friendly employment rights?

**Director, J.A.C.S.:**

Only in the fact that we completed the consultation document, so we completed that when the consultation was out, as we fill in every consultation, anything that comes out of the Employment Forum. We always submit a consultation, which is drafted and sent out to our board members and our board then come back with any comments and then it is submitted as a whole.

**Deputy K.F. Morel:**

Brilliant. Yes, so from your perspective, that is the same as the Chamber of Commerce or a business down the road, you just provided your own views in that consultation period, you did not help them edit the policy or the proposal itself?

**Director, J.A.C.S.:**

No. We get to see a draft, not an early one, a much later draft, because we need to be prepared so that when the regulations, when the draft law goes live, we have got answers to questions that people are going to ask us or that we have developed papers or documents that are going to help people bite-size down the legislation, because obviously not everybody wants to sit and read lots of law. We look at the bits that we think are going to be of most interest or the things that are going to bring most questions to us and we will develop something on that. With these pieces of legislation we did things which we have done previously, like draft up charts, so this explains qualifying periods, when people need to notify, who it affects, what needs to happen at what stage. That is available and that will go on our website, so we get that in so that as soon as it is live for the general public, we have got a knowledge of it so that we can start answering questions, basically.

**Deputy K.F. Morel:**

Materials to provide, yes.

**Director, J.A.C.S.:**

Absolutely, yes, and to start the training sessions as well.

**Deputy S.M. Wickenden:**

Of course there are 2 levels, like now with P.17, this is a proposed proposition that will or will not go through the States Assembly, so it has not quite gone through the whole legislative side. Do you get prepared with the proposed legislation, something like now in advance so that people can come to you and ask questions in case it does come into effect?

**Director, J.A.C.S.:**

Yes.

**Deputy S.M. Wickenden:**

So that the early stage side of it?

**Director, J.A.C.S.:**

When the amendments were sent through for 1st September last year, we already knew what the proposals were for 2019 as well, so we prepared documents that said: "This is where you are now, this is what we have got in 2018, this is what we are likely to get in 2019." So on one page we did a: "Where you are now, what will happen from there and this is the proposals for next year." So yes, we already start preparing employers well in advance, because that proposition, that proposal, has been out for over 12 months.

**Deputy S.M. Wickenden:**

Do you get to feed back how much time you think is appropriate, based on the evidence that you have got from dealing with employees and employers going forward for such laws like this, as J.A.C.S.?

**Director, J.A.C.S.:**

Time?

**Deputy S.M. Wickenden:**

Like the amount of leave for new parents and the move up to 52 weeks, do you get to have your say on how you feel that ...

**Director, J.A.C.S.:**

Only in the consultation document. It is not any more than that, either the consultation or as and when I attend any of the Employment Forum's open meetings.

**Deputy K.F. Morel:**

In the Employment Forum itself, it stated that details of the review were promoted by J.A.C.S. and others.

**Director, J.A.C.S.:**

Yes.

**Deputy K.F. Morel:**

What kind of role is that?

**Director, J.A.C.S.:**

What we do is we would get advised that there is going to be a consultation going out, so we send out newsletters and we have got around about 1,200 - or we had - people on our newsletter, so it is people that signed up to it and that is all there that is there. If we get notification that a consultation is going out, we will add our stuff and then we will say: "The Employment Forum is consulting on this, click this link if you want to have your say" and that is basically what we do.

**The Deputy of St. Mary:**

But you are not a collecting box for all the individual things, no.

**Director, J.A.C.S.:**

No, absolutely. No, no, we just say ...

**The Deputy of St. Mary:**

"It is coming."

**Director, J.A.C.S.:**

... we just publicise it, basically. We just say: "You may have seen it. Here it is, so click here." To make it as easy as possible we put the link in our newsletter as well, because we know it is hitting a lot of desks.

**Deputy K.F. Morel:**

What kind of people or organisations do you have in your database in general terms? Obviously I know you cannot name them.

**Director, J.A.C.S.:**

The thing is we do not have a database. People sign up for our newsletters, so ...

**Deputy K.F. Morel:**

That is what I mean, so yes.

**Director, J.A.C.S.:**

... we do not look at who has signed up. It is anybody that chooses to, so it will be across the business sectors. It will be all sorts of organisations that we have dealt with, people that have attended our training, we will say: "There is a free newsletter, just sign up for it. We do not do anything other than give you information."

**Deputy S.M. Wickenden:**

For info only, yes.

**The Deputy of St. Mary:**

Moving on to the implementation of P.17, it is in 2 parts. Do you have any views as to whether the time given for the implementation of part 2 is sufficient for employers?

**Director, J.A.C.S.:**

I think the fact that in our consultation response we said: "If you are going to do something, then it might be good to break it down into 2 pieces and give people notification that this will be happening at a later stage so that people can make planning stages." So the fact that we have got 12 months, as far as I am concerned that has not been a problem for us, because we have been ... although it is 12 months to the implementation date, we have been looking at it for 18 months, so we have been advising employers for almost 18 months by the time it comes in.

**The Deputy of St. Mary:**

On your advising, has there been much feedback from employers who come for help, how they can prepare or ...

**Director, J.A.C.S.:**

In 2018 in relation to family friendly, as of 1st January to 2nd April, we had 74 enquiries. This year we have had 87 inquiries, so for that for same period, 1st January to 2nd April, obviously. So that is obviously ...

**The Deputy of St. Mary:**

The enquiries are simply for you to interpret the legislation for them more recently, is that it?

**Director, J.A.C.S.:**

Yes, it is to look at how it applies, what they can do, do we have more information on it, how can they implement things. As part of our preparedness we devise forms, so we have got a request for parental leave form on our website, so people often say: "Do you have one?" Yes, it is on our website, so yes, it can be anything along those lines.

**Deputy K.F. Morel:**

Would you mind, just because I did not scribble it down, was it 74 enquiries?

**Director, J.A.C.S.:**

Seventy-four from 1st January to 2nd April 2018 and 87 year to date. In 2018, it was 35 employees, 33 employers and 6 others. This year it has been 39 employees, 38 employers, one union rep, one legal representative and 8 others.

**Deputy K.F. Morel:**

"Others" always raises so many questions.

**Director, J.A.C.S.:**

"Others", they can link to H.R. (human resources) consultancy companies, so they are not classified as an employer, they are asking on behalf of their clients, or it could be a parent that is not the parent having given birth to the child. Do you see what I mean?

**Deputy K.F. Morel:**

I see, yes.

**Director, J.A.C.S.:**

Like a friend of or whatever, another family member, yes.

**Deputy K.F. Morel:**

Yes, absolutely. I am just asking out of interest.

**The Deputy of St. Mary:**

Just pursuing this line for a moment, given the response, is there evidence of any particular difficulties that employees or employers see in implementation? Are there any certain areas?

**Director, J.A.C.S.:**

Not per se. We have done some work where we have been asking our training session attendees, which we started on 26th March, when we started running training sessions - generic ones, these were not specifically about this - this year and we had one on 26th March: "No real concerns; was aware it is being suggested; it is likely to reduce absenteeism" and that was from 10 attendees. On 19th March, 8 attendees: "Notifying the employer; managing flexibility when employees can state whether they take leave; the only thing is there is no rights set down in law for the employer to decline or shunt the leave." On 28th March: "What is the cost?" and somebody went through that with them. We had 2 sessions yesterday. The first one had 6 attendees and it said: "Employers already offer sabbaticals and/or unpaid leave and this is nothing different when it comes to planning and covering and it is just the additional 4 weeks' pay." We also had one that says no concerns for them.

[13:15]

Some said: "It would be easier for employers to manage replacements if the employee took the unpaid leave in one block rather than over 3 years." "Issues around licensing" but that was sorted out. Other people saying things like: "Bonding for the father or the other parents is equally as important." Obviously breastfeeding is important and that has to be up to 6 months, so that is the general feedback. Those are the people that we have just coming into our office for our training.

**The Deputy of St. Mary:**

Forgive my ignorance on this: your attendees, are they mainly employers?

**Director, J.A.C.S.:**

They are all employers.

**The Deputy of St. Mary:**

Always employers?

**Director, J.A.C.S.:**

Yes, yes.

**The Deputy of St. Mary:**

Just focusing on this section, yes, if the proposition did become law, would you expect to have a more meaningful response, would you get a lot more take-up of requests for your help?

**Director, J.A.C.S.:**



I do not necessarily think that we will do. Any new law, regardless of what the new law looks like, you will always see a spike, but it soon plateaus down. The main thing is that we prepare people for when the law comes in, so we are managing expectations and questions so that when we hit 1st September, we do not suddenly go through the roof with the same queries, people are already prepared. We are already advising employers to sort of update their policies and we make it as easy as possible for employers to do that, also handbooks. We have got multiple policies on our website and things like that.

**The Deputy of St. Mary:**

We will perhaps come on to that later maybe. Yes, okay.

**Deputy K.F. Morel:**

I am just wondering if it is at all possible to understand the types of employers that visit you most. Because I know any employer can visit you, any employee can visit you, I accept that.

**Director, J.A.C.S.:**

Yes, absolutely.

**Deputy K.F. Morel:**

But do you have particular types? Do you tend to get smaller businesses, larger businesses, businesses from particular sectors?

**Director, J.A.C.S.:**

Last year we had over 10,000 contacts and that is just generally through us.

**Deputy K.F. Morel:**

That is on all sides, yes.

**Director, J.A.C.S.:**

It is around about a 50:50 split between employees and others and employers. Of those employers, it is usually about a third. Now, we count small as less than 10, 10 to 49 is medium and 50-plus is large. Around about a third of the employers contacting us are from the small - in the way that we categorise them - bracket.

**Deputy K.F. Morel:**

Thank you. When you were looking at the proposals, again I guess as much as possible it could be based on your contacts with employers - but it may not be possible, so just from your own mind, so

to speak - but in terms of financial and resource implications, do you see these proposals having any particular effects for smaller businesses?

**Director, J.A.C.S.:**

I think that any law change that we bring in always has the response that it will have an impact on small businesses and it would be disingenuous of me to say otherwise. We had more concerns when we were introducing redundancy law than we do around this. Based on the fact that I have already given you the numbers for family-friendly contacts for this year and last year, for that same period, just by way of an example, 144 in 2018 on redundancy and 115 on redundancy. So when you are looking at the type of questions we get asked and you are looking at the impact of legislation, people are still talking about the impact of redundancy law more so than this.

**Deputy K.F. Morel:**

I was going to say that has been in for a while now, yes.

**Director, J.A.C.S.:**

It came in in 2009, which was when we kind of put family-friendly 1 on the backburner, and that had more impact, more discussion and concerns raised by small businesses than we have had raised directly to us - I can only talk about what happens with us - than we have on this piece of legislation.

**Deputy K.F. Morel:**

No, that is absolutely right and you are right to keep it to what happens with you. That is really interesting, because like I say, it is 9 years in ... sorry, 10 years, is it not? I cannot do my maths.

**Director, J.A.C.S.:**

Yes, absolutely.

**Deputy K.F. Morel:**

You are still receiving over 100 enquiries a year.

**Director, J.A.C.S.:**

Yes. We have had the legislation in since 2005, but apart from general information, the most number of queries are always around unfair dismissal. So there is always an impact to legislation.

**Deputy K.F. Morel:**

Absolutely.

**Deputy S.M. Wickenden:**

The proposed law gives employees full control in deciding when to take parental leave. Are you satisfied that it strikes the right balance between the needs of the employee and the needs of employer?

**Director, J.A.C.S.:**

Globally employment law is an employee protection law and therefore it is about employees, so employment law is always about employees. Just because the law says that an employee must notify their employer, there is nothing to stop the employer having a conversation. While they cannot decline, there is still a 2-way conversation to be had there. They can still say: "Happy to do that, but could you move it a couple of weeks or could we do something else?" The employee does not have to agree, but it does not stop conversations taking place. I think all too often people think: "It says this and therefore it has to be and therefore we cannot have any conversation about that." But this is an employment relationship and there are always conversations to be had.

**Deputy S.M. Wickenden:**

The Employment (Jersey) Law does give reasons why ... it is the flexible hours, the ...

**Director, J.A.C.S.:**

Yes, 6 reasons to decline.

**Deputy S.M. Wickenden:**

... 6 reasons to decline, so in the Employment Law, it does give the employer certain protections in those reasons. Do you think that this maybe should have had some certain guidance in the same way as this to help understand whether it is appropriate or it is not going to put the business at a serious problem for running their business?

**Director, J.A.C.S.:**

That has not come up. I am not here to give my personal opinion, of course, so we just must be mindful of that. It has not come up. I understand that you may have been given that information. I do not think that ... the way that things are planned at the moment is it does not make any difference. When we have got things, when we are saying: "This has to happen at this time" this is about one piece of our legislation. Other things can happen all the time, so the fact that somebody has to give the notification 15 weeks before the birth and they have to give the notification for the full period means that employers can plan. While the employee can later then say: "I would like to amend that and just give 2 weeks' notice" an employee could leave and give 2 weeks' notice, an employee could go off sick, they could just walk out. These things employers are facing all the time, so managing staff, it does not matter what the lead period is, it is going to always come up with these issues.

**Deputy S.M. Wickenden:**

Absolutely, no, I do agree with that. I only brought up the law because you said about the employee's laws, but as you mentioned, somebody could leave and give 2 weeks' notice, absolutely. But when you are dealing with a temporary amount, where you have to recruit somebody and you have got to go through the recruitment process, set a start date and then if the employee suddenly gives 2 weeks' notice and says: "I need to change that" then all of that expenditure and all of the work that has been done will suddenly change, whereas if an employee walks out, then you know that there is going to be no change, they have gone and you just need to cover it. So the 2 weeks' notice period do you think could potentially put undue cost on to the employer in that manner or ...

**Director, J.A.C.S.:**

I do not know what you are asking. I do not know if you are saying a longer period would be better or the employer has more say. They are 2 different things, because you could give an employer 3 months' notice of changing and there would still be an argument about an employer saying: "Yes, but I do not have a say in this." So is the issue that the employer does not have the say or it is the notice period? That has to be decided, because they are not hand in glove.

**The Deputy of St. Mary:**

It could be both, of course.

**Director, J.A.C.S.:**

It could be both, but that needs to be looked at. Is it that the employer wants more say or do we want an extended notice period? If we just want an extended notice period, then the employer does not necessarily get a say, so your question is not quite as ...

**Deputy S.M. Wickenden:**

I have gone off the whole idea that we are talking about J.A.C.S. and I do apologise about that.

**Director, J.A.C.S.:**

No, no, that is fine.

**The Deputy of St. Mary:**

Still on Scott's question, you say this legislation is for the employee, but it is also for all employees and the notice period is going to affect other employees who might be in a similar situation and therefore they are going to have to suffer if X has their leave at a certain period. That is what I am getting at. Do you think there is a correct balance within that, looking at the business as a whole and all employees?

**Director, J.A.C.S.:**

There will always be employees who choose to do different things. There will be employees that want flexible working, for whatever reason, not necessarily to do with children, it could be anything. An employee will be aggrieved that their colleague is leaving at 2.00 p.m. There will always be those matters. It is up to the employer to manage them.

**The Deputy of St. Mary:**

Yes, but outside this legislation, I know businesses who would say: "Put in your holiday requests for Christmas 3 months in advance" so that they can stagger their workforce. Now, this legislation would in a way trump that, would it not? It would ...

**Director, J.A.C.S.:**

It is the employee who has notified in advance. If an employer is saying: "You need to give your holiday request in for the whole of this year" we have already got blocked out Frieda's parental leave, so we have already factored that into our planning process, because Frieda notified us last year that she was going to be off, I do not know, in May or she might be off from May until September, whatever that looks like. When you are doing that and you are planning and scheduling holidays on top of that, you have already got blocks where people are already taken out of the business, so you manage those blocks accordingly.

**The Deputy of St. Mary:**

Yes, but Frieda can then come in and upset the apple cart by changing it and then the employer is not covered because of the double-booking, shall I say.

**Director, J.A.C.S.:**

I think that ultimately it would be for the employer to turn around and say: "If you still want those 2 weeks in June, you can have those now, because Frieda is coming back early." That kind of happens all the time.

**The Deputy of St. Mary:**

But the employer might be ... he is anticipating Frieda and one other being there for the whole of June and then finding out Frieda is away. Let us put it this way: when an employee is away and has booked her leave because of knowing Frieda has already booked hers out ...

**Director, J.A.C.S.:**

So for annual leave.

**The Deputy of St. Mary:**

Yes.

**Director, J.A.C.S.:**

Yes, sorry.

**The Deputy of St. Mary:**

Then if Frieda were to change it to coincide with the other person, I believe that will cause the employer difficulty.

**Director, J.A.C.S.:**

It may cause difficulty, but these things do happen. They happen now, regardless of anything else. We also have employers that deny leave for periods of time. A lot of employees only have 2 weeks' annual leave a year and then they cannot take them at certain periods of time, then they request to take them at other times and the employer does not give them an indication that they can do that. When somebody has an annual leave request not recognised, the statement in the staff handbook says: "Do not book your flights or anything until you have your annual leave approved" and you are still waiting 6 months down the line. That is not fair, so when it is a 2-way street, it can create as many problems as it being a one-way street.

**Deputy K.F. Morel:**

You talk about fairness and it is hard to understand how when it is a one-way street in either direction, if you know what I mean, how fairness fits into that, because if it is just a one-way street, then by nature, in this case the employee being given the right to notify and there is no right to a conversation, the employee can try to converse, but the employer could say: "No, that is it" and walk away.

**Director, J.A.C.S.:**

You do not have to have a right to have a conversation. You do not have the right to deny, but having a conversation does not have to be a right. That would be something I would expect most employers to do.

**Deputy K.F. Morel:**

No, I am not saying it should be a right, I am saying there is no right to a conversation. What I am saying is the employer could try to have a conversation and the employee just refuses and says: "No, I have handed in my notification. That is my notification and thank you very much." I am trying to understand how a one-way street, so to speak, when it is just one side can notify and the other side, there is no mention of them at all, how fairness comes into that.

**Director, J.A.C.S.:**

Because it allows for planning, because you have got this planned period, you know how long somebody is going to be off for and for when. Yes, they can change that for whatever reason with a 2-week notification, but from week 15 before the baby is due, in theory for the next 36 months plus, you know when somebody is not going to be around and therefore you can set things in order.

**Deputy K.F. Morel:**

As the arbitration service, if someone used that 14-day notification, let us say from a commonsense perspective, someone looking in, you could say: "They have done that maliciously or they have done that in a way which has burdened the employer hugely" if you know what I mean, they have used it to change it with the 14 days. As you said, the employer has been able to plan for 36 months, but then suddenly the employee walks in and says: "I am changing all my plans." From your perspective as a conciliation service, obviously under the law the employer can do nothing about that, but from your perspective, from industrial relations and that sort of thing, what do you think the effect of that happening could have on employment relations within a company or in Jersey in general? Could it become one-sided?

**Director, J.A.C.S.:**

Could it? To be honest, I do not know.

[13:30]

I do not know whether it could become ... if an employer approached us and said: "I set the wheels in motion for cover over this period of time and now this employee is saying that they have changed their times. What can I do?" the advice would be: "Sit down and talk to them. Try to understand why, find out if there is flexibility in those times. If there are not, ultimately they have the right to do this" but that is always your backstop, but ultimately it does not mean to say that you cannot talk to them and say: "Is there any rationale for this? Can you help us out? Can you do something different? Can we work around this in a different way, because that might be what they are looking for." Sometimes people will look and just do what they can do, but they do not look at being more flexible in the things that they can do. If an employer is equally able to show some flexibility, then you have a slightly more balanced situation there.

**Deputy K.F. Morel:**

It is interesting as well, you mentioned that there are other areas where employees can take leave, it could be sickness, it could be they just leave and so on and so forth and you are absolutely right. This is another one on top of all those others and one thing that is coming through from employers is that they are concerned about the cumulative effects in general, so they have been talking about

things like cost of the data protection laws, discrimination laws, just things piling cumulative costs on to their business. But in this case, from the leave perspective, do you think it could be fairly described that cumulative types of leave, there is a cumulative effect as far as all this leave is concerned that is potentially having an effect on businesses or employers?

**Director, J.A.C.S.:**

The proposals listed at the moment give another 4 weeks' pay to what is already there, nothing more than that.

**Deputy K.F. Morel:**

No, that is the pay, but the leave as a whole, the 52 weeks included.

**Director, J.A.C.S.:**

But if the leave is unpaid and the employer is not making any Social Security contributions, so basically that person just is not available to the business, whoever they bring in to plug the gap, it is not costing them more in that salary.

**Deputy S.M. Wickenden:**

This is a specialist job.

**Deputy K.F. Morel:**

Recruitment itself costs more.

**Director, J.A.C.S.:**

Yes, but recruitment costs ...

**Deputy K.F. Morel:**

Holding on to that person potentially in between shifts of 3 months costs more. There are ...

**The Deputy of St. Mary:**

The accommodation over here.

**Deputy K.F. Morel:**

Yes, accommodation, because we have already been told people ...

**Director, J.A.C.S.:**

Employers do not need to provide accommodation.



**Deputy K.F. Morel:**

If people are not available on-Island, because Jersey has a very tight labour market.

**Deputy S.M. Wickenden:**

Specialist areas.

**Deputy K.F. Morel:**

Yes, any skilled area, it has already been confirmed that the Population Office will give ... the law says they can waive registration for people covering maternity leave, so yes. One thing that has been said in the Population Office - we have had it confirmed - they have said that licences are not needed for this sort of thing. So potentially having to recruit off-Island is a possibility and certainly employers have been saying that that is a possibility. My point is that that is a cost, if you have to recruit from off-Island. To say there is no cost is looking at it without ...

**Director, J.A.C.S.:**

I think that the cost of recruiting a replacement for somebody is always going to be same cost, so if somebody is not entitled to any maternity leave, if we left it just as it is at the moment and somebody left their business, resigned because they needed more time, the recruitment costs are exactly the same as those you have just described. So to a certain extent the recruitment costs will always be that. You do not have to have a contract that straddles gaps, you can just bring people over for a fixed-term contract. If the terms of those contracts are set that somebody is over ... just say they are over for 3 months and somebody says: "I want to bring my leave forward and I want to come back sooner" you just make sure that you have got a notice period and there is nothing in the fixed-term contract to prevent that from happening. Employers are saying that they believe - the ones that we have spoken to - it will reduce absenteeism and it will encourage women and parents generally to remain in the workplace. If you have invested in somebody and trained them in their job for a long period of time, there is often a long-term investment, what you do not want is to lose them because you are not able to give them some flexibility.

**Deputy K.F. Morel:**

Absolutely, yes.

**Director, J.A.C.S.:**

Because that is a poor investment, so the more we invest in people and we want a return on them, then we need to make sure that we are giving the ability to manage their family lives and to return to the workplace.

**Deputy K.F. Morel:**

It is interesting, on the 4 chunks over 3 years, the 52 weeks, the Retail Association, they have submitted evidence that that return on investment could be an issue as well, saying that again, if you were to employ someone for one chunk of 52 weeks, as in you would get a replacement in to cover someone who is off on parental leave, that potentially having trained that person up over the course of that year, you recoup your return on investment, but their concern is that 4 chunks of 3 months roughly over 3 years, because that person comes, you hire someone for 3 months, you train them up, but then you do not get your return on investment. The second chunk of 3 months comes along a few months later, you hire someone new, you do not get your return on investment. Is that something which again could ultimately come back to disadvantage employers, because businesses find it so difficult to work with? Because this 4 chunks issue seems to be very much at the crux of employers' concerns.

**Director, J.A.C.S.:**

Absolutely I hear what you are saying. We have not seen that. Nothing that we have heard from the people that are contacting us is it causing a concern. I would not say that it was otherwise. If the employers are not speaking to us and saying it is a cause for concern, that is fine. I am not denying it ...

**Deputy K.F. Morel:**

No, no, no, absolutely.

**Director, J.A.C.S.:**

... I am just saying we do not have that evidence.

**Deputy K.F. Morel:**

It is very interesting, how you are getting very different enquiries to ours.

**Director, J.A.C.S.:**

What we are being asked for is the practical application and that is what we deal with, how to make this as easy as possible.

**Deputy S.M. Wickenden:**

Can I just ask, do you expect to see even a slight increase in claims that there is a perception that somebody did not receive a job due to them being within the 3-year unpaid leave period? Multiple people go for a job. One of the questions may or may not be you would have to inform your possible employer than you are within this 3-year bracket after having a child and that over the next 3 years, you may well be asking for unpaid leave in the future and that the employer may decide to go with somebody that is not within that period and somebody feels aggrieved, that maybe they feel that

they have been discriminated against or even due to the qualifying period. Do you feel, just from your knowledge of J.A.C.S., that there may be a slight increase in those kind of claims?

**Director, J.A.C.S.:**

We have only had, since 2014, one claim at the recruitment stage.

**Deputy S.M. Wickenden:**

So there is no evidence so far to prove that that may be the case?

**Director, J.A.C.S.:**

No, no. Absolutely, that is fine. We have had one claim in all that period of time.

**Deputy S.M. Wickenden:**

I know it sounds like we are being harsh. We do support the whole family-friendly law, but we are here to ask the questions ...

**Director, J.A.C.S.:**

Yes. No, no, it is absolutely ...

**Deputy S.M. Wickenden:**

... to be able to make our report.

**Deputy K.F. Morel:**

Yes. No, we do not mean to seem harsh at all, so ...

**Director, J.A.C.S.:**

No, but I am only answering truthfully. The evidence does not say that.

**Deputy S.M. Wickenden:**

Exactly, but I just did not want you to feel that we were just 3 white men at the end of this table going: "This is outrageous" because it is not where we are coming from.

**The Deputy of St. Mary:**

Having said that, can I ask about this point about the change of notice et cetera? I fully understand the direction you are going and no problem with that. The law on breastfeeding seems to me quite reasonable in that the duty for the space for breastfeeding, there are whole series of questions as to reasonableness on that, which are not ...

**Director, J.A.C.S.:**

Yes, the size of administrative resources available to the employer.

**The Deputy of St. Mary:**

Yes, that is right. If something like that was put into the law in relation to terms of notice and variation, do you see a role of your organisation in perhaps setting out some sort of protocol which might be reasonable or is that beyond what you would do?

**Director, J.A.C.S.:**

If you want to look at the size of administrative resources, you are basically saying that the smaller employer would not have to comply. That could be the end result, which could then mean that they would have trouble recruiting in the first instance, because if you end up with like a small business carve-out using the size of administrative resources to not enable ... to say: "You work for an employer that is smaller, therefore we do not expect the employer to allow you your leave or to have more of a say in it" then I think you are going to struggle to recruit into those smaller businesses generally.

**Deputy K.F. Morel:**

Do we not have a situation where because larger businesses we know - especially those with ties outside the Island - have maternity and parental leave policies which are far beyond what most small Jersey businesses have themselves, so we kind of have that situation and they are still already able to recruit now, so why would they ...

**Director, J.A.C.S.:**

I do not agree. There may be some organisations that operate on U.K. (United Kingdom) standards, but many of them do not. The biggest reason is because they understand that the legislation is different. Since the legislation has been introduced, a lot of companies have reduced their previously more generous maternity provisions and general parental provisions back to the statutory minimum.

**Deputy K.F. Morel:**

Do you have any evidence for this?

**Director, J.A.C.S.:**

Yes, I do.

**Deputy K.F. Morel:**

Not with you today. Are you able to send that?

**Director, J.A.C.S.:**

No, because it will be about employers. It is about named employers.

**Deputy K.F. Morel:**

Nothing which is ...

**Director, J.A.C.S.:**

No.

**Deputy K.F. Morel:**

Are you able to give a sense of the scale of that?

**Director, J.A.C.S.:**

I can think of some of the biggest employers reducing that down, some of the largest employers on the Island, certainly, and some of the more medium-sized ones. Businesses that are coming to Jersey as well look to create staff handbooks that do not necessarily look like their U.K. counterparts, so they are not harmonised.

**Deputy K.F. Morel:**

Very interesting.

**The Deputy of St. Mary:**

Just returning to my theme, we are drawing on the question of whether your organisation could do a protocol. With breastfeeding, there is a right to go to the tribunal, so again, do you see any merit in having similar provisions for notice so that there is at least a procedure where employers could say: "I met with them, I explained everything et cetera, but I do not think the employee is being reasonable" and let the Tribunal decide or is that ...

**Director, J.A.C.S.:**

The employee has the right to go to the Tribunal anyway if the employer denies them the right to take their leave.

**The Deputy of St. Mary:**

The employer cannot deny the right, they would just go, would they not?

**Director, J.A.C.S.:**

Yes. If an employer denied it, then they could, or ...

**The Deputy of St. Mary:**

Yes, if the employer denied it.

**Director, J.A.C.S.:**

Yes, absolutely.

**The Deputy of St. Mary:**

But I presume the employee would just go and then the employer is disadvantaged. I am just thinking of an application to determine who was right.

**Director, J.A.C.S.:**

That would go outside of the Tribunal's remit to where they are. They would not have jurisdiction to look at that scenario is the way it sits at the moment, the way it is in the legislation, so the Tribunal would not be able to answer that question, because it would not fall into their jurisdiction, it would not fall into their remit.

**The Deputy of St. Mary:**

Okay. I was wondering whether we could make it fall within their remit, but ...

**Director, J.A.C.S.:**

But that is not the question you have asked, but that is what I am saying, yes.

**Deputy K.F. Morel:**

From an unintended consequences perspective, it has been said a few times that despite there being discrimination law that this new chunk of 52 weeks' leave and 6 weeks' paid leave could encourage employers to start employing older people as opposed to younger people because of the potential for them having children. That is despite the discrimination law, because I guess they know it is very difficult to prove discrimination in a decision that is made in someone's head. From your perspective, is that a concern as well, that that could be the unintended consequence? Do you think that is realistically likely to be an unintended consequence?

**Director, J.A.C.S.:**

No, I do not think realistically it would be. I think that that would be very short-sighted of the employers to try to do that. You have already mentioned several times specialist situations. That is just not going to be an option, but if people that are older are able to get into employment for longer, then that is not a bad thing, but you are not going to lose it for the younger specialised people, people that are looking at doing training, that is not going to change, because it would be naïve of employers to think that is sustainable.

**Deputy K.F. Morel:**

I know what you mean, you would have a quicker turnover of employers. I think that is all from me.

**Deputy S.M. Wickenden:**

I do not have any more, no.

**The Deputy of St. Mary:**

No. Thanks, that has been very helpful.

**Deputy S.M. Wickenden:**

Do you have anything more you would like to tell us or ...

**Director, J.A.C.S.:**

No, I do not think so. I just brought that information just in case you needed it and that is absolutely fine.

**Deputy K.F. Morel:**

Or if you want to supply information, you are welcome. It is up to you.

**Director, J.A.C.S.:**

I do not know if you would understand it.

**Deputy K.F. Morel:**

No, that is fair enough.

**Director, J.A.C.S.:**

As in because I have scribbled all over it, not because of anything other than that, there is all my writing all over it. But no, I do not think so, thank you.

**Deputy K.F. Morel:**

Thank you so much.

**Director, J.A.C.S.:**

You are welcome, thank you.

[13:43]