

Jersey Employment and Discrimination Tribunal



Annual Report 2014

R.39/2015

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Introduction

The Jersey Employment and Discrimination Tribunal (the 'Tribunal') is an independent judicial body set up to hear and resolve certain complaints and matters of dispute arising under the Employment (Jersey) Law 2003 (the 'Employment Law'), the Employment Relations (Jersey) Law 2007 (the 'Employment Relations Law') and the Discrimination (Jersey) Law 2013 (the 'Discrimination Law'). The Tribunal is like a court but is less formal.

The Jersey Employment Tribunal was established when the Employment Law came into force on the 1st July 2005 and is based at the first floor of Trinity House, Bath Street, St Helier, Jersey. On the 1st September 2014, with the enactment of the Discrimination Law, the name of the Tribunal was changed to its present title.

The Tribunal consists of a legally qualified Chairman, up to 5 legally qualified Deputy Chairmen and three pools of lay side members. One pool of side members comprises up to 8 persons with knowledge or experience of, or an interest in, trade unions or matters relating to employees generally. The second pool comprises a group of up to 8 persons with knowledge or experience of, or an interest in, employers' associations or matters relating to employers generally. When the Tribunal hears a complaint under the Employment Law, or a work related complaint under the Discrimination Law, a Chairman will sit with a lay member from each of these pools. However when the Tribunal sits to hear a non-work related complaint under the Discrimination Law a Chairman will sit with two lay members drawn from the third pool of lay members which comprises a group of up to 8 persons with knowledge or experience of, or an interest in matters relating generally to equality and discrimination, or to discrimination and protected characteristics within the meaning of the Discrimination Law. All appointments to the Tribunal are made by the States of Jersey upon the recommendation of the Minister for Social Security following a recruitment process overseen by the Jersey Appointments Commission in accordance with its published guidelines.

Once appointed, lay members remain totally independent of their background; they do not represent any organisation that they are associated with or indeed even the employee/employer perspectives of a work related complaint. The Chairman and

Deputy Chairmen can sit alone to hear disputes but generally, whenever the Tribunal sits to consider issues at an Interim hearing or a Full hearing, it will consist of a panel of three persons being the Chairman or a Deputy Chairman, together with two lay members from the appropriate pools of side members.

The Tribunal's hearings are generally held in public (although there are certain circumstances when hearings are held in private) and anyone can observe a Tribunal hearing.

All of the Tribunal's application and response forms, as well as User's Guides and other explanatory information, are available on the Tribunal's website: www.jerseyemploymentTribunal.org

The Tribunal's decisions are published on the Jersey Legal Information Board (JLIB) website: www.jerseylaw.je/Judgments/JET

This is the tenth Annual Report of the Tribunal and covers the period 1st January 2014 to 31st December 2014.

Chairman's Comments

Membership of the Tribunal

The introduction of the Discrimination Law on the 1st September 2014 meant that not only the name of the Tribunal changed to reflect the dual role it now plays in the resolution of disputes under the Employment Law and the Discrimination Law but also that a pool of lay members were needed in order to hear non-work related complaints of discrimination under the Discrimination Law. During the course of the year Mr Jim McCartan, one of the founding members of the lay panel with experience of employment issues from an employee's perspective, came to the end of his term of office and the Tribunal took the opportunity to recruit to fill this position too. The Tribunal Service is grateful to Mr McCartan for his contribution to the work of the Tribunal over the 9 years that he held office.

Following an open recruitment process overseen by the Appointments Commission, and from a good field of candidates, the Chairman was able to propose 8 potential lay members to hear non-work related complaints under the Discrimination Law, and also a lay member to complete the employee panel of lay members hearing complaints under the Employment Law, to the Minister for Social Security. The Minister, following consultation with the Appointments Commission, recommended all of these persons to the States for appointment. In accordance with the Employment and Discrimination Tribunal (Jersey) Regulations 2014 these new lay members of the Tribunal took their Oath of office in the Royal Court on the 23rd January 2015.

The Chairman is pleased to report that in May 2014 Mr Peter Woodward extended the term of his appointment as a member of the employer panel of lay members in order to take advantage of the full 10 year tenure available to Tribunal members.

There are currently no vacancies for Tribunal members. Details of the Tribunal members as of 31st December 2014 are set out on page 20. The contribution of the lay members to the decisions made by the Tribunal is greatly appreciated by the Chairman and Deputy Chairmen.

During the course of 2015 the Tribunal will be seeking to recruit 8 new members of the panels hearing complaints under the Employment Law and work related

complaints under the Discrimination Law as current members of the lay panels will have fulfilled their maximum term of office in that role.

During 2014 the Tribunal members undertook training in Discrimination Law issues and also in respect of breach of contract claims made to the Tribunal. The panel members' meetings, which are also attended by the chairmen, remain useful forums for the discussion of issues relevant to the work of the Tribunal by its members.

Administration of the Tribunal

The Tribunal is one of several Tribunals managed by the Judicial Greffe, the administrative arm of the Jersey Courts, and is independent of the States of Jersey. The Tribunal also has links with the Social Security Department as the Minister for Social Security is responsible for recommending to the States the appointment of new Tribunal members and for the introduction of employment and discrimination legislation and policy. The Judicial Greffe is responsible for the administration of the Tribunal and maintains budgetary control of its resources.

The Tribunal is administered on a day-to-day basis by the Registrar of Appeals and Tribunals. During 2014 this role was undertaken by Mrs Louise Cave and Mrs Margaret Turner ('the Registrar'). Mrs Cave retired from the States of Jersey on the 24th December 2014 and the Tribunal, and the Chairman, remain indebted to Mrs Cave for the experience and administrative skills that she brought to this developing role.

Mrs Nicki Hirst was appointed to replace Mrs Cave and took up office on 2nd February 2015.

The Registrar is responsible for the administration of claims made to the Tribunal under the Employment Law, the Employment Relations Law and the Discrimination Law. The role of the Registrar is to assist both parties in the general administration of their case in an impartial manner. The Registrar will provide general information to members of the public but under no circumstances will the Registrar provide legal advice on a case or express an opinion in respect of it.

The Tribunal continues to strive to provide a user friendly service ensuring that the documentation and terminology used in its proceedings is easily accessible to all parties. The services of an Interpreter will be provided at all hearings at no charge to the parties whenever required. Where possible the Tribunal will endeavour to

provide assistance to parties experiencing difficulties due to disabilities such as dyslexia.

The Tribunal has produced guidance to parties in relation to Case Management Meetings, the preparation of Bundles and the grounds for applying for a Strike Out Order. These guides are available free of charge and those guides dealing with Case Management Meetings and the preparation of Bundles are available in English, Polish and Portuguese.

A new website for the Jersey Court Service, which will include the Tribunal, still remains in development by the Judicial Greffe.

Chairman's Conclusion

Whilst the overall number of applications to the Tribunal under the Employment Law fell in 2014 the number of issues, or particular complaints, remained consistent with the previous year. In 2013 the Tribunal received the second highest number of applications since it was established containing a correspondingly high number of applications. In addition to the new cases received in 2014 much of the work from the 2013 applications was undertaken by the Tribunal during 2014, resulting in a busy year for the Tribunal. However the appointment of 2 additional Deputy Chairmen to the Tribunal in 2014 has meant that the Tribunal has coped well with this increased workload and significantly more hearings of all types were held during the year. The increased case work meant that the time taken for a complaint to receive either initial case management or resolution through a full or interim hearing also decreased which is an advantage for all concerned. The Tribunal continued to find that attentive case management is essential where the parties are not legally represented in order to ensure the engagement of the parties to the dispute and the due preparation of the evidence to enable a fair hearing to be held. Not as many complaints under the Discrimination Law have been received as originally envisaged but it is anticipated that this aspect of the Tribunal's work will increase exponentially as the number of Protected Characteristics under the Discrimination Law increase and also the accessibility of rights under this Law becomes commonplace.

This Annual Report reflects the more detailed information gathered by the Registrar in respect of the complaints received this year. As ever unfair dismissal remains the most common single complaint received by the Tribunal but it is noteworthy that a failure to pay notice pay (in whole or part) is also a consistent complaint made to the Tribunal as is an apparent failure to pay outstanding wages or other payments

following the termination of employment. Of the cases which went to a full hearing in 2014 slightly more were found in favour of the respondent than the applicant, and in the cases where the applicant was awarded compensation for unfair dismissal, the Tribunal reduced the amount of the Award in 4 of those cases. These figures differ in emphasis from last year but of course all decisions reflect the nature of the evidence before the Tribunal at that time.

Nicola Santos-Costa

Chairman

Jersey Employment and Discrimination Tribunal

20th March 2015

Tribunal Statistics

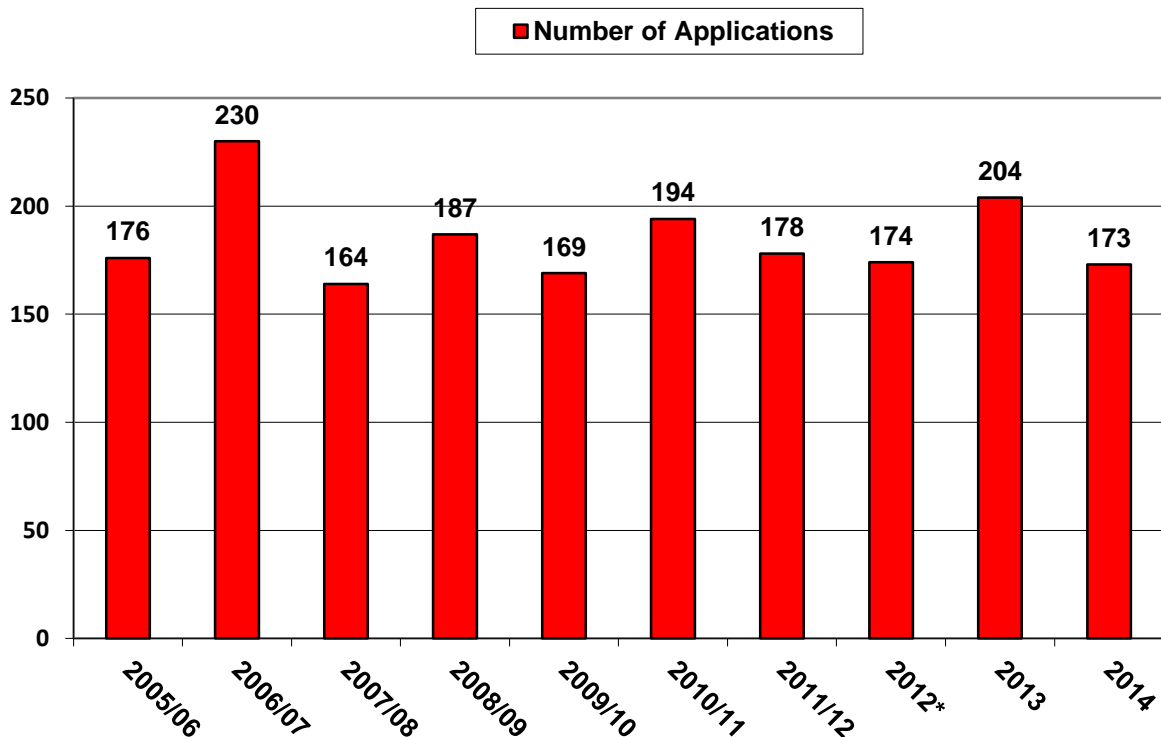
In any given reporting period, the Tribunal deals with *complaints received* and *hearings*. These may overlap, meaning that a complaint received has come to hearing within the same period. However, complaints received in the latter part of a reporting period tend to be heard in the following period. Conversely, cases that are heard within the reporting period may relate to complaints received in a previous period and carried forward. For the sake of clarity, this report will look at *complaints received* and *hearings* separately.

Employment (Jersey) Law 2003

Complaints Received

Complaints received are applications submitted to the Tribunal by way of a Form JET1. In respect of complaints under the Employment Law Figure 1 shows the number of such complaints received by the Tribunal in each reporting period since its inception.

Figure 1 Number of complaints received by the Tribunal in each reporting year since 2005/06



*From 2012 the Tribunal published its Annual Report based on a calendar year.

The Tribunal received 173 Employment Law complaints during 2014; 31 less than in 2013.

Of the 173 complaints received, 48 concerned a single issue, whereas 125 concerned multiple issues. Table 1 details the **issues** contained in the 173 complaints received by the Tribunal in 2014, together with those of previous annual reporting periods. The Tribunal has collected data about the Employment Law complaints received under a number of additional headings during 2014.

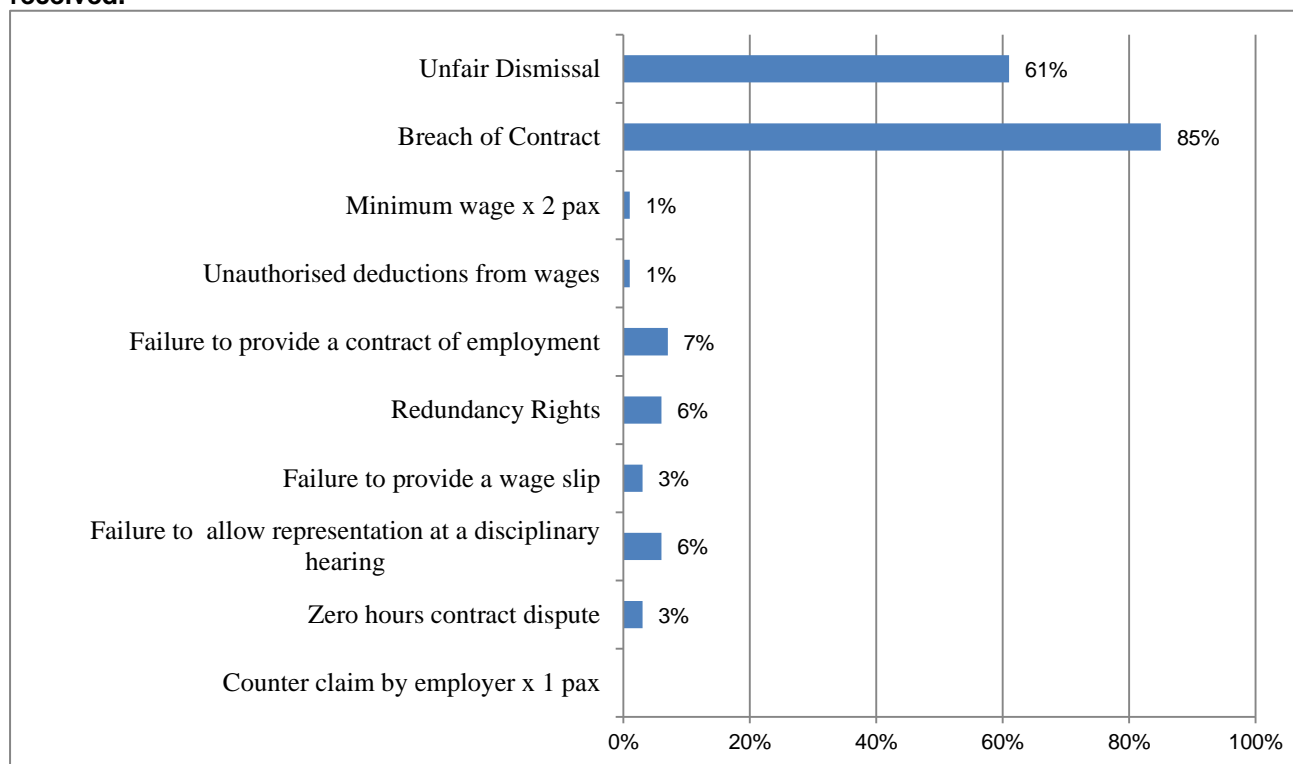
Table 1 Issues contained in complaints received by the Tribunal

Table of Issues	2009/10	2010/11	2011/12	2012	2013	2014
*Unfair dismissal	139	148	156	151	168	140
Breach of contract – 2014 underlying issues below:-	3	3	4	9	22	
• <i>Outstanding Notice Pay</i>	-	-	-	-	58	88
• Minimum rest periods/Annual leave/Holiday pay	47	61	74	49	36	42
• Outstanding Wages	80	71	61	47	56	47
• Other Claims e.g. bonus payments	-	-	-	-	13	20
Minimum wage	2	3	6	2	3	2
Unauthorised deductions from wages	-	-	-	-	2	3
Failure to provide a Contract of Employment	23	5	6	2	12	17
Failure to provide a wage slip	8	0	9	5	12	7
Failure to allow Representation at a disciplinary hearing	-	-	-	-	15	13
Zero Hours Contract Dispute	-	-	-	-	-	6
Counter claim by employer	-	-	-	-	2	1
Statutory Redundancy Rights underlying issues below:-						
Termination of employment ¹	73	59	114	70	-	0
• <i>Failure to make a redundancy payment</i> ¹	-	-	-	-	13	13
• <i>Collective Consultation Claim</i> ¹	-	-	-	-	4	0
• Failure to allow Time Off	-	-	-	-	-	1
Total Number of issues arising within the 173 Employment law complaints received at the Tribunal during 2014	375	350	430	335	416	400
* 140 Unfair Dismissal complaints broken down into specific reasons:-						
• Capability	--	-	-	-	-	13
• Conduct	-	-	-	-	-	46
• Redundancy	-	-	-	-	-	38
• Contravention of a Law	-	-	-	-	-	0
• Some Other Substantial Reason	-	-	-	-	-	8
• Constructive Dismissal	-	-	-	-	-	35
• Claim for a Direction for continued employment	-	-	-	-	-	0

¹ The 'termination of employment' category was split into three separate categories in 2014 as shown above

Figure 2 shows the percentage of the 173 Employment Law complaints received during 2014 that contained each particular issue. The majority (85%) of complaints received by the Tribunal in 2014 concerned a claim for Breach of Contract which included such issues as outstanding notice pay, holiday pay, wages, bonus payments and other monetary claims.

Figure 2 Percentage of the 400 particular issues contained within the 173 cases of complaints received.



Of the 173 complaints received in 2014, 72 are ongoing – meaning that they are currently being administered in order to reach a hearing date. Figure 3 shows this, together with the outcomes of the remaining 101 complaints. Figure 3 should be read in conjunction with Table 2, overleaf, which explains the possible outcomes to a complaint.

Figure 3 Outcomes of Complaints received by the Tribunal in 2014

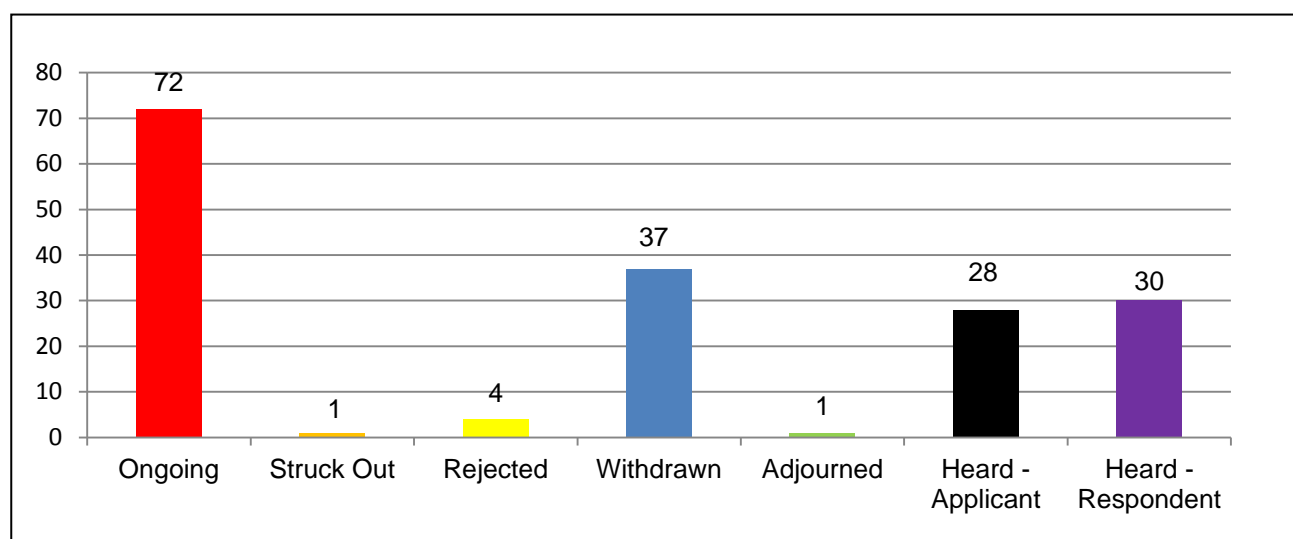


Table 2 Possible outcomes to a Tribunal complaint

Outcome	Definition
Ongoing	a complaint that has been admitted by the Chair and has not yet been heard.
Rejected	a complaint that has not been admitted by the Chair, usually because it does not comply with the Employment Law.
Settled	both parties have come to an agreement and resolved the complaint, usually via JACS.
Withdrawn	the Applicant has decided not to continue with the complaint.
Struck Out	the Applicant's complaint has been heard at an Interim Hearing and the Panel concluded that part or all of the complaint did not comply with the Employment Law and cannot proceed to a Full Hearing.
Adjourned	the part-heard case has been put off until a later date or time due to some unforeseen event occurring within the course of an initial hearing or case management meeting.
Heard - Applicant	the complaint reached an Interim/Full hearing and the Tribunal's Decision is in favour of the individual organisation who lodged the complaint (employee).
Heard - Respondent	the complaint reached an Interim/Full hearing and the Tribunal's Decision is in favour of the individual/organisation who responded to the complaint.

Either party can elect to be represented at any point in their case.

During this reporting period, 40 of the 173 **Applicants had representation**; in 13 cases this was professional representation (including Trade Union representation and legal representation) and in 27 cases the representation was non-professional (for example, a friend or family member) and;

34 of the 173 **Respondents had representation**; in 29 cases this was professional representation and in 5 cases the representation was non-professional.

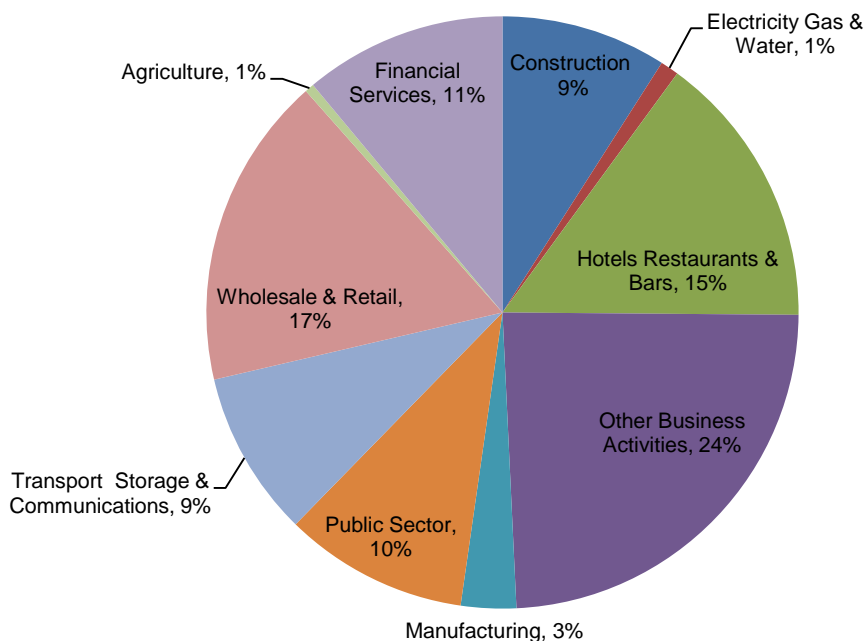
Profile of Applicants

Figures 4 and 5 show the sector in which Applicants were employed, and their occupational group (based on the Standard Occupational Classification (SOC 2000)). In the reporting period complaints were made by employees across a wide spread of employment sectors and occupations and ages.

Figure 6 shows the age group of the Applicants making an Employment Law complaint to the Tribunal.

Figure 7 shows the length of service of the applicants at the time of making a complaint to the Tribunal. These length of service ranges reflect the scale of unfair dismissal compensation.

Figure 4 Complaints received by the Tribunal in 2014 by sector of employment



The 'other business activities' sector includes 'Miscellaneous business activities' and private sector 'Education, health and other services'. The 'transport, storage and communications' sector includes Jersey Airport, Harbours, Postal Administration and Jersey Telecom.

Figure 5 Complaints received by the Tribunal in 2014 by occupational group

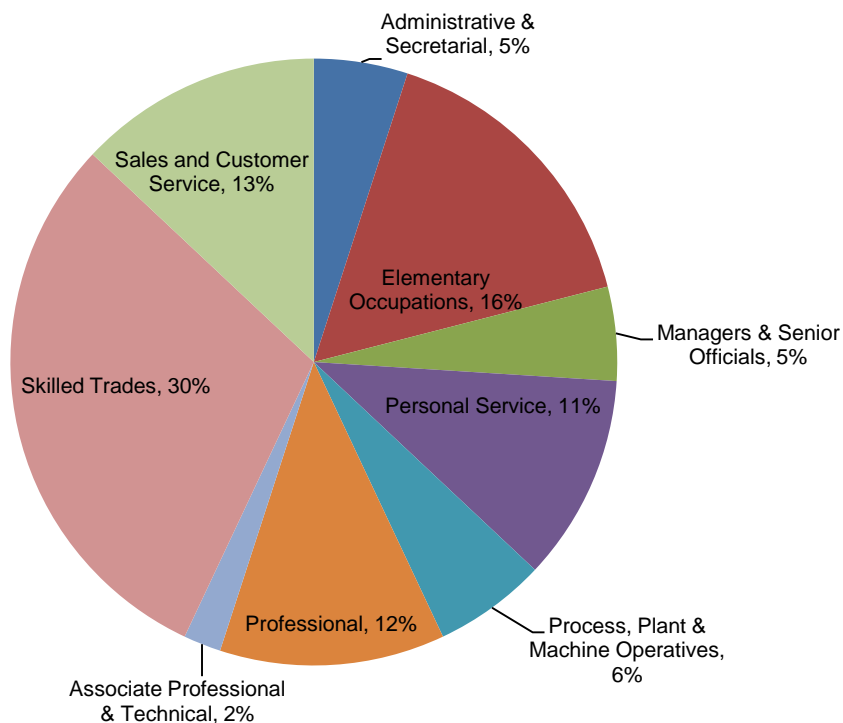


Figure 6 Employment Law complaints received by the Tribunal in 2014 by age range

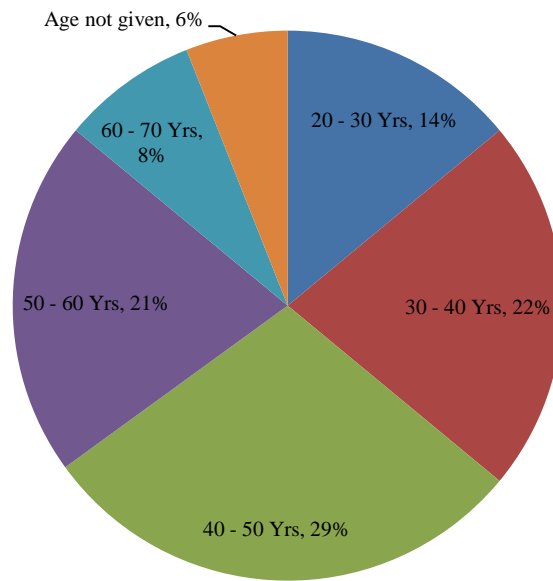


Figure 7 Employment Law complaints received shown by Gender ratio

In 2014 60% of complaints were received from male applicants and 40% from female applicants.

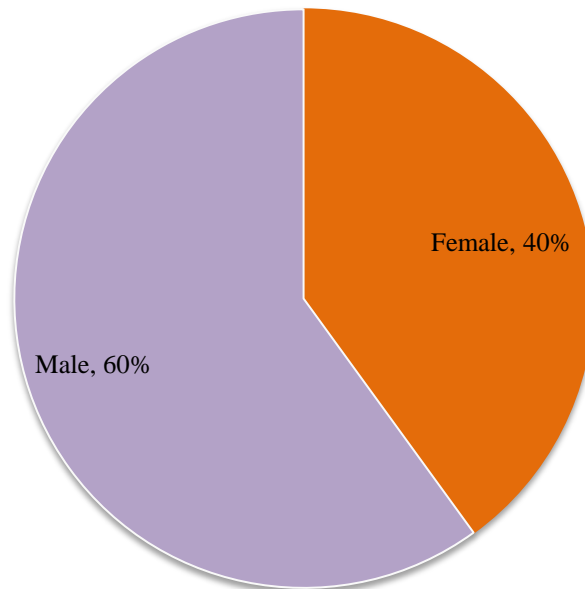
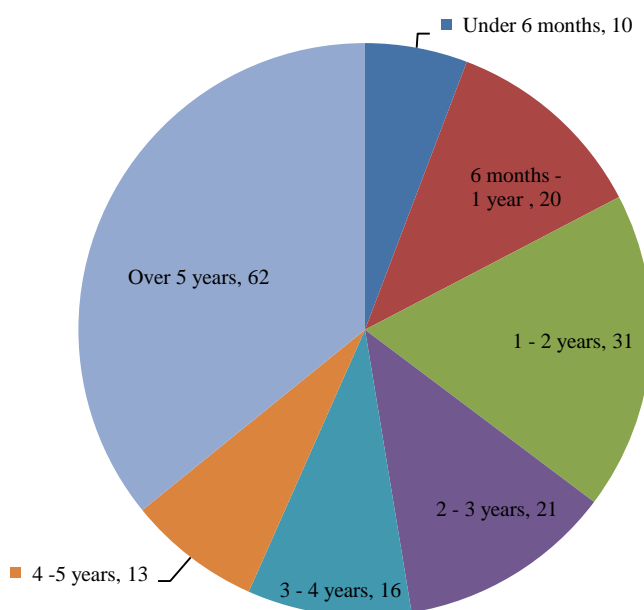


Figure 8 Employment Law complaints received by the Tribunal in 2014 by the applicant's length of continuous service



Note – none of the 10 applicants with less than 6 months' service had submitted a complaint of unfair dismissal.

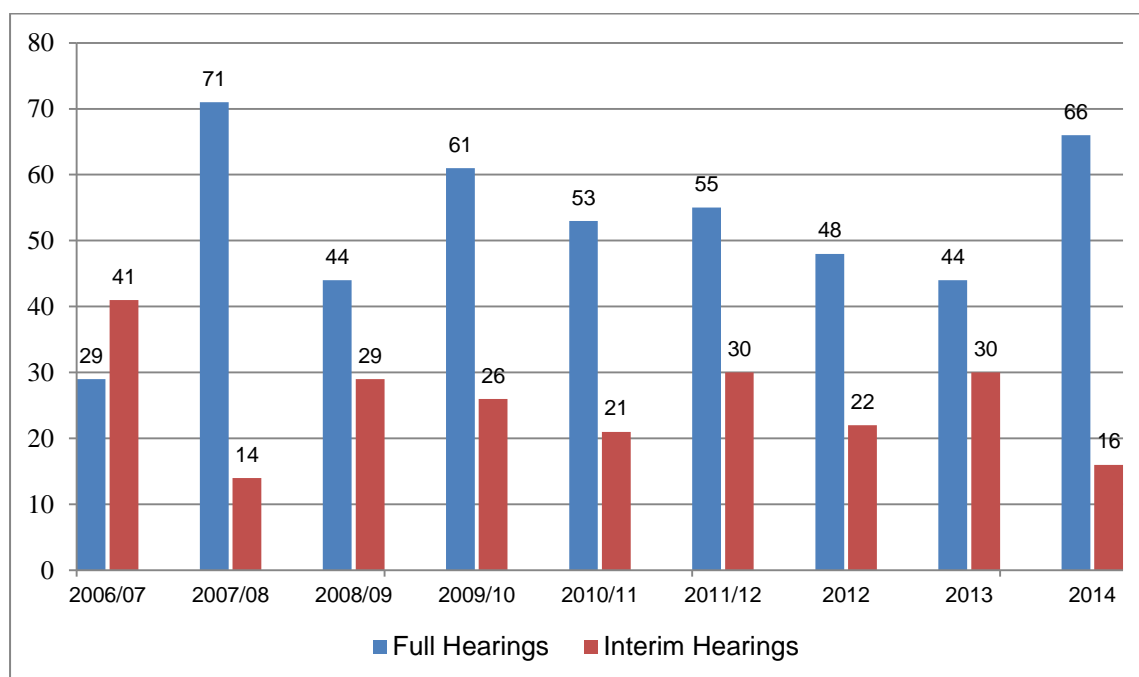
Hearings

If a complaint is not settled, withdrawn or rejected at an earlier stage, it proceeds to a *hearing*. A hearing is attended by the Applicant and Respondent, many of whom choose to put their own case to the Tribunal whilst others are represented by a lawyer, trade union official, professional organisation, a friend or relative.

A hearing is normally conducted by a Chairman and two panel members. The purpose of a Full hearing is to decide whether the complaint or complaints succeed or fail, i.e. if it falls in favour of the Applicant or Respondent, and to make the appropriate award or compensation.

Prior to a Full hearing, there may also be an Interim hearing, which may be vital in order to determine whether the case can continue or not. These take place in order to determine an initial point of law, in other words, whether or not the Tribunal has the jurisdiction to hear part or all of the complaint. Figure 9 below shows how many Full and Interim hearings have taken place at the Tribunal in each reporting period.

Figure 9 Full and Interim Hearings of the Tribunal in 2014



The average number of hearings (both Full and Interim hearings) per period is 77. In 2014, the Tribunal was convened for 82 hearings, comprising 66 Full hearings and 16 Interim hearings.

Of the 66 Full hearings, 44 were heard in the course of one day, 2 lasted two days and 6 were heard over three days.

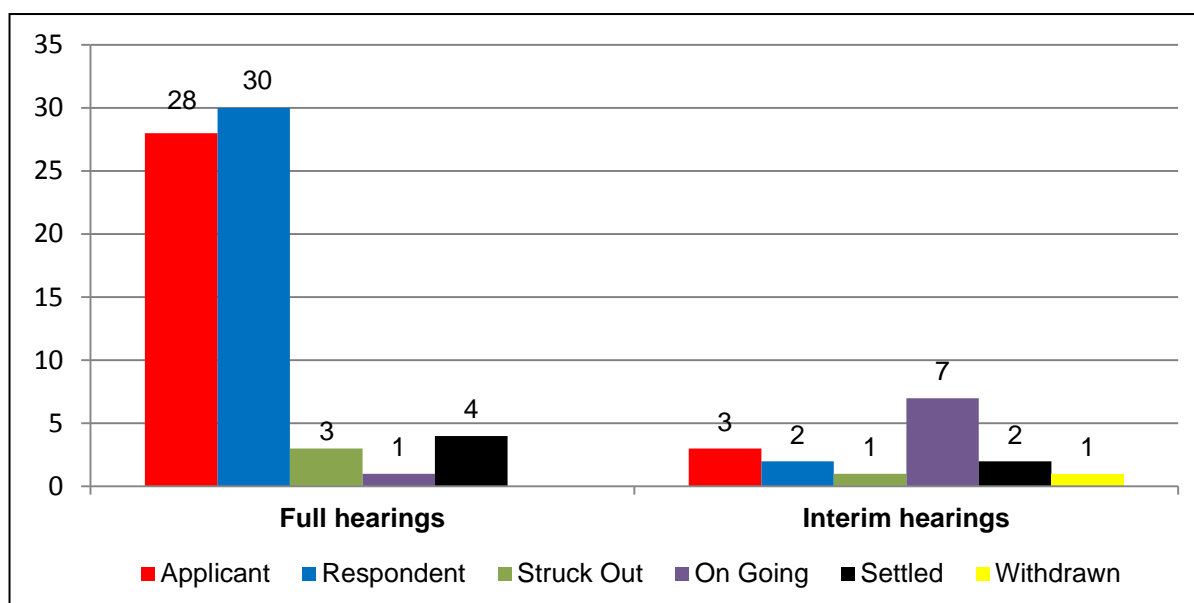
The Tribunal introduced a policy in 2012 whereby Case Management Meetings (CMMs) are now being held for the majority of cases. In 2014, 138 CMMs were convened, a significant increase on the previous 2013 reporting period which was 89.

The purpose of a CMM is to give Directions to the parties requiring them to provide as much information as possible to each other and the Tribunal about the case in advance of the hearing so that the case can proceed to a Full hearing as easily as possible. At a CMM, the Chair of the Case Management Meeting will make enquiries of the parties regarding any disputed factual information given on the Forms JET1 and JET2 (the employer response form) and also deal with matters such as requests by the parties for copies of documents which are relevant to their case and the attendance of witnesses at the hearing.

Figure 10 below shows the outcomes of the Full and Interim hearings held in 2014. This can be read in conjunction with Table 2 'Possible Outcomes to a Tribunal Complaint', on page 11.

In 2014, 28 of the Full hearings found in favour of the Applicant and 30 found in favour of the Respondent. In the previous reporting period, 25 of the Full hearings found in favour of the Applicant, and 14 found in favour of the Respondent.

Figure 10 Outcomes of Full and Interim Tribunal hearings in 2014



Following a Full hearing, the Tribunal may make an award in accordance with the Employment Law. These sums are calculated depending on the type of complaint, as set out in Table 3 below.

Table 3 Awards made by the Tribunal

Unfair Dismissal	Compensation is based on weekly pay at the end of employment and years of continuous service to a maximum award of 26 weeks' pay.	Uncapped but subject to principles of reduction contained in the Employment Law
Notice pay	Compensation is based either upon weekly pay at the end of employment and years of continuous employment to a maximum award of 12 weeks' pay or the provisions of the contract of employment.	Uncapped but subject to contractual principles of mitigation of loss
Redundancy Pay	Compensation is based upon one weeks' pay per complete year of continuous service to a maximum of 12 weeks.	Uncapped but subject to a maximum amount of weekly pay currently set at £670
Holiday Pay	Compensation is based upon the terms of the contract of employment or the statutory entitlement to a minimum of 2 weeks' paid leave and the right to receive a paid days' leave on all bank and public holidays in Jersey.	Uncapped

Right to Representation at a Disciplinary or Grievance Hearing	Compensation is 4 weeks' pay (maximum).	Uncapped
Minimum Wage	The Tribunal will award the amount necessary to bring the wage earned up to the minimum wage, (£6.53 per hour as at 1 st January 2014; £6.63 per hour from 1 st April 2014).	Uncapped
Failure to comply with a Direction for re-employment	Compensation of up to 26 weeks' pay in the Tribunal's discretion plus in certain circumstances the original unfair dismissal award.	Uncapped
Protective award for failure to consult on proposed collective redundancies	Up to 9 weeks' compensatory pay to each affected employee.	Uncapped
Other employment contract disputes		Capped at a maximum award of £10,000 for all other contractual claims

In 2014, there were **13 unfair dismissal complaints which resulted in an Award of compensation being made.** The Tribunal has the power under the Employment Law **to reduce compensation for unfair dismissal** in certain circumstances and in 2014 the Tribunal exercised its discretion to reduce the Award of compensation in accordance with those provisions on **4 occasions.**

Discrimination (Jersey) Law 2014

The Discrimination (Jersey) Law 2014 came into force on 1st September 2014. The Tribunal has jurisdiction to hear complaints under this law. Currently the only protected characteristic under the Discrimination Law is Race and the reference to complaints received under the law is to race discrimination complaints.

Discrimination Complaints Received

Discrimination Complaints received are applications submitted to the Tribunal by way of a Form JEDT1. The Tribunal received 3 complaints of discrimination in 2014, one complaint was rejected by the Chairman and the other two cases are ongoing.

Figure 11 Number of Discrimination Complaints Received by the Tribunal in 2014

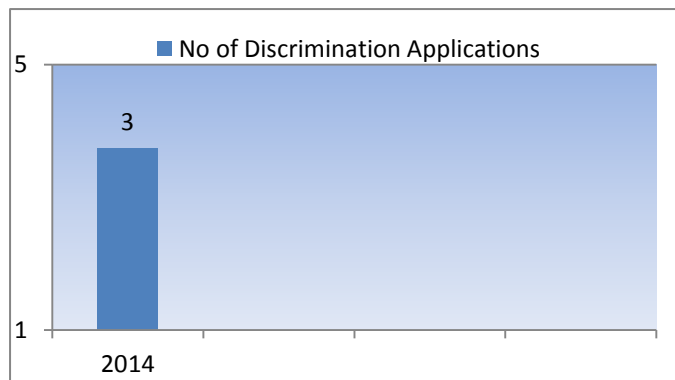


Table 4 Issues contained in Discrimination complaints admitted by the Tribunal

Nature of Complaints	2014
• Work related (paid work)	1
• Work related (voluntary work)	
• Education	
• Provision of goods, facilities & services	1
• Access to & use of public premises	
• Disposal or management of premises	
• Clubs	
• Request for information	
• Outstanding Wages	
Total	2
Nature of alleged act of Discrimination 2014	
• Direct	
• Indirect	1
• Victimisation	
• Harassment	
• Presently Unclear	1
Total	2

Note: one complaint of Discrimination was rejected by the Chairman on the basis that it did not refer to an act of race discrimination.

Of the 3 complaints received in 2014, 2 are ongoing – meaning that they are currently being processed in order to reach a hearing date. Figure 12 should be read in conjunction with Table 5, below, which explains the status of the complaints.

Figure 12 Status of Discrimination Complaints received by the Tribunal in 2014

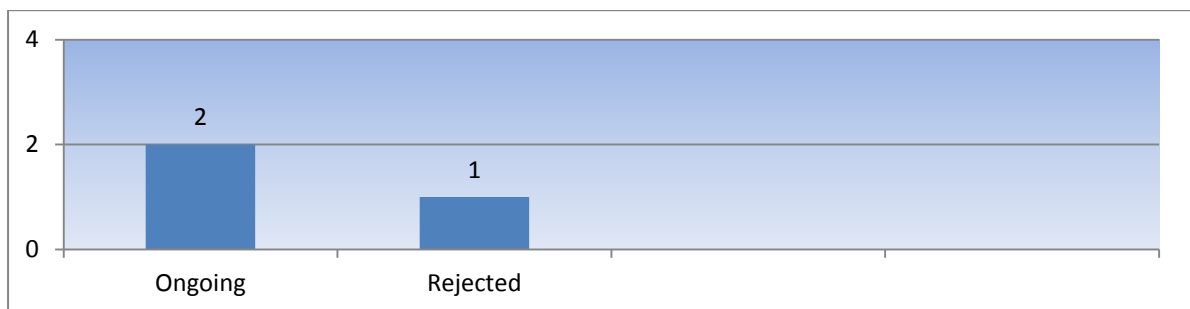


Table 5 Status of a Discrimination Tribunal complaint

Outcome	Definition
Ongoing	a complaint that has been admitted by the Chair and has not yet been heard at a final hearing.
Rejected	a complaint that has not been admitted by the Chair, usually because it does not comply with the Discrimination Law.

**MEMBERSHIP OF THE JERSEY EMPLOYMENT AND
DISCRIMINATION TRIBUNAL**

As of 31st December 2014, the members of the Tribunal were:

Chairman

Nicola Santos-Costa

Deputy Chairmen

Advocate Claire Davies
Hilary Griffin
Advocate Michael Preston

**Panel members appointed to hear complaints under the
Employment Law and also work related complaints of
discrimination**

Members with experience as
representatives of employers

Susan Armes
Ian Carr
Louise Cram
Mary Curtis
Emma Harper
Stewart Mourant
Mark Therin
Peter Woodward

Members with experience as
representatives of employees

Michael Baudains
Alan Hall
Clive Holloway
Patrick Kirwan
Timothy Langlois
Samuel Le Breton
John Noel
Angela Swindell

**Panel members appointed to hear non-work related complaints of
discrimination**

Elizabeth Adams
Janet Brotherton
Melanie Cavey
Thomas Gales

Claire Follain-Metcalf
Tamburi Muoni
Mandlenkosi Mlambo
Daria Sawicka

CONTACT DETAILS

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Margaret Turner

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