

STATES OF JERSEY



JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL: APPOINTMENT OF MEMBERS

Lodged au Greffe on 11th November 2014
by the Minister for Social Security

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to appoint, further to a process overseen by the Jersey Appointments Commission and in accordance with the Employment and Discrimination Tribunal (Jersey) Regulations 2014, the following persons as members of the Jersey Employment and Discrimination Tribunal, each for a period of 5 years to begin from the date of States approval –

Mrs. Elizabeth Adams
Mrs. Janet Brothertom
Mrs. Melanie Cavey
Mrs. Claire Follain-Metcalf
Mr. Thomas Gales
Mr. Clive Holloway
Mr. Mandlenkosi Mlambo
Miss Tamburai Mouni
Miss Daria Sawicka.

MINISTER FOR SOCIAL SECURITY

REPORT

Background

Article 81 of the Employment (Jersey) Law 2003 (the 'Employment Law'), as amended by the Discrimination (Jersey) Law 2013 (the 'Discrimination Law'), provides for the establishment of the Jersey Employment and Discrimination Tribunal (the 'Tribunal'). It provides that the Tribunal will exercise the jurisdiction conferred on it by the Employment Law, the Discrimination Law and the Employment Relations (Jersey) Law 2007.

The Tribunal retains the jurisdiction of the former Jersey Employment Tribunal which had been responsible for hearing and determining complaints relating to the following areas since 1st July 2005 –

- written statements of employment
- minimum rest periods and annual leave
- minimum wage
- payment of wages (including itemised pay statements)
- notice pay on termination of employment
- unfair dismissal
- redundancy pay and related rights
- breach of contract of employment
- trade union recognition
- collective disputes.

From 1st September 2014, the Tribunal additionally became responsible for hearing complaints of race discrimination made under the Discrimination Law. The Discrimination Law is an overarching law that provides a framework for protection against discrimination and it includes 'race' as the first protected characteristic¹. Further protected characteristics (including sex, age and disability) are intended to be added in the future.

The written decisions of the Tribunal are published on the Jersey Legal Information Board website. Annual Reports of the Tribunal are presented as a Report to the States each year. The latest Annual Report was presented on 28th April 2014 ([R.54/2014](#)).

Constitution of the Tribunal

Under Article 82 of the Employment Law, Regulations may provide for the constitution, membership and administration of the Tribunal, including for the appointment and terms of membership of the members. These provisions are set out in the Employment and Discrimination Tribunal (Jersey) Regulations 2014 (the 'Regulations')².

The Regulations provide that the Tribunal consists of the following members –

- (a) one legally qualified Chairman;

¹ Details of the history and development of the Discrimination (Jersey) Law 2013 are set out in [P.6/2013](#).

² These Regulations replaced the Employment Tribunal (Jersey) Regulations 2005 when the Discrimination law came into force on 1 September 2014 to ensure that appropriate provision was made to reflect the extended jurisdiction of the Tribunal in relation to the appointment of Tribunal members and the constitution of the Tribunal for a hearing.

- (b) at least one and not more than 5 legally qualified Deputy Chairmen;
- (c) at least 2 and not more than 8 lay members with knowledge or experience of or interest in trade unions or matters relating to employees generally;
- (d) at least 2 and not more than 8 lay members with knowledge or experience of or interest in employers' associations or matters relating to employers generally; and
- (e) at least 2 and not more than 8 lay members with knowledge or experience of or interest in matters relating generally to equality and discrimination, or to discrimination and protected characteristics.

In hearing a complaint that relates to employment or discrimination in employment, the Regulations provide that a 3 person panel must consist of a legally qualified Chairman or Deputy Chairman with 2 lay members; one employee representative member (paragraph c) and one employer representative member (paragraph d), chosen by rotation. It is important that the employer/employee balance is retained in employment related discrimination cases.

Where a panel is formed to hear a complaint about an act of discrimination that does not relate to employment or recruitment (e.g. housing, services or education), the panel must consist of the Chairman or a Deputy Chairman and 2 members from the new pool of discrimination lay members (paragraph e), chosen by rotation. The employer/employee balance is not required in such a case.

The Regulations also provide that the recruitment of Tribunal members must be overseen by, and conducted in accordance with, the guidelines produced by the Jersey Appointments Commission (the 'Appointments Commission'). Members are appointed by the States on the recommendation of the Minister for Social Security (the 'Minister'), after consultation with the Appointments Commission.

Recruitment of Tribunal members

Open recruitment was undertaken during the period July to October 2014 with the intention of appointing up to 8 discrimination panel members. In addition, a vacancy for one employer representative lay member was advertised following the resignation of Mr. Tim Allen on 16th September 2013.

Advertisements were placed in the Jersey Evening Post in July and August 2014 and an advert was placed on the States website. Following short-listing, structured interviews were undertaken in September and October by a recruitment panel chaired by a representative of the Appointments Commission. Having considered the candidates, the recruitment panel recommended the appointment of nine new members.

The Minister is satisfied that the 9 proposed lay members have the required knowledge and experience. Further details of the proposed members are provided in the **Appendix**.

The Minister proposes that the States approves the following individuals as discrimination lay members, each for a 5 year term of office to begin from the date of States approval –

Mrs. Elizabeth Adams
Mrs. Janet Brothertom
Mrs. Melanie Cavey
Mrs. Claire Follain-Metcalf
Mr. Thomas Gales
Mr. Mandlenkosi Mlambo
Miss Tamburai Mouni
Miss Daria Sawicka.

The Minister proposes that the States approves the following individual as an employee lay member for a 5 year term of office to begin from the date of States approval –

Mr. Clive Holloway.

Financial and manpower implications

There are no financial or manpower implications arising from this Proposition. Training for new members will be financed from existing budgets.

APPENDIX

Discrimination side member

Mrs. Elizabeth Adams has 20 years' experience of the criminal justice system and considerable relevant experience of panel based decision making. Mrs. Adams currently sits as a lay magistrate for the Youth Court Panel and her ten year tenure on that Panel will end in 2015. Since 2009, Mrs. Adams has also sat as an independent member of the panel that considers prisoners' applications for the Temporary Release Scheme at Her Majesty's Prison, La Moye. For 8 years until 2000, Mrs. Adams was employed as an Ancillary Probation Officer for the Probation Service working primarily with young offenders.

Mrs. Janet Brotherton has a Master's degree in Child Protection and she worked as a Training and Development Officer for the Child Protection Committee for 10 years until 2012, which included the provision of training in culture and diversity. Mrs. Brotherton has a background in nursing, including 3 years working as a Clinical Nurse Specialist in Child Protection for the South Buckinghamshire NHS Trust. Mrs. Brotherton has been involved in the UK and Jersey Women's Refuge movements for the past 24 years, including 11 years on the Jersey Women's Refuge Management Committee and 4 years on the Jersey Domestic Violence Forum.

Mrs. Melanie Cavey has been employed as Development Officer for the charity Community Savings Ltd. since April 2012. For 16 years prior to that, Mrs. Cavey worked for the States of Jersey and was involved in the development of a wide range of policies including the Discrimination Law, the Employment Law, the Control of Housing and Work Law, the Residential Tenancies Law and the Tenants Deposit scheme, as well as the setting up of the Petty Debts Court Mediation Scheme and the Community Mediation Service. Mrs. Cavey first qualified in Law and she achieved a Diploma in Therapeutic Counselling in 2012.

Mrs. Claire Follain-Metcalf has a Master's degree in Contemporary History with a particular interest in the development of protection for women and minority groups and is a qualified Barrister with 6 years' experience as a criminal litigation lawyer. Mrs. Follain-Metcalf was appointed to perform civil partnership ceremonies as a delegate of the Superintendent Registrar in September 2012 and has officiated over many civil partnerships and civil weddings in Jersey. Mrs. Follain-Metcalf was a Trustee of the Jersey Community Relations Trust for one year until August 2014 and is currently a Trustee of the Jersey Heritage Trust.

Mr. Thomas Gales was employed by the States of Jersey for 32 years, primarily in the Social Security Department and latterly in the Chief Minister's Department, until he retired in December 2011. Mr. Gales has widespread experience of addressing discrimination in social policy having been involved with a range of issues including the removal of discrimination in pensions, benefits and reciprocal agreements as well as the recent civil partnership legislation. Mr. Gales is currently a voluntary facilitator on the ADAPT programme dealing with domestic abuse and is a volunteer at Macmillan Cancer Support. Mr. Gales is a qualified Pharmacist.

Mr. Mandlenkosi Mlambo has been employed as a Senior Staff Nurse for Jersey's General Hospital since May 2007 delivering a range of nursing services. Prior to that, Mr. Mlambo was employed for 5 years as a Coronary Care Unit Staff Nurse for the Chelsea and Westminster NHS Foundation Trust in London. Mr. Mlambo has gained considerable relevant experience of team decision making in critical situations. Mr. Mlambo qualified as a nurse in 2002, achieved a Master's degree in Bioethics and Medical Law in 2012 and is currently undertaking a Masters of Medical Science in Advanced Nursing.

Miss Tamburai Muoni qualified as a Registered Nurse in 2003, as a Midwife in 2007 and achieved a Master's degree in Bioethics and Medical Law in 2012. Miss Muoni has been employed as a Midwife for Jersey's Maternity Unit for the past 7 years, including as Senior Midwife since 2009, and she previously worked as a Nurse for the Royal Lancaster Infirmary, Morecambe Bay NHS Foundation Trust. Miss Muoni has gained considerable relevant experience in her 5 years on the Investigative Committee of the 'Fitness to Practice' Panel for the Nursing and Midwifery Council in which she reviews allegations as part of a decision making panel that has a UK wide remit.

Miss Daria Sawicka has been employed by the Transport and Technical Services Cleaning Services team for 6 years, including as Leading Chargehand for the past 4 years. Miss Sawicka has experience of panel based decision making as a current member of the States Suspension Review Panel and of the States Job Evaluation Panel. In addition, Miss Sawicka is employed as a Customer Service Agent and Welcome Host for Jersey Airport. For 2 years until 2008, Miss Sawicka was a Store Manager for Channel Islands Newsagents. Miss Sawicka volunteers as an independent custody scheme visitor carrying out unannounced visits to Police custody.

Employee side member

Mr. Clive Holloway has been a member of the trade union JCSA/Prospect since joining the Civil Service in 2005 and currently serves on its Executive Committee. During this time, Mr. Holloway has gained experience of supporting union members in the disciplinary and grievance process and has been trained as an ACAS disciplinary and grievance investigator. Mr. Holloway is employed as a Data Control Manager for the States of Jersey Taxes Office and is currently seconded part-time to a small job evaluation team as part of the States workforce modernisation project. For 19 years, until 2005, Mr. Holloway was Operations Manager for the Bank of Nova Scotia (Channel Islands) Limited.