

# Jersey Employment Tribunal



Annual Report

**2012**



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# Introduction

The Jersey Employment 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') and the Employment Relations (Jersey) Law 2007 (the 'Employment Relations Law'). The Tribunal is like a court but is less formal.

The Tribunal was established when the Employment Law came into force on the 1<sup>st</sup> July 2005 and is based at the first floor of Trinity House, Bath Street, St Helier, Jersey.

The Tribunal consists of a legally qualified Chairman and Deputy Chairman and two pools of 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 other 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. All appointments to the Tribunal are made by the States of Jersey upon the recommendation of the Minister for Social Security.

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 side of a complaint. The practical knowledge and experience that these people bring to the Tribunal discussions is greatly valued by the Chairman and Deputy Chairman. The Chairman and Deputy Chairman 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 Deputy Chairman, together with one person from each pool 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 Tribunal hearings. The Tribunal's decisions are issued in writing and are available to the public for reference on the Tribunal's website:

[www.jerseyemploymenttribunal.org](http://www.jerseyemploymenttribunal.org)

The majority of Tribunal decisions are now published on the Jersey Legal Information Board (JLIB) website:

[www.jerseylaw.je/Judgments/JET](http://www.jerseylaw.je/Judgments/JET)

This is the eighth Annual Report of the Jersey Employment Tribunal and covers the period 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012.

# Chairman's Comments

## **New Reporting Period**

The Jersey Employment Tribunal was established on 1<sup>st</sup> July 2005 following the implementation of the Employment (Jersey) Law 2003. Since then, the Employment Tribunal has produced an Annual Report with a reporting period running from 1<sup>st</sup> July to 30<sup>th</sup> June. In 2012, the Employment Tribunal (Jersey) Regulations 2005 were amended to provide that, "The Chairman shall prepare an annual report on the activities of the Tribunal and submit it to the Minister within 4 months after the end of the financial year".

The reporting period of the Employment Tribunal will now be in line with other governmental reports. This Annual Report will present data for the year 2012 and, where appropriate, for the six month period since the last Annual Report, being 30<sup>th</sup> June - 31<sup>st</sup> December 2012.

## **Future reporting**

As of January 2013, the Employment Tribunal will record broader data on each case in order to further enhance the information being provided in our Annual Report. Amongst others, we will be reporting on the type of organisation of the Respondent involved, for instance whether they are a sole trader or company etc. In addition, the outcome of a complaint will be broken down to reflect the outcome of each particular issue within the complaint and the amount of compensation awarded will also be broken down to show the award for each head of claim.

## **General Information**

There have been no new appointments to the Tribunal since the last Report in June 2012 and there are currently no vacancies for Tribunal members. No further training of Tribunal members has taken place in the second half of 2012. The Chairman and Deputy Chairman remained indebted to the Tribunal members for their commitment to the Tribunal process.

In October 2012 the Chairman was invited to attend a training day of the Guernsey Employment Tribunal members and to advise upon successful practices and procedures of the Jersey Tribunal which might be of assistance to them in the performance of their duties. This was an interesting and insightful meeting which is expected to continue as an annual event.

There were no legislative developments in the second half of 2012 which impacted upon the work of the Employment Tribunal.

The proceedings of the Tribunal are open to the public (with a few limited exceptions) and any potential users of the Tribunal or interested parties are welcome to come along and observe a hearing and the style of the Tribunal process.

## **Administration**

The role of Registrar of Appeals and Tribunals is still performed by Louise Cave and Jo Hickey on a job share basis. They are supported by Rebecca Newman and Kathryn Cuccurullo who carry out the role of receptionist/administrator, again operating through a job share.

In addition to responsibilities under the Employment Law and Employment Relations Law, the Registrar also has responsibility for appeals and claims in connection with other legislation including the Social Security and Health and Safety Laws.

The office is now referred to as The Tribunal Service.

The Employment Tribunal's aim is to provide swift, accessible, cost effective decisions to employment disputes. The Tribunal remains focussed on providing a user friendly service and we are aware that we have a responsibility to ensure that our documentation and terminology is easily accessible to all parties. Interpreters will be provided to parties as required, at no cost to them. We have prepared explanatory pamphlets about preparing for a Case Management Meeting, the grounds for applying to strike out a complaint and the preparation of bundles. These are available on request at no cost and the Case Management document is available in English, Polish and Portuguese. In due course all our explanatory documents will be available in these languages. The Registrar and the Receptionist are always willing to help with a general enquiry about the progress of a case.

The majority of parties appearing before the Tribunal represent themselves. The Tribunal uses non legalistic terms and processes so that parties feel confident in representing themselves. There are no costs awarded to either party in the Tribunal and it is understood that the Minister has no plans to change this policy. The Tribunal has put in place a service pledge that all its decisions will be delivered in writing to the parties within 4 weeks of the hearing date. From early in 2013 the Tribunal will issue a short note ('an Acte') to the parties recording the outcome of its decision and the value of any Awards made in advance of its written decision.

## **Website**

Plans are in place for a new website for the Employment Tribunal and it is anticipated that this will become available in the latter part of 2013. In the meantime users requiring a copy of any of the Tribunal's decisions should use [www.jerseylaw.je/Judgments/JET](http://www.jerseylaw.je/Judgments/JET) where they will find copies of Full and Interim decisions of the Tribunal for reference.

## **Chairman's Conclusion**

The Tribunal statistics show that overall the number of complaints to the Tribunal fell slightly in 2012. It will be easier to see if this a trend when the statistics for the calendar year of 2012 are compared to those collected for the calendar year of 2013 next year. It is interesting to note that the Tribunal was convened for fewer Full hearings and Interim hearings in 2012 than in previous years but the number of Case Management Meetings convened in 2012 doubled from the previous period. It is a reasonable conclusion to draw that this early intervention is resulting in a greater number of settlements and withdrawals of complaints to the Tribunal. Of those cases that do proceed to a Full hearing one feature that is clear is that Unfair Dismissal remains the most common complaint made to the Employment Tribunal. In the current economic climate there are undoubtedly more dismissals taking place for a variety of reasons not least because of redundancy but also the fact that employers are demanding higher standards from their employees. It is a great pity that some of these terminations of employment are resulting in complaints to the Employment Tribunal, many of which are successful. A review of the cases heard by the Tribunal in 2012<sup>1</sup> indicates that most involved small employers, without HR support, who failed to follow a fair procedure – sometimes even when a disciplinary procedure was contained in their contracts of employment. The Tribunal is not concerned by the lack of resources of an employer but it does expect an attempt to be made to follow a fair procedure in the process of terminating an employee's employment. The Tribunal would urge employers to gather the information they need regarding a due process from JACS, CAB, lawyers or professional advisers before dismissing an employee. Many employers consider that the employment laws are weighted against them, they are not but the employers must take steps to adapt to the requirements of the law: as indeed many employees have already done so.

**Nicola Santos-Costa**

**Jersey Employment Tribunal Chairman**

**23<sup>rd</sup> April 2013**

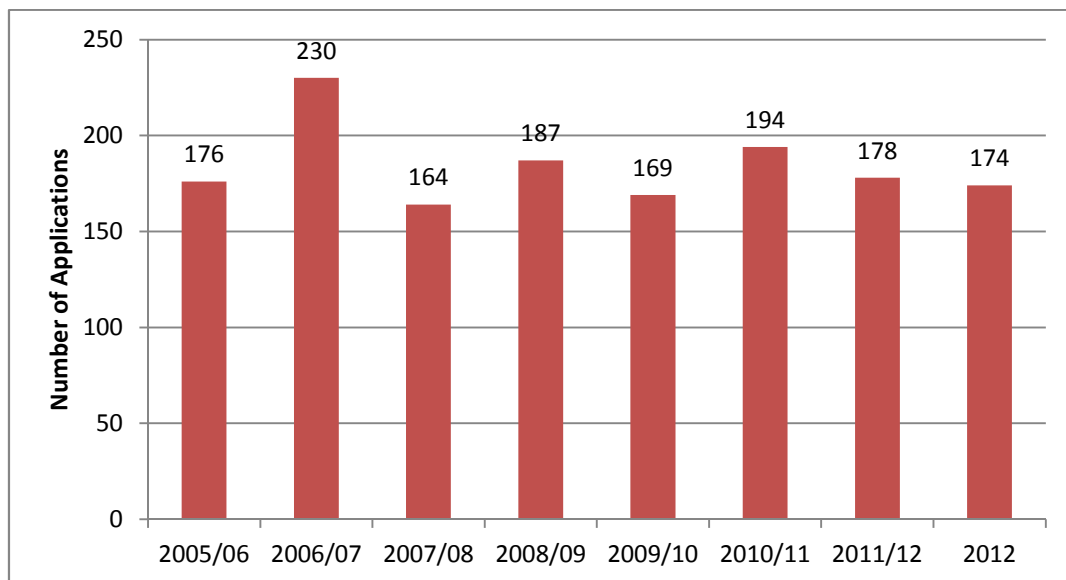
<sup>1</sup> [www.statesassembly.gov.je/AssemblyReports/2013/R.028-2013.pdf](http://www.statesassembly.gov.je/AssemblyReports/2013/R.028-2013.pdf)

# Tribunal Statistics

In any given reporting period, the Employment Tribunal deals with *complaints received* and *hearings*. These may overlap, meaning that a complaint received will 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.

## Complaints Received

*Complaints received* are applications/complaints made to the Employment Tribunal by way of a Form JET1. Figure 1 below shows the number of complaints received by the Tribunal in each reporting period since its inception.



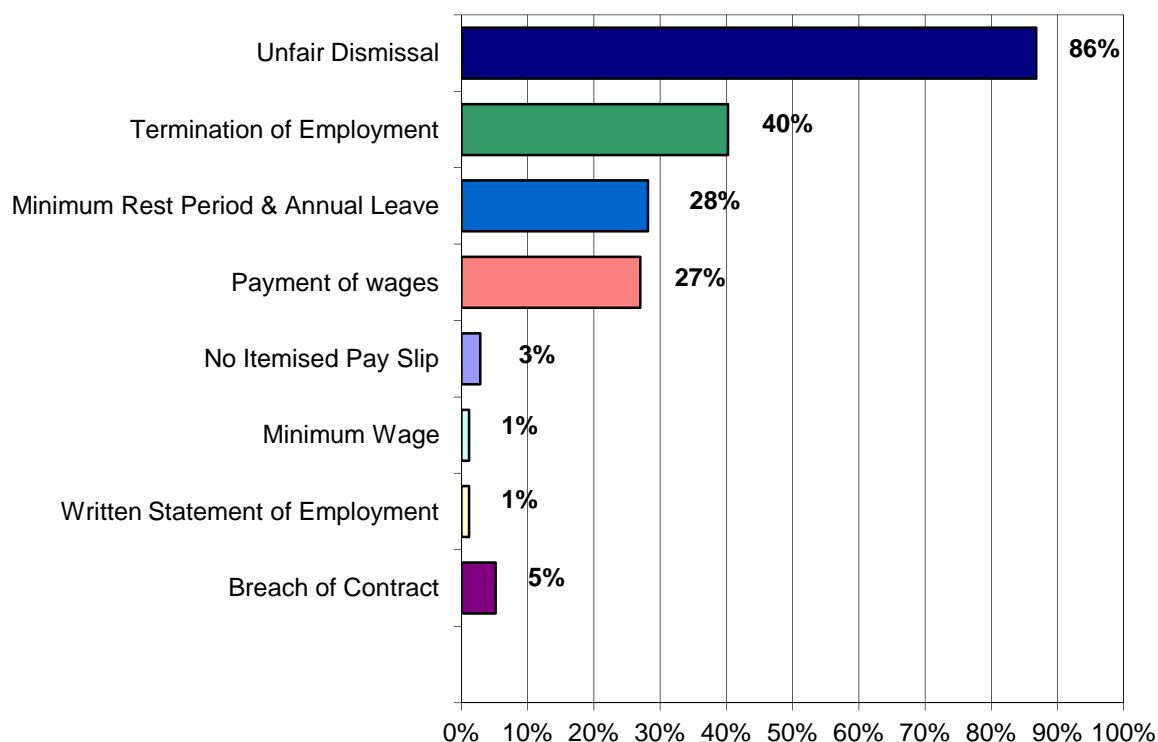
**Figure 1 Complaints Received**

As shown in Figure 1, the Tribunal received 174 complaints during 2012; 10 fewer than the average number of 184 complaints per period. Out of these 174 complaints, 96 were received in the six month period to 31<sup>st</sup> December 2012. Any reduction in complaints is viewed positively by the Tribunal, particularly given that the number of redundancies in the Island has undoubtedly increased due to the recession.

Of the 174 complaints received, 77 concerned a single issue, whereas 97 concerned multiple heads of claim. Consistent with previous reporting periods, the majority (86%) of complaints received by the Tribunal concern a claim for unfair dismissal. Yet contrary to the previous reporting period (64%) complaints citing termination of employment as a grievance has dropped (40%). The termination of employment category includes claims for notice pay and redundancy pay.



Figure 2 below shows the percentage of complaints received during 2012 that contained each particular issue.



**Figure 2 Percentage of complaints received in 2012 containing each issue**

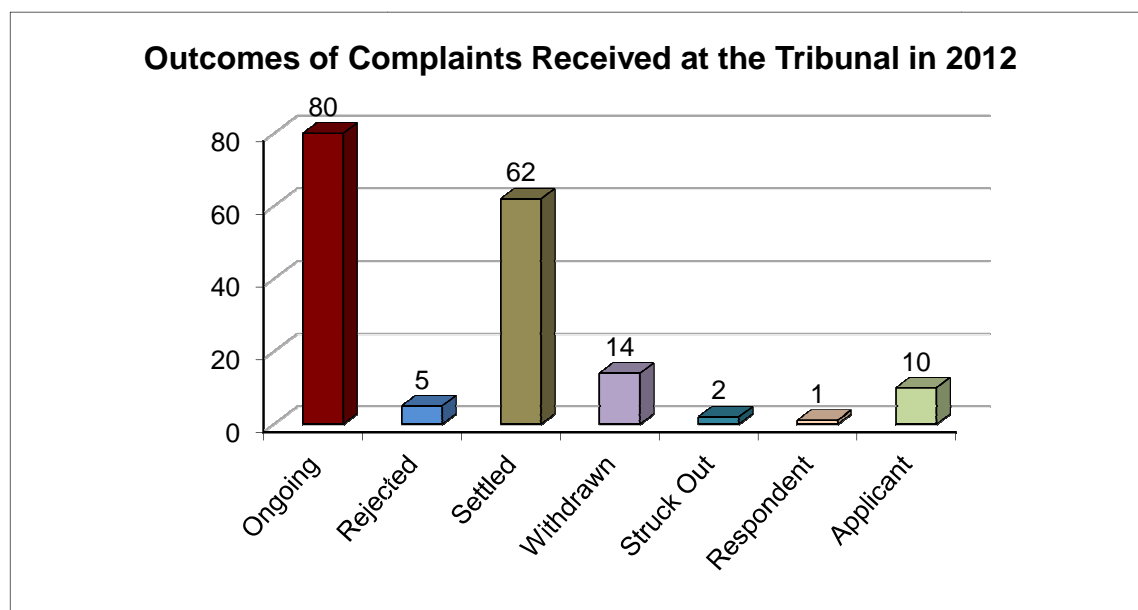
Table 1 below details the issues contained in the 174 complaints received by the Tribunal in 2012, together with those of previous reporting periods.

**Table 1 Issues contained in complaints received by the Tribunal**

<u>ISSUE</u>	2009/10	2010/11	2011/12	2012
<b>Unfair dismissal</b>	139	148	156	151
<b>Payment of wages</b>	80	71	61	47
<b>Minimum rest periods and annual leave</b>	47	61	74	49
<b>Termination of employment</b>	73	59	114	70
<b>Written Statement of employment</b>	23	5	6	2
<b>Breach of contract</b>	3	3	4	9
<b>Minimum wage</b>	2	3	6	2
<b>No itemised pay slip</b>	8	0	9	5
<b>TOTAL</b>	<b>375</b>	<b>350</b>	<b>430</b>	<b>335</b>

Of the 174 complaints received in 2012, 80 are ongoing – meaning that they are currently being processed in order to reach a hearing date. Figure 3 shows this, together with the outcomes of the remaining 94 complaints. Figure 3 can be read in

conjunction with Table 2, below, which explains the possible outcomes to a complaint.



**Figure 3 Outcomes of Complaints Received**

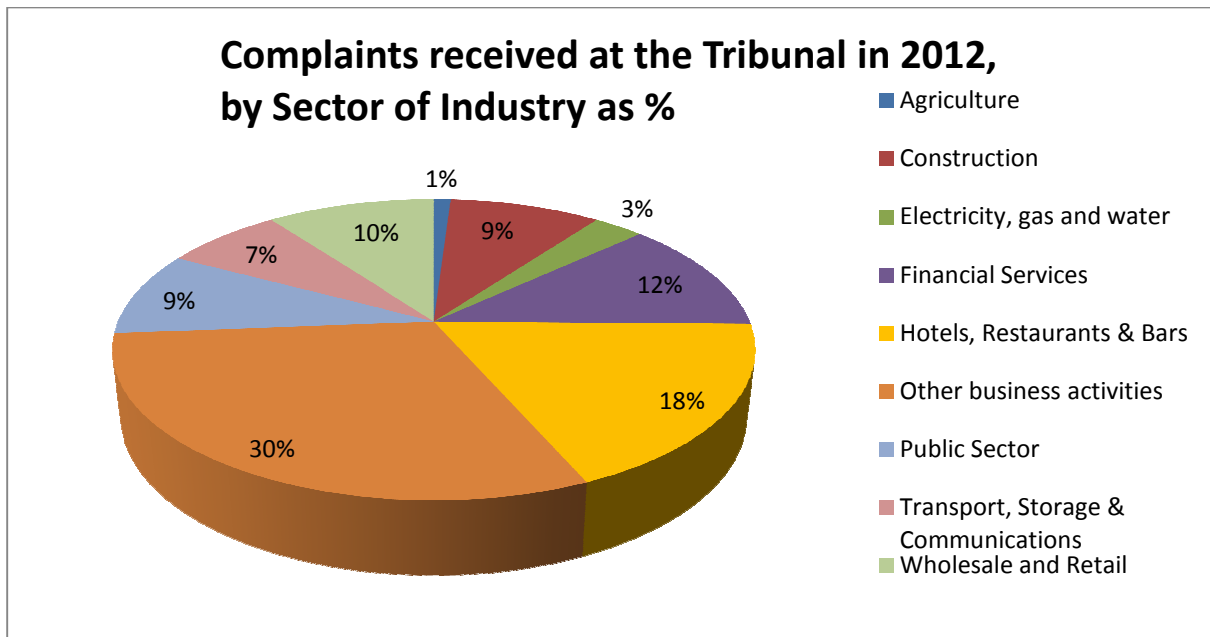
**Table 2 Possible Outcomes to a Complaint**

Outcome	Definition
Ongoing	a complaint that is being processed 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 (Jersey) 2003
Settled	both parties have come to an agreement and resolved the matter, usually via JACS
Withdrawn	the Applicant has decided that they do not wish to continue with their complaint
Struck Out	the Applicant's complaint is heard at an Interim Hearing and the Panel conclude that part or all of the complaint does not comply with the Employment Law (Jersey) 2003 and cannot proceed to a Full Hearing
(in favour of) Respondent	the complaint reaches a Full/Interim hearing and the Tribunal's Decision is in favour of the individual/organisation who responded to the complaint (employer)
(in favour of) Applicant	the complaint reaches a Full/Interim hearing and the Tribunal's Decision is in favour of the individual who lodged the complaint (employee)

Either party can elect to be represented at any point in their case. During this reporting period, 16 of the 174 Applicants had representation; in 13 cases this was legal representation and in 3 cases representation was via a trade union. From 2013, the Tribunal will keep broader information on the representation of Applicants and Respondents; further details of this are found on page 4.

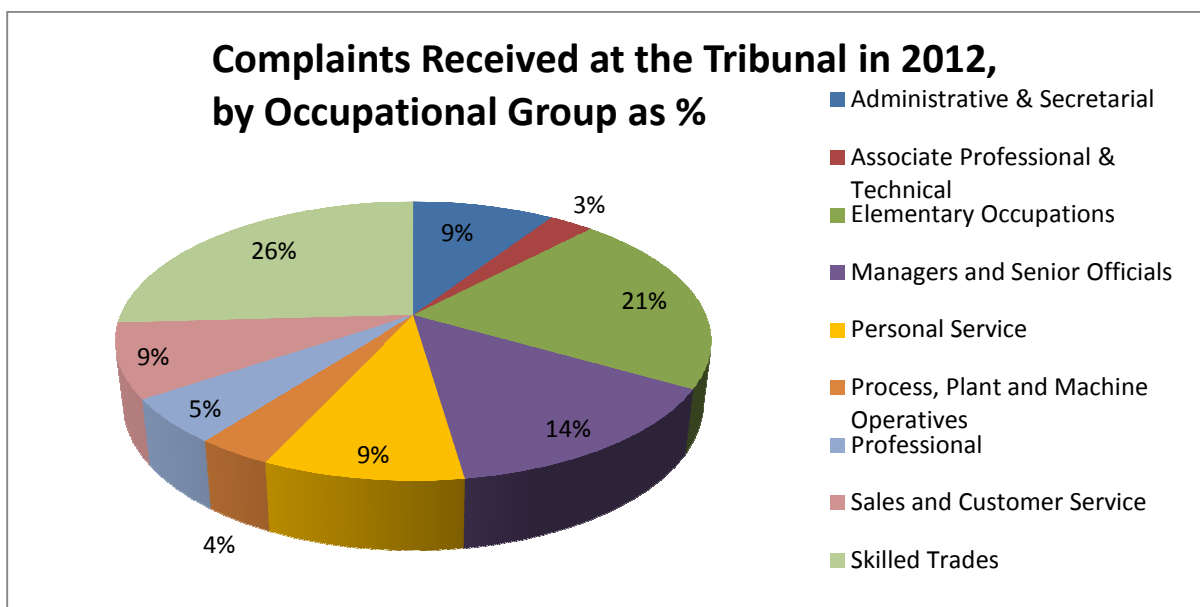
Figures 4 and 5 show the sector of industry where Applicants were employed, and their occupational group (based on the *Standard Occupational Classification (SOC*

2000)). Complaints were made by employees across a wide spread of employment sectors and occupations. See the Appendix for charts reflecting the 6 month period to 31<sup>st</sup> December 2012.



**Figure 4 Complaints Received by Sector of Industry**

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.



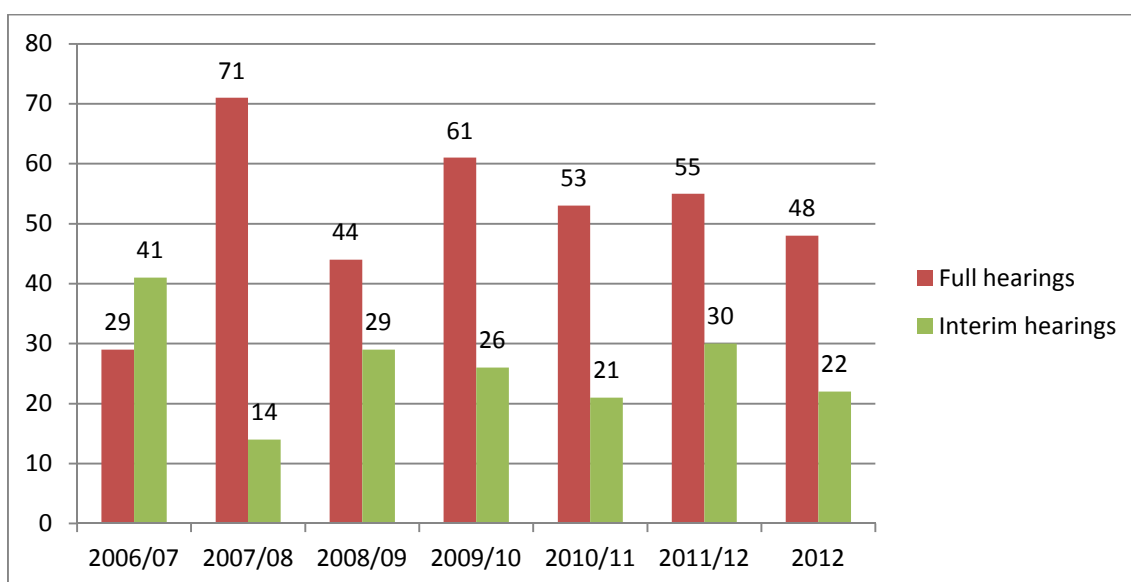
**Figure 5 Complaints Received by Occupational Group**

## 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 6 below shows how many Full and Interim hearings have taken place at the Employment Tribunal in each reporting period.



**Figure 6 Full and Interim Hearings**

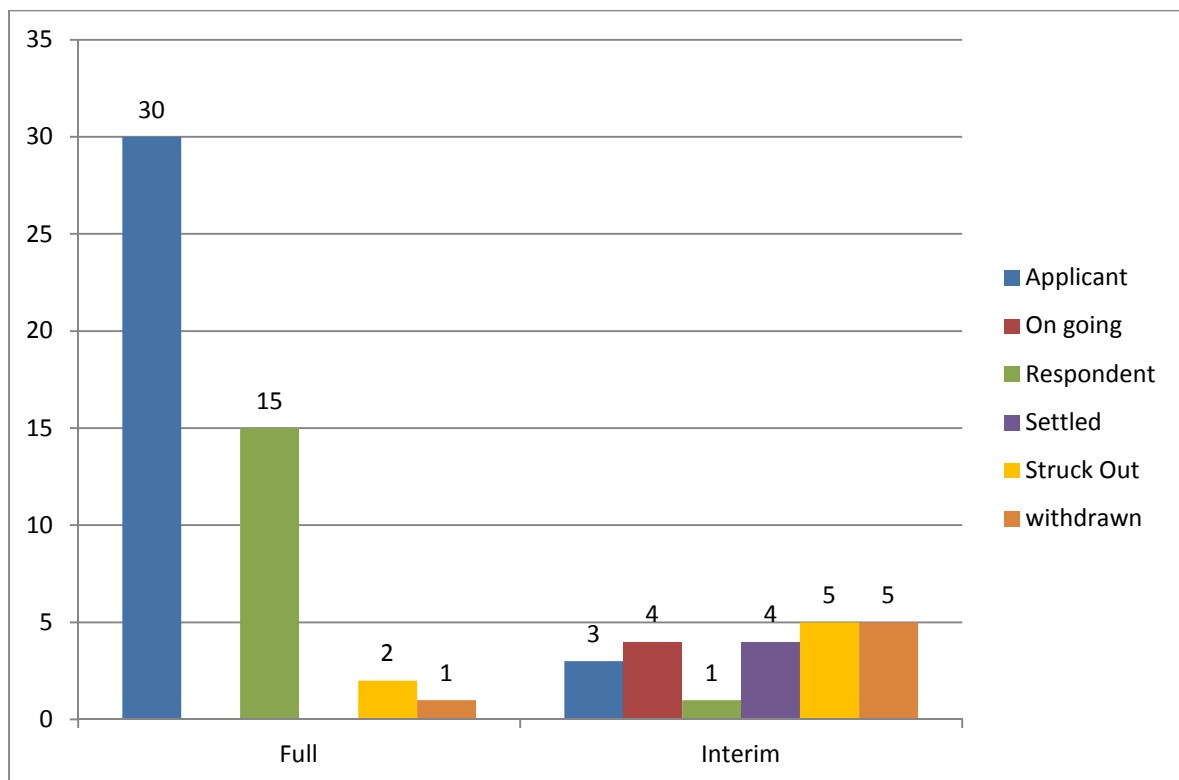
The average number of hearings (both Full and Interim hearings) per period is 78. In 2012, the Tribunal convened for 70 hearings, comprising 48 Full hearings and 22 Interim hearings.

Of the 48 Full hearings, 44 were heard in one day, 2 lasted two days, 1 was heard over three days, and 1 lasted five days. In the six month period ending 31<sup>st</sup> December 2012, there were 21 Full hearings and 5 Interim hearings.

The Tribunal introduced a policy in 2012 whereby Case Management Meetings (CMMs) are now being held for the majority of cases. In 2012, 56 CMMs were convened; almost double that of the previous reporting period. In the 6 month period ending 31<sup>st</sup> December 2012, there were 27 CMMs.

The purpose of a CMM is to require the parties to give 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. For instance, the Chair of the Case Management Meeting makes enquiries of the parties regarding disputed factual information given on the Forms JET1 and JET2 (the employer response form); deals 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 7 below shows the outcomes of hearings in 2012. This can be read in conjunction with Table 2 ‘Possible Outcomes to a Complaint’, on page 9. Thirty of the Full hearings found in favour of the Applicant and 15 found in favour of the Respondent. In the previous reporting period, 27 of the 55 Full hearings found in favour of the Applicant, and 21 found in favour of the Respondent.



**Figure 7 Outcome of Tribunal hearings in 2012**

Following a Full hearing, the Tribunal may make an award in accordance with the Employment (Jersey) Law 2003. These sums are calculated depending on the type of complaint, as set out in Table 3 below.

**Table 3 Awards made by the Tribunal**

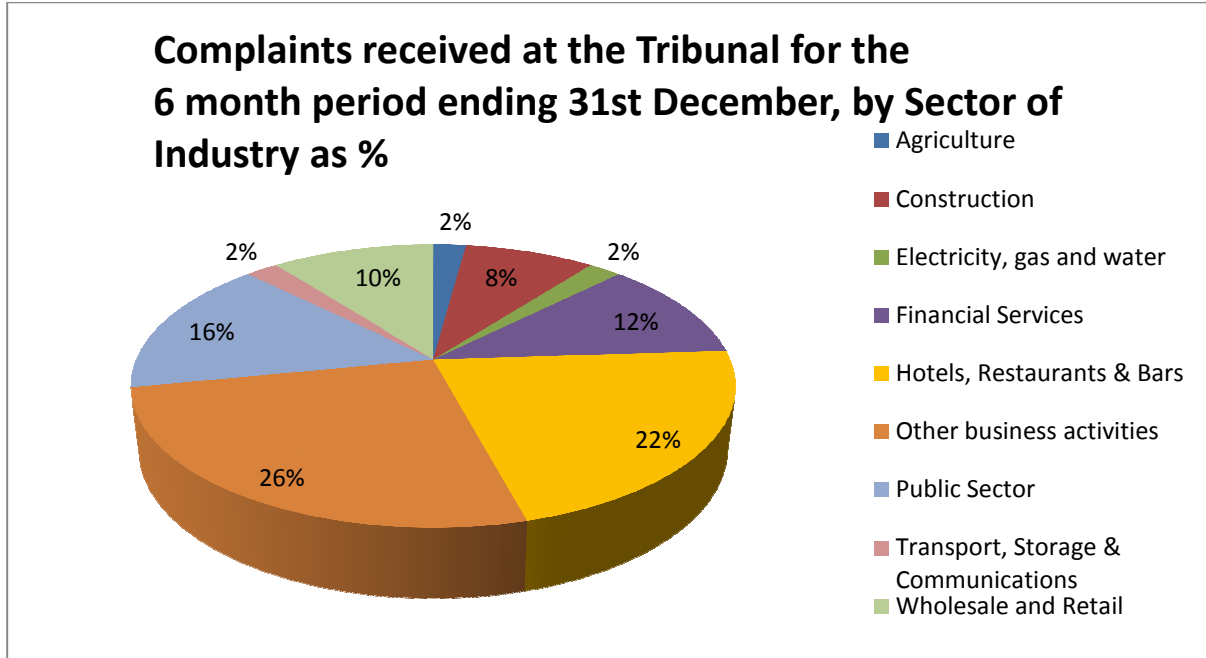
<b>Unfair Dismissal</b>	Compensation is based on weekly pay at the end of employment and years of continuous service to a maximum award of 26 weeks' pay	Uncapped but subject to principles of reduction contained in the Employment Law
<b>Statutory Notice pay</b>	Compensation is based upon weekly pay at the end of employment and years of continuous employment to a maximum award of 12 weeks' pay	Uncapped
<b>Redundancy pay</b>	Compensation is based upon one weeks' pay per complete year of continuous service	Uncapped but subject to a maximum amount of weekly pay currently set at £650
<b>Statutory Holiday pay</b>	All employees are entitled to receive a minimum of 2 weeks' paid leave and to receive a paid days' leave on all bank and public holidays in Jersey	Uncapped
<b>Right to representation at a Disciplinary or Grievance hearing</b>	Compensation is 4 weeks' pay (maximum)	Uncapped
<b>Minimum Wage</b>	The Tribunal will award the amount necessary to bring the wage earned up to the minimum wage, (£6.48 per hour as at 31 <sup>st</sup> December 2012; £6.53 per hour from 1 <sup>st</sup> April 2013)	Uncapped
<b>Failure to comply with a Direction for re-employment</b>	Compensation of up to 26 weeks' pay in the Tribunal's discretion plus in certain circumstances the original unfair dismissal award	Uncapped
<b>Protective award for failure to consult on proposed collective redundancies</b>	Up to 9 weeks' compensatory pay to each affected employee	Uncapped
<b>Other employment contract disputes</b>		Capped at a maximum award of £10,000 for all other contractual claims

In 2012, there were 17 unfair dismissal cases resulting in compensation. The Tribunal has the power under the Employment (Jersey) Law 2003 to reduce compensation for unfair dismissal in certain circumstances and in 2012 the Tribunal exercised its discretion to reduce this compensation in accordance with those provisions on three occasions. Further information about the compensation awarded to successful applicants in 2012, and of the reductions applied, can be found by reference to *Jersey Employment Tribunal Review: Report to the States* [March 2013]<sup>2</sup>.

<sup>2</sup> [www.statesassembly.gov.je/AssemblyReports/2013/R.028-2013.pdf](http://www.statesassembly.gov.je/AssemblyReports/2013/R.028-2013.pdf)

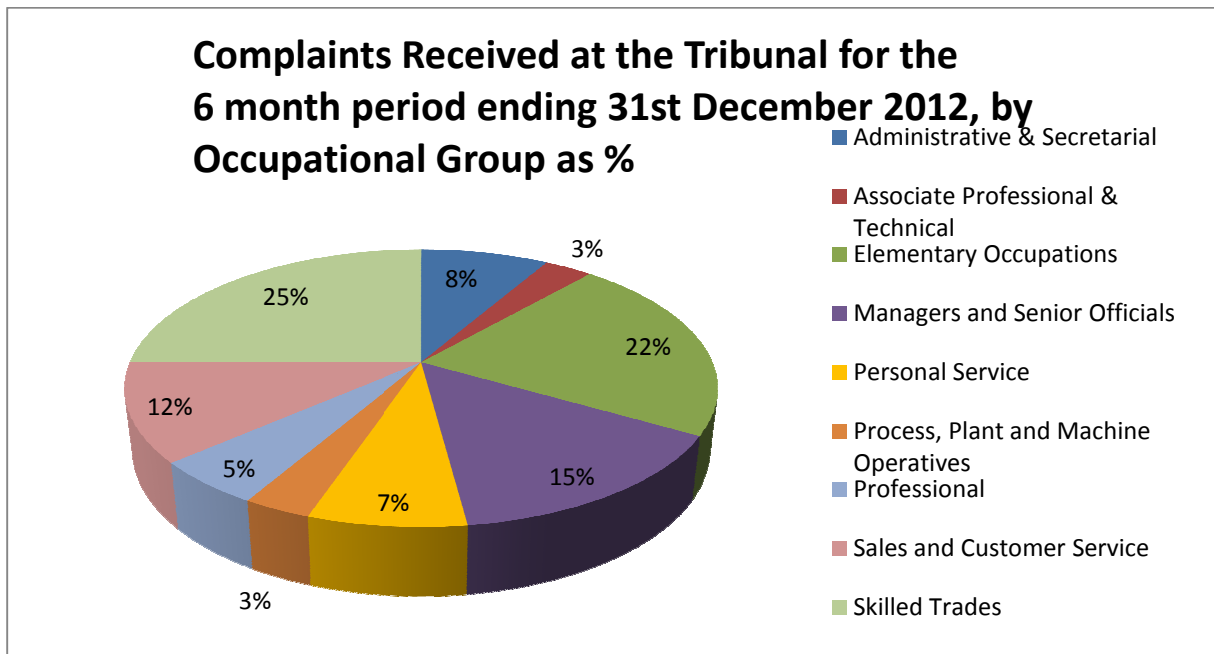
# Appendix

The Tribunal records the sector of industry in which Applicants were employed, together with their occupational group. Figures 4 and 5 on page 10 reflect the results in percentage terms for the year 2012; Figures 9 and 10 below, set out the results for the six month period ending 31<sup>st</sup> December 2012.



**Figure 9 Complaints Received by Sector of Industry (6 month)**

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 10 Complaints Received by Occupational Group (6 month)**



# Membership of the Jersey Employment Tribunal 2012

As of 31<sup>st</sup> December 2012, the members of the Tribunal were:

## Chairman

Mrs Nicola Santos-Costa

## Deputy Chairman

Advocate Claire Davies

Members with experience as  
representatives of employers

Mrs Susan Armes

Mrs Louise Cram

Mrs Mary Curtis

Mr Stewart Mourant

Mr Mark Therin

Mr Peter Woodward

Mr Ian Carr

Mr Timothy Allen

Members with experience as  
representatives of employees

Mr Michael Baudains

Mr Alan Hall

Mr Patrick Kirwan

Mr Timothy Langlois

Mr Sam Le Breton

Mr James McCartan

Mr John Noel

Mrs Angela Swindell

# Contact details

The Registrar:

Mrs Louise Cave

Mrs Jo Hickey

Jersey Employment Tribunal

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St Helier

Jersey

JE2 4ST

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