

STATES OF JERSEY



JERSEY EMPLOYMENT AND DISCRIMINATION TRIBUNAL: APPOINTMENT OF MEMBERS

Lodged au Greffe on 2nd November 2020
by the Minister for Social Security

STATES GREFFE

PROPOSITION

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

to appoint, in accordance with the Employment and Discrimination Tribunal (Jersey) Regulations 2014, the following persons as Members of the Jersey Employment and Discrimination Tribunal, both for a period of five years –

Dr. Elena R. Moran as Chair of the Tribunal (from 1st December 2020); and

Mr. Cyril E. Whelan as a Deputy Chair of the Tribunal (from 1st January 2021)

MINISTER FOR SOCIAL SECURITY

REPORT

Background

The Jersey Employment and Discrimination Tribunal was established by the [Employment \(Jersey\) Law 2003](#) and became operational in 2005. The Tribunal is responsible for enforcing the Island's employment and discrimination legislation, consisting of the Employment Law, the [Employment Relations \(Jersey\) Law 2007](#) and the [Discrimination \(Jersey\) Law 2013](#). It hears and determines complaints relating to –

- Written terms of employment
- Minimum rest periods and annual leave
- Minimum wage
- Payment of wages
- Notice pay on termination of employment
- Unfair dismissal
- Redundancy pay and related rights
- Family friendly rights
- Breaches of contracts of employment
- Trade union recognition
- Collective disputes
- Discrimination on the grounds of race, age, disability, gender, sexual orientation, gender reassignment, pregnancy and maternity

Constitution of the Tribunal

The [Employment and Discrimination Tribunal \(Jersey\) Regulations 2014](#) (the “Tribunal Regulations”) set out the requirements for the constitution and membership of the Tribunal, including the appointment and terms of office of the members. The Tribunal consists of the following:

- A Chair
- Up to five Deputy Chairs
- Up to eight employee representative lay members who have knowledge or experience of, or an interest in, trade unions or matters relating to employees more generally
- Up to eight employer representative lay members who have knowledge of, or an interest in, employers' associations, or matters relating to employers more generally

Up to eight discrimination panel lay members who have knowledge or experience of, and an interest in, equality and discrimination matters generally, or discrimination and specific protected characteristics

When hearing a complaint that relates to employment or discrimination in employment, the Tribunal Regulations provide that a three-person panel must consist of a legally qualified Chair or Deputy Chair, together with two lay members – one employee representative member and one employer representative member. It is important that the employee/employer balance is maintained in employment and employment-related discrimination cases.

When a panel is formed to hear a complaint about an act of discrimination that does not relate to employment or recruitment (for example, issues relating to housing, services or education), the panel must consist of the Chair or a Deputy Chair and two members from the pool of discrimination lay members.

The Tribunal Regulations provide that members are appointed by the States Assembly for an initial term of up to five years. If a member requests an extension of their appointment, the Minister for Social Security may, after consultation with the Jersey Appointments Commission, extend the member's term of office. The Commission's recruitment guidelines state that members of independent bodies should not normally be appointed for terms in excess of nine years.

The current recruitment exercise

A recruitment exercise has identified a new Chair and Deputy Chair for the Tribunal. In September and October 2020, advertisements were placed in the Jersey Evening Post, on the website gov.je, on the [Jersey Advisory and Conciliation Service](#) website and the [Jersey Law Society](#) website. Following short-listing in October 2020, structured interviews were undertaken for both positions by a recruitment panel.

Chair and Deputy Chair of the Tribunal – the recruitment panel which interviewed candidates for both positions consisted of the Deputy Greffier of the States, the Magistrate, the Judicial Greffier and a representative of the Jersey Appointments Commission.

The Jersey Appointments Commission oversaw the exercise. The Commission has indicated it is content that the process has been conducted in accordance with its guidelines.

Having assessed the candidates and reached a decision, the recruitment panel recommends to the Minister that the two new appointments be made. The Minister is satisfied that the individuals possess the required knowledge, experience and expertise and proposes their appointment, both for a five-year term of office: Dr Elena Moran as Chair from 1st December 2020 and Mr Cyril Whelan as a Deputy Chair from 1st January 2021. Further details about the two new members are at Appendix 2.

Financial and manpower implications

There are no financial or manpower implications arising from this Proposition. Training for the new Tribunal members and their remuneration will be financed from within existing budgets.

With the appointment of the new Chair, the Minister has asked the Judicial Greffe and the sponsoring policy unit of the Government of Jersey to carry out a joint review of the terms and conditions of the appointment of Chair of the Tribunal and the overarching Regulations which govern the functioning of the Tribunal and its processes. That exercise will commence at the beginning of 2021. The Tribunal has been in existence for 15 years. Its functions, responsibilities and workload have expanded significantly in that time and it is considered an appropriate moment to undertake a review.

APPENDIX 1

The two vacancies have been created by the following members

1. Mrs Hilary Griffin
(appointed as Chair 23rd May 2017; resigned 17th August 2020)

2. Ms Claire Davies
(appointed 1st June 2012; stepping down as a Deputy Chair on 31st December 2020)

Chair of the Tribunal

Advocate Dr. Elena Moran was called to the Bar of England and Wales in 1989 and became an Advocate of the Royal Court in 2012. Dr. Moran has been a partner in the firm of Ward Yates since October 2018, specialising in litigation predominantly in the Royal Court and also in the Employment Tribunal.

From 2014 to 2018, Dr. Moran was a partner in the dispute resolution department of Collas Crill, specialising in commercial and trust litigation and employment law. Dr Moran has significant experience over many years in the field of employment law in a range of organisations, both public and private, including in multi-jurisdictional disputes of a complex nature.

Dr. Moran chaired the Jersey Community Relations Trust from 2009 to 2015, working with the Jersey Government to introduce the civil partnership law, discrimination law, equality in succession law and maternity rights. In that role, she led a group of trustees, setting strategic objectives for the Trust and ensuring appropriate governance arrangements were in place. Dr. Moran has a good understanding of Jersey's business and charitable communities.

Deputy Chair of the Tribunal

Mr. Cyril Whelan was called to the Bar of England and Wales in 1979, and to the Jersey Bar as Advocate in 1982. He spent 28 years as a senior legal adviser in the Law Officers' Chambers in Jersey, appointed as a Crown Advocate in 1987 and serving as acting Attorney-General from time to time.

Mr. Whelan has significant experience across the range of public law practice, particularly in the area of serious and complex fraud and asset recovery. Since 2007 he has been a Senior Consultant for the firm of Baker and Partners.

Mr. Whelan has also served as a Commissioner of the Jersey Financial Services Commission; Chair of the Jersey Gambling Regulator; and has acted as retained counsel for a trade union. He has extensive experience of producing reasoned written decisions and independent recommendations in many areas of his practice.

Mr. Whelan's public sector service began in the early 1970s in a variety of appointments – human resources, the States Greffe, housing and social security. These included advising on procedural and substantive questions of employment, dismissal issues and contractual terms. Mr. Whelan is a Director of the Jersey Opera House and a former director of the Family Nursing and Home Care charity.