

STATES OF JERSEY



HEALTH AND SAFETY APPEAL TRIBUNAL: APPOINTMENT OF CHAIR AND DEPUTY CHAIR

Lodged au Greffe on 23rd September 2022
by the Minister for Social Security
Earliest date for debate: 1st November 2022

STATES GREFFE

PROPOSITION

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

in accordance with the Health and Safety at Work (Appeal Tribunal) (Jersey) Regulations, 1989 , to appoint for a period of 3 years, the following persons as Chair and Deputy Chair of the Health and Safety at Work (Appeal Tribunal) to determine appeals against Prohibition and Improvement Notices, served by Health and Safety Inspectors, and decisions by the Minister on licensing provisions under the Law, commencing immediately –

Advocate Cyril Whelan – Chair

Advocate Niall MacDonald – Deputy Chair

MINISTER FOR SOCIAL SECURITY

REPORT

The Minister for Social Security decided to recommend to the States Assembly the appointment of Advocate Cyril Whelan as Chair and Advocate Niall MacDonald as Deputy Chair of the Health and Safety Appeal Tribunal.

Article 17 of the Health and Safety at Work (Jersey) Law, 1989, allows for the establishment of an appeal tribunal to determine appeals against administrative sanctions, Prohibition and Improvement Notices, served by Health and Safety Inspectors, and decisions by the Minister on licensing provisions under the Law.

The Health and Safety at Work (Appeal Tribunal) (Jersey) Regulations, 1989, set out the arrangements for the Tribunal, including the appointment of members for a three-year period of office. Regulation 2(2) provides for the Tribunal to consist of 4 members: a chairman and deputy chairman who both must be advocates or solicitors of the Royal Court of at least 7 years standing, and two other members. The Regulations require for the Chairman and Deputy Chairman to be appointed by the States.

Candidate Synopsis

Advocate Cyril Whelan – Chair

Called to the English bar in 1979 and to the Jersey bar in 1982, Advocate Whelan spent 28 years as senior legal adviser in the Law Officers' chambers in Jersey. He was appointed to the office of Crown Advocate immediately upon the creation of that office in 1987.

As head of the Department within the Attorney General's chambers responsible for Serious Crime and International Mutual Legal Assistance, Advocate Whelan has advised on all aspects of public law, and has acted as prosecuting counsel in serious crimes such as murder, rape, serious and complex fraud and money laundering.

He has been a Senior Consultant at Baker and Partners law firm since 2007. As well as Senior Counsel for Baker & Partners, Advocate Whelan is also Chairman of Baker Regulatory Services Limited.

Advocate Whelan has acted as Jersey's Attorney General from time to time and has also acted on behalf of successive Attorneys General in the implementation of major regulatory and mutual assistance legislation in Jersey. He has been involved in high profile investigative and litigation work relating to asset recovery on behalf of governments worldwide.

He is one of Jersey's four MONEYVAL assessors, trained to assess the AML/ CFT defences of countries across a wide international front. MONEYVAL is the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, an independent monitoring mechanism within the Council of Europe answerable directly to the Committee of Ministers.

In June 2020 Advocate Whelan completed the ten-year maximum tenure as a Commissioner of the Jersey Financial Services Commission. He continues to sit as a Deputy Chair of the Employment and Discrimination Tribunal. He continues to chair the Jersey Gambling Commission and to chair the Appeals Panel in respect of the fitness

of medical professionals under the relevant legislation. He sits from time to time as one of Jersey's Coroners. He serves on the conditional early release panel in respect of those serving custodial terms in the Jersey prison system. He continues to serve as a director of the Jersey Opera House.

Advocate Niall MacDonald – Deputy Chair

Advocate MacDonald is partner at Appleby and member of their Dispute Resolution department. Before relocating to Jersey in 2008, he qualified in 2006 as a Solicitor in Scotland by training with a commercial law firm in Edinburgh with whom he worked for two years afterwards as a litigator. After working for law firms in Jersey for six years he qualified as a Jersey Advocate in 2014. He has extensive advocacy experience before the different forums in the Island. The cases which he has been involved with have included a broad range of areas of the law (including company, contract, construction, criminal, employment, insolvency, judicial review, personal injury and professional negligence); and in 2015 he was awarded the Junior Lawyer of the Year by the Law Society of Jersey with its President noting that Niall stands out having “represented clients in a wide range of litigation issues ... achieving consistently good results.” Such experience will assist him to adapt to the requirements of the Health and Safety Appeal Tribunal.

Recruitment and appointment process

Applications for both positions were invited from interested parties, through the post being advertised in the Jersey Evening Post. Only two applications were received, and following consideration of both applications, the Tribunal Service recommended the appointment of the proposed candidates. The Minister for Social Security strongly supports these recommendations

Financial and manpower implications

The Chair and Deputy Chair are paid an annual retainer of £350 for the Chair and £250 for the Deputy Chair. In addition, there is a remuneration daily rate of £300 for both the Chair and Deputy Chair.