

Jersey Employment Tribunal



Annual Report

2013

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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 1st 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, up to 4 Deputy Chairmen 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 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 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 application and response forms, as well as a User's Guide, 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 ninth Annual Report of the Tribunal and covers the period 1st January 2013 to 31st December 2013

Chairman's Comments

Membership of the Tribunal

The Chairman has been aware for some time that the Tribunal has needed to appoint further Deputy Chairmen in order that cases can be heard more quickly and also to deal with an increase in claims to the Tribunal. During 2013 Mr Tim Allen resigned as a side member of the Tribunal. This meant that a position on the employer's panel of side members became vacant. It was decided to recruit to fill the post in the employer's panel and also to seek to appoint further Deputy Chairmen. The interviews were conducted in December 2013 following an open recruitment process overseen by the Appointments Commission. The Chairman is pleased to report that the appointments of Mrs Hilary Griffin and Advocate Michael Preston were confirmed by the States of Jersey on 18th February 2014 together with Mrs Emma Harper, who was appointed as an employer representative. We are grateful to them for accepting their appointments to the Tribunal.

The Chairman is pleased to report that in January 2013 the terms of office of Michael Baudains and Mark Therin were extended to take advantage of the full 10 year tenure available to a Tribunal member. There are currently no vacancies for Tribunal members. Details of the Tribunal members as of 31st December 2013 are set out on page 15. The contribution of experienced members of the panel is greatly appreciated by the Chairman and Deputy Chairmen.

During 2013 the Chairman introduced an appraisal system for all members of the Tribunal. The appraisal is designed to ensure that a Tribunal member possesses the necessary skills, knowledge and behavioural attributes required in order to perform a judicial role in the Tribunal. The introduction of an appraisal system is a commitment to the operation and development of a professional service and ensures not only that Tribunal members are aware of the competencies that they must possess for their role but also of aspects of their professional development as the outcomes are also used as a guide for designing and delivering relevant training programmes. The Chairman and Deputy Chairmen are appraised by a senior officer of the Judicial Greffe and the panel members are appraised by the Tribunal Chairman.

In 2013 the Tribunal members undertook training in general principles of social media issues and the Data Protection Law. The Chairman and Deputy Chairman Davies also visited the Southampton Employment Tribunal Service in order to observe hearings and discuss issues of policy and administration with the Regional Head of that Employment Tribunal Service.

During 2013 the Tribunal panel members agreed to hold regular meetings to share and discuss matters of interest arising in the course of their work as Tribunal members.

Administration of the Tribunal

The Tribunal is part of the Jersey Tribunal Service and is independent of the States of Jersey. However it has important links with the Social Security Department and the Judicial Greffe. The Minister for Social Security is responsible for recommending to the States the appointment of new Tribunal members and for 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. This role is undertaken by Mrs Louise Cave and Mrs Margaret Turner ('the Registrar'). The Registrar is supported by Mrs Alicia Troy, a full time receptionist/administrator.

The Registrar is responsible for the administration of claims under the Employment Law and the Employment Relations 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. Under no circumstances will the Registrar provide legal advice on a case or express an opinion in respect of it.

The Tribunal strives to provide a user friendly service ensuring that the documentation and terminology used is easily accessible to all parties. Whenever required the services of an Interpreter will be provided at all hearings at no charge to the parties.

The Tribunal has produced guidance 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 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, remains in development by the Judicial Greffe.

General Information

Throughout 2013 all Interim and Full hearings of the Tribunal were digitally recorded for reference. These proceedings will be transcribed or a CD provided when decisions of the Tribunal are being appealed.

In April 2013 the Minister for Social Security presented to the States of Jersey a Review of the decisions of the Tribunal in 2012 which had been prepared by an independent employment law expert¹. The review had been instigated by the Minister following criticism of the work of the Tribunal by certain employers and employer representative bodies. The Review 'found nothing to indicate that there is any fundamental problem with the way in which the Tribunal goes about its task' and no evidence that the Tribunal was biased in favour of employees or that the Tribunal's decisions were inconsistent. In his response to the Review the Minister said that he strongly endorsed and supported the work of the Tribunal and that he hoped that the Report would 'reinforce the reputation of the Tribunal as a provider of unbiased, sensible and sensitive decisions'.

In October 2013 the Chairman was pleased to be invited again to attend a training day of the Guernsey Employment and Discrimination Tribunal members and to update that Tribunal of practices and procedures that the busier Jersey Employment Tribunal has found to be of assistance.

From the 3rd April 2013 the Tribunal has issued Actes in advance of its written reasoned decisions in a case. The Acte records the outcome of the case only and the written reasons for that decision follow within 4 weeks of the hearing date.

¹ R.28/2013 - www.statesassembly.gov.je/AssemblyReports/2013/R.028-2013.pdf

Chairman's Conclusion

The Tribunal's statistics show that in 2013, 204 application forms were received from employees submitting complaints to the Tribunal. This was the second highest number of complaints in an annual period since 2006/07. As it takes about 6 months for a complaint to be heard by a Tribunal the Chairman anticipates that 2014 will be a busy year for the Tribunal.

Unfair dismissal complaints continue to be the most common claim to the Tribunal followed by claims for notice pay. There has been an increase in the number of complaints regarding unpaid wages, compared to the previous year which may be as a result of the recession and businesses being unable to meet their liabilities. The number of Full and Interim Hearings held during 2013 remained consistent. Most parties are unrepresented at the Tribunal and the use of Case Management Meetings remains an effective means for the Tribunal to ensure that the parties understand their claims and are able to prepare their case for hearing.

In 2013 the Tribunal held 44 full hearings and 30 Interim hearings, an overall increase on the number of hearings held in 2012. In addition, the Chairman and Deputy Chairman Davies held 89 Case Management Meetings compared to 56 Case Management Meetings in 2012. This means that a total of 163 hearings were held in 2013, compared to 126 in the previous year. The Tribunal only has access to one hearing room which it shares with other Tribunals. It is anticipated that with the availability of the two new Deputy Chairmen in 2014, and a more efficient use of the hearing room, that the Tribunal will be able to conduct even more hearings going forward in order to continue to achieve the Tribunal's aim of providing swift, accessible, cost effective decisions in employment disputes.

Nicola Santos-Costa

Jersey Employment Tribunal Chairman

11th April 2014

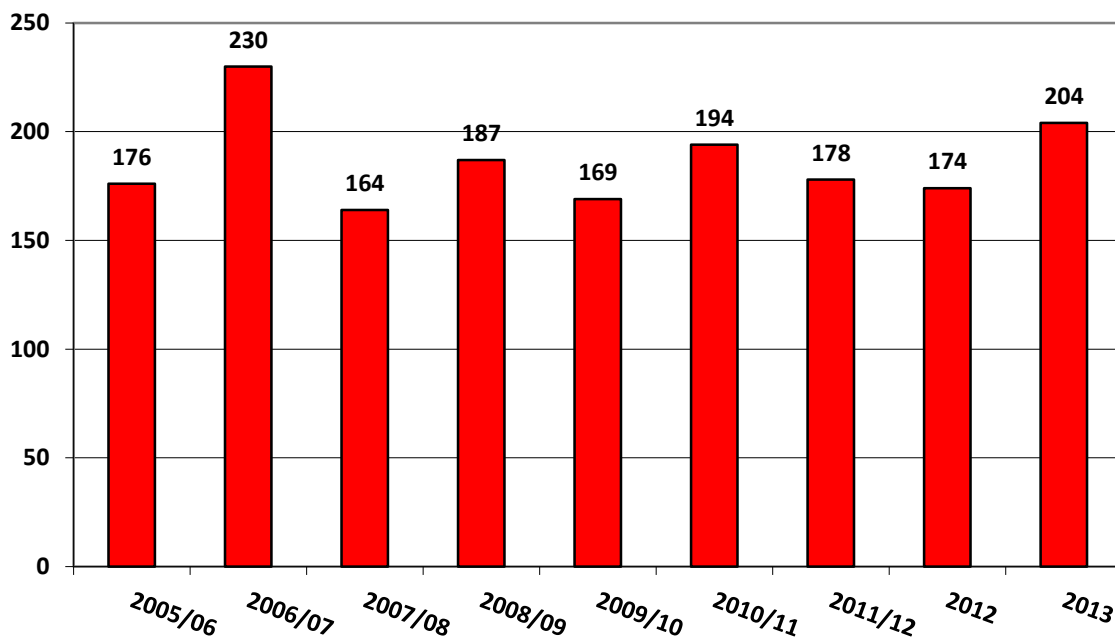
Tribunal Statistics

In any given reporting period, the 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 submitted to the Tribunal by way of a Form JET1. Figure 1 shows the number of 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



The Tribunal received 204 complaints during 2013; 30 more than in the previous reporting year.

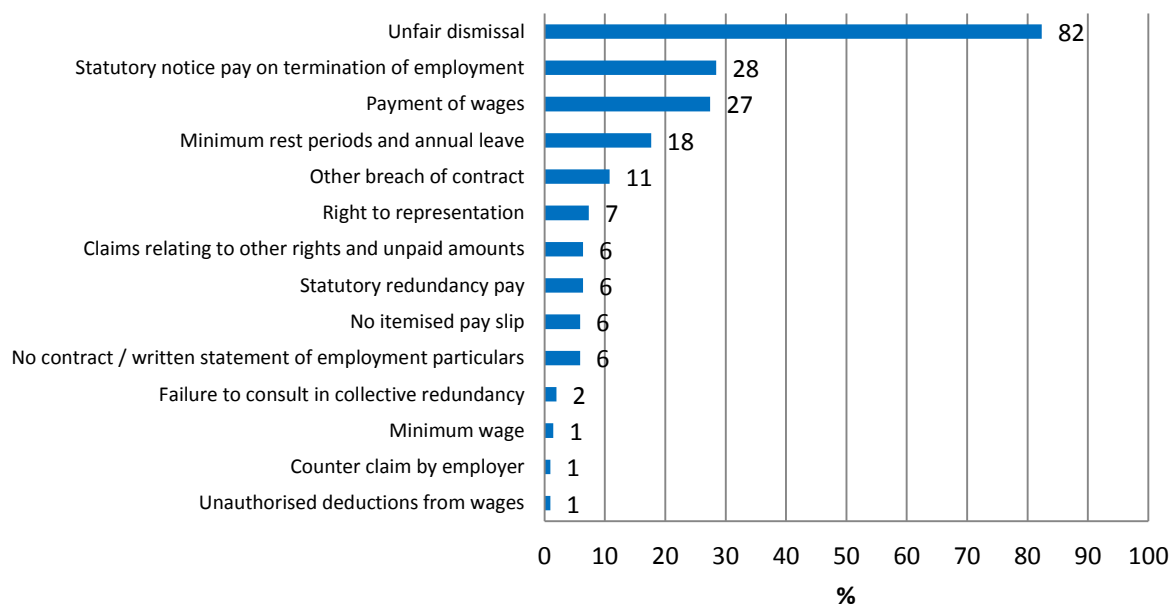
Of the 204 complaints received, 87 concerned a single issue, whereas 117 concerned multiple issues. Table 1 details the issues contained in the 204 complaints received by the Tribunal in 2013, together with those of previous annual reporting periods. The Tribunal has collected data about complaints under a number of additional headings during 2013.

Table 1 Issues contained in complaints received by the Tribunal

Table of Issues	2009/10	2010/11	2011/12	2012	2013
Unfair dismissal	139	148	156	151	168
Termination of employment ²	73	59	114	70	-
*Statutory notice pay on termination of employment					58
*Statutory redundancy pay	-	-	-	-	13
* Failure to consult in collective redundancy	-			-	4
Payment of wages	80	71	61	47	56
Unauthorised deductions from wages	-	-	-	-	2
Other breach of contract	3	3	4	9	22
Minimum rest periods and annual leave	47	61	74	49	36
No contract / written statement of employment particulars	23	5	6	2	12
No itemised pay slip	8	0	9	5	12
Minimum wage	2	3	6	2	3
Right to representation	-	-	-	-	15
Claims relating to other rights and unpaid amounts	-	-	-	-	13
Counter claim by employer	-	-	-	-	2
TOTAL	375	350	430	335	416

Figure 2 shows the percentage of the 204 complaints received during 2013 that contained each particular issue. Consistent with previous reporting periods, the majority (82%) of complaints received by the Tribunal included a claim for unfair dismissal.

Figure 2 Percentage of complaints received in 2013 that included each issue



² The 'termination of employment' category was split into three separate categories in 2013; statutory notice pay on termination of employment, statutory redundancy pay and failure to consult in a collective redundancy situation (marked *).

Of the 204 complaints received in 2013, 71 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 133 complaints. Figure 3 should be read in conjunction with Table 2, below, which explains the possible outcomes to a complaint.

Figure 3 Outcomes of Complaints received by the Tribunal in 2013

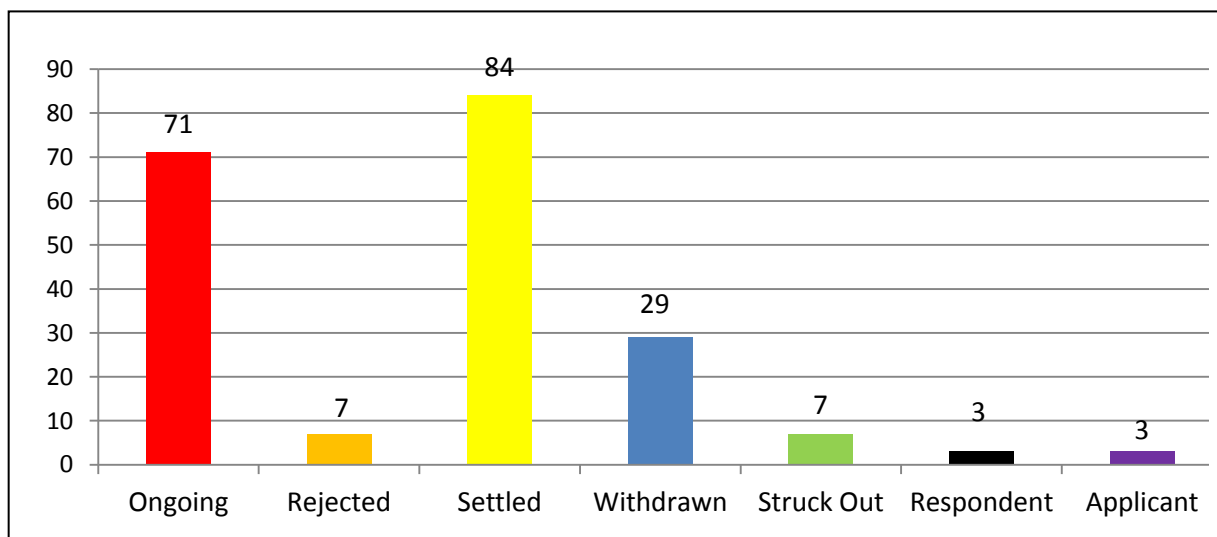


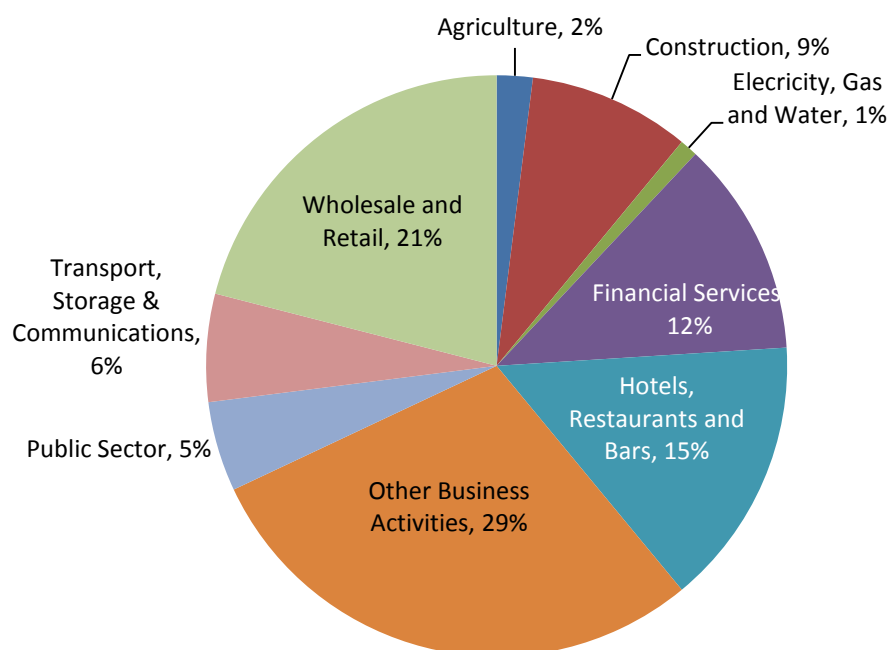
Table 2 Possible outcomes to a Tribunal complaint

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 that they do not wish to continue with their 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
(in favour of) Respondent	the complaint reached 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 reached 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, 44 of the 204 Applicants had representation; in 18 cases this was professional representation (including Trade Union representation and legal representation) and in 26 cases representation was non-professional (for example, a friend or family member).

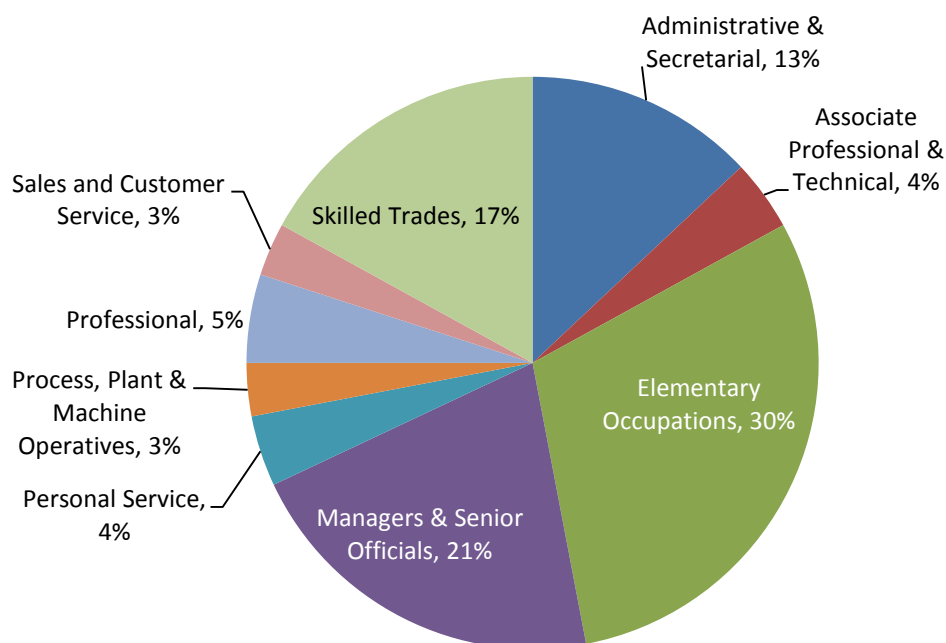
Figures 4 and 5 show the sector in which Applicants were employed, and their occupational group (based on the Standard Occupational Classification (SOC 2000)). Complaints were made by employees across a wide spread of employment sectors and occupations.

Figure 4 Complaints received by the Tribunal in 2013 by sector



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 2013 by occupational group



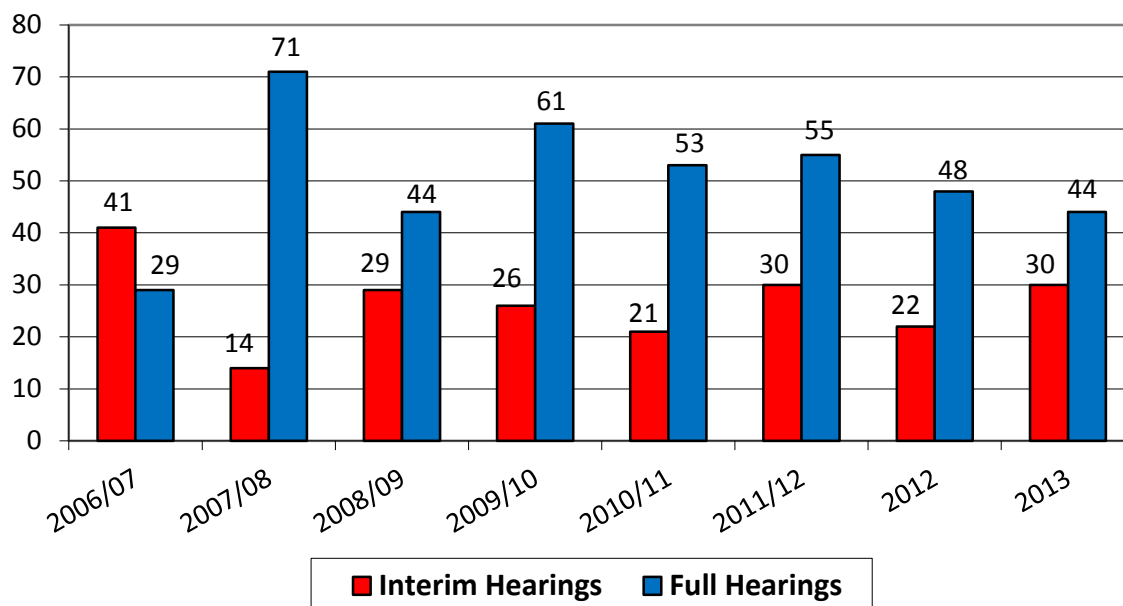
Hearings

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 Tribunal in each reporting period.

Figure 6 Full and Interim Hearings of the Tribunal in 2013



The average number of hearings (both Full and Interim hearings) per period is 77. In 2013, the Tribunal convened for 74 hearings, comprising 44 Full hearings and 30 Interim hearings.

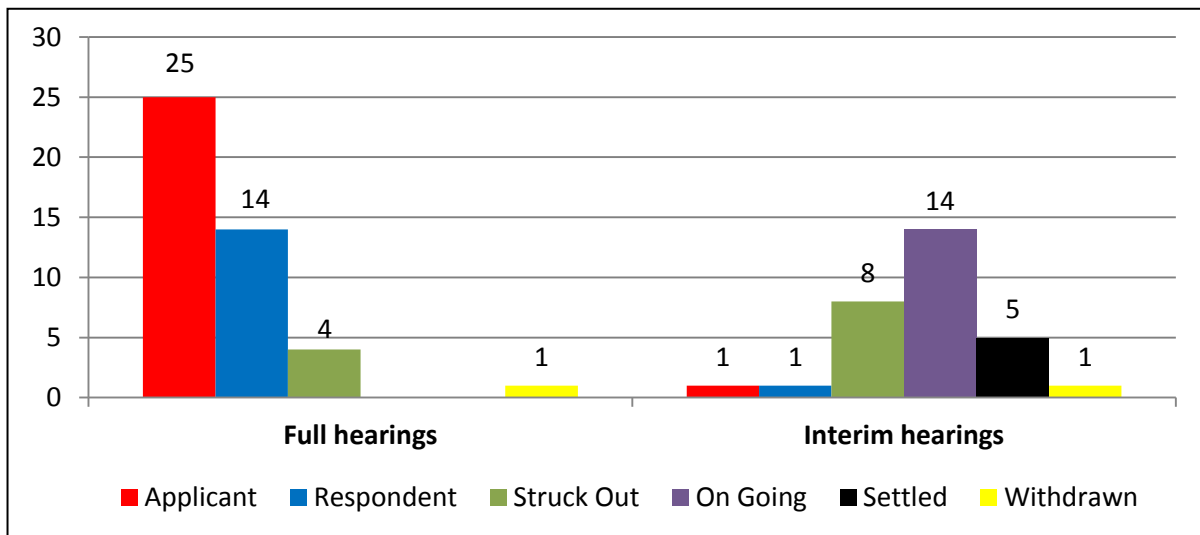
Of the 44 Full hearings, 39 were heard in one day, 4 lasted two days and 1 was heard over three days.

The Tribunal introduced a policy in 2012 whereby **Case Management Meetings** (CMMs) are now being held for the majority of cases. In 2013, 89 CMMs were convened, a significant increase on the previous reporting period which was 56.

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 2013. This can be read in conjunction with Table 2 'Possible Outcomes to a Tribunal Complaint', on page 9. Twenty five (25) of the Full hearings found in favour of the Applicant and 14 found in favour of the Respondent. In the previous reporting period, 30 of the Full hearings found in favour of the Applicant, and 15 found in favour of the Respondent.

Figure 7 Outcomes of Full and Interim Tribunal hearings in 2013



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
Statutory Notice pay	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 but subject to contractual principles of mitigation of loss
Redundancy Pay	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 £660
Statutory Holiday Pay	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
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, (£6.48 per hour as at 31 st December 2012; £6.53 per hour from 1 st April 2013)	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 2013, there were 17 Full hearings of unfair dismissal complaints resulting in compensation. The Tribunal has the power under the Employment Law **to reduce compensation for unfair dismissal** in certain circumstances and in 2013 the Tribunal exercised its discretion to reduce the Award of compensation in accordance with those provisions on 5 occasions.

Membership of the Jersey Employment Tribunal

As of 31st December 2013, 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

[Vacant]

**Members with experience
as representatives of
employees**

Mr Michael Baudains

Mr Alan Hall

Mr Patrick Kirwan

Mr Timothy Langlois

Mr Samuel Le Breton

Mr James McCartan

Mr John Noel

Mrs Angela Swindell

Contact details

The Registrar

Mrs Louise Cave

Mrs Margaret Turner

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