

The Jersey Advisory and Conciliation Service 2013



The Jersey Advisory and Conciliation Service

ANNUAL REPORT 2013

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Annual Report 2013

The Board

Chair	Tom Slattery
Deputy Chair	Sarah Beirne
Board members	Ed Daubeney Zoe Blomfield Craig Channing Julie Crabtree (Stepped down July 2013) Alison Mellor

The JACS Team

Director	David Witherington
Team members	Patricia Rowan, Senior Advisory and Conciliation Officer Patricia Weston, Advisory and Conciliation Officer Sharon Timoney Advisor and Outreach (from Feb 2013) Bruno Sousa Administration Officer (From Aug 2013)

JERSEY ADVISORY & CONCILIATION SERVICE

YEAR IN NUMBERS – 2013

	(2012)	
8676	(9720)	Enquiries received in total
4884	(5035)	Employee enquiries (or others on their behalf)
3792	(4685)	Employer enquiries
1934	(2286)	Enquiries from employers employing less than 50 staff, 47% of these employing less than 10 staff.
1410	(893)	Attendees at 69 workshops, training courses and seminars
329.2	(322.75)	Thousand pounds received as annual States Funding (2% increase from 2012 funding level).
172	(157)	New claims passed to JACS by the Tribunal
256	(150)	Requests for advice or conciliation in respect of collective disputes and trade union recognition.
101	(88)	New Tribunal claims resolved, 76 (75%) by conciliation
32	(31)	Thousand visits made to our website www.jacs.org.je
17.2	(0)	Thousand pounds special funding for Outreach Service
6	(7)	Board members
5	(4)	Staff members, including 1 Outreach Officer
1	(1)	Website: www.jacs.org.je
0	(1)	New employment law in force in Jersey during 2013.

Chairman's Foreword

I am pleased to introduce the 2013 Annual Report of the Jersey Advisory and Conciliation Service.

The difficult economic conditions that first arose four years ago have continued into this year, with company restructuring, and in some cases companies ceasing to trade, resulting in continuing job losses across all sectors of our economy.

Towards the end of the year we began to see a slight improvement in outlook, in particular in parts of the finance industry, but the recovery remains weak in the non-finance sector. Despite some excellent initiatives by the government in helping to create jobs and assisting unemployed people to re-enter the workforce, statistics show that we still have more than 1700 people registered as actively seeking work.

In these circumstances we may have expected the number of queries dealt with by JACS to increase yet again, but this has not proven to be the case. We hope, therefore, that having passed the peak years of 2011 and 2012, JACS workload has now dropped back to a more manageable level of around 8500 queries a year that can be coped with by the existing team. The new Outreach service presents an opportunity for JACS to engage more proactively with smaller organisations and we thank the Social Security Minister for providing the necessary finance to allow this to happen. We have been concerned for a number of years that smaller organisations fall foul of the Employment Law, not because they are bad employers but because they have not had the time or resources to put in place the necessary documentation or to understand fully their statutory obligations. The new service is aimed at working with these employers, at a time and place suitable to them, to help them to better meet these obligations. We hope the one year pilot scheme that began in September becomes a permanent feature of our services.

JACS' workload in dealing with collective disputes increased substantially during 2013 as the impact of the recession resulted in disputes over pay and changes to working practices. Over 250 contacts from employers and trade unions were recorded, resulting in the Director and his deputy jointly running 13 mediations, dealing with a whole range of issues. It is a credit to the team and to the parties in dispute that, without exception, each of those disputes was resolved without significant disruption or industrial action.

Individual disputes that cannot be resolved usually result in claims to the Employment Tribunal. Bearing in mind the need for many employers to manage their staff more rigorously in order for their business to survive, it is not surprising that the year saw a 10% increase in the number of new claims that the Tribunal passed to JACS. Conciliation of such claims continues to be an important feature of our work. Tribunal claims can be stressful, time-consuming and costly and the fact that 75% of new claims were resolved without the need for a Tribunal hearing is a credit to the conciliation service that JACS provides.

As anticipated last year, the Social Security Minister successfully guided the Discrimination Law through the States and it, together with the first attribute, namely Race, will be in force by late summer of 2014. JACS has increased its training provision to assist employers in preparing for this significant legislation, while continuing to offer its well regarded series of general employment training courses. As we move into 2014 we will be reviewing our education and training provision as we believe this is an extremely important area of our work in which we should invest greater time and resources.

The Board has ensured that JACS continues to meet its statutory obligations which are reflected in the Service Level Agreement with Social Security Department. This agreement was reviewed in April 2013 and added to in November to take account of the new Outreach service. In addition the Board has met on a regular basis and has received comprehensive reports to enable it to monitor activity and operational expenditure against agreed budgets, to ensure that States funding is effectively used in a proper manner. We are satisfied that JACS has achieved its objectives despite a reduction in the real value of its annual grant in line with the States spending review.

Julie Crabtree retired from the Board on her return to England and on behalf of the Board I thank her for conscientious and always practical and constructive input. I am confident we have a balanced representation on the Board, combining expertise from both the employer and employee perspective.

Ed Daubeney, who has been Deputy Chair for the past four years, will be retiring from the Board during 2014 and in anticipation of this Sarah Beirne has been elected as Deputy Chairman and I am grateful to her for assuming this role. Ed was a founding member of the JACS Board and his contribution over the years cannot be overstated and I and the Board will miss his practical guidance and wholehearted commitment.

I am extremely grateful to all members who have served during the year and thank them for their continued support and for freely giving of their time and experience. On behalf of the Board I would also like to express our appreciation to Senator Francis Le Gresley, the Minister for Social Security for his support and to his colleagues in the Department for their help in sustaining a positive and constructive relationship with JACS.

No less importantly, however, I would like to thank David Witherington and his team for their enthusiastic commitment over the year to helping JACS continue to achieve its prime objective of improving industrial relations on the Island.

This will be David's final Report as Director of JACS as he will be retiring on 31st March 2014. David has been the guiding hand behind the formation and constructive development of JACS since its inception in 2000. His professionalism, knowledge and constructive approach to employers and employees alike have been key factors in gaining JACS the high reputation it now has. I have been privileged to work with David over much of that time and on behalf of the Board would wish to formally acknowledge our thanks to him and wish him well in his upcoming retirement.

Finding a replacement for David was always going to be a difficult task. Under the auspices of the Appointments Commission a rigorous selection process was undertaken and a number of excellent candidates were considered. The unanimous decision was to appoint Patricia Rowan, who is currently David's deputy, and she will assume her new role in April.

The Board is confident that Patricia will build on the foundations David has laid and we wish her well in her new role. In what will be undoubtedly a further period of challenge for JACS.

Tom Slattery

Chairman

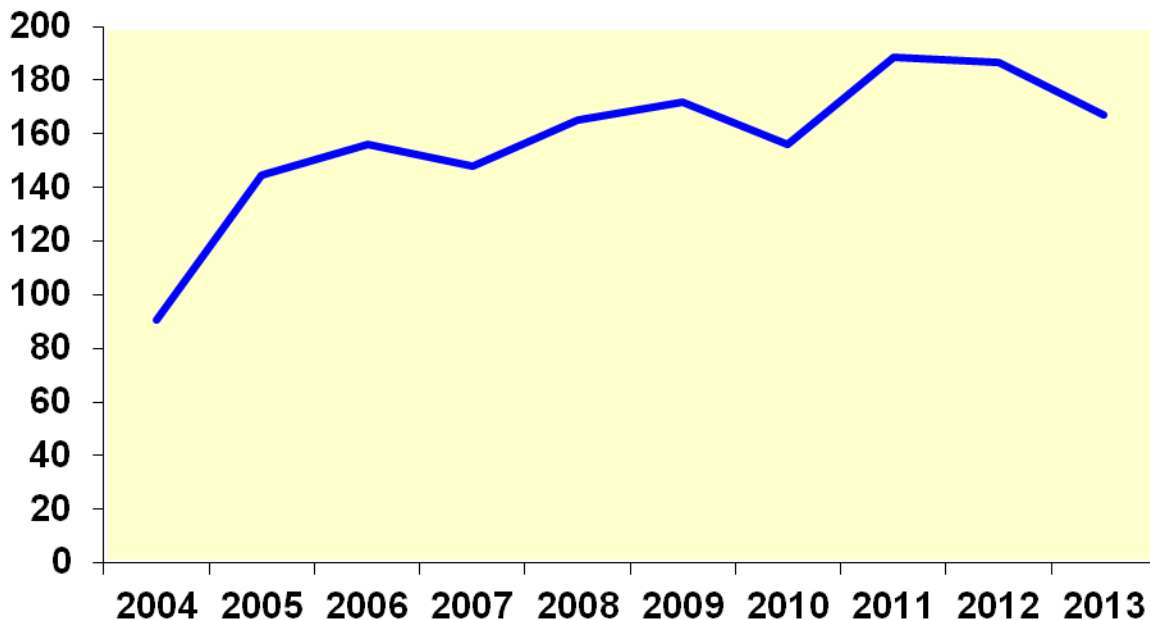
Director's Report

Overview

The past year has seen continuing difficult trading conditions for most sectors of the economy. While parts of the finance industry have shown some improvement, the non-finance sector is still weak and organisations have continued to restructure their businesses as they cope with reduced levels of consumer demand. Redundancy and restructuring have again dominated employment relations throughout 2013 but, towards the end of the year, the volume of enquiries began to lessen.

We have experienced a reduction in the number of client contacts, which peaked over the previous two years at the height of the recession, and enquiries have now returned to a more manageable level. The statistics in "Year in Numbers" show that in 2013 we received a total of 8676 client contacts. Statistics alone do not reflect the time-consuming nature of the advisory work related to redundancy, or its avoidance. Many employers have found that early discussions with our advisers have proven very helpful in mitigating the impact upon their businesses and their employees.

Client Contacts Per Week to 31st December 2013



Last year I reported that the percentage of calls relating to redundancy and lay-offs had increased sharply to 17% (i.e. more than 1600 calls), compared to the previous two years where, on average, 11% of all enquiries were redundancy-related. It is therefore pleasing to report that 2013 saw a reduction in this area, with just over 15% (1370 enquiries) being redundancy-related. The split between employee/employer initiated enquiries was 53%/47%.

The requirement for employers to make statutory redundancy payments for those with two or more years' continuous service has provided a buffer for many redundant employees. Indeed, many employers choose to pay above the statutory minimum redundancy pay which increased by £10.00 per week in 2013 (to £660) having remained static for two years. Statutory redundancy pay is calculated using the statistics taken from the average weekly earnings which are calculated in June each year. However, the availability of new job opportunities for those made redundant has not yet recovered and it appears likely to be some

time before the job market improves significantly. As a consequence a number of government initiatives, particularly those under the “Back to Work” scheme and its derivatives have been particularly helpful to those seeking to re-enter the workforce.

As the Employment Law has bedded in over the past 7 to 8 years, the number of routine enquiries about basic employment issues such as annual leave and minimum wage have lessened. There is little doubt that the information contained on our new website www.jacs.org.je has contributed to this, with employers and employees able to access a great deal of useful information on-line. During the year the website had over 32,000 visitors.

Pre-claim conciliation (PCC)

Where a problem or disagreement in the workplace is likely to lead to a tribunal claim, JACS can offer free and impartial pre-claim conciliation (PCC). The aim of this service is to help employers and employees to find a solution that is acceptable to both parties and avoid the costs, stress and time associated with an employment tribunal.

In the UK the Dispute Resolution Review, published in 2007, highlighted the benefits for both employers and employees if workplace disputes are resolved swiftly and with minimal formality before they escalate into litigation. JACS has offered this service for a number of years and in 2013 we successfully helped employees and employers in 319 instances to resolve their disputes through PCC. Many of these issues would otherwise have resulted in claims to the Tribunal.

Thankfully many more settlements were also reached that allowed the employment relationship to continue, for example disputes about holidays, pay, contractual terms, disciplinary actions and grievance issues.

Conciliation in potential Tribunal Cases

The number of Employment Tribunal claims passed to JACS for conciliation in 2013 has increased compared to 2012, despite our pre-claim conciliation (PCC) service. Unfortunately, disputes still arise in the workplace and dispute resolution is an important service offered by JACS. While PCC prevents many hundreds of potential claims from being made, not all matters can be dealt with at an early stage. During the year 172 claims were forwarded to us by the Tribunal to allow us to offer conciliation, compared to 157 in the previous year.

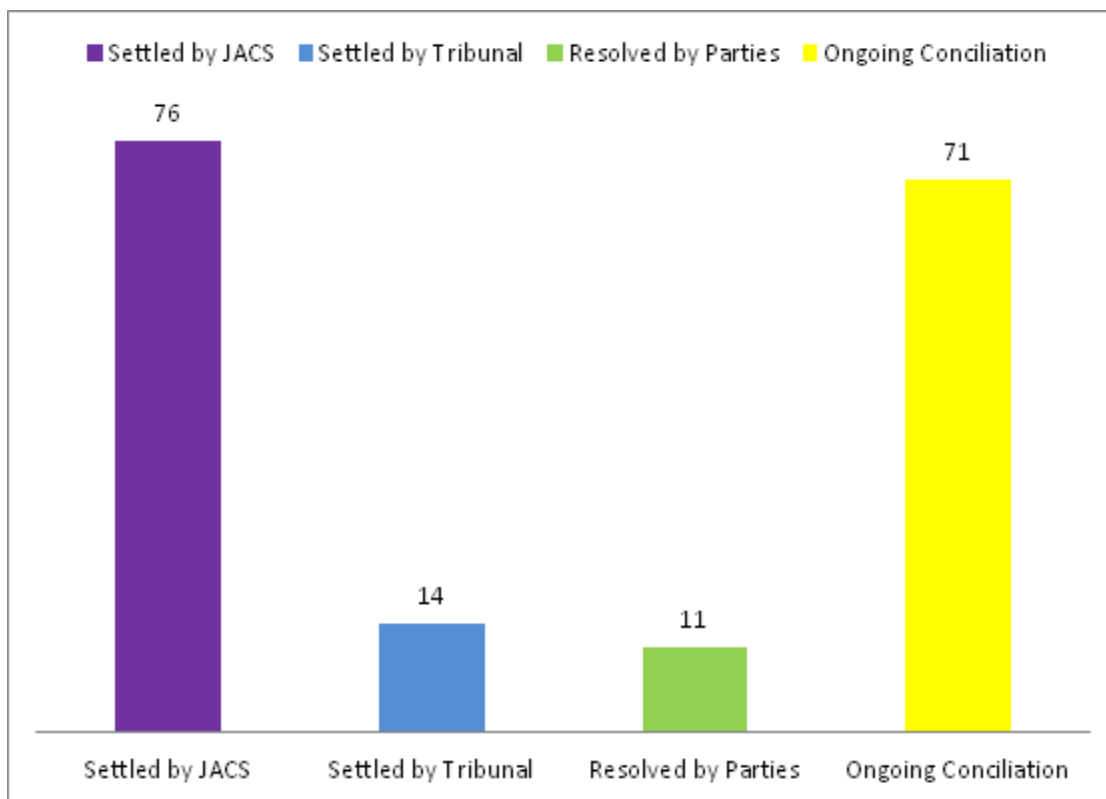
Conciliation is often a lengthy process and may stretch over many weeks or months until the actual date when the claim is due to be heard by the Tribunal. While the parties are sometimes reluctant to engage in conciliation until the potential Tribunal date approaches, we firmly believe the sooner matters are dealt with then the easier it is for the parties to resolve issues without the time and expense involved in preparing the documentation that bringing or defending a claim requires.

The Tribunal arranges Case Management Meetings between the parties in order to determine the heads of claim and to ensure that the information and evidence that a full Tribunal Hearing will require is prepared and available. This approach is very helpful in that it focuses the thoughts of the parties to the dispute and often encourages them to seek a conciliated settlement or to withdraw a claim altogether.

In 2013, of the 172 new cases forwarded to JACS by the Tribunal a total of 101 have been settled: 76 (75.3%) were settled by JACS conciliation, 14 (13.9%) were settled by the action of the Tribunal and 11 (10.8%) were subsequently settled or withdrawn by the parties

themselves, often after they had taken advice from their lawyers and/or had discussed matters with JACS. At year-end, 71 cases were subject to ongoing conciliation or awaiting resolution and were carried forward to 2014.

Number of new claims resolved in 2013



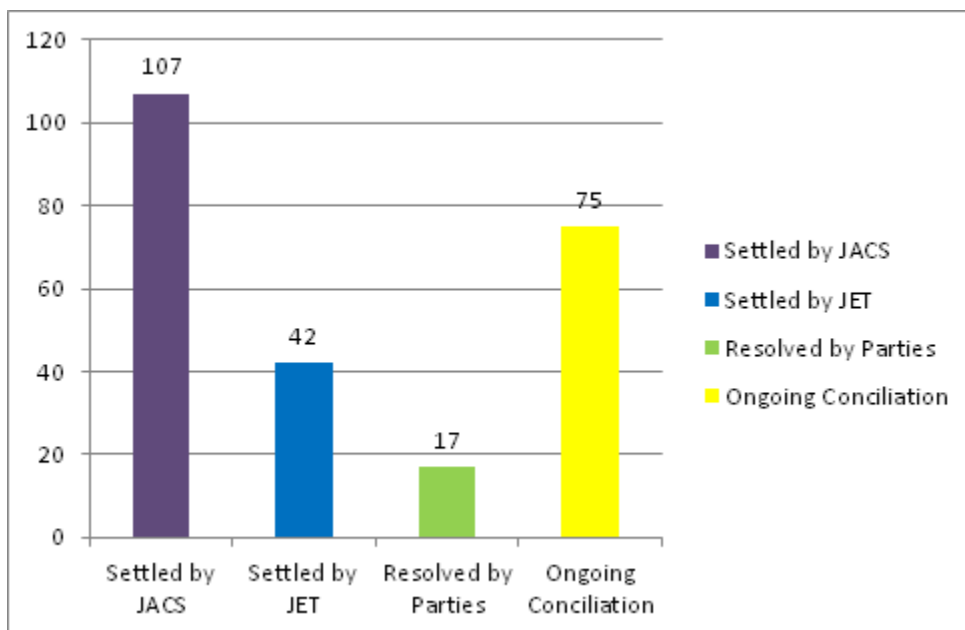
As in previous years, unfair dismissal remains the most significant of the claims made, followed by breach of contract, wages or salaries, and rest periods/annual leave.

As well as being the most prevalent claim, unfair dismissal is the most expensive if the claim succeeds, resulting in an award of 26 weeks' pay for employees with 5 or more years' service. All of our training and advice stresses that employers should ensure that they adopt fair processes in dealing with matters of discipline or poor performance and investigate any allegations of misconduct or poor work thoroughly before considering any disciplinary action.

At the start of the year, 69 cases had been carried forward from 2012. Of these, 62 were resolved during the year: 26 by JACS conciliation; 31 via Tribunal Hearings; 3 claims were either withdrawn or settled between the parties.

Combining 2012 and 2013, a total of 241 claims were active in 2012 and during the year 166 cases have been resolved one way or another, as shown in the following chart:

Combined Settlements: those 2012 claims carried forward plus new claims in 2013



In an attempt to reduce unfair dismissal claims, we encourage all employers to speak to us before taking severe disciplinary sanctions. Alternatively, employers can use our website www.jacs.org.je which contains a large amount of useful information, including a model process for redundancy consultation and selection; model disciplinary, capability and grievance procedures (including the Code of Practice on Disciplinary and Grievance Procedures) as well as a wide variety of other guidelines on dealing with such issues in the workplace. If employers follow similar procedures to those described then the likelihood of resolving a problem without resorting to dismissal increases greatly; if dismissal is necessary, then evidence of having followed best practice will mean that the risk of a successful claim being made is much reduced.

Resolving collective disputes and improving relationships

With the continuing economic uncertainty, pay rises have again been negligible or at a level below that of inflation. In some organisations wages and salaries have been frozen or even reduced. This, combined with the need for employers to change the terms and conditions offered to their employees, has led to an even greater increase in collective disputes i.e. disputes involving groups of employees rather than individuals. During the year we received 256 requests for advice and assistance in respect of collective issues, including disputes in relation to trade union recognition (a 70% increase on the previous year). We also saw a marked increase in requests for advice from employers and employees in regard to transfer of business ownership.

It is common practice for trade unions to ballot their members on matters of pay or changes to terms and conditions of employment. Last year JACS officers administered/acted as Returning Officer in 11 pay and conditions ballots in accordance with the requirements of the Employment Relations (Jersey) Law 2007.

As part of any ballot process we vet ballot questions, which must comply with the Code of Practice and ensure as far as possible that only those entitled to vote do so, that only papers

returned in accordance with the ballot requirements and by the closing date are counted and that the counting is done accurately.

Prior to administering a ballot, we are frequently involved in negotiations during which we help the parties in dispute to reach a settlement, if possible, by means of conciliation i.e. informal assistance to help both parties reach their own solution. Very often one or other of the parties meets with JACS independently to talk through the issues that they face. This is an important, impartial role as it allows various ideas to be explored before they are put forward formally as a proposal to settle whatever dispute had arisen. If the parties are unable to agree then we routinely offer a range of alternative dispute resolution procedures such as mediation or, as a last resort, arbitration. Arbitration is a formal hearing which results in a binding award that the parties must implement. Arbitration hearings are chaired by an employment relations expert selected from the same list of arbitrators used by Acas.

Much of our collective dispute activity has focused on helping various parties to implement wide reaching changes as a result of limited budgets following the economic downturn. Very often the sticking point has been a lack of clarity in the proposals and our task has been to focus on the key issues, to encourage a more transparent approach and to re-establish lines of communication where these have broken down. Despite a number of industrial action ballots in which employees had voted for industrial action, it is rewarding to record the fact that no strikes took place during the year and in those very few instances where limited industrial action took place, the impact upon the island was minimal. During 2013 we were requested to chair 13 major mediation meetings compared to only 4 in 2012.

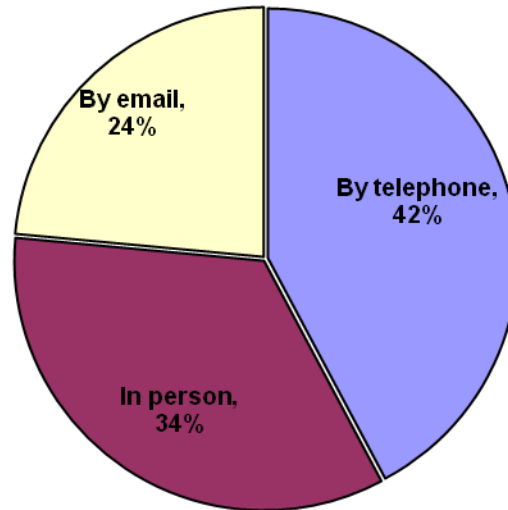
Conciliation or mediation helps employers and employee representatives to focus on the key issues and provides an opportunity for one party to consider the requirements and restrictions faced by the other in a relatively informal environment. Even if a solution to a dispute is not found, experience has shown that conciliation or mediation helps the parties to move towards a greater understanding of the others point of view, allowing a solution to be reached at a later date. Trade unions and employers are to be applauded for their decision to request mediation rather than face confrontation and we continue to work hard to promote the adoption of good practice and to encourage employers, employees and trade unions to follow due process.

Contacting JACS

Our offices in West's Centre are well located and the position encourages personal callers – 34% (2950) clients visited our offices either by appointment or by “drop-in”. We have been fortunate in recruiting two members of staff who can speak Portuguese and this facility has been welcomed by clients for whom this is their first language.

Our main point of contact remains our advice line (730503) with more than 3600 clients contacting us by telephone between the hours 08.30 to 17.00, Monday to Friday. The percentage of email queries has remained similar to last year, at 24% of client contacts.

Ways in which clients made contact



Our website, www.jacs.org.je was completely restructured in 2013 and has proved yet again to be an invaluable tool and a source of assistance to employees and employers. Individuals made more than 32,000 visits to our website over the course of the year. As well as proving easier to access, the website is now compatible with modern, hand-held technology, ensuring it meets the needs of today and of the future.

We continue to produce a periodic newsletter whenever there are significant developments in employment relations, training or employment legislation that we feel should be highlighted. We now have over 900 regular users of JACS' newsletter service and clients can sign up on-line to receive these free updates which cover important issues.

Due to the costs of printing and the need for a continually up to date information service we provide more and more information electronically. We have, therefore, increased the use of the internet to give more wide-ranging advice and to provide specific up-to-the-minute news on developments in employment law and will continue to do so, while still ensuring that basic information is available in the form of printed guidelines.

Outreach Service

During the year the Social Security Minister commissioned a review of the Jersey Employment Tribunal by Darren Newman LLB, an employment law expert and writer. In his report he noted that some concern has been voiced that small businesses often found it difficult to take time away from the workplace to seek advice and training from JACS or from other sources and some employers do not seek help until a problem arises. Other employers saw employment legislation as too complex and as a barrier to employing staff.

As a direct response to these concerns, we met with the Social Security Minister and his team and agreed to launch a new Outreach advisory service in September to help small businesses comply with the essential requirements of the Employment Law, such as providing staff with contracts and pay slips. This is a year long pilot exercise and additional funding has been made available to JACS in order to offer this service.

The Outreach service is available at times and places to suit the employer, such as out of town workplaces, either within or outside normal office hours, and is offered proactively to employers, typically those employing ten or fewer employees.

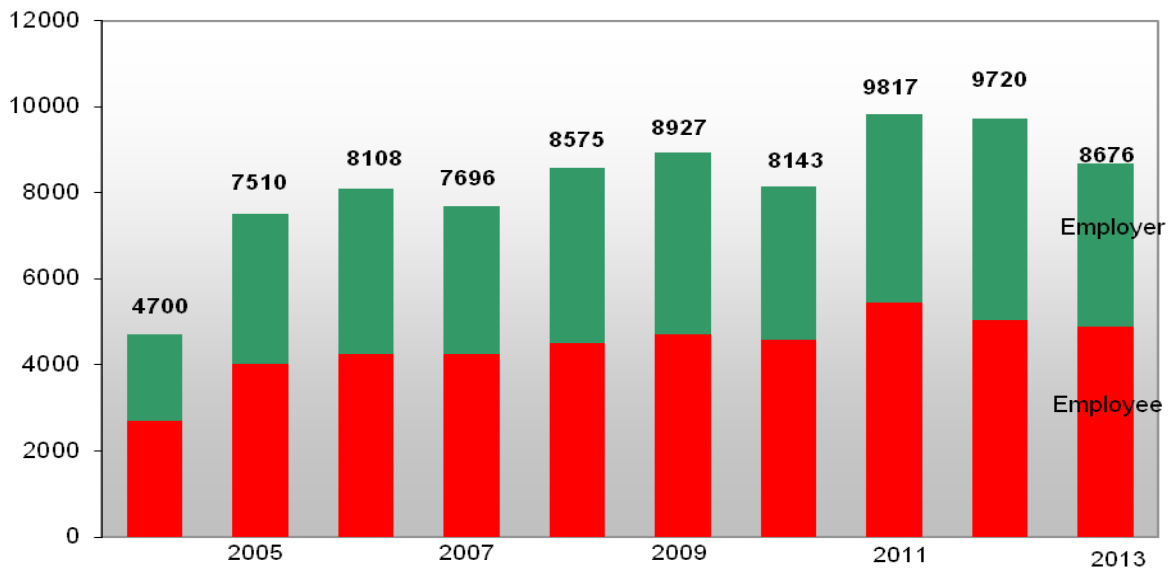
Our Information & Advisory Officer, Sharon Timoney, who as an added advantage is fluent in Portuguese, has been seconded to act as our Business Support Officer, Outreach Service.

The Outreach service gives straightforward and practical advice to employers and helps them develop an essential toolkit of employment documents, including terms of employment, pay slips and policies and procedures, such as a disciplinary and grievance procedure. Our Outreach officer does not get involved in conciliation or mediation nor does she offer the full range of JACS' advisory service – these issues are referred back to the JACS team at Trinity House.

Owners of small businesses or those starting new businesses find the information particularly helpful in terms of understanding their obligations as employers. The quality of the Outreach service is monitored by a questionnaire which employers are requested to complete in the weeks following initial contact. Without fail all respondents have stated they are pleased with the service in terms of timeliness, documentation and general information provided. In the final quarter of 2013 we provided significant assistance to 90 smaller employers, particularly focusing on terms of employment and written procedures covering such essential areas as disciplinary and grievance policies. Further marketing of the service is planned in 2014.

Information, advice and conciliation

Client contacts 2004 - 2013: Employer and Employee

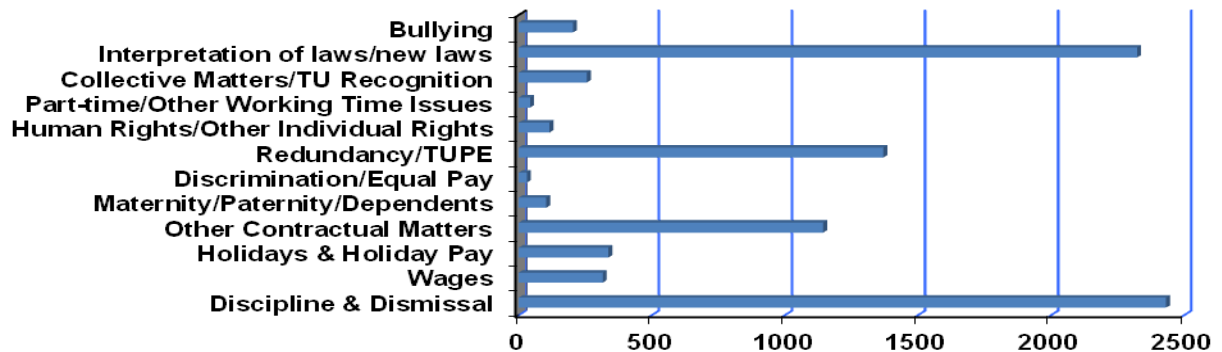


Throughout the year 169 clients contacted us on average each week, a lower number than in 2012 (186). The proportion of employer/employee contacts has varied by a small degree over the years and in 2013 was 44%/56% compared to 48%/52% in 2012. Of necessity we still deal with a number of basic issues such as statutory holiday entitlement or minimum wage, but increasingly employers and employees appear to be more aware of their obligations and statutory rights, hence the reduction in client contacts in general and employer contacts in particular. Many of the more fundamental answers to queries can be found on our website.

The volume of queries in relation to redundancy and restructuring has reduced by almost 250 compared to 2012 but this was still a very active and time-consuming element of our overall workload. While reductions in wages or reduced working weeks have been difficult to negotiate, we have worked with many employers and employee representatives to bring about such agreements as realistic alternatives to redundancy, in the knowledge that retention of skills will benefit businesses in the future when business prospects improve.

With the exception of the increase in collective disputes, the general trend remains fairly consistent from year to year and the predominant issues remain disciplinary and grievance, redundancy and contractual disputes, as well as interpretation of legislation as shown in the bar chart below.

Enquiry Subject Volume 1st January to 31st December 2013



Zero Hour contracts:

Last year I reported our concerns about the potential misuse of zero hour contracts and these have continued to be in the spotlight in 2013. Zero hour contracts consist of arrangements where people agree to be available for work as and when required but no particular number of hours or times of work are specified.

We fully accept that these contracts are entirely appropriate for Temporary Staff Agencies that supply employees to other organisations but where there is no guarantee that work will be available, or for “bank” employees in nursing or care homes, who provide essential cover for staff holidays or sickness. They are also essential to many other businesses that require a high degree of flexibility in their workforce to enable them to meet workload peaks and troughs. Problems do arise, however, when employers employ the majority of their staff on zero hour contracts even though they rely upon those same staff to work every day in order to deliver the services that the organisation provides. We constantly advise employers that in a zero hours contract there should be no obligation on the part of the employer to offer work and no obligation on the worker to accept the work offered.

The extent of the use of zero hour contracts has been the subject of significant media and political interest both in Jersey and the UK. We do believe that the situation is improving, with an

increasing number of employers recognising that, when used inappropriately, such contracts offer little protection to businesses. Our Outreach advisor has found that many of the small businesses that she assists have mistakenly used zero hour contracts. By helping such businesses to evaluate their needs she has helped employers to understand that while their workload is variable, they have a core need for staff on a regular basis, albeit not necessarily for a fixed number of hours per week.

As a result many of these employers have been helped to introduce variable hour contracts in which a set number of hours is guaranteed each week (e.g. 25 hours per week) with additional hours being provided as determined by the workload. In this way, employers have reduced the risk that they may face Tribunal claims and their employees have been guaranteed a minimum income each week, allowing them to more easily meet their financial commitments.

The States of Jersey has responded to the need to investigate the extent of the use of zero hour contracts in the island by amending the information that will be required on manpower returns from 2014 onwards. Following the introduction of the Control of Housing and Work Law in July 2013, in addition to reporting on staff numbers and residential status, employers will provide information on the number of full-time, part-time and zero hour employees.

Training and Other Support Services.

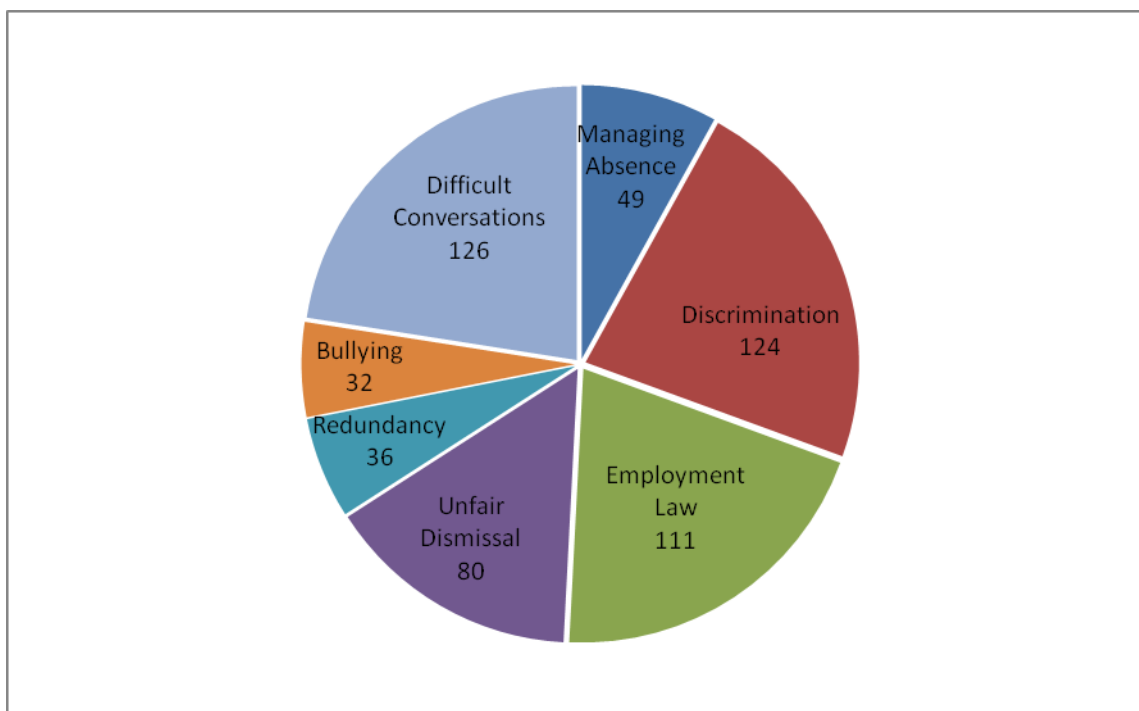
While settling Tribunal claims or resolving disputes is an important part of our work, our main emphasis remains helping to prevent problems arising in the first place, rather than settling claims once the employment relationship has broken down. Training of managers, supervisors and staff representatives is an important factor in ensuring good employment relations and our program of public training courses remains very popular, particularly with individuals who are new to the responsibilities of management as well as the more experienced who want to update their knowledge or learn about new legislation that has either come into effect in recent months or is anticipated in the near future.

Over the years we have found that relatively small groups of delegates obtain the most benefit from our training, as delegates are more willing to interact and ask questions than is often the case in large seminars. During the year we ran 31 half-day public training courses, attended by 484 delegates. We continue to focus on those issues that appear to cause most problems in the workplace or have the greatest potential to cause problems for employers in their management of staff.

Dealing with poor performance, allegations of bullying and absenteeism have always been difficult areas for employers. Managers and supervisors are often reluctant to deal with the matter as they know it will involve having a difficult conversation with the employee concerned. In 2013 we ran 6 "Difficult conversation" courses attended by 126 delegates.

In anticipation of the introduction of the Discrimination Law in 2014 we have continued to offer a "Discrimination in Employment" course which, unlike our other courses where we charge a small fee, is offered free of charge to delegates thanks to special funding from Social Security Department. During the year we delivered 6 courses in this specialist area, attended by 124 delegates. This course has been offered for a number of years both as a free, public course and a re-chargeable in-house course, as requested by particular businesses. In total well over 1000 delegates have attended discrimination training in preparation for the introduction of this legislation.

484 delegates attended half-day public training courses



In addition to our public training we delivered a further 38 training courses or seminars to various interest groups or, on a cost-recovery basis, to in-company groups for those organisations that wanted training delivered which was specifically tailored to their management and supervisory teams. 926 delegates attended these seminars, in addition to those attending the public courses.

These training sessions, together with our guide (the A to Z of Work), our individual publications and our website www.jacs.org.ie provide good sources of advice and information and are particularly useful to small or medium sized employers who find the model policies and procedures helpful. The website is continually updated to reflect changes in legislation and up to the minute advice.

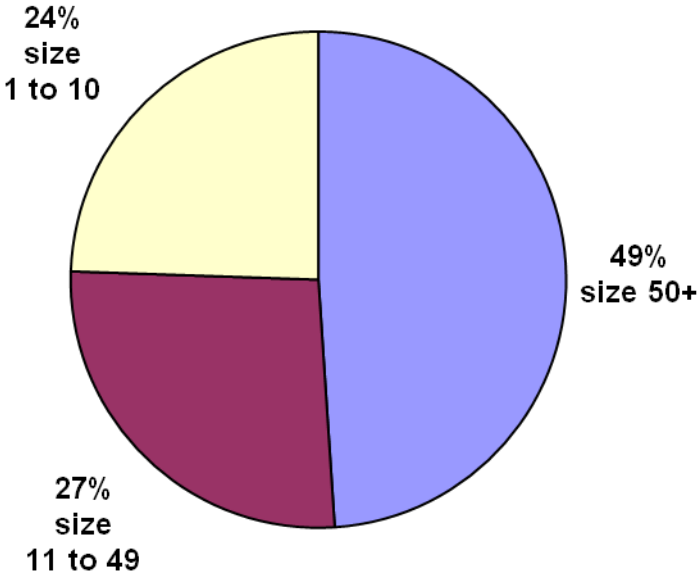
Working with employers.

During the year we dealt with 3792 employer contacts, fairly evenly divided between those larger employers with 50 or more employees, and those employers with up to 49 employees.

While we are pleased to assist all employers, we are particularly keen on helping smaller employers deal with the complexity of employment laws that set out their statutory obligations, irrespective of their size. These smaller employers are particularly vulnerable in terms of Employment Tribunal claims as they are unlikely to employ a specialist HR officer who can advise them on the requirements of relevant legislation.

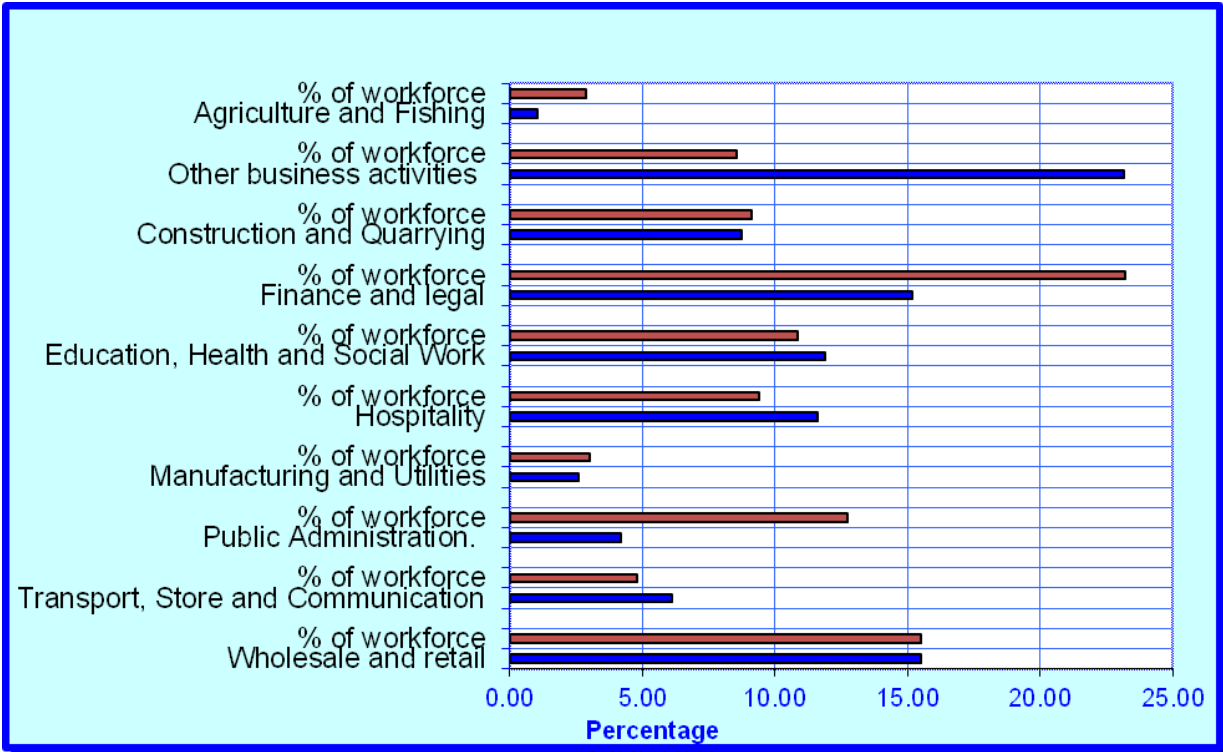
Compared to previous years there has been a small shift, such that small to medium sized organisations i.e. those with up to 49 employees, now represent 51% of employer contacts compared to 49% in 2012. Feedback indicates they value being able to contact JACS for free, impartial advice.

Organisations contacting JACS by size (headcount)



While some of these contacts were JACS-initiated, following requests from employees that we contact their employer in an attempt to resolve issues, or were initiated by our Outreach service, the majority were employer-initiated requests for advice and guidance over a wide range of subjects, the most complex being those associated with terms and conditions negotiations and with restructuring and redundancy.

% of client contacts by Sector in 2013 / % of total workforce in Jersey (December 2012)



The bar chart on the previous page provides an analysis of the enquiries from the various sectors that make up our economy, together with an indication of the proportion of the workforce employed in each sector. It is noteworthy that the traditionally lower paid sectors, namely agriculture, hospitality and retail do not contribute a disproportionate number of enquiries.

While "Other business activities" stands out as having a high number of client contacts compared with the percentage of total workforce employed, this group is a catch-all category of organisations that do not fit easily in one of the other more clearly defined sectors.

Legislation

With the exception of the Control of Housing and Work Law mentioned previously, no new legislation was enacted that was specific to employment during 2013. However, a great deal of work was undertaken by Social Security Department and by JACS in regard to the Discrimination Law which was agreed by the States in May and is expected to be in force in the third quarter of 2014. The Discrimination Law will include the first protected characteristic of Race and it is intended that this will be followed by a series of successive Regulations in respect of Sex, Age and Disability discrimination.

JACS will advise on the employment implications of the Discrimination Law and will act as conciliator in exactly the same manner as we do in the areas covered by the Employment Law. Of course the Law covers a much wider area than employment and Citizens Advice Bureau will advise their clients on these wider issues.

While we appreciate that employers have some concerns about additional legislation at this time, we welcome the fact that Jersey will soon meet its obligations under a number of international conventions to ensure protection from discriminatory behaviour. While there will inevitably be an increase in our workload, we believe that most employers are unlikely to find it difficult to meet the requirements of the law, particularly the first characteristic of Race as there is widespread belief that racial discrimination should not be tolerated.

In addition to the work we have undertaken on the Discrimination Law we have been heavily involved in the redrafting of the Disciplinary and Grievance Code of Practice which the Social Security Minister intends will come into effect in early 2014, following extensive public consultation during 2013. While a code of practice is not a statutory instrument, the Jersey Employment Tribunal takes account of the code when dealing with relevant tribunal claims.

The code has been written to assist both employers and employees deal with matters related to discipline and grievance in a fair and appropriate way. It recognises that, while employees have a right to be treated reasonably, employers also have a right to manage their businesses and to ensure that employees conduct themselves in a way that contributes to business success. The principles set out in this code of practice are designed to apply to employers with just one or two employees just as much as they apply to larger businesses with hundreds of employees.

Careful regard has been paid to the need not to burden employers with excessive bureaucracy and it is hoped that this code of practice can contribute to the success of businesses in Jersey by setting out a clear framework of reasonable and fair treatment. This will help employers deal effectively with issues that arise in the workplace and help employees to raise their concerns in a constructive and proportionate manner and to act reasonably throughout the process.

The principles set out in this code of practice are designed to be as straightforward as possible.

Staffing and standards of service

For a number of years our team has comprised three full-time advisor/conciliators and a part-time advisor/administrator. The part-time administrator acted as the first point of contact for clients contacting JACS in person or by telephone and worked on a morning only basis. In early 2013 it was recognised that it was no longer realistic to continue with this approach as the three full time staff were frequently simultaneously engaged with clients, leaving the reception role unattended during the afternoons. As a result, in February the full time team was increased to four.

In September, following discussions with the Social Security Minister, the decision to offer the new Outreach service as a one year pilot scheme resulted in a further member of staff being recruited on a fixed term contract. This allowed an existing team member to be seconded to the new service. Our experience to date is that the Outreach service has been well used and much appreciated by employers running small businesses who do not have access to their own specialist HR function. We hope to continue offering this facility for the foreseeable future.

We monitor our service standards and have again issued a client satisfaction questionnaire to those employers and employees whose Tribunal cases had been referred to us for conciliation. The rate of return was 95%, with slightly more employers returning their questionnaires than employees. Of the total returned, 94% reported they were 'very satisfied' or "satisfied" with the service they received, the information provided and the time taken to deal with their case. 6% of clients were "dissatisfied" – the principal causes of dissatisfaction being the time taken and information provided to the parties. While JACS' conciliators always try to resolve cases speedily, we are dependent upon both parties responding to us. Conciliation is a voluntary procedure and if one or other of the parties chooses to delay matters then this will impact upon the speed of resolution.

Published standards of service were maintained or exceeded and we fully met the requirements of the Service Level Agreement that we have developed, together with officers of Social Security Department, to ensure that JACS delivers value for money.

Managing our Finances

The total cost of running JACS measured in terms of annual income against expenditure was approximately £387,350 and exceeded the budget by 1%, although this figure will be subject to audit adjustment. We experienced a number of unexpected costs during the year, primarily associated with building maintenance. These included the need to replace faulty lighting throughout the office following a small electrical fire due to failed wiring insulation and repairs to water-proofing of the roof.

Expenditure included all operational costs, for example rent, rates, insurance, audit fees, utility services, printing and publications, I.T. facilities, website development, staff salaries and related costs such as pension contributions, Social Security contributions and staff training.

Our grant from Social Security Department increased by 2% to £329,200 and this was supplemented by a further £17,200 in the year to allow us to introduce the Outreach service. Income derived from the administration fee charged for those attending our public courses and cost recovery charges for in-house training contributed almost £15,000.

In cooperation with Social Security Department senior officers and as part of good corporate governance we reviewed our Service Level Agreement (SLA) in April to ensure it is still fit for purpose and, in addition, in November we agreed an addendum to the SLA to cover the Outreach service.

Following those discussions, JACS' Chairman has advised Social Security Department that during 2014 he will be seeking a meeting to discuss a 3 year funding agreement as the Board wishes to consider the implications for JACS' operation, services and staffing levels in the light of the increasing complexity and breadth of matters with which JACS deals. It is believed that this will inevitably increase further when discrimination, maternity, paternity and family friendly legislation is addressed in 2014 and beyond.

Our accounts will be audited by BDO Limited and presented to the Social Security Minister as required by the Jersey Advisory and Conciliation (Jersey) Law 2003.

Future Plans

I reiterate our commitment to helping to avoid and resolve disputes and we shall continue to raise awareness of the important issues through a comprehensive training program focused on existing and new legislation, via the media and through our everyday role in dispute resolution and the provision of advice. It appears that the economic difficulties experienced since 2008 will continue to have some impact throughout 2014, as public and private sector organisations continue to strive towards a sustained recovery across the economy as a whole. We will do our best to help employers, trade unions and employees to cope with the continued changes that will be necessary.

We are committed to supporting all our clients in respect of their needs for advice and dispute resolution in relation to existing legislation and good employment practice and to offer training and advice in regard to the forthcoming Discrimination Law and, Maternity, Paternity and Family Friendly Law that we anticipate will follow. In particular, we will provide additional support to small organisations through our Outreach service to ensure that the owners of such businesses understand and comply with their statutory obligations.

We shall continue to develop the skills and knowledge of the JACS team to ensure that we are up to date with developments in employment law in Jersey, as well as in other jurisdictions, so that we can respond effectively to proposals locally. By ensuring that our knowledge base is maintained and developed we believe we can best serve the needs of employers, employees and trade unions.

Post of Director

Having had the privilege to be the inaugural Director of JACS it is time to hand over to my successor as I shall retire at the end of March 2014. My 13 years service have given me immense satisfaction and, despite not being able to please all of the people, all of the time, I believe that the team I have led is regarded as professional and impartial and that JACS has contributed to the good employment relations that Jersey enjoys.

I am pleased to be able to report that my deputy, Patricia Rowan, will take over the post of Director in April next year, having been appointed following a rigorous selection procedure overseen and chaired by the Professor Ed Sallis, Appointments Commission. I wish Patricia all the very best in her new role and I know she has the support of the Board and the rest of the team.

Summary

My last four annual reports stated that we expected redundancy and restructuring to continue throughout the following year and this has proven to be the case. However, it is pleasing to report there are signs that conditions in the Island have begun to improve and we have some cause for optimism in the coming year. Some sectors of the economy are faring better than others with the finance industry leading the way. However, the non-finance sector is still at risk and employers and employees will need to show continued restraint to ensure that the early signs of recovery result in continued growth. For the first time in more than 4 years, earnings increased at a faster rate than inflation and this easing of pressure on employee's incomes will assist the recovery, providing that productivity improves to match the increase in earnings.

The decisions that government has made in 2013 in respect of major capital projects will have given encouragement to the construction sector and its suppliers. While it is appreciated that the time lag between such decisions and the reality of work on site can be many months or even years, the feedback we have received from those in this sector is that its leaders are more hopeful for the future than they have been for a number of years.

Most businesses have been obliged to undertake substantial change programs in recent years in response to the pressures faced, and we expect organisational restructuring to continue as businesses realign to meet the needs of their market. We encourage employers to continue exercising good practice and to consult fully with their staff. Equally we encourage employees and trade unions to act as responsibly – and responsively – as they have throughout the recession and to continue to work with employers to meet the challenges that still lie ahead.

Central to our work is the premise that employers, employees and trade unions working together are an essential feature of a successful economy. We encourage all employers to seek advice to ensure that their policies and actions conform to good employment practice and to employment legislation. Our training and advice is focused on helping employers to take timely action to prepare for the new laws that will be introduced over the next two to three years, as Jersey moves towards implementing the second phase of employment legislation that was planned over a decade ago. The JACS team will continue to provide a professional, impartial advisory service to employers, employees and trade unions in order to help them whenever possible to achieve their joint objectives of managing and working within businesses that are successful and fair in their employment of people.

I once again record my thanks for the loyalty and support provided by the small team at JACS; team members have worked extremely hard to meet the expectations of our clients.

JACS' Board, lead by the Chairman, Tom Slattery, has also provided me with tremendous support and guidance and I sincerely thank all Board Members for offering their time willingly throughout this year and, in many cases, for a number of previous years. JACS is very fortunate to be able to call on the time of Board Members who provide their services willingly in an honorary capacity.

Finally, I join my Chairman in thanking the Social Security Minister Senator Francis Le Gresley and his officers for their encouragement and support of the work that we undertake.

David Witherington

Director

21st January 2013

About JACS

To assist in the building of harmonious relationships between employers and employees, both collectively and individually and thereby help improve the performance and effectiveness of organisations.

Our values

Our role is to seek to resolve conflict, maximise agreement and encourage employment policies and practices that contribute to improvements in performance, organisational effectiveness and quality of working life. We are committed to helping employers and employees to develop positive ways of working together, to their mutual benefit. We will promote employee involvement and we will:

- act independently and impartially, with integrity and professionalism
- respect confidentiality
- be accessible to all and respond promptly to all requests for information or assistance
- use resources cost effectively within budgets
- continue to develop a highly motivated and committed workforce able to deliver our services courteously, efficiently and effectively.

Activities

In working towards our mission we will provide a number of key services such that we shall seek to:

- prevent and resolve industrial disputes
- resolve individual disputes over employment rights
- provide impartial information and advice on employment matters
- improve the understanding of industrial relations.

In providing any of our key services we will be ready to identify other ways in which JACS' involvement might improve industrial relations.

Service standards

Preventing and resolving collective disputes

JACS assists parties seeking settlement of collective disputes on employment issues by way of conciliation, mediation or arbitration. JACS can also assist in preventing and resolving problems at work by providing advisory mediation. JACS is not able to insist on the acceptance of its assistance or to impose any solution for an issue in dispute. Before providing assistance JACS encourages parties to make full use of any agreed procedures they may have for negotiation and the settlement of disputes.

Advisory mediation

Advisory mediation enables JACS to work jointly with employers, employees and employee representatives to help overcome problems which threaten to damage the employment relationship or which constitute a major obstacle to organisational effectiveness.

We will:

- acknowledge all requests for assistance within five working days
- discuss fully the nature of the problems and what help might be provided and, where appropriate, be ready to suggest alternative sources of assistance
- explain our role and working methods and agree clear terms of reference
- provide advisory mediation only when there is joint participation of the employer, employees and/or their representatives.

Collective conciliation

This is a voluntary process whereby employers, trade unions, and worker representatives can be helped to reach mutually acceptable settlements of their disputes by the involvement of an impartial and independent third party.

We will:

- acknowledge all requests for assistance within 24 hours, whether made separately or jointly, and seek to reach agreement on how and when we should assist
- offer assistance where no request has been made where we consider it appropriate
- provide appropriate assistance for as long as a dispute continues
- explain to the parties that they alone are responsible for their decisions and any agreements reached

Arbitration and mediation in disputes

Arbitration involves the parties jointly asking a third party to make an award that they undertake to accept in settlement of the dispute. Mediation involves the third party making recommendations as a basis for settlement. JACS will normally agree to mediate or to arrange arbitration only when it has not been possible to produce a conciliated settlement.

We will:

- maintain access to a panel of independent, impartial and skilled arbitrators and mediators from whom we make appointments
- assist parties to agree clear terms of reference for arbitration or mediation
- explain to parties that arbitration is to settle the issue between them and they are committed to accepting an award
- provide parties with a nominated arbitrator/mediator and details of any hearing arrangements within five working days
- arrange for reports and awards to be provided simultaneously to both parties within 3 weeks of the hearing.

Resolving individual disputes

JACS conciliation officers have a duty to attempt to conciliate settlements of disputes where complaints have been or could be made to a court or tribunal under relevant employment protection legislation. Conciliators offer to assist both parties involved in a dispute to reach a voluntary settlement without the need to go to a formal hearing.

We will:

- write to or telephone applicants and (as necessary) respondents, or their named representatives, giving information about the conciliation process together with a named contact and an offer to conciliate. We will do this either:
 - within five working days of receiving copies of a formal complaint from the offices of a relevant body, or
 - within five working days of receiving directly from an employer or employee, or their named representatives, a claim that a formal complaint could be made to a relevant body and where no settlement has already been reached
- take prompt further action as soon as requested by either party or, if no request is received, when it is useful to do so
- keep the parties informed about the options open to them and their possible consequences whilst not expressing an opinion on the merits of a case
- seek to promote reinstatement or re-engagement, if the complaint is of unfair dismissal, before any other form of settlement
- not disclose information, given to a conciliation officer in confidence, to any other party unless required to do so by law
- encourage the parties to consider the consequences of proposed settlement terms and to seek further advice if necessary
- encourage the parties to record the terms of a settlement in writing as quickly as possible.

Providing information and advice and promoting good practice

We provide a telephone enquiry service ready to respond to queries from individuals on virtually all employment matters (other than job vacancies and health and safety), including the rights, protections and obligations which employment law provides. We do not provide legal advice for particular cases.

We can provide more extensive advisory assistance and we also publish advice and promote good employment relations practice.

Enquiry point (Trinity House, West's Centre, Bath Street, St. Helier, Jersey, JE2 4ST)

We will:

- respond to all telephone queries promptly, courteously and accurately
- identify ourselves by name to all enquirers
- answer written enquiries within five working days
- see personal callers promptly or make an appointment with a named member of staff.

Advisory assistance

Where an enquiry is too complex to deal with in a telephone conversation, we will:

- suggest an appropriate JACS or other publication, or
- suggest an appropriate JACS conference, seminar, or workshop, or
- arrange a meeting at a mutually agreeable time and place, or
- suggest other sources of help, such as trade unions, employers associations and the Citizens Advice Bureau.

Publishing advice and promoting good practice

We will use our experience of working with organisations and the results of any research we carry out to promote good employment relations practice. In particular we will provide:

- conferences
- seminars
- small firms workshops
- advisory booklets, handbooks, occasional papers and other publications.

Written material will be readily available, in hard copy or electronic format, and provide practical, accurate guidance. Material will be available on our website www.jacs.org.je

In order to recover costs there may be a charge for some publications, conferences, workshops and seminars.