

# The Jersey Advisory and Conciliation Service 2011



Annual Report 2011

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## ANNUAL REPORT 2011

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# Annual Report 2011

## The Board

**Chair** Tom Slattery  
**Deputy Chair** Ed Daubeney

**Board members** Julie Crabtree  
John Moulin (until 31<sup>st</sup> December 2011)  
Lorna Pestana  
Kevin Keen (until 29<sup>th</sup> September 2011)  
David Warr (until 29<sup>th</sup> September 2011)  
Sarah Beirne (from 1<sup>st</sup> October 2011)  
Alison Mellor (from 1<sup>st</sup> October 2011)

## The JACS Team

**Director** David Witherington  
**Team members** Patricia Rowan, Senior Advisory and Conciliation Officer  
Patricia Weston, Advisory and Conciliation Officer  
Chrissie Hennessy, Administration and Advisory Officer

## JERSEY ADVISORY & CONCILIATION SERVICE

### YEAR IN NUMBERS – 2011

(2010)

|              |         |   |
|--------------|---------|---|
| <b>9817</b>  | (8018)  | Enquiries received in total   |
| <b>5441</b>  | (4492)  | Employee enquiries (or others on their behalf)  |
| <b>4376</b>  | (3526)  | Employer enquiries  |
| <b>2220</b>  | (1692)  | Enquiries from employers employing less than 50 staff, 46% of these employing less than 10 staff.   |
| <b>827</b>   | (1194)  | Attendees at 45 workshops, training courses and seminars  |
| <b>316.2</b> | (314.7) | Thousand pounds received as annual States Funding (£1,500 [0.5%] increase from 2010 funding level). |
| <b>183</b>   | (160)   | Claims passed to JACS by the Tribunal   |
| <b>97</b>    | (165)   | Requests for advice or conciliation in respect of collective disputes and trade union recognition.  |
| <b>94</b>    | (84)    | Tribunal claims resolved, 68 (72%) by conciliation  |
| <b>27</b>    | (22)    | Thousand visits made to our website <a href="http://www.jacs.org.je">www.jacs.org.je</a>            |
| <b>7</b>     | (7)     | Board members   |
| <b>4</b>     | (4)     | Staff members, including 1 part-time advisor/administrator  |
| <b>1</b>     | (1)     | Website: <a href="http://www.jacs.org.je">www.jacs.org.je</a>                                       |
| <b>1</b>     | (0)     | New employment law in force in Jersey during 2011.  |

# Chairman's Foreword

I am pleased to introduce the 2011 Annual Report of the Jersey Advisory and Conciliation Service.

The employment market in Jersey has continued to be a difficult one with the number of unemployed now exceeding 1500 and of these a disappointingly large proportion are aged under 25. The virtual lack of growth in UK and Europe has continued to impact on the finance industry and there is no real sign of an uplift in the short term with significant redundancies continuing to be announced.

Perhaps reflective of these challenging economic conditions, the volume of enquiries received by JACS has reached its highest ever level at 9800, equating to 188 enquiries a week, which is a significant workload for an executive team which has remained unchanged for a number of years.

The long awaited legislation relating to redundancy has now been approved and implemented and its relevance is highlighted by the continuing high levels of enquiries relating to redundancy which have increased by 11% in the year. Revisions to the Employment legislation have also been approved and are due to be implemented in the early part of 2012.

The lack of progress in developing Discrimination Laws has been commented on in previous years and confirmation that draft legislation will be brought forward in 2012 is welcomed. Initially this will probably cover age and sex with other attributes being addressed subsequently. JACS will continue to work to assist in developing legislation which meets Jersey's needs in a practicable way. It is likely that this will be progressed in conjunction with the proposed Maternity, Paternity and Family Friendly Law. JACS appreciates the impact new legislation has, especially on small businesses, and will actively update its training programmes to help both employers and employees understand the implications and to provide timely and impartial assistance in interpreting the Laws.

As with other States funded bodies JACS has faced a reduction in real funding over the past two years and this is projected to continue over at least the next two years. To help redress this JACS has introduced a nominal fee for those attending training sessions. While this had an initial adverse affect on numbers, attendances have returned to their previous levels as the year has progressed and charges will continue in 2012.

JACS has also continued to be active in helping resolve pay disputes and avoiding industrial action. It has also maintained its target of resolving over 70% of claims referred to the Employment Tribunal which helps avoid the cost of full hearings by encouraging more constructive dialogue between the parties.

JACS hard won reputation is very much attributable to David Witherington and his team and on behalf of the Board I wish to thank them for their continued enthusiasm and commitment and their undoubted expertise in dealing with what can be extremely complex and time consuming issues.

There have been a number of changes in Board membership both during 2011 and subsequent to the year end. Kevin Keen and David Warr resigned during the year to meet the challenges of new external roles and John Moulin retired at the end of his period of

appointment. On behalf of the Board I thank them for their constructive and positive contributions to the Board.

Alison Mellor and Sarah Beirne joined the Board in December 2011 and Craig Channing joined in January 2012. In recruiting new members the Board is always conscious of the need to obtain a balance between employer and employee representatives and the new Board reflects this.

I would wish to express my continued thanks to all members for their support over the year and for freely giving of their time and experience.

Finally I would like to express the Board's appreciation for the continuing support during the year of Senator Ian Gorst while he was the Social Security Minister. We look forward to a continuing constructive relationship with his successor, Senator Francis le Gresley, and his colleagues in helping to sustain JACS. To enhance this relationship and as part of good corporate governance we have prepared and agreed a comprehensive Service Level Agreement between JACS and the Department which we believe will enable us to work more effectively together to benefit the Island through ongoing improvements in employment relations.

**Tom Slattery**

**Chairman**

## Director's Report

### Overview

Last year I reported that I expected redundancy and restructuring would continue to be a key feature throughout the year and, regrettably, 2011 has seen very difficult trading conditions for many businesses which have had an inevitable impact upon security of employment and the availability of new job opportunities for those made redundant. The introduction of redundancy legislation and statutory redundancy payments has provided a buffer for many employees, providing some financial "breathing space" while they look for new employment. A large number of employers have contacted us, seeking advice on their need to reduce their costs fairly as required by legislation, and this advisory work is more time-consuming, of greater complexity and more critical to the employers and employees involved than we have previously experienced. The statistics in "Year in Numbers" show that this has been our busiest year ever, with over 9800 client contacts (22% more than were recorded in 2010).

### Enquiries and Dispute Resolution.

While the percentage of calls relating to redundancy and lay-offs remained fairly consistent at 11% of total client contacts, the numbers involved has increased to 1100, with employees accounting for 55% of requests for assistance. The number of Employment Tribunal claims passed to JACS for conciliation has increased by 14% to 183 and of those that have been resolved, 72% were settled by conciliation without the need for a Tribunal Hearing. The conciliation process is very time-consuming and of the total claims passed to JACS, at year-end 81 claims remain outstanding and are subject to on-going conciliation.

A great many potential Tribunal claims have been avoided through Pre-Claim Conciliation (PCC), a service we have always offered but one which has increased in volume over the years. We remain strongly of the view that early resolution of disputes is far preferable to litigation and it has proved to be a popular service with the number of settlements far exceeding the claims forwarded to us by the Tribunal. During the year we have successfully offered PCC in 132 employment disputes which would otherwise almost certainly have resulted in claims to the Tribunal. Thankfully many more settlements were also reached in ways that allowed the employment relationship to continue, for example disputes about holidays, pay, contractual or disciplinary matters.

We strive to continually 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 of questionnaires was 32%, with more employers returning their questionnaires (53%) than employees. Of the total returned, 66% reported they were 'very satisfied' with the service they received and 32% were 'satisfied'. Regrettably one client, an employee, was "very dissatisfied" expressing frustration with the legislation, in particular the "cap" on contractual payments that can be awarded if a claim progresses to a Tribunal Hearing.

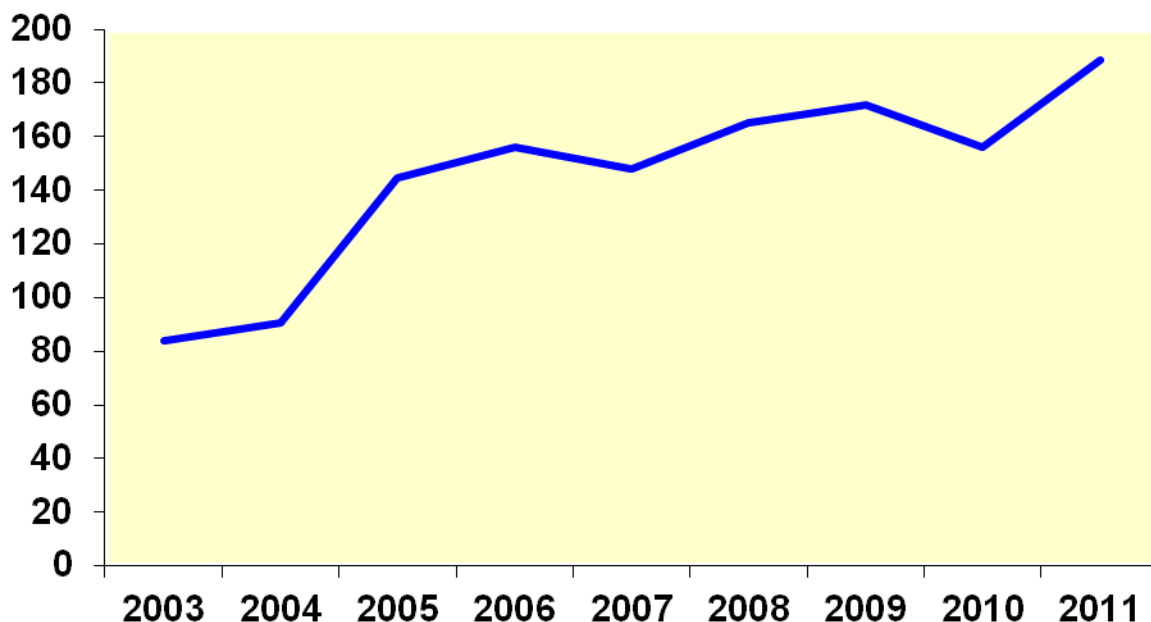
### Collective Disputes

We continue to work hard to promote the adoption of good practice and to encourage employers, employees and trade unions to follow due process rather than rely on the 'knee jerk' reaction to dismiss on the one hand or take industrial action on the other.

Collective disputes, that is, those involving groups of employees rather than individuals have not featured strongly in 2011. However we have still been active in helping various parties to resolve difficulties which often arose from the need for employers to cut costs, yet one more impact of the economic downturn. We received 97 requests for advice and assistance in respect of collective issues and thankfully all were resolved without industrial action, which can be very damaging to both parties and to the economy.

Many of our recorded client contacts resulted in multiple meetings and involved lengthy discussions, particularly when the advice sought was associated with restructuring or redundancy. Published standards of service were maintained or exceeded.

## Client Contacts Per Week in 2011



### 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. To this end we continue to put significant resource into developing our business support services to ensure that employers and managers recognise the benefits that good employment relations can bring to building successful organisations. Our program of public training courses remains very popular and is particularly appreciated by individuals who are new to the responsibilities of management as well as the seasoned professionals 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.

As well as one-to-one support or training events, our website [www.jacs.org.je](http://www.jacs.org.je) provides another source of advice and information. It is continually updated to reflect changes in legislation and up to the minute advice often developed following particular decisions in Tribunal Hearings. This, together with our guide (the A to Z of Work) and other publications provides employers with a great deal of helpful information and is particularly useful to small



or medium sized employers who find the section providing model policies and procedures helpful. In addition, we offer our services to employers who wish to review and update their contracts of employment, application forms or staff handbooks.

### Conciliation in potential Tribunal Cases

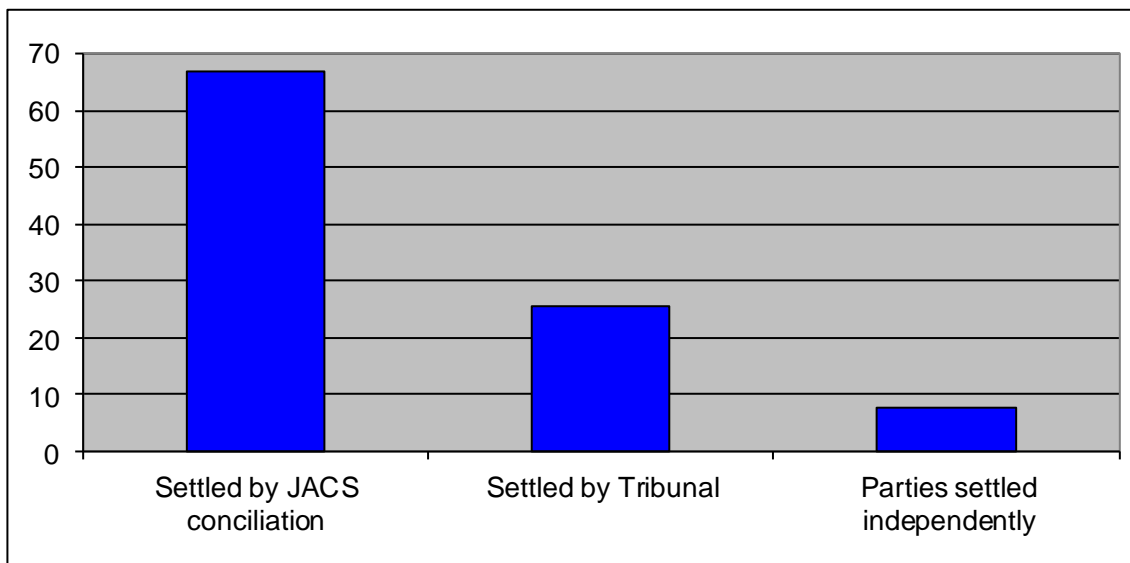
Despite the best efforts of all parties, disputes still arise in the workplace and dispute resolution is an important service offered by JACS. While pre-claim conciliation prevents many hundreds of potential claims from being made, not all matters can be dealt with at an early stage. During the year 183 Tribunal claims were forwarded to us by the Tribunal to allow us to offer conciliation.

Conciliation is now often proving to be a drawn out process and this is not assisted by the lengthy period between a claim being made and the actual date when that claim is to be heard by the Tribunal. While an employer's reluctance to engage in conciliation until the potential Tribunal date approaches is understandable, 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.

In 2011, of the 183 new cases forwarded to JACS by the Tribunal, 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; 94 were resolved by one means or another and, at year-end, 81 cases were subject to ongoing conciliation or awaiting resolution.

Of the 94 claims that were resolved in 2011, 68 (72%) were settled by JACS conciliation and 26 were settled by the action of the Tribunal.

**Number of claims resolved in 2011**



Unfair dismissal claims are still the most numerous (the main head of claim in 83% of all cases) and are 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

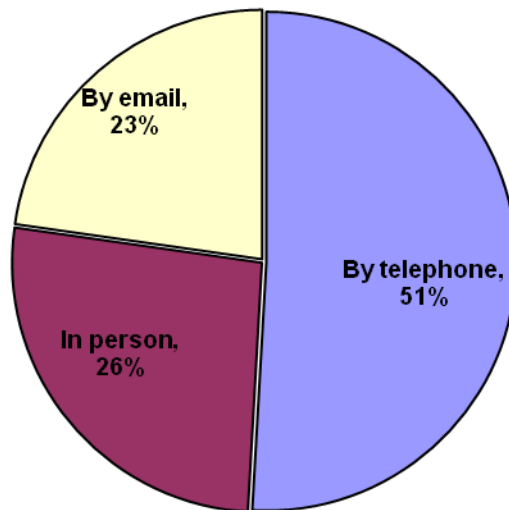
poor performance and investigate any allegations of misconduct or poor work thoroughly before considering any disciplinary action.

In previous years concern was expressed by a number of employers that a dismissal could be judged unfair, resulting in the award of maximum compensation, simply because the employer failed in some way to follow a fair process. This has now been addressed by changes to the Employment Law such that when an employee is judged to have been dismissed unfairly (e.g. on procedural grounds) the Tribunal has the power to reduce the monetary value of the standard scale of compensation where “any conduct of the complainant before dismissal contributed directly to the dismissal”. Similarly, an award can be reduced where a complainant “has refused an offer by the employer ... for an amount equal to the maximum award ...”

We encourage all employers to speak to us before taking severe disciplinary sanctions or to use our website [www.jacs.org.je](http://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 against them is much reduced.

## Contacting JACS

### Ways in which clients made contact



JACS' offices are in West's Centre and this town centre location encourages personal callers - over 2,500 clients visited our offices either by appointment or by “drop-in”, although increasingly clients discuss their needs or ask questions by email enquiry. Our main point of contact remains our advice line (730503) with 5,000 clients contacting us by telephone between the hours 08.30 to 17.00, Monday to Friday.

Our website [www.jacs.org.je](http://www.jacs.org.je) is an invaluable tool and a source of assistance to employees and employers, including UK-based employers. Individuals made more than 27,700 visits to our website in 2011 and we have received particularly good feedback from owners of small businesses or those starting new businesses who find it helpful in understanding their obligations as employers and the model policies and procedures help them to put in place the fundamental building blocks necessary as a basis of their employment practice. Without this facility there is little doubt that our workload would increase enormously.

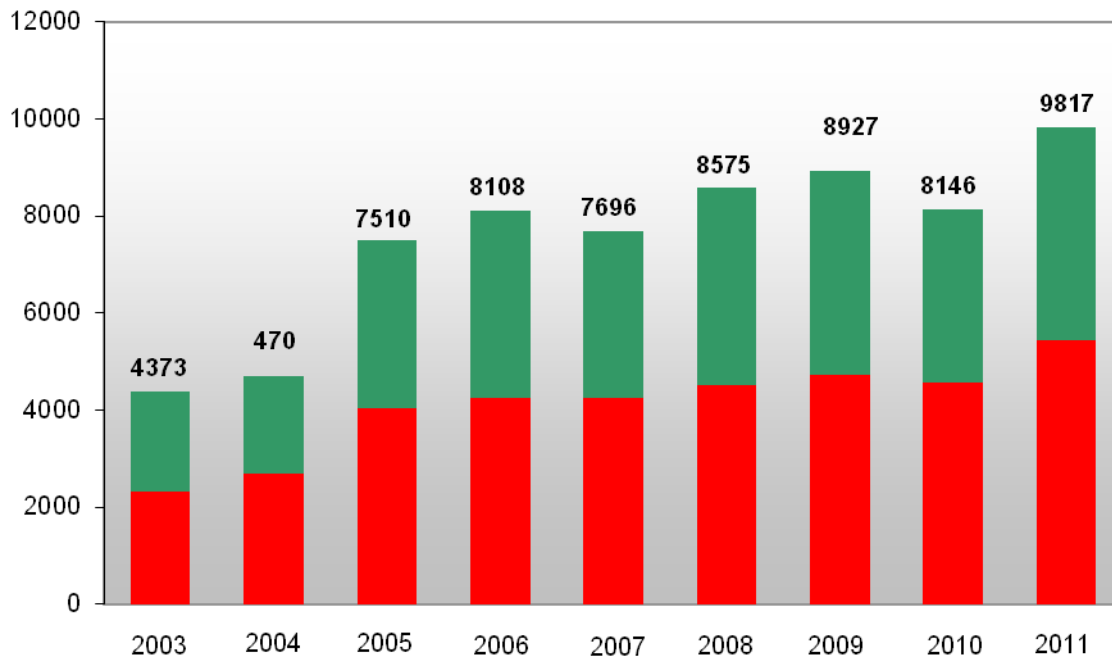
Coupled with this, we now have over 680 regular users of JACS' newsletter service. Clients can sign up on-line to receive these free updates which cover important issues in employment relations.

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 intend to increase 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.

### Information, advice and conciliation

Throughout the year, 188 clients contacted us on average each week.

**Client contacts 2003 - 2011: Employer and Employee**



Employees and those persons acting on their behalf accounted for 55% of client contacts (5441) which, combined with 4376 employer contacts represented the highest number of enquiries since the Employment Law was introduced. This volume was due not only to the increasing complexity of legislation but also, no doubt, to the economic uncertainty and the high level of change that this necessitated.

While we still deal with a number of basic issues such as statutory holiday entitlement or

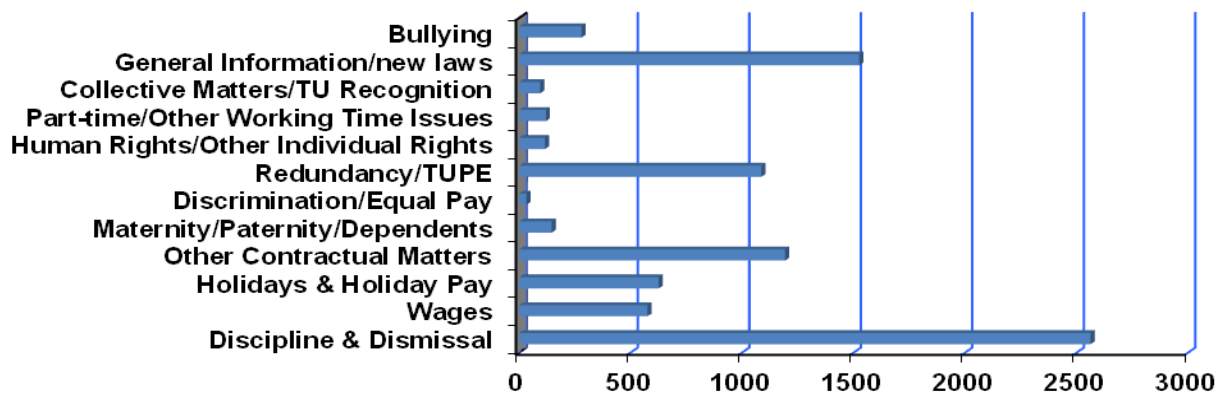
minimum wage, employers and employees are now much more aware of their obligations and rights and are used to researching basic queries via the internet. Instead, the queries brought to JACS by employers and employees are now more complex, particularly those linked to organisational restructuring and the need for meaningful consultation with employees at risk of redundancy.

JACS has dealt with numbers of cases where cost reductions have been considered by employers as essential to business survival and as a consequence they have declared redundancies without any meaningful consultation with staff. It is apparent that some employers appear reticent in regard to consulting, believing it could damage the morale of those employees not 'at risk', preferring instead to resolve matters quickly and pay the equivalent of an unfair dismissal claim

While the "morale argument" for not consulting is understood, the benefits of consultation are worth striving for. By encouraging such consultation, we have been able to help employers and employees agree alternatives to redundancy, such as a reduction in pay shared across the whole business or an acceptance of part-time working and job sharing, resulting in jobs (and skills) being retained. Retention of skills will benefit businesses in the future and will greatly assist employees in these very difficult times.

The financial imperative for proper consultation will become even more important with the various amendments to the Employment (Jersey) Law 2003 having now been approved by Privy Council. These include the amendment dealing with collective consultation in redundancy which introduces a potential penalty in the form of protective awards where an employer fails to consult, as required, of up to 9 weeks' compensatory pay to each affected employee. As a consequence, the protective awards will increase substantially the premium faced by employers who decide to take such short cuts, rather than to consult properly.

### Enquiry Subject Volume January to December 2011



The general trend of enquiries remains fairly consistent from year to year and the predominant issues remain disciplinary and grievance, contractual disputes, redundancy, holiday pay and wage disputes, as shown in the bar chart above.

## **Particular problems:**

Each year it seems that some specific issues arise that give particular cause for concern - 2011 was no exception.

**Zero Hour contracts** - the first is an increasing problem involving the use, or rather misuse, of variable hour contracts (sometimes called zero hour contracts). Such 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. These contracts are appropriate for Temporary Staff Agencies that supply temporary employees to other organisations but where there is no guarantee that work will be available. They are also useful when an employer needs a bank of 'casual workers' who are available to be called upon to meet workload peaks such as in the Fulfillment Sector. 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.

Problems arise when an employer uses zero hour contracts for work that is regular because the employer believes it protects him from claims of unfair dismissal, the need to give notice or from the obligation to make redundancy payments. When such employers no longer require the same number of staff, they simply tell them that no work is available, giving no notice or redundancy payments.

The question arises as to whether an employer/employee relationship is created. In our view, a relationship does exist where a mutuality of obligation arises i.e. there is an expectation by the employer that the individual will be available for work and by the individual that work will be offered. In such circumstances we believe that such employees would be entitled to the same employment rights as 'permanent contract' employees.

An associated problem arises with redundant employees trying to re-enter employment. Subject to certain provisos, redundant employees receive benefits from Social Security Department for a period time while they look for new work. If they are fortunate in finding a job, within a short period of starting work their benefits will cease. There is an understandable reluctance to accept jobs advertised with variable (zero) hour contracts as the employee has no security of income and if the "zero hours" employer then stops providing work the individual finds it difficult to regain his benefits. As far as the employee is concerned, he or she can do best for their families by refusing to accept such jobs in the hope that a "permanent" job offer is round the corner.

**Phased return to work** – the second problem is also benefit-related to some degree. JACS has been asked to advise a number of employers and employees how best to deal with long-term absence and the damage this can cause to a person's employment prospects.

The length of time off work due to sickness has been shown to have a strong relationship to the likelihood of returning to work. The British Society for Rehabilitation Medicine (2001) has found that after six months' absence there is only a 50 per cent likelihood of the employee returning to work. At 12 months this falls to 25 per cent and after two years, the chance of a return is practically nil. These findings emphasise the importance of beginning the process of rehabilitation as soon as possible after the commencement of the period of absence.

If we wish to create and support a healthy and efficient working environment there is a need for a supportive and flexible approach in assisting staff if they need time away from work due to illness and in supporting their rehabilitation back to work.

The purpose of a phased return to work is to rehabilitate the member of staff to their full duties and gradually build back up to undertaking their normal working hours within the earliest agreed timescale. In terms of a rehabilitation program the advice of a health specialist should first be obtained. The phased return to work program would normally not exceed four weeks, but bearing in mind the need for a degree of flexibility since the member of staff's progress might be difficult to predetermine, this could be extended to two or three months. The program should be time-limited and targets will be agreed.

If the GP has agreed that a phased return to work is appropriate, and the Line Manager has agreed a rehabilitation program, the member of staff should submit a final medical certificate from the GP. Further medical certificates will not be required relative to a phased return as the member of staff will no longer be on sick leave and sick pay will not apply.

This latter point is often an impediment to employers even considering, let alone agreeing, a phased return to work. Without Social Security sickness benefit it falls to the employer to pay sufficient to allow the employee to be no worse off than they would be on benefits, even though the employee may only be working for less than 20 hours a week during the first few weeks. This can act as a disincentive to effectively tackling this problem.

## **Legislation**

My previous report commented that we were disappointed with the lack of progress by the States in bringing forward what we believe is necessary legislation if Jersey is to be seen as a fair jurisdiction in which to work. This has now been addressed to an extent by the amendment relating to redundancy that came into force in January 2011, giving those with two or more years' service the right to statutory redundancy payments and paid time off to attend interviews or to look for new employment in addition to their existing right to notice periods. Further revisions to the redundancy provisions of employment legislation were also approved during the year and are due to be implemented in the first half of 2012.

We do understand that legislation can weigh heavily on small businesses and we will update and further promote our training courses in order to help employers and employees understand their new obligations and to meet them as effectively as possible.

There has been much media comment during the year and in our previous reports about the lack of Discrimination Laws and we understand that draft legislation will be debated in 2012 with a view to its introduction in the following year. Initially it is thought that changes to the State pension age will mean that age discrimination is now likely to be the first area to be addressed, with sex discrimination closely following as this is considered necessary before the introduction of the proposed Maternity, Paternity and Family Friendly Law. Remaining areas of discrimination will be addressed subsequently.

We will continue to encourage employers to adopt good practice in anticipation of these changes; indeed many employers already set high standard that are reflected in their profitability, low staff turnover and their overall success.

One of the areas of on-going concern has been the number of clients we see who believe they are suffering from bullying or harassment at work. In 2010 we dealt with 238 bullying-related issues; in 2011 this increased to 280.

While we believe that the harsh economic climate has added to the problem – in that employees whose performance remains unchanged may be subjected to more rigorous performance management or may feel “picked on” by employers who are struggling with declining revenues – there is no doubt that employees are no longer as reluctant to discuss their concerns with our advisers.

This has been brought about, we believe, by the excellent work undertaken by the Jersey Community Relations Trust (JCRT), by the Trust’s appointment of a qualified counsellor and by the publicity that the Trust has generated. JACS wholeheartedly supports the work of JCRT and we will continue to provide advice and guidance to employees and employers on this issue. However, it remains our belief that until Jersey introduces Discrimination Law the extent of and damage caused by bullying will not be tackled. While Discrimination Law will not directly address the question of bullying and harassment in full, JCRT’s workplace surveys have shown that age, sex, disability and race feature largely in bullying and harassment and while we understand the reluctance to over-legislate, we find it difficult to understand the arguments of those who believe that these issues should not be outlawed in a modern society and be dealt with by legislation.

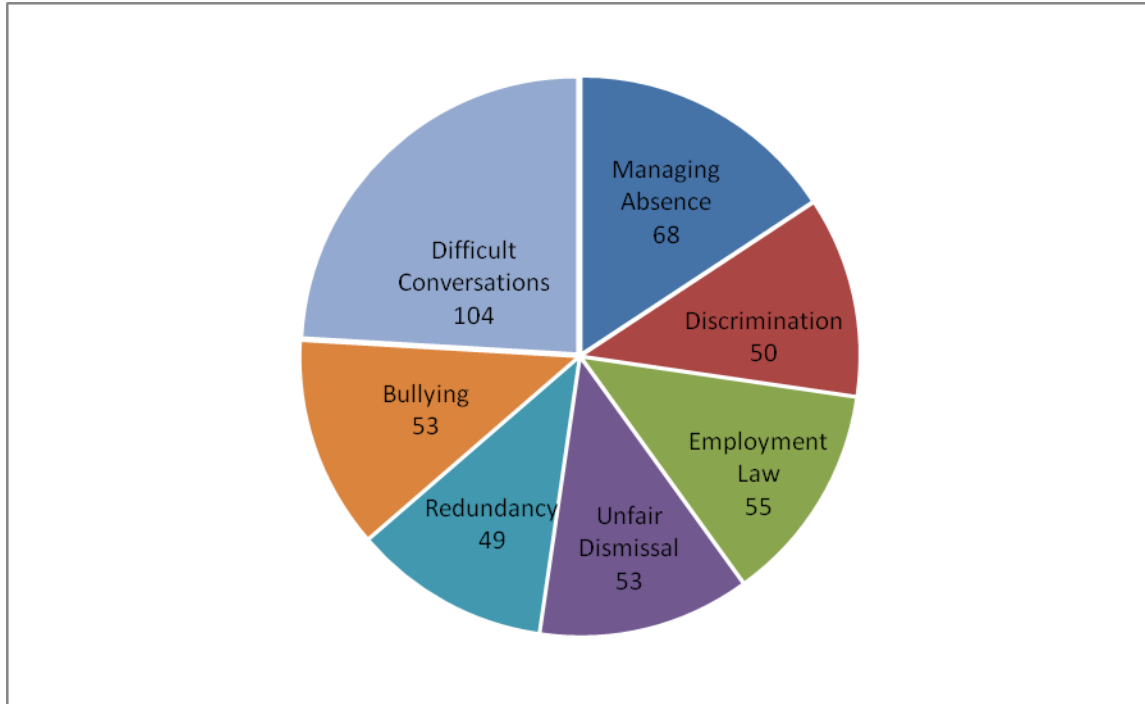
Employment law is still a relatively new concept in Jersey and despite the need to reduce costs in both the public and private sectors we have a fair way to go in order to offer adequate safeguards to all. We appreciate that further legislation is seen as an unnecessary burden by some, but JACS supports the intention of the Minister for Social Security to give a clear commitment to a specific, timed program of necessary legislation that will give reassurance to employees that progress will be made in a reasonable timescale while providing time for employers to plan for its implementation.

## **Training**

Until the end of 2010 our public training had remained free of charge to all organisations and individuals. Financial constraints obliged us to introduce a small charge in 2011 (£25 per delegate for a half-day training course) and predictably this caused a reduction in course bookings in the first quarter. We believe that our courses offer excellent value for money and it seems as if this view is shared by our clients, with bookings for training courses returning to their former level by mid-year. We continue to focus on those issues that appear to cause most problems in the workplace or had the greatest potential to ‘trip up’ employers in their management of people. Dealing with poor performance, absenteeism and allegations of bullying have always been difficult areas for employers, with reluctance by many to have the “difficult conversation” necessary to deal with the problem. As a result of feedback from course members, we introduced a new program predictably entitled “Difficult Conversations” and ran the course 5 times during 2011, with a total of 104 delegates attending.

Some of our training is offered in advance of, or in anticipation of, legislation e.g. discrimination and bullying. These subjects featured in 6 of our courses throughout the year and despite the uncertainty about the time-scale of legislation many organisations have supported these courses by putting forward more than 100 delegates. Attendance has given managers an opportunity to explore the positive benefits of a non-discriminatory approach to the employment of their staff. As well as a comprehensive set of training notes, delegates are encouraged to use JACS’ website which provides examples of model policies that organisations find useful.

## Public training courses 2011: total 432 delegates



In total, 432 delegates attended our 27 courses from a whole range of organisations, large and small. Feedback continues to be very positive with all delegates rating the training as 'good' or 'excellent'. St Paul's Centre has proven to be an excellent facility for our training over the years as it offers the space for 20 or more delegates as well as break-out areas, allowing us to split the delegates into smaller groups to work on the case studies that form an integral part of JACS' training.

In addition JACS senior team members have provided free training, workshops or seminars to a variety of interest groups including: Highlands College Management Centre; Chartered Institute of Personnel and Development; States Departments; schools. In total, 18 such sessions were delivered by the JACS team and 395 delegates attended, bringing the number of course delegates for all of our training to over 800.

### **Resolving collective disputes and improving relationships**

2011 was not a particularly busy year in respect of JACS involvement in collective disputes as it appears many groups of employees accepted the economic reality of pay freezes or increases at or below the rate of inflation. Nevertheless we were involved in 4 collective mediations, all of which resulted in an agreed outcome and we administered 4 pay and conditions of service ballots in accordance with the requirements of the Employment Relations (Jersey) Law 2007. Also in line with that law we acted as independent scrutineer for a ballot to determine whether or not an employer was obliged to grant trade union recognition

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.



The requirement to administer a ballot usually follows our prior involvement in negotiations once the parties have reached an impasse in their attempts to settle their dispute. We have assisted a number of employers, groups of staff and trade unions with a range of alternative dispute resolution procedures such as conciliation (informal assistance to help both parties reach their own solution), mediation (which is more formal and may lead to non-binding recommendations being made by the mediator) and as a last resort, arbitration (a formal hearing, usually chaired by an employment relations expert selected from the same list of arbitrators used by Acas – arbitration leads to a binding award).

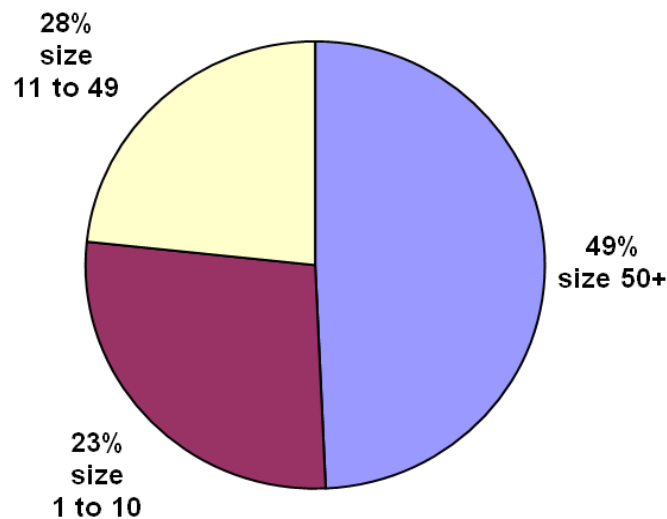
Whereas in 2010 the number of requests for advice or assistance increased to its highest level with 165 contacts recorded, in 2011 this reduced to 97 such requests. This does not mean we dealt with 97 disputes as each dispute normally gives rise to a series of contacts as discussions progress. Our involvement covered pay disputes, transfer of undertakings, trade union recognition, changes to terms and conditions of employment and consultation and negotiation arrangements.

Not all our collective work involves JACS acting as conciliators or mediators with both parties present. On numerous occasions one or other of the parties simply wanted to meet to talk through the issues that they faced. This role as an impartial third party allowed various ideas to be explored before they are put forward as a proposal to settle whatever dispute had arisen.

While conciliation is not always successful in terms of helping the parties to reach a binding agreement immediately, we regularly find that conciliation or mediation helps employers and employee representatives to focus on the key issues and provides an opportunity for one side to reflect on the pressures or restrictions faced by the other. As a result it is frequently the case that 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.

### Organisations working with JACS

**Organisation size in terms of headcount**



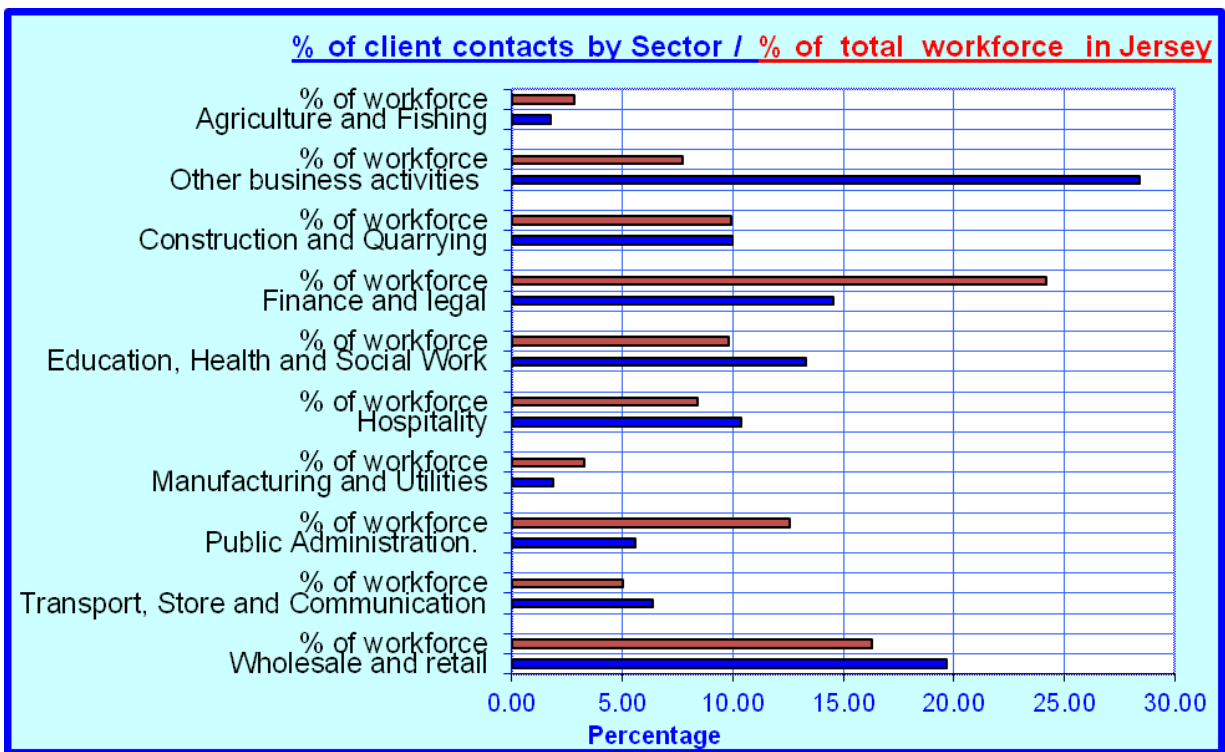
During the year we dealt with 4376 employer contacts, an increase of 24% on the previous

year. A number of these contacts were JACS-initiated following requests from employees that we contact their employer in an attempt to resolve issues. The majority, however, remain employer-initiated requests for advice and guidance over a wide range of subjects, the most time-consuming being those associated with restructuring and redundancy.

Our dealings with employers are fairly evenly divided between those larger employers with 50 or more employees, and those employers with up to 49 employees. We are particularly keen to assist these smaller employers that are normally too small to employ a specialist HR function which will be the case for the 23% of business clients employing 10 staff or less (over 1000 contacts) and more than likely applies to the remaining 28% employing less than 50 staff.

The bar chart on the next page gives an analysis of the enquiries from the various sectors that make up our diverse economy, together with an indication of the proportion of the workforce employed in each sector. Despite the economic problems faced it will be seen that a number of traditionally lower paid sectors including agriculture, hospitality and retail do not generate a disproportionately large number of issues for JACS to deal with, nor does the construction industry or finance sector.

Once again, however, 'Other business activities' stands out as having a disproportionately high number of client contacts compared with the percentage of total workforce employed. It is probable that this is again due to the magnitude of the effect of the recession on general business and the sheer volume of problems that this has given rise to for employers and employees alike.



### Staffing

Our team comprises three full-time advisor/conciliators and a part-time advisor/administrator and, since the formation of JACS in 2001 has only increased by the part-time member. We

have coped with the new legislation and complexity of issues raised because, thankfully, we now deal with fewer 'routine' issues and our website, which had 27,000 separate 'visits' in 2011, enabled a great many individuals to obtain the information they required without the need to contact us directly. The unfortunate illness of one of our three full time staff during the final quarter of the year has stretched our resources, however, and we are very hopeful that by the start of the second quarter in 2012 she will be back at work, allowing the team to continue to deliver an effective service. Despite staff shortages we have met or exceeded the published standards of service and my thanks go to the remaining team members for their hard work and the long hours they have endured.

It continues to prove difficult to release team members to undertake necessary training which normally takes place in the UK, but it is essential we ensure that JACS advisors and conciliators are up to date and knowledgeable in all employment matters in order that we can offer the professional service expected. It has been possible for a team member to attend Acas Conciliation training, while others have attended relevant training courses on redundancy and discrimination in the UK and locally.

## **Managing our Finances**

The total cost of running JACS was marginally below budget at approximately £343,000 although this figure will be subject to audit adjustment. 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 0.5% to £316,200 as, like all grant aided organisations, we were subject to the reduction necessary under the Comprehensive Spending Review before receiving a small increase to off-set some inflationary costs in 2011.

For the future, the level of funding we are likely to receive still presents a serious concern and the Board regularly considers the implications for JACS' operation, services and staffing levels. It is very difficult to make further savings bearing in mind the complexity and volume of employment legislation that we are required to deal with and advise upon and this will inevitably increase further when Discrimination Law and Maternity, Paternity and Family Friendly legislation is eventually introduced. The number and complexity of conciliations, whether pre- or post-Tribunal claim is expected to increase in direct proportion to increased legislation and the Board will carefully review future needs in order to present a robust budget each year.

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

## **Future Plans**

With the exception of amendments associated with redundancy, proposals to introduce new legislation – in particular Discrimination and Maternity, Paternity and Family Friendly legislation - have been delayed in part due to decisions reached by Ministers in relation to the Comprehensive Spending Review but also due to the demands on law draftsmen.

Recent Ministerial changes have allowed priorities to be re-established and the Social Security Minister has been pro-active in setting out his plans at least in outline. While there is still some uncertainty over the timescale for legislation, we have a better understanding of the Minister's intentions and 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.

In cooperation with Social Security Department senior officers and as part of good corporate governance we have drafted and agreed a comprehensive Service Level Agreement between JACS and the Department. We have been assured that we will be notified of the intentions of the Department and the Minister in respect of the introduction of new employment legislation each year and this, we believe, will enable us to work more effectively together to benefit the Island through ongoing improvements in employment relations.

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 programme 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 in the previous two years will continue throughout 2012 and we will do our best to help employers, trade unions and employees to cope with the continued economic uncertainty.

Smaller businesses and new business start-ups are vitally important in developing employment opportunities and we have been pleased with the extent of our dealings with such businesses and will continue to provide advice and assistance to them. We recognise that such organisations may not welcome increased employment legislation and we will do all we can to assist bearing in mind that, in the absence of dedicated human resources functions, it is difficult for business owners or managers to cope. While we will continue to support all organisations and their employees, irrespective of size, we will continue to focus on the needs of smaller organisations, ensuring they have ready access to model policies, to necessary procedures and to guidelines which will help them to deal with the employment issues that will arise.

## **Summary**

My last two annual reports stated that we expected redundancy and restructuring to continue throughout the following year and this has proven to be the case. My expectation is that 2012 will not see a great deal of respite and employers and employees will face even more challenges before we can expect to see an improvement in the general business climate.

We encourage employers to adopt good practices in making the changes that will be necessary within their businesses and to do so in the knowledge that redundancy often has a devastating impact upon employees and their families – any and all steps that can be taken to avoid redundancies should be carefully considered by employers, employees and trade unions before the final decisions are made.

Many employers, employees and trade unions have asked us to assist in dispute resolution during the past year as it is recognised that determined attempts must be made to avoid damaging industrial relations confrontation. While any dispute between employees and their employer is regretted we believe there is now willingness on both sides to resolve problems by consultation, conciliation and mediation rather than by litigation or industrial action.

We continue to encourage all employers to seek advice to ensure that their policies and actions conform to good employment practice and to employment legislation. We reiterate the need to deal fairly with the consequences of change and JACS will continue to provide a professional, impartial advisory service to employers, employees and trade unions.

Those organisations that work hard to encourage staff to accept necessary change rather than trying to force change upon them and those staff that work with the employer to limit the negative reactions that change can create will reap the benefit as the economy improves. This approach of working together is essential if Jersey is to make the most of opportunities that do arise.

Finally, I once again record my sincerest appreciation for the support provided by Patricia Rowan, Trish Weston and Chrissie Hennessy, all of whom have worked tirelessly to exceed the expectations of our clients despite unforeseen illness that has stretched our limited resources.

My thanks also to my Chairman, Tom Slattery, who has again offered his time willingly whenever advice and guidance is requested and to Kevin Keen, David Warr and John Moulin who have now left the Board after a number of years. I join my Chairman in thanking the remaining Board Members and welcoming those who have recently joined. 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 thank Senator Ian Gorst for his encouragement and support while he was the Social Security Minister and I too look forward to continuing that constructive relationship with Senator Francis le Gresley and his officers at Social Security Department.

**David Witherington**

**Director**

15<sup>th</sup> February 2011

## **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](http://www.jacs.org.je)

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