

# Jersey Employment Tribunal

## Annual Report

2010 - 2011



# **Jersey Employment Tribunal Annual Report 2010/11**

This is the sixth annual report of the Jersey Employment Tribunal and covers the period 1<sup>st</sup> July, 2010, to 30<sup>th</sup> June, 2011.

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## **CHAIRMAN'S COMMENTS**

### **Membership of the Tribunal**

As ever, I am grateful for the commitment of the Tribunal members. Time spent in hearings probably is about half the time the members actually spend on each case. The rest of the time is spent studying the papers before hearings, discussing and examining in detail the evidence after hearings and prior to making the decision. Thereafter, the Chairman or Deputy Chairman provides a draft judgment for the panel members to correct and amend before publication, and there may be several drafts before the document is finalised.

All too often, the Tribunal convenes to hear a case only to find that one of the parties does not appear, or reads the papers before a hearing only to find that the parties settle the case a day or two before the hearing. In both cases at that stage it is too late to arrange for another case to be heard by that panel. This is hard on panel members who may have taken holiday time or time off work to attend and who have spent their own time reading the papers. It is also a nuisance administratively, for if our time were not wasted in this way, we would be able to reduce the backlog of cases awaiting hearing.

Two appointments were made during the period of this report: Mrs Louise Cram as an employer representative and Mr John Noel as an employee representative. There are currently two vacancies for Tribunal members and I hope that these vacancies will be filled by the end of the year.

### **Legislative Developments**

#### **Discrimination Law**

The States of Jersey has approved in principle a law to prevent discrimination. I believe that, with some adjustments in terms of name, manpower and resources, the Tribunal would have the capacity to deal with all aspects of discrimination and if it is agreed that discrimination claims should be heard in the same relatively informal manner as employment claims, the Tribunal might reasonably be regarded as the most suitable forum for all discrimination matters.

#### **Redundancy Law**

The Employment (Amendment No. 5) (Jersey) Law, 2010, came into effect on 1<sup>st</sup> January, 2011. The main aims of this amendment are to (1) set out an employee's entitlement to a redundancy payment (2) provide for paid time off to seek, or arrange training, for future employment, and (3) provide for a means of enforcement of these provisions.

### **Unfair Dismissal Awards**

From October, 2009, the Tribunal has the power to reduce the compensation that an employer is ordered to pay where the employee has contributed in some way to his or her own dismissal, in addition to being able to order the re-employment of an unfairly dismissed employee instead of a financial award. These powers allow the Tribunal to achieve greater fairness than hitherto.

### **Staffing**

John Mallet has retired as Secretary to the Tribunal. He was there at the beginning, and it was largely due to his organization and patience that we now have a Tribunal which runs smoothly. John's firm yet kind management of the parties in employment disputes has set the hallmark to the Tribunal's approach: we try throughout the process to match fairness with compassion.

In October, 2010, Mrs Louise Cave joined the Tribunal from the Viscount's Department as Registrar of Appeals and Tribunals, and is assisted on a part-time basis by Mrs Jo Hickey. Both contribute most effectively to the smooth running of the Tribunal.

### **Training**

During the period covered by this report Tribunal members received training on 18<sup>th</sup> November, 2010, and 4<sup>th</sup> March, 2011. The courses are designed as a refresher for existing panel members and an introduction for new panel members.

### **Website**

It has become apparent that the current website is outdated and in need of improvement. Work is currently being undertaken to update the website with a view to creating a much more user friendly website containing extra information. In addition, work is progressing on transferring all Tribunal judgments onto the Jersey Legal Information Board (JLIB) website. By using advanced search tools, access to relevant Tribunal judgments will be much more straightforward. The intention is to create a link from the improved Tribunal website direct to the JLIB website.

## **Administration**

From January this year responsibility for the Tribunal's administration moved from the Department of Employment and Social Security to the Judicial Greffier. I have no doubt that the experience within the Judicial Greffe will be valuable. There are, however, two dangers which should be borne in mind.

First, the Tribunal is a statutory body created by the States, as a political decision, to fulfil a social need. The Minister for Social Security, who is responsible for the Tribunal, has to be sensitive to the political and social requirements of the States, and hitherto I have been aware of those requirements through exchanges with the Minister or his civil servants.

The Judicial Greffier is not answerable to the States. It is therefore important, I believe, that the Minister keeps a close interest in the Tribunal.

Second, the Tribunal deliberately works very differently from the courts; its hallmarks are informality and flexibility; it has to be accessible to parties who generally are not represented by lawyers or other experts. I hope that the Judicial Greffier will recognise this difference.

## **Review Group**

Every organisation needs external review from time to time, and with the Minister's approval I have recently set up a working group under one of the lawyers who appears in the Tribunal, Helen Ruelle, to look at how the Tribunal operates and report its findings to the Chairman and the Minister. At the time of writing this, we are still considering membership of the group, but I hope that the group will be at work before the end of the year.

## **My resignation**

Some time ago I informed the Minister of my wish to retire from my post as Chairman. No date has been fixed for my departure; it depends upon when my replacement is appointed, but I expect it will be early in the new year.

To the panel members past and present, and to Nicola Santos Costa, I give my thanks for their hard work.

The support we have had from Kate Morel at the Social Security Department has been beyond value. I am also grateful for the support and interest shown by successive ministers, Paul Routier and Ian Gorst.

**David Le Quesne**  
**Jersey Employment Tribunal Chairman**  
**27th of October, 2011**

# GENERAL STATISTICS

## **Applications to the Jersey Employment Tribunal**

During the period 1<sup>st</sup> July, 2010, to 30<sup>th</sup> June, 2011, the Jersey Employment Tribunal received 194 applications, an increase of 25 compared to the previous reporting period (15% increase). This continued increase probably reflects the difficult economic climate, in which employers wish to reduce staff and employees are desperate to keep their jobs. The applications came from a wide spread of Jersey's employment sector, and for the first time are included in this report in the Statistical Appendix.

## **Number of Cases Heard**

During the period the Tribunal sat on 74 occasions: 53 full hearings and 21 interim hearings, a decrease of 13 compared to the previous reporting period.

In addition, some case management and directions matters are dealt with by the Chairman or Deputy Chairman on paper, without a hearing.

Of the full hearings, judgment was given in favour of the Applicant in 28 cases and in favour of the Respondent on 11 occasions. The remaining cases were dealt with at hearing as follows: 9 settled, 3 dismissed, 1 withdrawn and 1 struck out.

## **Interim Hearings**

Interim hearings are used increasingly to determine matters such as whether the Tribunal has jurisdiction, whether the claimant is an employee of the alleged employer, identifying the issues for determination, disclosure issues and many other areas where preliminary determinations may lead to a fair and efficient hearing. These are conducted at the request of either of the parties or at the direction of the Chairman or Deputy Chairman.

## **Outcomes of Tribunal Applications**

Unless a party indicates that he/she does not want conciliation, all applications and responses are forwarded to the Jersey Advisory and Conciliation Service (JACS). The Employment Tribunal actively encourages both parties to meet an Officer of JACS. Cases only come to the Tribunal if no conciliated settlement has been reached.

The 194 applications that were received during the report period were dealt with as follows:-

Rejected		5
Dismissed		2
Continuing		75
Settled		71
Withdrawn		15
Struck Out		2
Found in favour	Applicant	17
	Respondent	7
	<b>Total</b>	<b>194</b>

### **Outstanding Cases from Previous Years**

For the period 2005 there is one case outstanding. The conclusion of this case is dependent on the outcome of a hearing before the Royal Court. The only other outstanding cases are three for the period 2008 and four for the period 2010.

### **Issues Identified in Applications**

Consistent with previous reporting periods, the majority of cases coming before the Tribunal relate to unfair dismissal and payment of wages. It is interesting to note, however, that there has been a marked decrease in applications citing no contract as a grievance.

The figures below do not include additional issues which are identified to the Tribunal during the course of a hearing, and in most applications there is more than one issue to be addressed by the Tribunal.

	<b>2010/11</b>	<b>2009/10</b>
Unfair Dismissal	148	139
Payment of wages	71	80
Minimum Rest Periods & Annual Leave	61	47
Termination of Employment	59	73
No Contract	3	23
Breach of Contract	3	3
Minimum Wage	3	2
No Itemised Pay Slip	0	8
Written Statement of Employment	2	0
<b>TOTAL</b>	<b>350</b>	<b>375</b>

# Membership of the Jersey Employment Tribunal 2010/11

As of 30<sup>th</sup> June, 2011, the members of the Jersey Employment Tribunal were:-

## Chairman

David Le Quesne

## Deputy Chairman

Mrs Nicola Santos-Costa

### Members with experience as representatives of employers

Mrs Susan Armes

Mrs Louise Cram

Mrs Mary Curtis

Mrs Kelly Flageul

Mr Stewart Mourant

Mr Mark Therin

Mr Peter Woodward

### Members with experience as representatives of employees

Mr Michael Baudains

Mr Alan Hall

Mr Patrick Kirwan

Mr Timothy Langlois

Mr Sam Le Breton

Mr James McCartan

Mr John Noel

## Contact details

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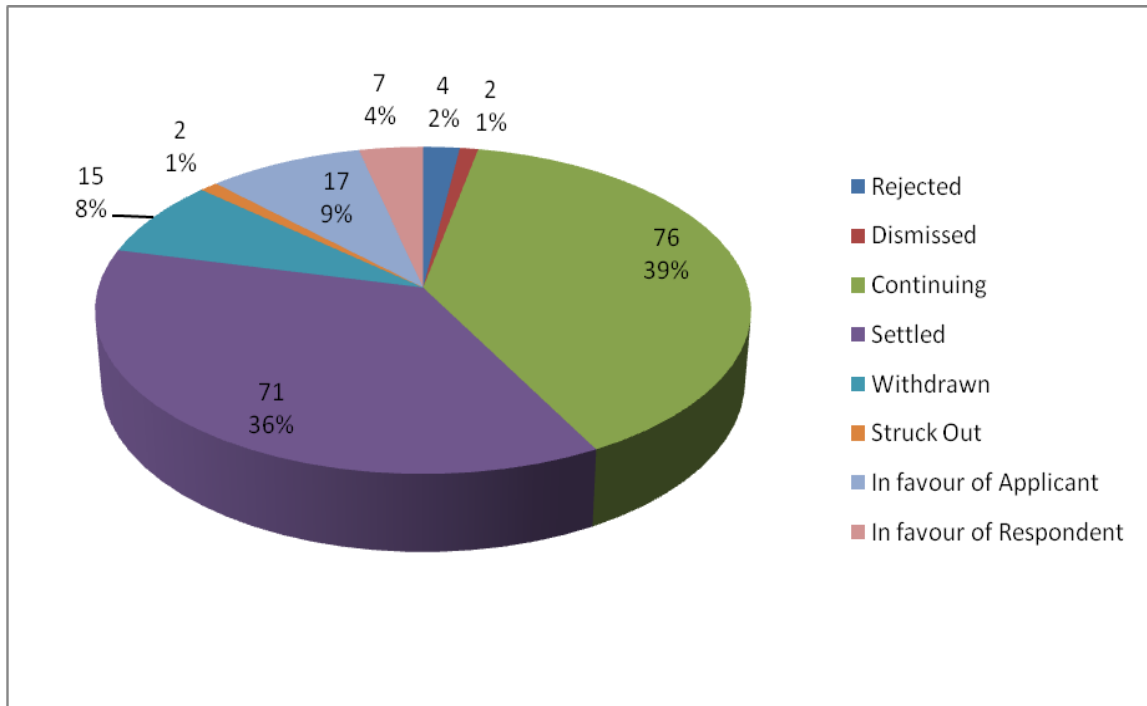
**E-mail:** [admin@jerseyemploymenttribunal.org](mailto:admin@jerseyemploymenttribunal.org)



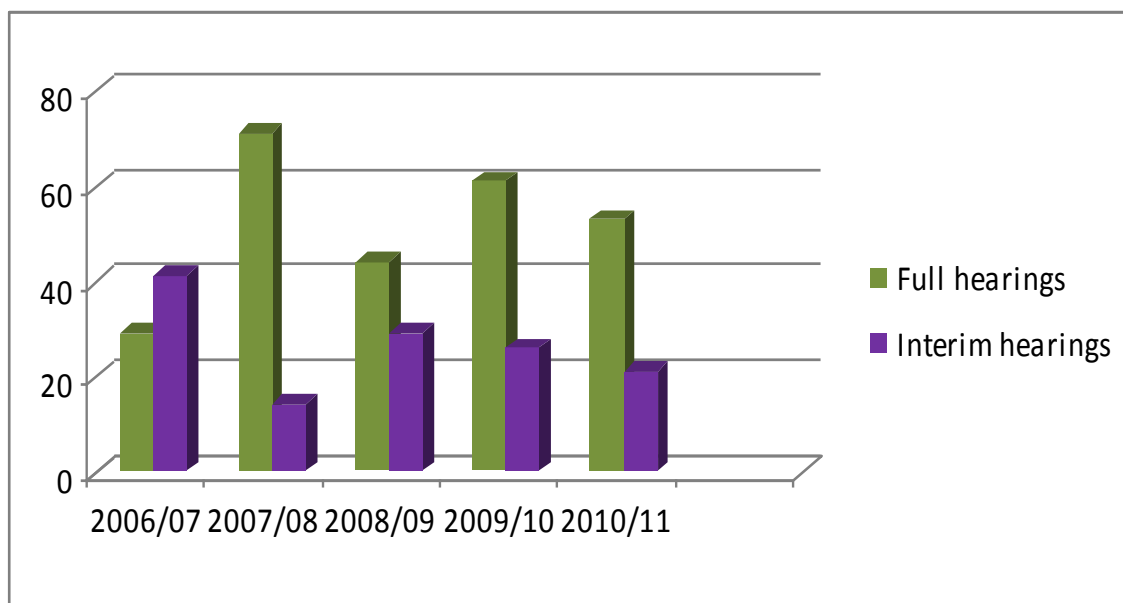
**Website:** [www.jerseyemploymenttribunal.org](http://www.jerseyemploymenttribunal.org)

# STATISTICAL APPENDIX

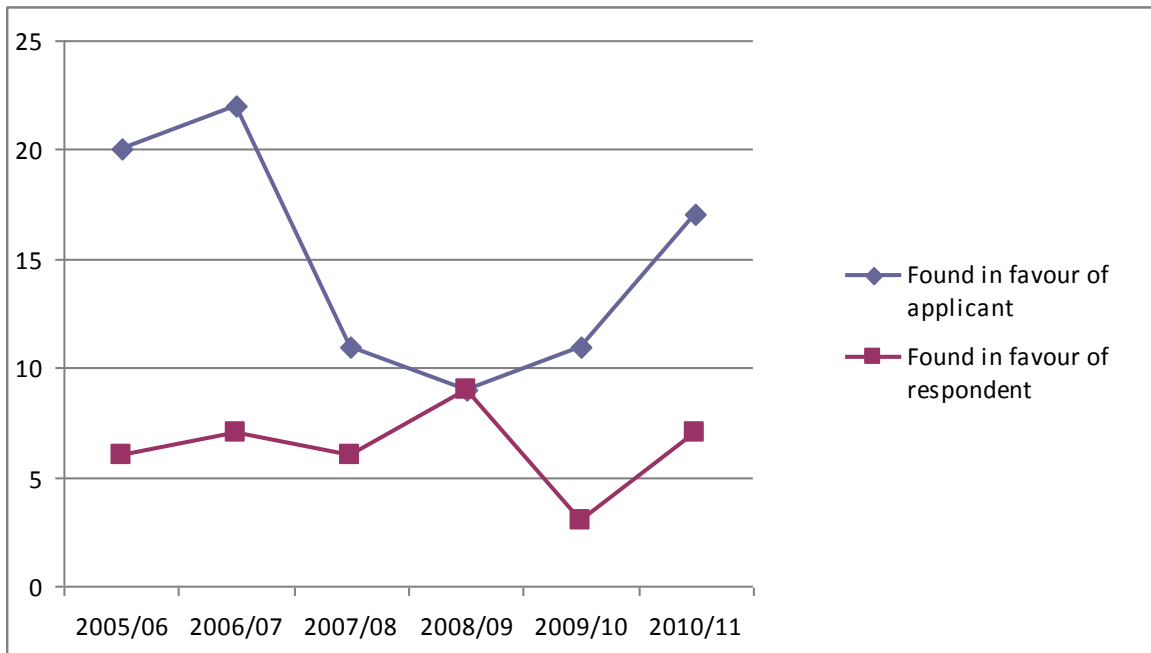
**Figure 1 - Applications Received During the Period 1<sup>st</sup> July, 2010, to 30<sup>th</sup> June, 2011**



**Figure 2 - Comparison of Full and Interim Hearings Held**

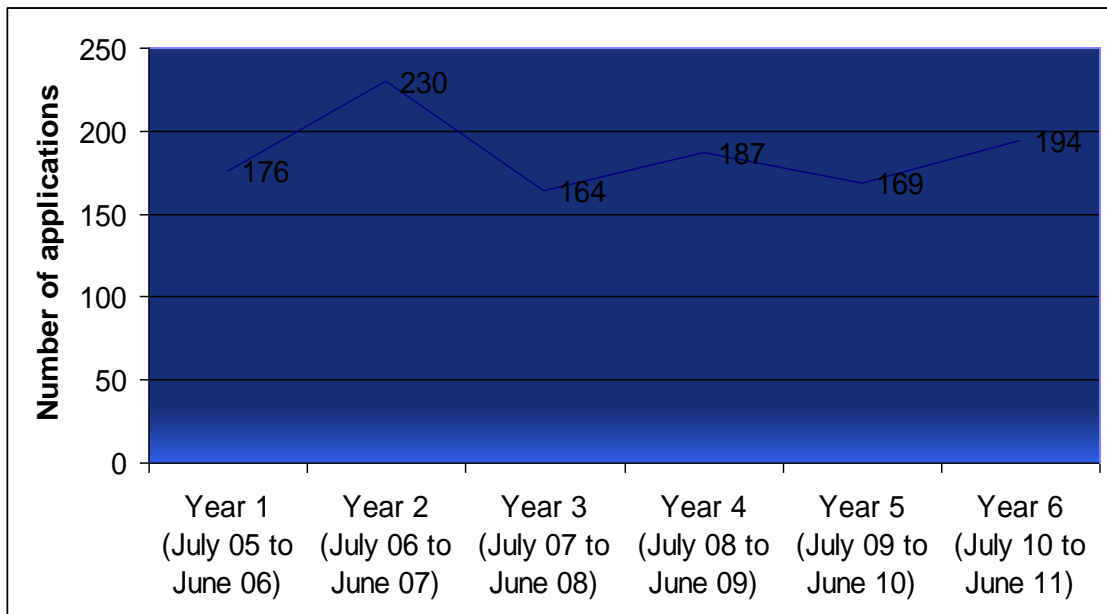


**Figure 3 - Comparison of Tribunal Judgments**

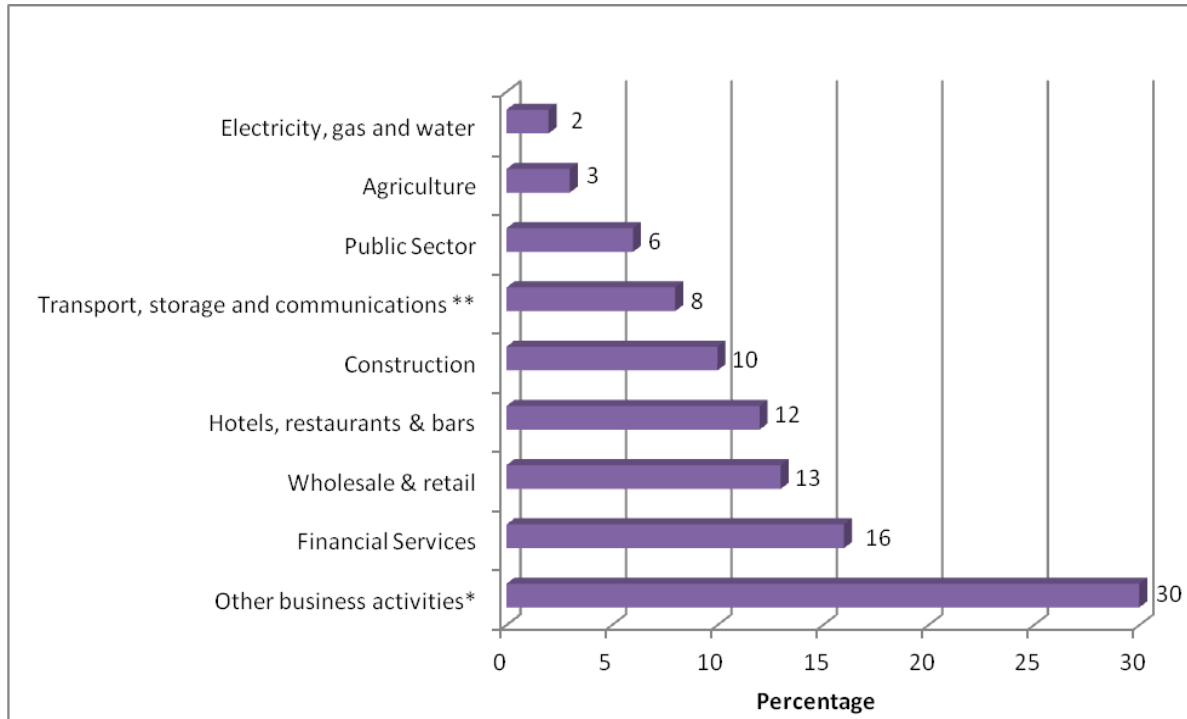


Note: Of the 194 applications received during the period 1<sup>st</sup> July, 2010, to 30<sup>th</sup> June, 2011, 17 cases were found in favour of the Applicant and 7 in favour of the Respondent. Of all full cases heard by the Tribunal during the same period (which includes cases that have been carried forward from previous years) 28 cases were found in favour of the Applicant and 11 cases were found in favour of the Respondent.

**Figure 4 – Total Number of Tribunal Applications Received in each Annual Period**



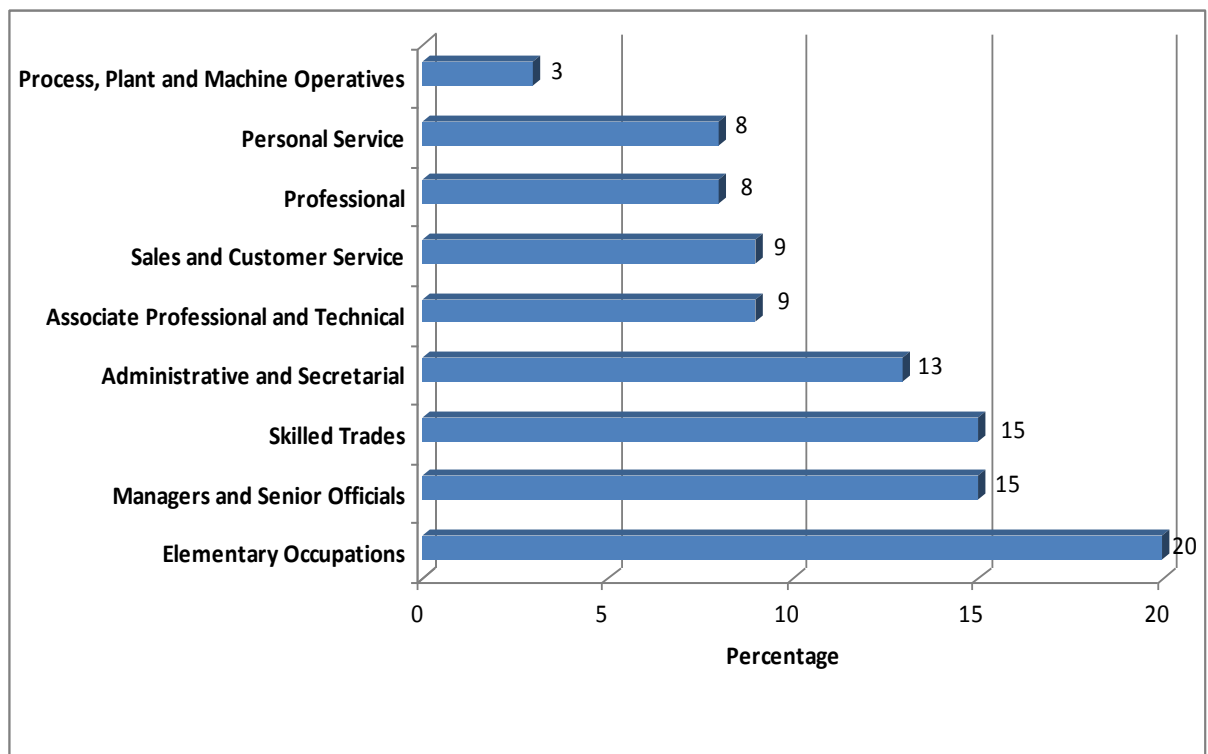
**Figure 5 - Percentage Applications by Business Sector 2010-2011**



\* The 'Other business activities' sector includes 'Miscellaneous business activities' and private sector 'Education, health and other services'.

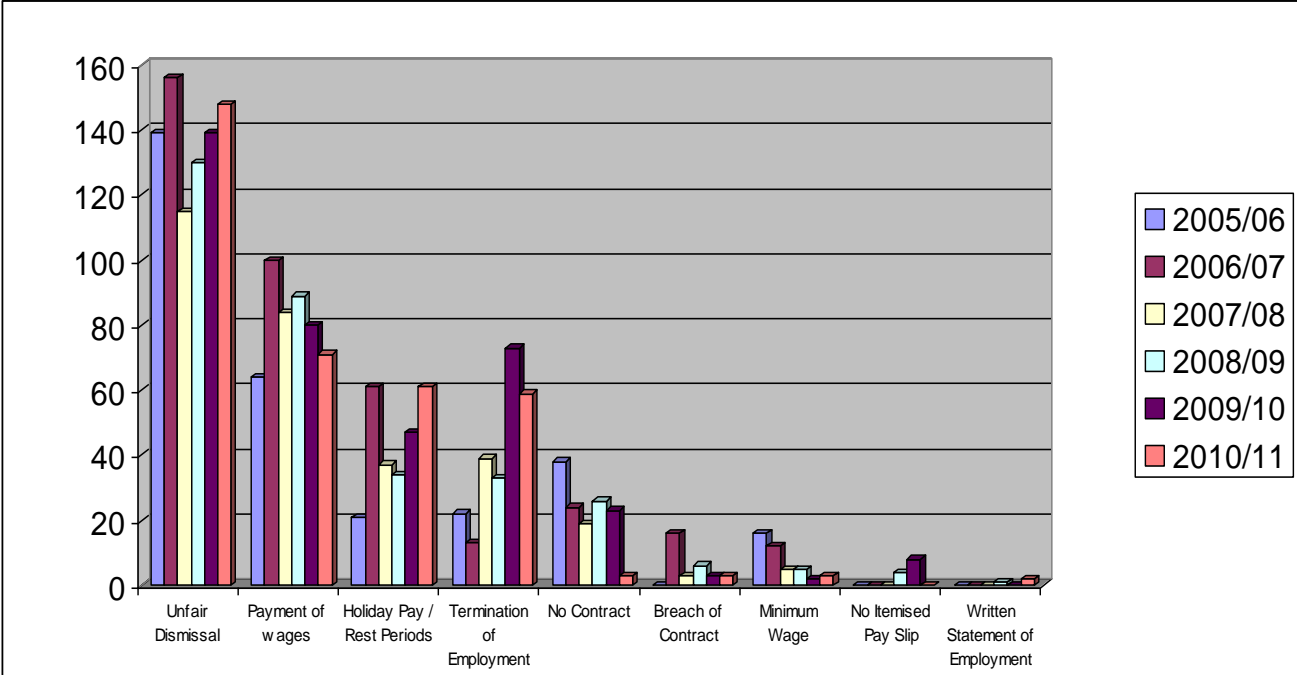
\*\* 'Transport, storage and communications' includes Jersey Airport, Harbours, Postal Administration and Jersey Telecom.

**Figure 6 - Percentage Applications by Occupational Classification 2010-2011**



\* see notes

Figure 7 – Issues Contained In Applications



## Notes

### **Standard Occupational Classification (SOC 2000):**

#### **Example occupations with each category:**

##### **Managers and Senior Officials**

Managers and senior officers in public and private sectors.

##### **Professional**

Science professionals, civil engineers, pharmacists, vets, teachers, lawyers, judges, chartered accountants, architects, social workers, librarians, clergy.

##### **Associate Professional and Technical**

Science technicians, engineering technicians, nurses, dental technicians, physiotherapists, youth workers, police officers (sergeant and below), artists, actors, graphic designers, journalists, sport coaches, air traffic controllers.

##### **Administrative and Secretarial**

Office clerks, secretaries, personal assistants, receptionists, book-keepers, telephonists.

##### **Skilled Trades**

Farmers, gardeners, fishermen, mechanics, electricians, telecommunication engineers, computer engineers, bricklayers, plumbers, carpenters, plasterers, tailors, printers, butchers, bakers, chefs.

##### **Personal Service**

Nursing auxiliaries and assistants, care assistants, home carers, animal care, leisure and travel assistants, travel agents, hairdressers, nursery nurses, childminders, education assistants, housekeepers

##### **Sales and Customer Service**

Sales assistants, retail cashiers, call centre agents, check out operators, customer care occupations, telephone sales person.

##### **Process, Plant and Machine Operatives**

Plant and machine operatives, fork-lift truck drivers, taxi cab drivers, chauffeurs, bus drivers, van drivers, construction operatives.

##### **Elementary Occupations**

Farm workers, labourers, packers, postal workers, messengers, couriers, hotel porters, kitchen and catering assistants, waiters, bar staff, domestic cleaners, security guards.