THE LAW ON TRADE UNIONS, INDUSTRIAL DISPUTES AND COLLECTIVE BARGAINING IN THE CHANNEL ISLANDS

Andrew Cross

This article seeks to outline the development of the law on trade unions, industrial disputes, and collective bargaining in the Channel Islands from 1771 until the present day. Previous contributors to the this Review such as Cavey, Ferbrache, Malorey and Roland and Milner have addressed individual labour law aspects, but any consideration of the collective aspects of labour law is largely absent. This article is written in an attempt to redress that gap in the published literature.

Introduction

1 This article seeks to outline the development of the law on collective industrial disputes in the Channel Islands from 1771 to the present day. Cavey,[1] Ferbrache,[2] Malorey,[3] Milner and Roland,[4] writing previously in the *Jersey Law Review*, *Guernsey Law Journal* and the *Jersey and Guernsey Law Review* have each considered aspects of individual labour law in the Islands, but not the Islands' collective labour laws, the roots of which, in Jersey at least, go back to the *Code des Lois de 1771* [or, as it is known in Jersey, the Code of 1771].

2 A helpful description of the law relating to collective bargaining is provided by Ewing & Hendy[5]—

> "Trade union legal rights are vital to collective bargaining. The purpose of a trade union is to defend and advance its members interests, especially at work. By doing so, of course trade unions defend and advance the interests of the working class. Unions fulfil that purpose in many ways (*e.g.* by promoting legislation, by

[1] Cavey, "Fair Play in the Workplace" (1999) 3 *Jersey Law Review* 158.
[2] Ferbrache "Unfair Dismissal Legislation in Guernsey" (2000) 4 *Guernsey Law Journal* 33.
[3] Malorey, "Some Employee Protection at Last" (2004) 8 *Jersey Law Review* 54.
[4] Milner & Roland, "Employment Tribunals in the Channel Islands—Time for a Closer Look" (2013) 17 *Jersey & Guernsey Law Review* 58.
[5] Ewing & Hendy, *Trade Union Rights—The Short Story*. (2012, Liverpool: Institute of Employment Rights) p 3.

serving on governmental and joint bodies) but the most important and most fundamental of all is through collective bargaining. In order to achieve effective collective bargaining, trade unions need trade union rights."

Jersey's industrial relations laws 1771–1946

Historical background—the Code of Laws of 1771

3 Following conflicting reports of serious political unrest in Jersey, in 1769 the King of England sent Colonel Rudolph Bentinck, a Dutchman, with five companies of soldiers, to restore order and appointed a Royal Commission to investigate the situation and codify the Island's laws. The result of the latter was the Code of 1771. Unfortunately (for any prospective future trade unionists at least), the Code of 1771 provided as follows[6]—

> "*Réglemens pour ouvriers et personnes de métier. Les personnes, soit Ouvriers ou Gens de Metier, qui comploteront ensemble a l'égard de leurs salaires, des heures du travail, ou de la manière de le faire ou de le rendre, seront punis par amende qui n'excédera point vingt livres, applicable comme dessus est dit; & en cas de recidive, de telle punition qu'il sera trouvé appartenir*."
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> ["Regulation for workers and tradesmen. All persons whether workers or tradesmen who combine together in relation to their wages, hours of work or the working conditions under which they work, will be punished by a fine not exceeding twenty *livres tournois*, as stated above, and, on a recurrence, to such punishment as shall be found to be appropriate."[7]

4 The prohibition of combinations of workers in the Code of 1771 had its parallel in England and Wales with the Combination Acts of 1799 and 1800 which effectively criminalised workers' organisations in all trades and occupations. In that legislation[8]—

> "a penalty of some three months' imprisonment was specified for those who formed an association of workers that had the purpose of raising pay, reducing hours or interfering in any other way with an employer's business or the employment of workers."

5 Following the passing of the Combination Laws Repeal Act of 1824, workmen took advantage of their new freedoms, but a number of

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[6] *A Code of Laws for the Island of Jersey 1771* (1860, 2nd edn), pp 242–244.
[7] Editor's translation.
[8] Barrow, *Industrial Relations Law* (2002, 2nd edn, London: Cavendish Publishing Ltd), p 5.

cases of violence occurred. Accordingly, in 1825 a Parliamentary Select Committee recommended new legislation as a compromise between the demands of the masters to return to the old laws of 1799–1800 and the aspirations of the workers to use their new freedoms since repeal. One of the purposes of the 1825 Combination Act was to confine the objects of association—

> "to those objects alone which are essential to the protection of both the workmen and the master, and may be secured without impairing the freedom of either, or endangering the public tranquillity."

6 In other words, the activities of trade unionists were to be limited strictly to negotiations over wages, and other action, particularly the refusal to work with non-union men, was to be illegal**.** The Combination Act 1825 thereafter made combinations legal.[9]

Trade union developments in England—Tolpuddle Martyrs 1834 & Combination Act 1825

7 In England and Wales, even though the Combination Act 1825 had made the fact of combinations *prima facie* lawful, a complicated series of statutes related to unlawful oaths was then used instead to prevent the formation of trade societies. Whilst the Unlawful Oaths Act 1797 had not been aimed at trade unions per se, but rather at naval mutinies, the prosecution of six Dorset farm labourers (who came to be known as the Tolpuddle Martyrs) under that statute and their subsequent sentence of transportation to Australia reveals the lengths to which some in England and Wales were prepared to go to suppress combinations of workers.[10] In England and Wales, it would take nearly half a century before trade unions were effectively "de-criminalised" by the Trade Union Act 1871.

Early trade union developments in the Channel Islands 1886

8 It was not until 1886 in Guernsey that the first stirrings of a nascent trade union movement began with the quarrymen. A Guernsey Stone Crackers' Union was formed to defend the interests of the Island's quarrymen. In 1890, the Guernsey Stoneworkers Society was formed and shortly after its formation, union members went on strike for better conditions in August 1890.The apparently successful strike lasted for

[9] Kidner, *Trade Union Law* (1979, London: Stevens & Sons), p 6.
[10] *Ibid*, p 124.

some nine days from 21–30 August 1890.[11] A Reverend Canon Foran eventually addressed the crowd of strikers on the Common[12]—

> "Men, you know that your wives and children need food and shelter. No good can come of your holding out. Take my advice and go back to work."

9 The men duly took the Reverend Canon Foran's "advice" and returned to work. It was difficult for workers to live and pay their way in the Channel Islands of 1890, but for the time being, no other workers "dared" to form a trade union in the Islands. By 1911 the Guernsey Stone Crackers' Union had been superseded by the formation of a Guernsey branch of the English United Union of Quarryworkers and Settmakers.

10 Meanwhile in Jersey, in 1914 the Ronez Quarrymen decided to form a Jersey branch of the English Amalgamated National Union of Quarryworkers and Settmakers. However with the outbreak of World War 1, the quarrying unions and the local Independent Labour Party branch (established in 1911 or 1912) collapsed, leaving Jersey without any labour organisation for the remainder of the Great War.

11 In 1917 Jersey's building and allied trades masters formed a new Federation to guard their interests. The Federation called a meeting of the masters and men to discuss wages. A new wages' table proposed by the Federation met with much opposition on the part of the men. The local newspapers reported that the men had been offered a "handsome increase", though it is to be noted that the UK Ministry of Labour had estimated that the cost of living had in fact risen by 98 per cent. The lack of workers' organisations resulted in the protests of the workers being ignored and the Federation's plans being carried through.[13]

12 Norman Le Brocq, a member of the Jersey Communist Party and later a States of Jersey Deputy, argues that the explanation for this in the Jersey society of 1917 was fairly simple, in that in those days there was still no large-scale industry or other large employers in the Island. As he put it[14]—

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[11] Fenn & Yeoman, *Quarrying in Guernsey, Alderney and Herm* (2008, Markfield, Leicestershire Aggregate Industries) pp 70–71.
[12] Pattimore, "Looking Back Upon 60 Years in Stone Trade—Early Days of Unions and their Pioneers," *Guernsey Evening Press*, 27 June 1946.
[13] Le Brocq, *Jersey looks Forward* (1946, London: The Communist Party of Great Britain), p 21.
[14] *Ibid*, p 22.

> "the Jersey worker had a brother who kept a small shop or an uncle who owned a farm or perhaps a cousin who was a master carpenter. When times were bad, [he] could go and work for his Uncle! ... The Jersey worker, even more than the English worker, had the mental outlook of the bourgeoisie. He was very far from being class-conscious."

Jersey Labour unrest in the aftermath of World War 1

13 The Transport and General Workers' Union ("TGWU") first established a presence in the Islands as the Dock, Wharf, Riverside and General Workers' Union, in Jersey on 23 September 1918 and in Guernsey some time before this. By the end of 1921 the TGWU was reported as having some 5,000 members in Jersey.

14 From the outset, there was a Jersey reaction to this linkage with an outside union. On 2 December 1918, an *Evening Post* leader column called for an exclusively Jersey trade union to be formed[15]—

> "Jersey labour is not yet organised … There is no doubt the time has arrived for a properly constituted labour organization composed of all classes of workers and having accredited representatives or officials with whom authority can confer or consult. Such a labour organization ought to be exclusively 'Jersey.' That is to say, whilst maintaining the brotherly relations with labour elsewhere, it should recognise the conditions and special factors which distinguish us as an Island and as workers."

15 A later anonymous correspondent to the *Evening Post* replied[16]—

> "You say it should be exclusively Jersey. Why so? I think it is more desirable that it should form part of some properly organised Union from the mainland. It is understood that the conditions here [in Jersey] are different to those in England, but they can be greatly improved … What is wanted is: Fairness between masters and men; a liveable wage for all; and better housing accommodation."

16 This exchange of views makes the fundamental point that Jersey already had in existence a properly constituted labour organisation—namely the Dock, Riverside and General Workers' Union—which union catered for all classes of workers—skilled or not—in both town and country with all the benefits that a well organised UK body could provide, thus demolishing the argument for an exclusively "Jersey union".

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[15] *Evening Post*, 2 December 1918, p 2.
[16] *Evening Post*, 4 December 1918. p 4.

Organisation of Labour (Jersey) Bill 1919—Deputy F.J. Bois' Bill

17 The early weeks of 1919 saw the publication of an anti-union Bill by the Deputy for St Saviour, Deputy Francis Bois. On 14 January 1919 his "*Projet de Loi Touchant les disputes entre patrons et employés*" [Draft Law on disputes between employers and employees][17] was presented to the States of Jersey. A full English language translation of this Bill was published in the *Evening Post* on 15 January 1919.

18 The Bois Bill purported to provide "machinery for dealing with any "difficulties" that may arise between employers and employees", but, however benign the supposed motivation of Deputy Bois in bringing his Bill to the States, certain States members were reported to have said that he and his supporters were really out to "smash the union".[18]

19 In support of his Bill, Deputy Bois claimed that "it would establish just relations between employees and employers and fair wages" in Jersey, would give "freedom to every man to deal with matters of interest to himself" and at the same time "protect him from outside interference". However, the "freedom" being promised was a questionable one for the individual Jersey worker since it lacked a collective organisation to protect him or her.

20 In the States debate on the Bill, Deputy Bois claimed, no doubt with the Dock, Wharf, Riverside and General Workers' Union in mind, that it was—

> "a criminal and wicked thing for third parties to interfere and foment discontent and that there must be "legal protection" against this risk."

21 The Constable of St Helier, seconding the Bill, was reported to have said that[19]—

> "… in the subject of labour, employers and employees must be placed on exactly the same footing and the Bill would ensure that. He hoped that its adoption would mean that in future there would be none of those strikes so disastrous to the employees. It was not a question of sending wages up to a figure that would ruin the employer, but of protecting the interests of both sides."

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[17] *Projet de Loi Touchant les disputes entre patrons et employes* P3/1919 [Draft law on disputes between employers and employees].
[18] Le Brocq, *op cit*, p 24.
[19] *Evening Post*, 15 January 1919, p 2.

22 Whilst the Bois Bill did allow for trade unions to be formed (art 1) and for all workers to have the right freely to join such a union, somewhat unfairly art 5 then added a "sting in the tail" in that it concurrently sought to criminalise any effective industrial action being taken by local union officials at all[20]—

> "… any third party who shall interfere to prevent an agreement or aggravate a difficulty between masters and employees and also any person who shall attempt to promote strikes or lockouts in an industry trade or undertaking of any kind or who shall attempt to bring about a crisis in regard to labour or employers or who shall attempt by means of intimidation or otherwise to compel another party against his will to join or not to join a union either of labour or of employers shall be guilty of an offence and shall be liable for each infraction to a fine not exceeding £100 or to a term of imprisonment with or without hard labour not exceeding six months or both at the discretion of justice."

23 This would mean that any local union shop steward seeking to reach a settlement in favour of the workers under those conditions would always be doomed to failure. No attempt could be made by a Jersey worker to consult their Union headquarters in England, for that would be introducing interference of "a third party", and no attempt to "promote a strike" would be allowed. Accordingly, any locally employed shop steward in Jersey would soon find him or herself effectively victimised.

24 The Bois Bill was later quickly dropped when it met with a storm of disapproval in the Island. The *status quo* remained and therefore, for the time being in Jersey, trade unions were to remain illegal due to the continued existence on the Jersey statute book of the Code of Laws 1771.[21]

Jersey strikes (1919–1925)

25 In April 1920 Deputy Bois called a meeting of Union officials at the Bailiff's Chambers, and in the presence of the Bailiff, still Sir William Venables Vernon, he referred the Union to the provisions of the Code of 1771 declaring Unions to be illegal. At this time, the Union delegates were in dispute with the Jersey Produce Merchants Association, refusing to accept their pay offer, and the Bailiff warned them that they left with the "shadow of arrest hanging over them."[22]

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[20] *Ibid*, p 2.
[21] Le Brocq, *op cit*, p 25.
[22] *Ibid*, p 38.

26 A number of other industrial disputes took place in Jersey during this time, the most notable of which, according to Le Brocq, were the Dockers' lightning strikes (1919), the Grandins Ironmongers & Founders' strike (1919), the Bashfords Growers Ltd's strike (1919), the Piers and Harbours' strike (1919), the Police Officers' strike (1919), the Tailors' Strike (1919), the National Union of Railwaymen's strike (1919), the Gas Workers' dispute (1921), the JW Huelin Dockers' dispute (1924), and the petrol carters' dispute (1925). Le Brocq records that a further Bill was tabled in the States of Jersey in March 1922 aimed at the compulsory arbitration of trades disputes. Voting was 20 for the Bill and 20 against and the Bailiff refused to use his casting vote and the Bill was dropped.[23]

Jersey and the UK general strike 1926

27 In the immediate post World War 1 period, there was an atmosphere of trade union stagnation and decline which was largely due to the lack of local leadership. Jersey workers heard the call of their UK-based union leaders to take part in the 1926 UK General Strike. In the UK, Sir John Simon (Lord Chancellor) declared the 1926 General Strike to be illegal. Similarly in Jersey, the States of Jersey warned workers that any supportive strike action locally would amount to a criminal offence under the Code of 1771.

28 Whilst in the United Kingdom, the collapse of the 1926 General Strike may well have amounted to a serious set-back in the fight to secure trade union rights, in the Channel Islands it almost amounted to a death blow—coming as it did on top of a general feeling of frustration of the rank and file union membership and following a reported stagnation in local TGWU affairs.[24]

The appointment of a resident trade union official in the Channel Islands and the repeal of the anti-union provisions in the Code of 1771

29 In 1937 the Southampton Area Headquarters of the TGWU sent a young Mr Edward Hyman to reside in Jersey as the first permanent official of the Union in the Channel Islands. However, at an early meeting with the Jersey Attorney General (Mr Charles Duret Aubin), Mr Hyman was warned of the prohibition in the Code of 1771.[25]

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[23] *Ibid*, p 52.
[24] *Ibid*, p 62.
[25] *Daily Herald*, 3 October 1946.

30 Unperturbed by these "words of welcome" from the Attorney General, Mr Hyman soon gained the sympathy of two States of Jersey Deputies (Edward Le Quesne and Philip Richardson) who argued that the offending provisions of the Code of 1771 should be repealed as no longer reflecting modern conditions and should be replaced by legislation based upon current standards and requirements. It took time for opinions to change, but eventually this view was unanimously accepted by the States Assembly and relayed in 1939 with advice from the Attorney General to the Home Office[26]—

> "We are satisfied that it is in the public interest that there should be removed from the Statute book legislation such as this—legislation which is completely out of date and, in most respects it is more honoured in the breach than in the observance—and we are therefore of the opinion that the Act is one of which His Majesty may properly be advised to approve."

31 The offending passage from the Code of Laws 1771 prohibiting trade union activity was duly removed from Jersey's statute book by the *Loi abrogeant les dispositions du Code des Lois de 1771, sous le titre de "Reglemens pour ouvriers et personnes de metier 1939* [Law repealing the provisions of the Code of 1771, entitled "Regulations for workers and tradesmen"].[27]

The German Occupation 1940–1945

32 The German occupation of the Channel Islands commenced in late June and early July 1940. Prior to their arrival, the TGWU recalled Mr Hyman to England for the duration of the war. Just before his departure, Mr Hyman left the local TGWU District Committee with full delegated powers. However, by 2 September 1940, the District Committee had taken the decision that it should be dissolved. All Union business was suspended indefinitely.

33 In any event, just two months later on 4 November 1940, the German authorities in both Jersey and Guernsey issued an order dissolving all societies (to include all trade unions). When some of the less scrupulous Jersey employers saw that the TGWU was now defunct, according to Le Brocq, they began a vicious attack on the workers'

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[26] Letter, 12 May 1939 Charles Duret Aubin, Attorney General to the Home Office, Jersey Archive. A/D/1/L1/11.

[27] *Loi abrogeant les dispositions du Code des Lois de 1771, sous le titre de "Reglemens pour ouvriers et personnes de metier".* L.17/39 [Regulations for workmen and craftsmen] Adopted by the States on 28 March 1939, confirmed by Order in Council on 23 June 1939 and Registered on 8 July 1939.

standard of living, such that, by the end of 1940, wages had been cut in practically every branch of industry. These cuts varied from the suspension of war bonuses to drastic cuts of up to 40% of existing wages. By the beginning of 1941 this began to produce local unrest, as shown by the chalking up on walls of slogans such as: "Workers' wages must keep pace with prices", and "The workers need food—search the houses of the rich hoarders".[28]

34 By April 1944, local workers had begun to reorganise their Union, albeit illegally. On 26 August 1944, a meeting was called in Jersey somewhat belatedly to protest against the decision to dissolve the local TGWU in 1940. Members of the gas workers, building trades, storemen, dockers, waterworkers and general workers' branches of the TGWU were present and it set up a provisional organising committee to revive Union activity.[29] The Channel Islands were liberated by British forces on 8-9 May 1945.

Jersey's industrial disputes laws (1947–2007)

Industrial Relations and Trade Disputes Act 1947

35 In the aftermath of Liberation, on 24 January 1947, the States of Jersey Legislation Committee set up a Sub-Committee to review and report upon the whole field of workers' conditions and industrial relations. On 28 January 1947, the Sub-Committee recommended the creation of a "Joint Advisory Council on Industrial Relations." On 18 March 1947 the Sub-Committee's report and a draft Act ("*Relations professionnelles et controverses industrielles*" [Industrial Relations and Trade Disputes]) was lodged "*au Greffe*" to enable Parish Constables to consult their parishioners on its contents.[30] On 13 May 1947 the States of Jersey's minutes record that they adopted the recommendations contained in the Act of the Legislation Committee.[31] It is to be noted that the Act was a piece of subordinate legislation.

36 The Act established the Joint Advisory Council which was to consist of eight members—two employers from the Jersey Employers' Federation, four representing the TGWU, one representing the Public Utilities and one representing the non-federated employers.[32] Edward

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[28] Le Brocq, *op cit*, pp 82–83.
[29] *Ibid*, pp 91–92.
[30] Act dated 12 March 1947 of the Legislation Committee with report of the sub-committee regarding *Industrial Relations and Trade Disputes*. Lodged *au Greffe* on 18 March 1947. P.20/1947.
[31] États, Vol 36 1946–1947 p 165.
[32] *Relations professionnelles et contreverses industrielles* [Industrial Relations and Trade Disputes] 1947 R&O/1833.

Hyman, the now returned TGWU Channel Island official, became one of the TGWU representatives. The functions of the new Joint Advisory Council were to consider terms and conditions of employment and all such other matters affecting employers and employees in their industrial relations; to act on all matters under dispute between employers and employees when required to do so and, if necessary, to set up [Industrial Disputes] Tribunals for the settlement of disputes or to refer them to arbitration.

37 The Act of the States of 13 May 1947 regarding Industrial Relations and Trade Disputes was referred to in the States debate on 29 April 1953 when additions to the text were proposed.[33] These were approved and added a quorum requirement for meetings and provisions for the Council's expenses.

38 As we shall see, when compared to the parallel Guernsey legislation, (also passed in 1947), it can fairly be said that Jersey's 1947 legislation was somewhat skeletal.

Industrial Disputes (Jersey) Law 1956

39 Given the economic difficulties following the departure of the Germans and the large number of returning locals, both members of the military and refugees, many of whom brought with them experiences of elsewhere and aspirations of a fairer society, Jersey was arguably fortunate that it had seen no major industrial turmoil in the immediate post-Liberation years.

40 It is likely that this absence of industrial disputes, perhaps assisted by the Joint Advisory Council, explains why no further legislation on the subject was introduced until 1956. In any event, the Industrial Disputes (Jersey) Law 1956 sought to set up machinery under which industrial disputes could be settled by "regulated arbitration".

41 In the States debate on the Law, Deputy JJ Le Marquand observed that he viewed the draft law with a certain amount of "fear". He believed it would give the main Island union (the TGWU) "status" and would be "trouble". In contrast, Deputy Charles (or "Pat", as he was known) Rumfitt saw the importance of the measure as providing machinery "in case of emergency". Deputy Cyril Le Marquand stated that the Bill was "a safeguard for both sides". Deputy Wilfred Krichefski said the Island was[34]—

[33] États, Vol 41 1953–1954, p 141.
[34] *Evening Post*, 4 April 1956.

> "not isolated from the United Kingdom regarding trade union disputes as the Island was still dependent on the United Kingdom for all goods imported and exported."

42 The Industrial Disputes (Jersey) Law 1956 was eventually passed by the States on 18 May 1956.[35] The final version of the Law made provision for the settlement of industrial disputes and for regulating conditions of employment. Article 1 defined the meaning of "industrial dispute", with certain exclusions, as "any dispute between an employer and workers in the employment of that employer connected with the terms of the employment or with the conditions of labour of any of those workers". Article 2 provided for the appointment of an "Industrial Disputes Officer". Article 3 provided for the constitution of the "Industrial Disputes Tribunal" (which is set out in a schedule to the Law). Article 4 provided that where such a dispute existed and was reported to the Industrial Disputes Officer it should be dealt with in accordance with the subsequent provisions of the 1956 Law. Article 7 related to steps the Industrial Disputes Officer could take to promote settlement. Where there existed "suitable machinery" aimed at resolution of disputes which had not yet been utilised, the Industrial Disputes Officer was directed by art 8 to refer the dispute to it. Article 9 provided that where an agreement had been reached by the parties to a dispute utilising that machinery, "such agreement shall be treated as constituting a final settlement of that dispute". Article 10 provided that the Industrial Disputes Officer should, if the dispute has not otherwise been settled, refer the dispute to an Industrial Disputes Tribunal. Article 11 provided that where an issue had been referred to the Industrial Disputes Tribunal, the Tribunal could by its award require the employer to observe the recognised terms and conditions of employment applicable to the case. Article 12 provided that where the Tribunal had made an award on a dispute or issue, it should be an "implied term" of the contract between the employer and the workers that the terms and conditions of employment would be performed in accordance with that award.

Shortcomings of the Industrial Disputes (Jersey) Law 1956

43 The Industrial Disputes (Jersey) Law 1956 did, however, have a number of shortcomings. One of the most serious was that the procedure for the resolution of disputes did not apply to "individual employees" who were in dispute with their employer—it applied only

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[35] Industrial Disputes (Jersey) Law 1956 L.27/1956 adopted by the States 18 May 1956, confirmed by Order in Council 30 August 1956 and registered on 29 September 1956.

to "collective" employment disputes. Also, the 1956 Law required that the Industrial Disputes Officer (and his or her Deputy) must both be States Members who would administer the complaints process and then refer it to the Industrial Dispute Tribunal. By contrast, since 1993 the position in Guernsey is that there is a statutory bar on elected States members serving in these positions.[36] The Industrial Disputes Tribunal was to comprise a legally qualified Chairman sitting with two representatives drawn from each of three panels representing employers, employees and independent appointees.[37] This promised a laudable balance of interests, but in fact it only met infrequently. The first formal acknowledgement of any shortcomings in the 1956 Law came in 1969**,** when a new States Industrial Relations Committee was charged with the responsibility of preparing legislation to replace it.[38] However, such a replacement was not to take place for a further 38 years. This is yet more evidence (if such were needed) of the "glacial pace" of the development of collective employment legislation in Jersey.

Senator J.J. Le Marquand's proposition to ban the closed shop in the Jersey public sector 1960

44 The moral justification for the existence of the "closed shop", a place of work where all employees must belong to an agreed trade union, had consistently been a matter of controversy in UK industrial relations throughout the post-World War 2 period. The opposing views pitted those supporting the freedom of the individual to join a trade union or not against the emphasis of trade unions on the principles of "collective job security" and their opposition to the "free-rider" principle, that is non-union member employees who nonetheless benefitted from union activities.[39] In Jersey, the dilemma of the "closed shop" could not simply be solved by saying that, if there was a right to be a member of a trade union, there must be an equivalent right not to be a member of a trade union, because the underlying policy of the Industrial Disputes (Jersey) Law 1956 was to promote collective bargaining, and whilst this would be facilitated by the former, it would not be achieved by the latter.

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[36] Industrial Disputes and Conditions (Guernsey) Law 1993, Ordres en Conseil Vol XXXIV, p 267, Registered 11 May 1993, art 1(3).
[37] Employment and Social Security Committee, *Fair Play in the Workplace Good Employment Practice in Jersey*. Discussion document. Jersey States (1998), p 43.
[38] *Ibid*, p 11.
[39] Kidner, *Trade Union Law* (1979, London: Stevens & Sons), p 117.

45 In the context of this conundrum, a dispute broke out in Jersey in early 1960 between the States Sewerage Board and the TGWU about the latter's demand for a "closed shop". On 27 January 1960, now Senator JJ Le Marquand lodged a proposition before the States seeking a declaration to the following effect[40]—

> "The States have determined that under no circumstances whatever will any person in its employ be dismissed from or coerced into leaving his or her employment merely by reason of his or her refusal to become a member of a trade union"

46 This anti-union proposition was arguably in the same Jersey "backwoodsman" tradition as Deputy Bois' Bill of 1919. Again, however, the majority of States members was not with him. On 22 March 1960, Deputy Le Cocq, President of the Manual Workers Employment Committee, presented to the States a joint agreement it proposed to enter with the TGWU, which in effect approved the principle of a "closed shop", once a threshold of 85% of workers in the relevant States' department had joined the Union.[41] On 6 April, the States approved the agreement, 30 to 19.[42]

Jersey Advisory and Conciliation (Jersey) Law 2003

47 In 1997, the Employment and Social Security Committee took over responsibility for industrial relations from the former Industrial Relations Committee. During a legislative debate in 1999, the States voted in favour of establishing a UK "ACAS" style body, which would be supported by a Tribunal-type service in the form of the Jersey Employment Tribunal ("JET") and also a consultative body to be known as the Employment Forum, as had been proposed in the 1998 States' discussion document "Fair Play in the Workplace".[43]

48 The Committee's proposal was finally enacted in Jersey as "The Jersey Advisory and Conciliation (Jersey) Law 2003".[44] which established a body to be known as the "Jersey Advisory and Conciliation Service" ("JACS") which had a general duty to: promote the improvement of employment relations; assist in the resolution of

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[40] *Proposition that no employee of the States be dismissed for refusing to become a member of a trade union*, presented to the States by Senator JJ Le Marquand, lodged *au Greffe* on 27 January 1960. (P.6 1960).

[41] *Evening Post*, 22 March 1960.

[42] *Evening Post*, 6 April 1960.

[43] *Fair Play in the Workplace*, *op cit*, p 43.

[44] *Advisory and Conciliation (Jersey) Law 2003* L.11/2003 Adopted by the States 5 November 2002, confirmed by Order in Council 27 February 2003, Registered on 21 March 2003.

individual and collective employment disputes; and assist in the building of harmonious relationships between employers and employees, collectively and individually, and thereby improve the performance and effectiveness of organisations. Under art 4, JACS was to promote conciliation by designating "Conciliation Officers" from amongst its employees to conciliate in both individual and collective employment disputes. Article 6 permitted JACS to refer any disputed matters for settlement through arbitration or mediation. Article 7 permitted JACS to issue information, or advice and/or publish general advice concerned with employment relations or established employment policies. Article 8 permitted JACS to inquire into any question relating to employment relations generally or to employment relations in any particular undertaking. The findings of any such inquiry under art 8(1) could be published by JACS, if it appeared that such publication was desirable for the improvement of employment relations generally.

49 The coming into force of the 2003 Law meant the disbandment in Jersey of the long-standing statutory roles of the Industrial Disputes Officer and of the Industrial Disputes Tribunal under the Industrial Disputes (Jersey) Law 1956. In future, the work of the former would be assumed by JACS and the Process Officer. All new collective disputes after 2003 would be allocated to a panel of three arbitrators.

50 The introduction in Jersey of JACS in 2003 marked the first real departure in the Channel Islands from the post-World War 2 arrangements (of the Industrial Disputes Officer/Industrial Disputes Tribunal) which had been introduced into both Islands back in 1947.

Employment Relations (Jersey) Law 2007 ("ERL")

51 In 1997, the Employment and Social Security Committee was asked by the Policy and Resources Committee to bring forward for consideration employment legislation. Running parallel to the latter's request was the concurrent view expressed by the former in its "Fair Play in the Workplace" that Jersey's employment laws were: "out of date, fragmented, and ineffective."[45]

52 Indeed, in contrast with an Island legislature, which had readily adopted new laws to promote and regulate the growing finance industry, there was little legislation in Jersey to protect the employee in the workplace itself when compared to many other jurisdictions.

53 Ten years later, the final piece in the Jersey collective legislation jigsaw came in the form of the Employment Relations (Jersey) Law

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[45] *Fair Play in the Workplace, op cit,* p 2.

2007 ("ERL 2007").[46] For the first time, this provided for the registration of trade unions and employers' associations. It also made provision as to their legal status, together with that of their officials and members, and provided for the resolution of collective employment disputes between employers and employees, so as to promote the development of good working relationships between them. All of this was a very far cry from the outright criminal prohibition of trade unions in the Code of 1771, but for the Jersey worker it arguably came 236 years too late.

54 A series of legislative amendments tabled during the passing of the ERL 2007 were proposed by Deputy Southern, supported by the TGWU. However, only the amendment to art 22(4) was accepted, such that the JET in determining whether a party was acting reasonably would have to have regard to whether any relevant handbook had been "agreed" by or on behalf of the parties to a dispute. The detailed arguments presented on behalf of the TGWU were contained in a petition to the States with an accompanying submission by John Hendy KC, one of the UK's foremost employment law specialists.[47]

Codes of Practice issued under the ERL 2007[48]

55 The ERL 2007 was intended largely to operate through a series of Codes of Practice loosely modelled on those established in the UK, produced by ACAS. In preparing the Codes, consideration was given to Jersey's international obligations, in particular under the Human Rights (Jersey) Law 2000 and International Labour Organisation (ILO) Conventions No 98, Right to Organise and Collective Bargaining and No 87, Freedom of Association and Protection of the Right to Organise.[49] Under the terms of art 25 of the ERL, the Jersey Social Security Minister was empowered to approve codes of practice as follows:

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[46] Employment Relations (Jersey) Law 2007 L.3/2007. Adopted by the States 17 May 2005, confirmed by Order in Council 14 December 2006 and Registered 5 January 2007.

[47] States of Jersey, *Employment Legislation: Petition.* Lodged *au Greffe* on 4 October 2005 by Deputy G. P Southern. Includes accompanying submission by John Hendy K.C.

[48] *Codes of Practice Employment Relations (Jersey) Law 2007*, https://www.jacs.org.je/laws/codes-of-practice/codes-of-practice-employment-relations-jersey-law-2007

[49] *Ibid*, Introduction, para 4.

Code of Practice No 1: Recognition of Trade Unions

56 This Code covered (*inter alia*) recognition of trade unions in Jersey; tribunal jurisdiction; the process for seeking recognition; the bargaining unit (*i.e.* the group of employees that would be represented by the union in negotiations); the process for ascertaining the wishes of the employees; the process for holding a recognition ballot; access to the workforce prior to the ballot; the conduct of a recognition ballot; the recognition agreement; process for de-recognition; joint-recognition; references to JET.

Code of Practice No 2: Balloting on Industrial Action/Picketing

57 This Code covered (*inter alia*) "action in furtherance of a trade dispute"; unofficial or "wildcat" action; the calling of action in furtherance of a trade dispute; action as a last resort; ensuring the support of a majority of employees by balloting; giving appropriate notice to the employer; action in services essential to the well-being of the community (*e.g.* emergency services, utilities and health sector); "NISAs" (non-impairment of service agreements); "secondary action" (*i.e.* targeting employers not party to the dispute); "picketing"—*i.e.* striking workers assembling at or near their place of work for the purpose of peacefully obtaining or communicating information or peacefully seeking to persuade others not to attend work or enter the employer's premises.

58 Paragraph 32 of the Code 2 states—

> "a small Island community such as Jersey may have services that in certain circumstances are considered more essential to the population than they would be in a larger jurisdiction. For example, a stoppage in transport links could be detrimental to the health and safety of the population if services were interrupted for a prolonged period of time."

59 Paragraph 33 of the Code 2 goes on to describe what should be included in such a NISA agreement—

> "An agreement should define a minimum service (*e.g.* to ensure that service users basic needs are met, or that facilities operate safely, or without interruption) and provide for a formal, rapid and impartial dispute resolution mechanism in the event of a dispute arising which cannot be resolved through negotiation. This may include the use of conciliation, mediation or arbitration services, including the involvement of JACS and the Jersey Employment Tribunal."

60 Paragraph 35 of the Code 2 states—

> "If, prior to an agreement being reached, action is called which would seriously interrupt a service endangering the life, personal safety or health of the whole or part of the population, notice should be given in writing and sent to the employer so that it is received at least 20 days before the action commences."

61 Paragraph 39 of the Code states—

> "It is not unreasonable conduct for a union to call on employees who are involved in a collective employment dispute at or near their place of work for the purpose of picketing in contemplation or furtherance of that dispute. That is:
>
> - Peacefully obtaining or communicating information
> - Peacefully seeking to persuade others not to attend work or enter the employer's premises."

Code of Practice No 3: Procedure for Resolving Collective Disputes:

62 This Code covered (*inter alia*) JET's jurisdiction; declarations by the JET; unreasonable conduct by the parties; incorporation of terms and conditions into individual contracts of employment; preference for a joint and voluntary approach to referrals to JET; and definitions of what amounts to an "available procedure".

63 In Jersey, any stoppage in transport links could quickly become detrimental to the health and safety of the Island's population if services were interrupted for a prolonged period of time. A good example of a Channel Islands' essential services dispute was seen most recently in 2009 in Guernsey with the Airport Firefighters, which dispute was ultimately only averted at the last minute on a "goodwill" basis—and was later to be the subject of an extensive Tribunal of Inquiry in 2010.

64 As for the legal definition of "Essential Services" in Code No 3, the States of Jersey have adopted the ILO's definition such that any limitations on strikes in "essential services," would be achieved under a voluntary NISA between the relevant trade union and the States of Jersey employer.

Guernsey's industrial relations pre-1947

Background

65 Much like Jersey, there is little information to be found in histories of Guernsey about industrial relations there. We have already noted the first stirrings of trade unionism in Guernsey amongst the granite quarrymen in the late nineteenth century. As we have also noted, the TGWU had a Guernsey branch predating that of Jersey in September 1918, and in 1937 the Southampton Area of the TGWU appointed Edward Hyman as its Channel Islands official and the likelihood is that steps were taken by him in Guernsey as well as in Jersey. Following the

Liberation, the TGWU quickly re-established itself across the Channel Islands largely due to the efforts of Hyman, who returned to his former post in late 1945.

66 In Guernsey a TGWU mass-member meeting was convened on 22 March 1946, and a resolution was passed, unanimously demanding the introduction of compulsory arbitration in Guernsey as follows[50]—

> "That this meeting of workers, members of the Transport and General Workers' Union, request the States of Guernsey to introduce legislation making it compulsory for Industrial disputes to be submitted to a Board of Arbitration for Adjudication."

67 The Bailiff, Sir John Leale, responded to this resolution on 23 March 1946 in a statement to the States of Deliberation[51]—

> "I have received from [Mr E.J. Saunders] the local Secretary of the Transport and General Workers Union a letter dated 23 March 1946 … it appeared to me that the submission to arbitration of industrial disputes is merely the extension … of a principle that has operated for centuries in relation to matters in which an action at law lies and which is, we all hope in process of realisation in regard to international disputes … I am satisfied that it is in the public interest that I should lay the matter before you in the form of proposals for debate… This matter has been considered by the States Advisory Council, which is of the opinion that, in the first place, the States should be asked 'to approve of the principle of compulsory arbitration' …
>
> The [States Advisory] Council also feels that industrial disputes should first be referred to a Conciliation Board, and if agreement cannot be reached, then the whole matter should in the final resort, be submitted to a Board of Arbitration. The States Advisory Council therefore recommends that the States be asked to agree this principle of compulsory arbitration and that a special States Committee … should study the English Laws on the subject and produce a report to the States."

"The English Laws on the subject"

68 In the UK, during World War 2, the Conditions of Employment and National Arbitration Order 1940[52] had prohibited strikes and

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[50] *Billet d'État* XI 1946, p 134.
[51] *Ibid*, pp 134–135.
[52] *Conditions of Employment and National Arbitration Order 1940* (SR&O. 1940 No. 1305).

introduced compulsory arbitration. However, the conclusion drawn from this experience was that the criminal prosecution of strikers was ineffective. The arbitration aspect of the order was however more effective, and parts of it were incorporated into the Industrial Disputes Order 1951.[53]

69 The Guernsey Solicitor General, speaking in a States debate on 27 November 1946, where consideration was being given to industrial dispute and employment legislation, said that he did not agree that the UK Conditions of Employment and National Arbitration Order 1940 was a failure. Whilst people may have heard of cases where arbitration had failed, they had not heard of the far greater number of cases which were settled successfully. There were times when workers did not obey their union leaders, but the Guernsey Solicitor General spoke of the undesirability (if not impossibility) of fining or imprisoning 2,000 or 3,000 men. Speed in settling disputes was very important. Provision was made in the proposed Guernsey Law whereby the Guernsey Industrial Disputes Officer could determine that a dispute must go before the Industrial Disputes Tribunal at once. Jurat Sir John Leale said too much stress had been laid on the "very few" strikes which took place, whereas a "large number" of industrial disputes were settled quietly.[54]

Guernsey's Industrial Disputes Laws (1947–1993)

The Industrial Disputes and Conditions of Employment (Guernsey) Law 1947

70 The Industrial Disputes and Conditions of Employment (Guernsey) Law 1947 was registered on 22 February 1947.[55] Article 2 provided for the appointment of the office of "Industrial Disputes Officer" ("IDO") whose duties are set out at art 3 and art 4—namely to try to settle a notified industrial dispute by conciliation (art 3(a), within 14 days of the IDO being notified of such a dispute. In the event that such conciliation failed, then the IDO had a duty to bring about a settlement of the dispute by way of voluntary arbitration submitted to by the parties concerned (art 3(b)). In the event that voluntary arbitration was not achievable, the IDO would refer the dispute to a compulsory Industrial Disputes Tribunal**,** unless negotiations with a view to settlement by conciliation or arbitration proceedings were in progress.

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[53] *Industrial Disputes Order 1951* (1951 SI No 1376).

[54] *Guernsey Evening Press*, 28 November 1946, p 1.

[55] The Industrial Disputes and Conditions of Employment (Guernsey) Law 1947, *Ordres en Conseil* Vol XIII, p 1, Registered 22 February 1947.

71 The duties of the Industrial Disputes Tribunal (art 6) were to enquire into and make an award as to any dispute referred to it; to state its award in writing to the parties without delay; and to publish its award by public notice displayed in the Royal Court House.

72 The powers of the Industrial Disputes Tribunal (art 7) included: the compulsion of the attendance of witnesses before it; the power to take evidence from witnesses on oath and to compel the production of documents and exhibits; and, the power to order that the whole or part of the costs incurred by any party to a dispute be paid by one or more of the parties or by the States of Guernsey.

73 Article 13 provided that both "lock-outs" and strikes were to be illegal, unless the dispute had been notified to the IDO and fourteen days had elapsed—thereby (if possible) permitting the IDO to attempt to resolve the dispute under his statutory powers.

74 Article 14 provided that decisions and awards of an Industrial Disputes Tribunal would become implied terms of contracts of employment.

75 Article 18 provided that certain matters could be deemed to be industrial disputes having regard to art 16 and also to any collective agreements concerning the terms and condition of similar workers in comparable trades or industries.

76 The Schedule set out the constitution of the Industrial Disputes Tribunal.

1991 Review of the Industrial Disputes and Conditions of Employment (Guernsey) Law 1947

77 The Guernsey States Board of Employment Industry and Commerce in its 1991 Review of the Industrial Disputes and Conditions of Employment Law was of the opinion that, since its introduction, the 1947 Law had[56]—

> "continuously provided the Island with an effective system enabling all industrial disputes to be settled within a legal and binding framework. This has been to the benefit of employers, employees and the Island in general."

78 The TGWU, however, expressed a dissenting view. In particular, the Union was concerned that even though the States had previously suggested that disputes concerning the employment or non-employment

[56] *Billet d'État* XX 1991, para 1.3, p 838.

of any person could constitute an "industrial dispute", no steps had been taken to alter the definition in the 1947 Law.

79 The 1947 Law permitted any employer to negate an individual employee's registration of an "industrial dispute" simply by summarily dismissing that employee**.** The IDO has reputedly refused to put some registered industrial disputes before an Industrial Disputes Tribunal for resolution simply because he personally believed that the dispute should be settled by a court. The TGWU disputed that the IDO had the power under the 1947 law unilaterally to decide whether a given industrial dispute ought to be settled by a court, rather than being brought before the Industrial Disputes Tribunal.[57]

80 The TGWU responded to the Board's consultation process making a number of comments on the tabled amendments. The TGWU had lobbied the Board of Employment for the composition of the Industrial Disputes Tribunal to be reduced to just three members, which change was agreed by the Board. The Union had also wanted the panel of independent members to be dispensed with, for the stated reason that the Union could not find anyone to fulfil that role on the panel that they could trust.

81 The TGWU were supportive of the IDO retaining the duty of drawing up the terms of reference for a referral to the Industrial Disputes Tribunal for the obvious reason that if the parties were forced to go before the Tribunal, then they were unlikely voluntarily to agree the terms of reference.

82 The exclusion of payment (or non-payment) of wages from the definition of an "industrial dispute" was not opposed by the Union because Union members would continue to use the Union office and, if necessary, the courts to pursue unpaid wages claims. Non-members would have to instruct their own representative to get a resolution to a dispute. The exclusion of whether a person should or should not be a member of an organisation was backed by the Union as this would stop disgruntled union members from using the Law to break-up a closed shop. Closed shops were of two kinds—a pre-entry closed shop required that a person become a union member before taking up the employment and the post-entry closed shop which required membership of a trade union as soon as a person was engaged by the employer. The TGWU's fear was that if a member fell-out with his/her trade union then they might elect to take that dispute before the Industrial Disputes Tribunal (IDT), hence the TGWUs desire to "exclude" such disputes from the IDT's jurisdiction. The TGWU

[57] John Guilbert, (TGWU Official, Guernsey) Interview, 12 April 1995.

agreed with the exclusion of disputes between employees as it believed this Law should not be used to sort out work-related problems between working people. The TGWU objected to the exclusion of disputes over the continued employment of a person since this exclusion would have removed any chance of utilising this 1991 Law for unfair dismissal claims, and the union favoured the introduction of a proper unfair dismissal law.[58]

83 In early 1982, a legal challenge arose between Guernseybus and the TGWU due to Guernseybus having ignored the findings of the Industrial Disputes Tribunal (IDT). A selected driver in a "test case" sued Guernseybus relying upon the IDT's award but the court (advised by the Law Officers) threw out the claim on the basis that the award was unenforceable.[59] It is somewhat odd therefore that when the possibility of clarifying the law in art 14 arose the opportunity was clearly missed as the wording of the new art 10 is more or less the same, save for the use of "implied condition" (1993 Law) as opposed to "implied term" (1947 Law).

84 Further dissatisfaction with the 1947 Law came from the employers' side. The public sector employers expressed the view that, by providing the trade union side with unilateral access to the mechanism of an industrial disputes officer, it arguably undermined the very process of collective bargaining. This is because, in the final event, a union can take their case "up to the wire"—safe in the knowledge that they can always take their case to the Industrial Disputes Tribunal to try and achieve a more favourable settlement. There is therefore no incentive for trade unions to settle through the normal process of collective bargaining. Employers also largely accepted the view that the size of the Industrial Disputes Tribunal panel was unwieldy and that it should be reduced to three members only.[60]

The Industrial Disputes and Conditions (Guernsey) Law 1993

85 The Industrial Disputes and Conditions (Guernsey) Law 1993[61] followed the review of 1991 by the States Board of Employment, Industry and Commerce.[62] The background to this review was a sharp increase in the number of disputes being referred to the IDO and

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[58] TGWU letter to David Evans, Chair of States Board of Employment, 15 July 1991.
[59] *Guernsey Evening Press*, 24 March 1982.
[60] Steve Naftel (States Civil Service Board) Interview, 11 April 1995.
[61] Industrial Disputes and Conditions (Guernsey) Law 1993, Ordres en Conseil Vol XXXIV, p 267, Registered 11 May 1993.
[62] *Billet d'État* XX 1991.

onwards to a voluntary arbitration or a Tribunal adjudication. Until the early 1980s there had been on average just two or three voluntary arbitrations per year and compulsory industrial disputes tribunals once every two years. However, after 1983, there had been a sudden increase to twenty-seven voluntary arbitrations and five Industrial Disputes Tribunals, all of which had involved States employees or States-funded employees. This rapid increase in the use of the 1947 Law, coupled with the fact that most of its provisions had remained unchanged since 1947, had caused the Board to undertake the review and to determine what, if any, improvements could be made to the 1947 Law.[63] As explained in the *Billet d'État*—

> "Throughout the Review, the Board was mindful of the Island's unique position and its vulnerability to the effects of industrial action. Guernsey is particularly vulnerable in a number of areas involving essential services when compared with the United Kingdom which can be served by numerous harbours, airports, power stations, and fuel supply points etc. This matter was fully examined and led the Board to conclude that there was still a requirement to continue to provide an alternative to industrial action in the form of unilateral access to the Industrial Disputes Tribunal. The Board believes that the provision of such a system within the Island's legislation is to the benefit of the whole community."[64]

86 This vulnerability of the Island had led the Board to conclude that there was still a requirement to continue to provide an "alternative to industrial action" in the form of unilateral access to the Industrial Disputes Tribunal. The Board believed that the States were[65]—

> *"*right to provide such an Industrial Disputes mechanism for resolving disputes quickly, particularly where the Island's economy might be affected*."*

87 That mechanism in Guernsey was the Industrial Disputes Officer and the post-war compulsory arbitration arrangements enshrined in the 1947 Law. However, the Board resolved in 1991 effectively to leave matters well-alone on the basis[66]—

> "that there was very little wrong with the law which had served the Island well for over forty years."

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[63] *Ibid*, para 2.2, p 839.
[64] *Ibid*, para 2.5, p 839.
[65] *Ibid*, para 3.3, p 841.
[66] *Ibid*, para 2.7, p 840.

88 This maintenance of the status quo approach with Guernsey's industrial relations would in fact continue for a further 20 years until 2009, when a serious industrial dispute with the Unite Union and Guernsey Airport Firefighters was to occur.

89 In the Board's view, the proposed Industrial Disputes Law had the potential to[67]—

> "continue to provide Guernsey with a fair and sensible process for resolving industrial disputes but it will not take the place of good industrial relations and sensible negotiations. The law does not provide the latter, people do**,** and it is important that employer and employee organisations appoint skilled personnel to deal with the complex issues which are very often involved. The law itself cannot stop individuals from taking industrial action but it does provide a platform for disputes to be resolved without recourse to strike action or management lock-out. Many countries would like to have this facility. Our proposals will inevitably not suit all parties**,** but they will leave the law very simple and easy to comprehend when compared with the complex industrial relations legislation in other countries."

90 The 1991 review also suggested that maybe the lack of complex industrial relations legislation is one of the reasons why Guernsey's unemployment is the lowest in the world and why there are still employers wishing to set up in business in Guernsey.

91 Articles 1, 2 and 3 of the Industrial Disputes and Conditions of Employment (Guernsey) Law 1993 largely repeated the provisions of the 1947 Law, providing for the appointment of an IDO (s 1), a Deputy (s 2) and setting out the functions of the IDO (s 3). The main changes are to be found at art 4—with the introduction of the Industrial Disputes Tribunal. The 1993 Law provides for just two panels of 8 persons each—an Employers Panel and an Employees Panel, with the names of panel members being publicised in La Gazette Officielle in the Guernsey Press.

92 A schedule to the Law (at paragraph 5) provided that the Bailiff as Chairman of the Industrial Disputes Tribunal would, in future, be the person to appoint the members of the Tribunal after consultation with the IDO, rather than the States Labour and Welfare Committee (now Board of Employment, Commerce and Industry). The Industrial Disputes Tribunal would be reduced to one member from the Employees panel and one member from the Employers panel.

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[67] *Ibid*, p 844.

93 The Board had wished to clarify the definition of "industrial dispute" by excluding from the definition: payment or non-payment of wages; the interpretation of or contravention of contracts of employment; whether a person should or should not be a member of an organisation; disputes between an employee and employees; and, disputes over the continued employment of a person.[68] The recommendations for these amendments were set out in the conclusions of the review in para 10.4.[69] The States, however, declined to enact the Board's recommendations, with the result that the definition of "industrial dispute" in art 18 of the 1993 Law has remained effectively unchanged.

Guernsey Airport Firefighters Dispute Inquiry 2010

94 Industrial action by Unite (the successor to the TGWU) in May 2009 led to the closure of Guernsey Airport for several days and was the culmination of long-standing difficulties relating to the provision of fire-fighting cover there. Under the regulatory framework governing the airport, the airport cannot operate without cover from the Airport Fire Service.

95 A subsequent Tribunal of Inquiry[70] took place the following year to inquire into the facts and circumstances leading up to the industrial action taken by the Airport Fire Fighters in May 2009, including the circumstances in which that action was resolved. The 2010 Tribunal of Inquiry Report concluded that[71]—

> "consideration be given to legislation to clarify the scope of lawful industrial action and the conditions under which it may be taken. Such legislation should have regard to the restrictions which may be legitimate and proportionate in essential services and to appropriate guarantees to safeguard the terms and conditions of workers in such services."

96 Notwithstanding the clear recommendations in the 2010 report, no action has yet been taken by the States to amend the 1993 Law with regards to the scope of lawful industrial action.

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[68] *Billet d'État* XX 1991 para 5.2, p 841.
[69] *Ibid*, para 10.4, p 844.
[70] *Inquiry into industrial action by airport fire fighters at Guernsey Airport Report of the Tribunal, Billet d'État* IX 2010 Appendix 3.
[71] *Ibid*, para 9.9.

Guernsey (States Pensions) judicial review judgment 30 November 2022

97 In 2022 an application for judicial review of the IDO's decision to refer a dispute to an Industrial Disputes Tribunal was heard before the Royal Court.[72] The central issue was whether the IDO was correct, or was at least entitled, to regard three complaints which were the subject of his decision as "industrial disputes" (within the definition set out at art 14 of the 1993 Law). The three complaints in question related to changes to the States' pension scheme and potential breaches of contract in relation thereto.

98 It was held by Lieut. Bailiff Marshall that the proper forum for such complaints was the Industrial Disputes Tribunal itself and not the Royal Court *via* judicial review proceedings.

99 The advocate for the defendant submitted that[73]—

> "the IDO's function under the 1993 Law is very narrow; all he has to do is to make a broad-brush decision that an 'industrial dispute' as defined exists and he is then statutorily bound to refer it to an [Industrial Disputes Tribunal]."

100 The advocate for the defendant also submitted that[74]—

> "the definition of 'industrial dispute' in the 1993 Law is also, itself, very simple and perfectly clear. The definition needs to be capable of straightforward and common-sense interpretation by a layman (as the IDO is), and it is … If and insofar as the States' arguments might have any merits, with regard to the legal substance of the complaints, the proper place for these to be made is before the [Industrial Disputes Tribunal] and against the actual parties raising those complaints, not against the IDO."

101 The court stated that[75]—

> "The 1993 Law itself carries the 'strong flavour' of being focused on support for the system of collective bargaining in employment matters, seeking, in the public interest, to facilitate the smooth negotiation across employment sectors in such matters as pay rounds, and similar concerns, and obviating damaging and divisive industrial action … It is therefore unattractive that, after all that

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[72] *States of Guernsey v Le Maitre (as Industrial Relations Officer*, [2022] GRC075.
[73] *Ibid*, para 119.
[74] *Ibid*, para 119.
[75] *Ibid*, para 142.

> effort and toil, the States should be exposed to the prospect of having such a hard-won outcome challenged, and possibly undermined, by small groups of aggrieved individuals seeking to take them before an Industrial Disputes Tribunal."

102 In a Postscript to her judgment, Lieut Bailiff Marshall stated that[76]—

> "insofar as this is a consequence of what I consider to be the correct interpretation of the 1993 Law regarding the function and powers of the IDO, the disadvantages of this effect have previously been brought to the attention of the States of Deliberation, both in 1991 when the 1993 Law was debated, and again in 2010 when the report on its operation in relation to the industrial action of the Guernsey Airport Fire Fighters was received by the States. As no action has been taken to moderate this effect, it must be assumed that the States considers that it is in the best interests of Guernsey, as a matter of industrial relations generally, to have a very broad definition of "industrial dispute" administered by the IDO as a lay official, notwithstanding the possible practical disadvantages of this, which the present case has highlighted".

103 The whole debacle of the States having challenged the decision of its own IDO before the Royal Court and having been found wanting is indeed a somewhat bizarre occurrence. The matter is now to be referred to the Industrial Disputes Tribunal in 2023 for a determination to be made by the body set up in Guernsey statute law to deal with it.

Registration of trade unions/employers' associations and trade union recognition in Guernsey

104 Significantly, in Guernsey, unlike Jersey (and the UK), there is still at the time of writing no mandatory register of trade unions and employers' associations. Trade unions are not legally recognised in Guernsey, although individual employees are protected from dismissal for trade union–related reasons.[77] The States Industrial Relations Advisory Officer does however maintain a voluntary list of trade unions and employers' associations for the purposes of consultations on any new legislative proposals. Arguably, it is now time for Guernsey to adopt the Jersey approach of a statutory register of trade unions, which

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[76] *Ibid*, para 261.

[77] Guthrie, R *Guernsey: Industrial Relations* https://www.xperthr.com/international-manual/guernsey-industrial-relations/12558/

approach has been successfully operating in Jersey, reportedly without incident, since 2003.

Conclusion

105 In both Jersey and Guernsey, it can fairly be said that movement towards collective and individual employment rights since 1947 has remained on the slow side of glacial. Whilst the first post-war collective employment laws were passed by the legislatures of both Guernsey and Jersey back in 1947, it took Guernsey until 1998 with its Employment Protection (Guernsey) Law 1998, and Jersey a further five years with its Employment (Jersey) Law 2003, to introduce into law the most basic individual employment rights of unfair dismissal and minimum notice periods.

106 This slowness on employment rights legislation can perhaps be fairly contrasted with the Islands' relatively rapid legislative progress over the same period in the financial services area where, in the post-World War 2 period, both Islands have striven quickly to establish world-class legislation, thus placing them in the premier league of respectable jurisdictions. Many clients and lawyers coming to the Channel Islands from other jurisdictions would doubtless find it incomprehensible that, for example, "unfair dismissal" was not even a concept known to Guernsey law until 1998 and to Jersey law until 2003.[78]

107 The legalisation of trade unions in Jersey only came about in 1939 due to the pioneering efforts of Edward Hyman and two sympathetic States Deputies, who achieved the repeal of the relevant prohibition in the Code of 1771 by the *Loi abrogeant les dispostions du Code des Lois de 1771 sous le titre de Reglemens pour ouvriers et personnes de metier*, which then permitted the TGWU to operate lawfully for the first time.

108 The first significant collective labour laws on the statute books of Jersey and Guernsey were the Industrial Relations and Trade Disputes Act 1947 and The Industrial Disputes and Conditions of Employment (Guernsey) Law 1947, respectively. Indeed, these collective disputes laws, with all their defects, were enacted largely because of the tireless post-war lobbying of the TGWU across the Islands.

109 However, progress since 1939 in the Islands towards better employment rights protection has remained slow. As John Guilbert, one

[78] Malorey, *op cit,* p 54.

of Mr Hyman's TGWU successors, writing some four decades later in 1991, so succinctly put it[79]—

> "the recalcitrant employer dominated States is going to be dragged kicking and screaming into the 20th Century. Why won't they act reasonably in respect of employee protection NOW? There is no doubt that "back woodsmen" States' members will continue to oppose any improvements in workers' rights, therefore workers will have to press their Deputies to support the introduction of the Codes of Conduct on Unfair Dismissals and Redundancies etc. which would provide minimal protection."

110 Nevertheless, it is to the credit of the Channel Islands District of the TGWU, that throughout the post-World War 2 period, they steadfastly pursued the Union's "collective bargaining agenda" by negotiating with Island employers up to the ceiling of what could be achieved, rather than becoming too overwhelmed by the total absence of any minimum floor of statutory employment rights.[80]

111 Over the past 50 years, Guernsey and Jersey have become very successful specialist financial centres. The Islands are also significant net providers of liquidity and capital *via* investment funds to the EU economy. In that 50-year period (1973–2023), they have managed to meet international investors' needs by offering a range of regulatory legislation in financial services, anti-money laundering and data protection legislation.[81] These robust statutory protections have led to the attraction to the Islands from the UK of a highly skilled professional services workforce, which now `makes up almost a quarter of the total workforce across both Islands.

112 Even today, some still question the need at all for trade unions and employment law protection in such small islands, where there has been virtually full employment for such a long time. However, the Channel Islands do need to show that they are "responsible and reputable" jurisdictions which must include having in place laws relating to fundamental, internationally recognised concepts (including those established by the ILO). Furthermore, the fortunate position of

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[79] Guilbert, *Transport and General Workers Union Region 2 Press Release,* 12 September 1991.
[80] Guilbert, *Transport and General Workers Union Region 2 Press Release,* 12 September 1991.
[81] Channel Islands Brussels Office, *The Channel Islands and the EU: Financial Services,* 8 December 2021.

full employment could very quickly change as a result of external economic or political forces over which the Islands have little control.[82]

113 Does Guernsey leave its Industrial Disputes (Guernsey) Law 1993 well alone, perhaps for another 30 years, if it is indeed still fit for purpose? Alternatively, given that the 1940 wartime statutory instrument upon which it was based was largely repealed by the Industrial Disputes Order 1951—there is an argument that its replacement is long overdue. However, since the 1991 Review, nobody in Guernsey has been able to come up with anything better.

114 The whole edifice of the IDO and the Industrial Disputes Tribunal established by the 1993 Law was certainly well stress-tested during the Guernsey Airport Firefighters dispute of 2009. The industrial relations' stakes will always be high for any small island so dependent upon its airport, and Guernsey did come very close to a collective industrial relations meltdown in 2009. Next time it could be Jersey. The Royal Court of Guernsey's judicial review decision in 2022 on States pensions found the 1993 Law in part still wanting. The outcome of the consequent Industrial Disputes Tribunal hearing in 2023 is keenly awaited.

115 One option Guernsey might usefully consider would be the solution already adopted across the water in Jersey of replacing its existing IDO and Industrial Disputes Tribunal arrangements with a JACS equivalent (UK ACAS-style) service. Maybe with JACS, Jersey has found a more robust tool for dealing with similar industrial relations difficulties should they occur in their Island in the future. The "proof of the pudding will eventually be in the eating" for Guernsey, but for the moment, something akin to the successful JACS model would seem to represent the more sustainable solution for Guernsey.

116 Guernsey might also address its lack of protection for employees who take strike action. The current law leaves such employees open to being sued for contractual breaches or to having their contracts terminated. Guernsey could also benefit from developing a statutory register of Island trade unions as already exists in Jersey.

117 Trade unions in Guernsey and Jersey could easily find themselves crushed if the structure of the States-funded employment disputes framework were ever to disappear and full-throated collective bargaining were to replace it. However, with such a large public sector workforce in the Islands there is perhaps little risk of this ever happening. The continued existence in Guernsey and Jersey of their employment disputes frameworks means public sector unions will have

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[82] Malorey, *op cit,* p 54.

little or nothing to lose (or risk) by pursuing all or any of their collective disputes right "up to the wire".

118 This of course should be tempered by the realisation that on a small Island, reliant on its airport and seaports, things could very quickly turn nasty for the economy in the event of a total industrial relations breakdown. In those circumstances, an award through a compulsory arbitration process may well amount to the least-worst option for a trade union to take on its members' behalf.

119 The final words should perhaps go to the *Daily Herald* of 3 October 1946 paying tribute to Edward Hyman "the big trade union personality of the Channel Isles"[83]—

> "Odd to think that in 1937, when he [Mr Hyman] first arrived in the islands after a fine record of trade unionism on the mainland that the Attorney-General of Jersey solemnly opened the 'The Norman Code of Law 1771' and read to him a passage in Norman French saying: 'Any three or more persons gathered together for the purpose of discussing their working conditions constitute an illegal assembly'. It meant no trade unionism. But Ted Hyman got busy, earned the sympathy of two Deputies and they by force of enlightened argument had the offending passage removed from the island's ancient law. It was a victory for Mr Hyman and progress. It was a defeat for reaction, King John, who framed most of the island laws in the thirteenth century and for George the Third who confirmed them 175 years ago … There are new agreements to be made with employers, new fights to improve the standard of living. Mr Hyman marches on … Never were the islanders happier. They had nothing to lose but their chains."

Andrew Cross, LLB, LLM, FCIPD, Solicitor, ACAS Panel Arbitrator/Mediator, is a Member of the Law Society of England and Wales Employment Law Committee and is a former Assistant Secretary/Solicitor of BMA Cymru Wales.

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[83] *Daily Herald*, 3 October 1946.