



STATUTORY AND CONTRACTUAL EMPLOYMENT RIGHTS

An analysis of enquiries received by Citizens Advice Guernsey in 2017 regarding problems with employment contracts

Introduction

Citizens Advice Guernsey is the only local source of free confidential and independent advice on any subject. Consequently, it offers a huge resource of information about the issues that affect the users of our service.

Citizens Advice Guernsey has a system of categorising the issues that arise in the enquiries that come to our service. This enables the organisation to identify and analyse the issues that affect and are of concern to people living in Guernsey and Alderney, in order to inform the relevant agencies and governmental bodies.

In looking at the statistics of enquiries relating to statutory and contractual employment rights over the past three years 2015 to 2017, it was immediately noticeable that there has been a considerable and steady increase each year, resulting in a total of 623 issues in 2017, compared with 389 in 2015 and 521 in 2016, has prompted Citizens Advice Guernsey to analyse the information and formulate this report.

Methodology

Following the rise that had occurred during 2016 it was decided that specific problems relating to employment contracts (or lack of them) should be highlighted by advisors as a social policy issue on the case record during 2017. This separated these from more general enquiries about contractual rights. All cases with issues that were recorded under this heading were examined to identify:

- The number of separate cases involved
- The issues raised within the situations that prompted the enquiry to Citizens Advice Guernsey.

The number of separate cases

Very few enquiries (only 6) involved a simple question with a straightforward answer. Almost all enquiries relating to employment rights raised plural issues within the situation presented. In addition, 18 clients came back to Citizens Advice Guernsey two or more times for further support over the same complex situation. When analysed, the social policy issues thus highlighted during 2017 arose within **104 individual cases**.

The enquirers

Most enquiries were made by employees, as might be expected. However, six enquiries were made by employers (although one of these was on behalf of an employee). Only six enquiries were categorised as relating to foreign nationals working in the UK or Guernsey. A seventh enquiry was made on behalf of a foreign national who had worked in Guernsey for over 20 years.

The Citizens Advice Guernsey system does not collect specific information on employment by economic sector, so we are unable to analyse whether the issues raised in this report occur more frequently in some types of employment than in others.

Issues raised

Note some situations involved more than one issue

	ISSUE	Percentage of cases
1	No employment contract and/or wage slips	30%
2	Contract changes	16%
3	Pay issues	8%
4	New employee issues (within the first year of an employment)	11%
5	Health issues, sick leave, and injury at work	18%
6	Holiday entitlement and pay	7%
7	Maternity leave	2%
8	Bullying and harassment	10%
9	Health and Safety	3%
10	Issues arising when employment was ended by the employer	25%
11	Issues arising when the employment was ended by the employee	22%
12	Other issues	3%

1 No employment contract and/or wage slips

‘A contract of employment is a legally binding agreement made between an employer and employee when a job applicant accepts an offer of employment. It forms the basis of the employment relationship. **All employees are entitled to receive a written statement not later than four weeks** after the commencement of employment. The written statement **MUST** contain information relating to 12 terms of employment. **All employees are also entitled to receive a payslip on or before the day the employee is due to be paid.**’

(Ref: www.gov.gg/employmentrelations. Under Section ‘Contracts of Employment’, link to ‘Contracts of Employment (Written Statements and Payslips)’. Information based on the Conditions of Employment (Guernsey) Law, 1985.)

- a. 30 clients (28%) stated that they had no employment contract or statement under their current employer. However, two of these were new employees, still within the 4-week timescale.
- b. 7 clients stated that they did not receive wage slips.
- c. In addition to the above, one client had a contract (received after six weeks’ employment) but no payslips.

2 Contract changes

‘Where any material change occurs to the original terms and conditions of employment as set out in the written statement or contract of employment, **the employer must provide the employee with written particulars of the change(s) within a period of 4 weeks from the change occurring**, or alternatively issue the employee with a revised and updated written statement or contract.’

(Ref: www.gov.gg/Employment Relations. Under Section ‘Contracts of Employment’, link to: ‘Contracts of Employment (Written Statements and Payslips)’ and ‘Varying Terms and Conditions of Employment’)

17% of clients contacted Citizens Advice Guernsey about employers making changes to their contract terms:

- in 7 cases without consultation
- in 2 cases, without employees’ knowledge or consent
- 5 employees were informed but did not consent – three of these decided to leave their jobs.
- a further 3 clients contacted Citizens Advice Guernsey with questions around the process of employers changing contracts and/or terms and conditions of employment.

3 Pay issues during employment

‘Employers must provide every employee with a detailed statement of pay (wage) slip’...

‘The statement of pay must be given on or before the date that the payment is to be made.’ *(Ref: www.gov.gg/Employment Relations. Under Section ‘Contracts of Employment’, link to: ‘Contracts of Employment (Written Statements and Payslips).’)*

- a. 4 clients contacted Citizens Advice Guernsey with concerns that they were being underpaid (2 had contracts, 2 did not).
- b. 3 clients were concerned about being paid late, causing problems for personal finances such as paying rent (2 had no contracts, 1 had a contract but no wage slips).

- c. One client's contract required them to work 'occasional extra hours' for no added pay. The client contacted Citizens Advice Guernsey when the Christmas rota required the client to work an additional 10 hours on top of the contracted 30 hours (without any prior discussion), with implications for the employer potentially breaching minimum wage legislation (The Minimum Wage (Guernsey) Law, 2009).

4 First year of employment

After the first year of employment, employees' rights increase: 'Provision is ... made for an employee (subject to a one-year qualifying period in most cases) to be given a written statement of reason(s) for dismissal and the right not to be unfairly dismissed.' (Ref: [www.gov.gg/Employment Relations](http://www.gov.gg/EmploymentRelations). Under Section 'Unfair Dismissal', link to: 'The Requirements of the Employment Protection (Guernsey) Law 1998'.

11% of clients described problems experienced within their first year of employment:

- a. An apprentice experienced late payment of wages every week and the employer had still not signed the apprentice papers after 6 months.
- b. 5 enquiries were related to payment of study/training costs and expectations of employers that the employee should pay this back if they leave before a specific period of employment. Employees who contacted Citizens Advice Guernsey were unaware of this expectation because it had not been specified or was unclear at the start of employment or when the training was undertaken.
- c. One employee contacted Citizens Advice Guernsey because the employer had added additional duties without discussion and extended the probationary period when the employee refused to comply.
- d. 4 clients felt that they had been unfairly dismissed after less than a year's employment:
 - I. An apprentice was sacked allegedly for not passing the first year of apprenticeship, despite successfully completing the probationary period and passing all exams.
 - II. One apprentice was fired for absence caused by an injury at work, which had resulted from being given a task that the apprentice had not yet been trained to do.
 - III. One trainee was dismissed without notice and without wages in lieu of notice, as the employer alleged that this was not required during the probationary period.
 - IV. One employee was unexpectedly given notice of a week rather than one month as stated in the contract. It was noted that this employee was very close to the first anniversary of starting their job.

5 Health issues, sick leave, and injury at work.

'There is **no legal requirement** for sick pay in Guernsey. Any terms relating to sick pay should be clearly stated in the contract of employment. These terms should clearly identify how much sick pay is provided and for how long. If sick pay is not provided, this should be stated.' (Ref: www.gov.gg/EmploymentRelations. Under Section 'Good Practice at Work', link to 'Absence and Sickness Management'.)

18% of clients made enquiries relating to illness or injury, sick leave and sick pay.

- a. Just under half of these (6) had experienced harassment, pressure, actual dismissal or the threat of dismissal after being signed off work by their doctor.

- b. 2 enquiries were received regarding redeployment and support for employees who were unable to fulfil their current job description due to ill-health.
- c. 2 enquiries were specifically concerned with employers' and colleagues' unsympathetic approach to mental ill-health in the form of depression, anxiety and panic attacks.
- d. In 2 cases clients found that their holiday entitlement was reduced because of sick leave that they had taken.
- e. 2 enquiries were received specifically about claiming sick pay, in situations where employers had withdrawn pay for periods when the employee was off work through illness or injury.
- f. 5 clients (5% of all problems with employment contract enquiries) had sustained an injury at work and were concerned about pay, compensation and losing their job.

6 Holiday pay

'There is **no statutory entitlement to paid leave** in Guernsey. Neither is there a legal requirement to give employees time off with pay, an enhanced rate of pay, or time off in lieu in respect of public holidays. Any rights to paid time off for holidays and public holidays depend on the terms of the contract. The Conditions of Employment (Guernsey) Law, 1985, requires the employee's entitlement (or otherwise) to paid or unpaid holidays and public holidays to be clearly set out in their written statement of employment (or contract). The details of an employee's holiday and public holiday entitlement should be sufficient to enable the employee's entitlement to be precisely calculated, including any entitlement to accrued holiday pay on the termination of employment.' (Ref: [www.gov.gg/Employment Relations](http://www.gov.gg/Employment_Relations). Under Section 'Good Practice at Work', link to 'Holidays, Public Holidays and Holiday Pay'.)

Of the clients who had employment contracts, 9% contacted Citizens Advice Guernsey over problems with their contractual holiday entitlement and pay.' The issues included:

- a. holiday pay received being less than the contract terms stated. One client received none of the holiday pay that was expected and discovered that the contract terms had been changed without their knowledge.
- b. holiday entitlement withdrawn from the current year and the following year to make up for a period of sick leave.
- c. a request for advice about negotiating holiday pay.
- d. the issue of pay for an enforced holiday period when the workplace is closed. Due to an extensive period of sick leave, the client had not accrued enough leave to cover the required holiday period, but the employer refused to let the client take the holiday period without pay, instead insisting that the client should work additional hours (a considerable amount) to make up for it. The contract terms were unclear on this situation.

7 Maternity leave

Ref: [www.gov.gg/Employment Relations](http://www.gov.gg/Employment_Relations). Under Section 'Maternity and Adoption', link to 'Employment Guide: Statutory Maternity Leave', which gives guidance based on *The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016*.

2 clients contacted Citizens Advice Guernsey after being dismissed from their employment whilst approaching the end of planned maternity leave:

- a. One client was dismissed as her maternity leave was coming to an end, despite having worked for the employer for 5 years, including a small number of regular additional hours during her maternity leave.
- b. While on maternity leave, the other client signed a new contract which would facilitate her childcare needs. However before returning to work she decided to leave her job and gave 12 weeks' notice, as required by her contract. The employer responded by giving her two weeks' notice to leave, as specified under the new contract, which allowed a 'probationary' period of two weeks to test whether the new terms and conditions worked.

8 Bullying and harassment

'Everyone should be treated with dignity and respect at work. Bullying and harassment should not be tolerated; it is the employer's responsibility to ensure that this does not happen in the workplace.' (Ref: www.gov.gg/Employment Relations. Under Section 'Good Practice at Work', link to 'Bullying and Harassment at Work'.)

10% of the clients contacted Citizens Advice Guernsey regarding bullying and harassment at work.

- a. 6 cases (also referenced in 5a above) appeared to be a direct consequence of the employee requesting sick leave which had been authorised by a medical practitioner.
- b. 4 enquiries were made to Citizens Advice Guernsey regarding sustained and continuous bullying.
 - I. Two of these clients decided to leave their employment because of their experiences in the workplace.
 - II. One was still in employment and had reported the problem to the employer, but it had not yet been resolved at the time of the client contacting Citizens Advice Guernsey.
 - III. One client believed they had been fired by the employer as a direct result of raising health and safety concerns.

9 Health & Safety concerns

3 clients mentioned health and safety concerns within their workplaces, in addition to the specific individual issues that had prompted them to contact Citizens Advice Guernsey.

10 Issues arising when employment was ended by the employer

'There is a legal requirement to provide and be provided with minimum periods of notice, which are prescribed under the Employment Protection (Guernsey) Law, 1998.'

(Ref: www.gov.gg/Employment Relations. Under Section 'Good Practice at Work', link to 'Contracts of Employment (Written Statements and Payslips)').

25% of the client group contacted Citizens Advice Guernsey after being given notice to leave by their employer, including 4 redundancies. A common issue was the notice period and final pay.

- a. **Notice period:** 12 enquires were made regarding how much notice of dismissal was required, after clients were given little or no warning. 8 of these clients had no contract. Of the remaining 4 clients with contracts, three employers were not following the stated notice period and one contract did not specify the period of notice.
- b. **Pay issues:** 10 clients were concerned about pay owed to them when they were dismissed.

- I. 5 clients had no contracts and had not been paid for the statutory notice period. One was owed additional wages, which the client reported were often paid late.
 - II. Of the remaining 5 clients who had contracts, all were owed either back pay or pay in lieu of notice. Two of these were unaware that their contracts had been changed, which the employer gave as the reason for them not being paid as they expected.
- c. **Redundancies:** 4 enquiries were related to redundancy (*www.gov.gg/Employment Relations has specific guidance on 'Redundancy'.*)
- I. One client had no contract or wage slips, nor had the employer followed the statutory notice period and pay.
 - II. In another case where the employee did not have a contract and was made redundant without their consent, it was reported that the manager was requiring the employee to state that they agreed to voluntary redundancy.
 - III. Of the remaining 2 enquiries, one asked about entitlement to redundancy pay and the other wanted to check with Citizens Advice Guernsey that the employer had acted reasonably in terms of explanation, notice period, and pay.
- d. **Reasons for dismissal contested by employee:** 7 clients contacted Citizens Advice Guernsey because they did not accept the reasons given for being dismissed.
- I. After being signed off work by their doctor, the employer dismissed the worker for alleged 'bad attitude'.
 - II. Another client was dismissed after returning from sick leave, with no reason given (the client was still in the probationary period of their contract).
 - III. A client was distressed after being accused of stealing and dismissed; they denied the accusation, and since noted that the employer had not carried out a threat to report it to the police.
 - IV. One client was dismissed for refusing to do a job for which they were not trained
 - V. Another was fired for a period of absence following an injury sustained at work after being told to do a job he was not trained to do.
 - VI. One employee did not understand the reasons for being given notice to leave, and also disputed reasons given previously for their probation period being extended.
 - VII. An employee was contracted to work 36 hours per week and was later dismissed due to being unwilling to work 54 hours per week on a regular basis.
- e. **Maternity leave:** 2 clients were dismissed while on maternity leave, not long before the planned return-to-work date. [See 7 above].
- f. **Other issues:**
- I. Freelance work – one issue of client being dismissed from work premises without access to their own paperwork and equipment.
 - II. One client was required to return company equipment before receiving final pay; Citizens Advice Guernsey suggested how the client could retrieve the equipment and return it to the employer.

11 Issues arising when the employment was ended by the employee.

In 23 cases clients had resigned or were planning to resign from their employment and contacted Citizens Advice Guernsey over the following issues:

- a. **Pay:** over two thirds of these clients contacted Citizens Advice Guernsey because they believed they were owed wages by their employer. In some cases, the employer had withheld wages, reasons cited being: to recoup cost of the work permit/housing licence or training or

accommodation. In these cases, there was either no contract or the contract was unclear on these issues.

- b. **Notice period:** almost a third had queries about the required notice period, due to contracts being unclear on this issue or non-existent. (*See Reference under point 10 above on statutory notice periods.*)
 - i. 4 enquired what notice period they should give.
 - ii. 3 had left without giving notice (and consequently lost pay) and stated that they left because they believed they were owed leave or had been underpaid or had suffered harassment.

12 Other issues

Other enquiries included issues of tax on benefits received and the contract clause prohibiting them from poaching clients on leaving the employment.

Conclusion

This analysis has shown that the highest number of employment issues found in cases handled by Citizens Advice Guernsey in 2017 were lack of employment contracts or statements and wage slips, followed by uncertainty about notice periods, all of which are defined by legislation but not adhered to by some employers.

The process of changing contracts and management of health issues in the workplace, were also areas of significant concern, followed by the issues of bullying and harassment and difficulties experienced during the first year of employment. These are largely a matter of employers' management practice rather than defined by legislation, and helpful guidance from Employment Relations is available to employers and employees on all areas covered in this report.