

GDA response to the Committee for Employment and Social Security's plan to change the scope of the proposed disability discrimination so that it would provide protection on multiple grounds

Summary

The Guernsey Disability Alliance (GDA) supports the Committee for Employment and Social Security's (the Committee) proposal to introduce discrimination legislation covering multiple grounds of discrimination instead of just the ground of disability, but it seeks assurance that this approach will not result in any unreasonable delays (more than six months).

The GDA is concerned that, without sufficient resources, the proposed approach might dilute and further delay the States' already woeful and much delayed efforts to comply with its duty to raise awareness of disability, foster respect for the rights and dignity of persons with disabilities, and to combat stereotypes, prejudices and harmful practices relating to persons with disabilities.ⁱ This duty is one of the few contained within the Convention on the Rights of Persons with Disabilities (CRPD) which must be immediately addressed.

The GDA considers that expanding the grounds of protection amplifies the already pressing need to establish the proposed Equality and Rights Organisation in advance of the discrimination legislation coming in to force. The GDA would like to highlight its previous recommendation that resources for such an organisation should be front loaded. The GDA has provided evidence that the level of enquiry and complaint will be significantly higher in the months leading up to, and immediately following, the introduction of the legislation.ⁱⁱ Based on the experience of other jurisdictions with multiple grounds of protection (e.g. Australia, UK, Canada and New Zealand) disability related enquiries to such a body in Guernsey are likely to account for more than half, and possibly as much as three-quarters (as in the UK), of all enquiries.

In summary, the GDA gives qualified support to the Committee's plans to develop multi ground discrimination legislation but, in doing so, requests that the Committee:

1. commits to a unitary approach in developing the legislation;
2. seeks as rapidly as possible States' commitment to the plans and to the proper resourcing needed for the detailed and comprehensive development of policy and legislation (including the resources needed for consultation, awareness raising and training, and for development of official guidance with emphasis on measures required to comply with the duty to accommodate need and to achieve accessibility of infrastructure, goods and services and education);

3. commits to the inclusion of a public-sector equality duty within the legislation and to the development of ancillary regulations dealing with standards of accessibility;
4. ensures that the legislation complies with the CRPD and with the General Comments made by the Committee on the Convention on the Rights of Persons with Disabilities;
5. accelerates the work to establish the ERO; and finally
6. commits to and makes public more detail regarding the proposed project times.

The GDA notes that the Committee did not, on this occasion, consult with, or actively involve persons with disabilities in any discussion of the plans to expand the legislation, prior to announcement that a multiple ground approach was being considered. The GDA recognises that this oversight was unusual and unintentional; it did, however, raise concerns for a number of our members.

General

Although the GDA has not specifically called for a multi-ground ordinance to be enacted all at once, it has, since 2014, repeatedly explained that persons with disabilities should be protected on the basis of multiple grounds of discrimination. The GDA has also repeatedly cautioned about the dangers of inconsistency, complexity and inequity a ground-by-ground, single ordinance approach is likely to bring. The GDA backed this view by demonstrating that it is not rationally possible to base disability discrimination provisions on the existing Sex Discrimination Ordinance and that the existing ordinance was inequitable in terms of the calculation of awards. It was the GDA too, which first identified in 2014, the likely need to amend or replace the Sex Discrimination Ordinance.

The GDA also noted that, if Guernsey continues with a ground-by-ground approach, by the time our legislation protects on the same number of grounds as the UK, for example, our legislation would potentially be double the size of the UK's (which itself is one of the largest and most complex, if not the largest and most complex piece of equality legislation in the world).

The previous administration, through the Disability Legislation Group (DLG), was not receptive to widening the scope beyond the ground of disability on the basis that it believed this went beyond the mandate of the States Resolution of 27 November 2013.

The GDA argued, unsuccessfully at the time, within DLG, that the States' Resolution to develop legislation to "prevent discrimination against disabled people and carers and provide for equality of opportunity" did not restrict the grounds of protection afforded to persons with disabilities and that to not consider multiple and intersectional grounds of discrimination would be to fail to comply fully with that States' Resolution.

The GDA's argument is now given further weight by recent General Comment of the UN Committee on the Rights of Persons with Disabilities: "... *States parties must address multiple and intersectional discrimination against persons with disabilities. "Multiple discrimination" according to the Committee is a situation where a person can experience discrimination on two or several grounds, in the sense that*

*discrimination is compounded or aggravated. Intersectional discrimination refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination.*ⁱⁱⁱ

As a matter of policy, the GDA believes that a unitary approach should be adopted to the development of the discrimination legislation; so that, wherever rationally possible, all provisions should apply equally to all grounds. Legislation written in this way will be more equitable and should be more concise. Employers, service providers, service users and employees will find a unitary approach simpler and easier to understand. A multi-ground unitary approach is likely to result in considerably more efficient use of resources – the saving in States' time to develop legislative proposals and produce guidance, consult, debate, and then draft the legislation should be substantial because it will be developing one ordinance instead of, perhaps, upwards of nine. It also has the added attraction of it being simple to add further grounds in the future (by simple amendment to the list of protected grounds)

The GDA also interpreted the Resolution, in line with the enabling Law, to mean that prevention of discrimination involves not only prohibiting discrimination but also the promotion of equality of status, opportunity and treatment, and the equal enjoyment of rights and freedoms.^{iv} The GDA has consistently explained that this should include consideration of provisions and regulations governing accessibility standards and some form of Public Sector Equality Duty; otherwise, instead of preventing discrimination, our legislation will simply be attempting to rely on individual complaint to remedy discrimination which has already occurred. Regulations concerning accessibility standards have elsewhere reduced systemic discrimination and brought profound changes in accessibility for disabled people.

Our legislation needs to take a different approach so that compliance is achieved through changing attitudes, rather than just fear of the consequences of non-compliance; however, as the 70s seatbelt "Clunk Click every trip" campaign proved, there is a need for both impetuses to change both attitude and behaviour.

With regard to the possible inclusion of a Public Sector Equality Duty, or other legal provision, placing a duty on all sections of government to promote, respect and accommodate the needs, rights and freedoms of minority groups, the previous Policy Council discounted the idea on the basis that this would be better dealt with through policy than by legislation. A States Resolution was subsequently passed requiring States Departments to consider disability within all plans and policies, however, that Resolution has been ignored on numerous occasions.^v If a Public Sector Equality Duty is to be considered, it would make sense to do this within the broader context of moves to eliminate discrimination on multiple grounds.

GDA members are understandably concerned that any delay caused by a multi-ground approach must be kept to a minimum by the States not only properly resourcing the additional work involved in developing the legislation but also ensuring efficient and timely consultation, training, and the development of guidance.

The GDA sees advantages in a multi-ground approach in the fairness of treatment of all Islanders and, by considering the ground of disability alongside other grounds, persons with disabilities, often disadvantaged by segregation and separate treatment, would be seen to be to be treated equally before the Law.

While most GDA members who have expressed an opinion have given qualified support to the Committee's proposal, one GDA member organisation has indicated that, on the basis of expediency, it would prefer the committee restrict its proposals so that the ordinance limits its protection to the ground of disability and then only in the field of employment. The GDA Executive is not supportive of this view and thought it might be helpful to explain that:

1. the GDA is committed by its constitution to operate in line with, and to promote the principles of, the CRPD;^{vi}
2. the CRPD requires governments to eliminate all forms of discrimination based on disability in the political, economic, social, cultural, civil or any other field;^{vii}
3. the CRPD requires governments to protect disabled people on multiple and intersecting grounds;
4. the GDA Executive is wary of the dangers of developing legislation in a piecemeal fashion;
5. delaying protection, in the fields of access to goods and services and education, will further delay extension of the UK's ratification^{viii} of the CRPD to Guernsey^{ix} and makes assumptions about the relative importance of protecting against discrimination in the field of employment which are inconsistent with human rights principles (rights are interconnected, indivisible, and should not be compromised or inconsistently recognised or protected);
6. the GDA Executive believes that protection in the field of employment only would not comply with the States Resolution of 27 November 2013 and would not provide the protection most disabled islanders have a right to expect; and
7. the GDA Executive believes that it should not be significantly more difficult or time consuming to protect in the fields of access to goods and services and education and that if disabled people agreed to this limited protection it would likely be years before further protection was established.

End Notes

ⁱ UNCRPD, Article 8, Awareness raising

ⁱⁱ Guernsey Disability Alliance research paper, 2014, "Proposed Guernsey equality and rights organisation – estimate of service demands (enquiries, and complaints)"

ⁱⁱⁱ The Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination.

^{iv} The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, 3.1 "Interpretations"

^v For example, the Committee for Education Sport and Culture's first 2107 report into the future of secondary education failed to consult with persons with disabilities and made no mention of disabled students and how they would be accommodated. Similarly, the States proposals for inter-island ferry and air services failed in a similar manner.

^{vi} Guernsey Disability Alliance LBG Memorandum of Incorporation

^{vii} See CRPD, Article 2, definition of “discrimination on the basis of disability”

^{viii} Not only does the CRPD require that protection is available in all fields, but the UK Ministry of Justice has confirmed that legislation to protect in the fields of employment, access to goods and services and in education be in place before it will extend the UK’s ratification to Guernsey.

^{ix} States Resolution 27 November 2013