

A call to Galway

Probably just hearing the word “legislation”, for some, makes hearts sink and eyes droop in despair and disbelief. Many, perhaps, now equate the word “legislation” with delays, broken promises and denied rights – and I can understand that. The great Dr Martin Luther King hit the nail on the head when he said, “A right delayed is a right denied”.

Way back, I think in 2011, when Shelaine Green and I were first involved with the very beginnings of the Disability and Inclusion Strategy, the thorny question of “what law and how do we develop it?” first arose.

By that time, the late Dave Purdy, former GDA Vice Chair and lifelong disability rights campaigner, had alerted us to the fact that the UK legislation wasn’t living up to its promise to improve access to buildings, transport, shops, information and education - and the gap in employment between disabled and non-disabled people was only modestly improved and was still more than 30%. It was clear there was a need to look elsewhere and at other models.

But it was also clear that, at that time, there was no relevant expertise within the States, or funds available to pay for outside help. The team developing the Strategy asked whether the GDA could help find an expert who might do the work for free.

Shels and I trawled the local firms and even approached retired solicitors. We met some extraordinarily able and skilled people, many wishing to help, but none able to give the time that was needed – and actually, no one we met had knowledge of other jurisdictions. Most were steeped in the UK model.

All the while, yours truly, a retired caterer, with zero knowledge of discrimination law, or any law other than food hygiene laws, carried on reading, and carried on getting more and more concerned about the effectiveness and injustice of some models of discrimination legislation.

The definition of disability in UK legislation seemed very restrictive and invited legal argument. The UK Disability Discrimination Act (now superseded by the Equality Act) brought bizarre results, like a person with Multiple Sclerosis not being qualified as a disabled person simply because, on the day the discrimination was alleged to have happened, the person was not suffering any symptoms.

The official UK guidance, just on the definition, ran to over 50 pages and was illogical and overwhelming.

I was once a large employer, but even with the resources available to me, I would have found the UK legislation complex and burdensome and it would have left me cautious about employing people with disabilities – exactly opposite to the effect we need to achieve.

In contrast, most jurisdictions don’t find it necessary to qualify disability at all. Canada’s guidance, for example, is simple and runs to a couple of paragraphs.

The GDA's research was enough to guide the Strategy, but it did not give all the answers, as no single model worked well in all areas and none could just be imported wholesale, "ready to wear".

After the Strategy was passed by the States, a group was formed to develop the legislation. This group was mostly made up of lawyers and employment experts with no knowledge of disability discrimination legislation – the retired caterer was also there, representing GDA members.

I'm not going to dwell on the disaster that was the first Disability Legislation Group. But it could have been a lot worse. That group could have recommended the UK model and, whilst the project team would have been able to tick a big box, that law would have been discriminatory and would not have changed many lives for the better.

The GDA was once accused of letting the pursuit of "the perfect" get in the way of "the good". Indeed, even the Chair of the recent Scrutiny panel asked, in a rather accusatory way, whether the GDA might have been obstructive and whether we might have compromised more.

The simple answer is that a compromise which puts up barriers to justice to all disabled people, not faced by people seeking justice on other grounds (Sex, age, religion, etc) and which bars access to justice to some disabled people altogether, is not "the good" any of us should be happy to accept. It is a form of disability apartheid, built on outdated and ugly notions of the "deserving and genuinely disabled", rather than on respect for rights, which I think Dr King would have had plenty to say about.

Initially, the change of ownership of the Strategy, including the legislation project, brought challenges, because the newly formed Committee for Employment and Social Security faced an enormous learning curve, with only the GDA available to assist its induction and provide continuity.

Thankfully, ESSC has better project management skills and has been able to find more people to work on the various work streams. Ellen Pragnell, who was appointed to head up the new legislation team, soon realised that further expertise was needed in order to choose the model of legislation for Guernsey.

Whilst the retired caterer has a good amateur understanding of what does and doesn't work, it would not be reasonable to expect employers, service providers and indeed employees and service users to accept legislation developed on the say so and understanding of someone who is perhaps perceived as having skills more relevant to making omelettes.

So, it was like manna from heaven and, if I might be allowed to mix my metaphors, a light at the end of the tunnel, when the Committee for Policy and Resources prioritised the legislation and ESSC developed a plan and obtained the funds needed to employ world renowned experts to help Guernsey select its legislation model. ESSC also proposed a second phase, involving the tailoring of the selected model.

The GDA was consulted and actively involved, both with selecting the six potential models to be studied and with proposing possible experts who might tender for the work to help make the final selection.

The GDA was not involved in the selection of the experts and had no prior connection with the selected team, so we did not know what to expect from our first conference call with the newly appointed experts from Galway University in the Republic of Ireland.

By the end of that thirty-minute call, however, I was confident that we are in good hands. It no longer feels like Custer's (or perhaps custard's!) last stand – the cavalry has arrived and it's not just Irish eyes that are smiling.