Disability Legislation

Overview of disability legislation in general

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Shape of the Presentation

Stage 1

- **Why** legislate?

- **Who** is protected?

Stage 2

- **When** is a person protected?

- **How** is a person protected?

Stage 3

- **Informed decision by GDA member charites** – Guernsey law

![guernsey disability alliance logo]

Purpose of the Presentation (1/2)

- Expecting some debate about disability legislation

  ○ Possibly as soon as May 2016?

- As GDA member charities we need agreement on where we stand on what subjects:

  ○ Collective position

- As GDA members: present + debate = understand

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Purpose of the Presentation (2/2)

Today…

- Introduce the concept of disability legislation

- Build up member charities shared understanding of **common features** and **differences** in Disability Laws around the world

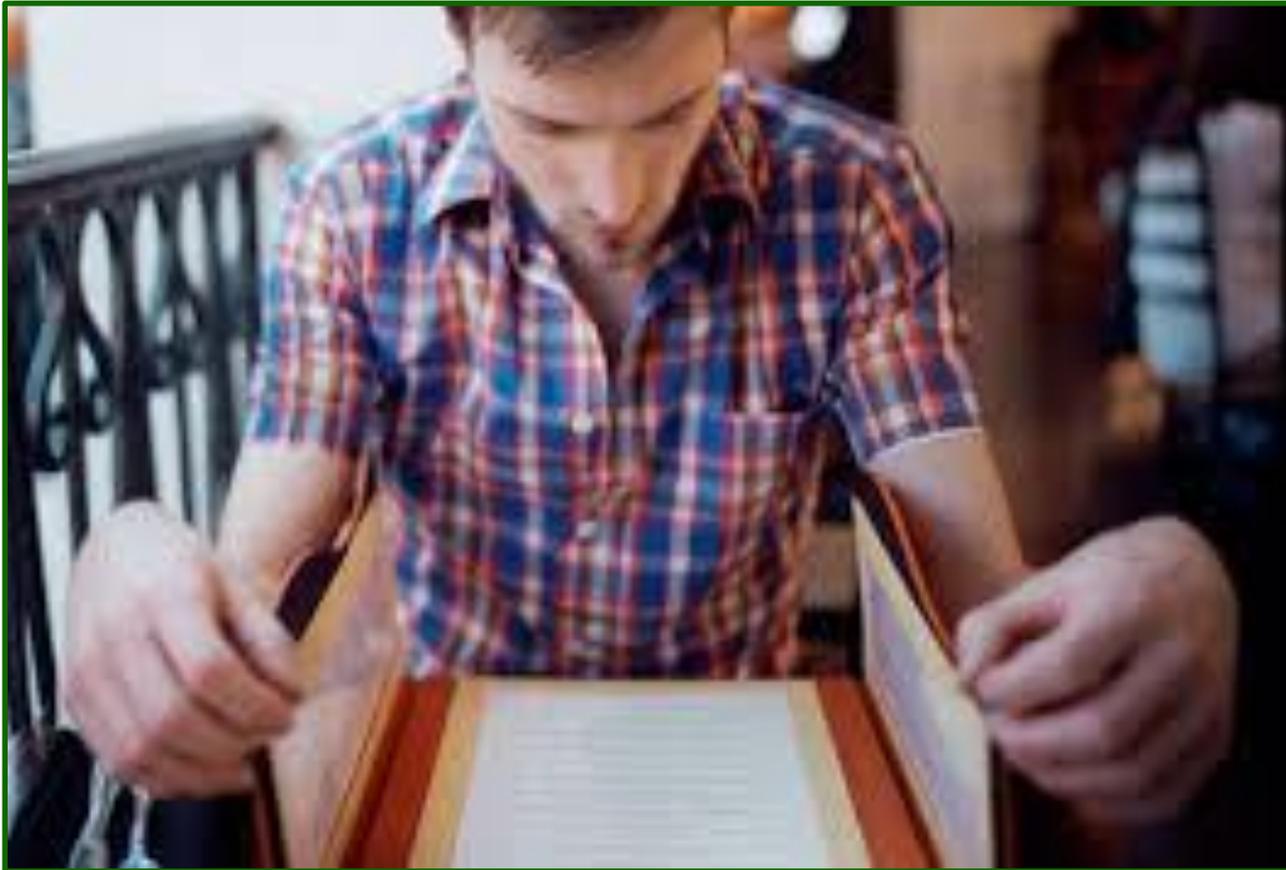- Lay groundwork for a discussion about Guernsey's position

Why legislate?

Discussion: Why do you think countries choose to have Disability Legislation in place?

We need to give everyone access to the same opportunities.

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It's not about court, it's about confidence.

"Could I have a menu in large print, please?"

Changing attitudes

- Better awareness and understanding of disability.

- Attempt to encourage people to proactively change their places, procedures and processes.

Guernsey is a long way behind

We haven't signed the UN Convention on the Rights of People with Disabilities.

95% of the world's population lives in countries that have.

It's still legal in Guernsey to discriminate on the grounds of disability.

The UK passed a law against disability discrimination 20 years ago.

Jersey is not there yet – hoping to do so by late 2017.

Why legislate? (summary)

- ✓ Ensuring that everyone has the same access to opportunities.

- ✓ Giving disabled people confidence to stand up for their rights.

- ✓ Changing society's attitudes towards disability.

- ✓ Fulfilling our duties under the UN Convention on the Rights of Person's with Disabilities.

Why not legislate?

- Could it be done by goodwill alone?

- Have other countries succeeded (in these objectives) without disability?

- Does it have to be onerous? (principle of "**reasonable**" adjustments)

Who is protected?

It depends on how you define disability…

- Using a **medical model**

- Using a **social model**

What is disability? – Medical model

- There is a "**normal**" way of doing things (e.g. it is "normal" to enter a building by walking up a flight of steps).

- Disability is a **personal characteristic** (e.g. having limited mobility) which means that disabled people "**can't**" do things the normal way.

- Disabled people need to be "**fixed**" (by a doctor, for example – this is where we get the term 'medical model') so that they are better able to do things the normal way – e.g. by giving a person with limited mobility a walking aid.

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What is disability? – Social model

- We "**choose**" the way we organise ourselves as a society – it is a choice to put a flight of stairs up to a building. It would be an equally valid choice to use a ramp.

- Disability is a **combination** of a **personal characteristic** (such as limited mobility) and a **social barrier** (such as a flight of stairs) which results in people being "**excluded**".

- We, as society, can choose to organise ourselves differently, in a more "**inclusive**" way, so that disabled people can participate equally – e.g. by putting a ramp in, instead of (or as well as) a flight of stairs.

What is disability? – Social model

- Features of a person's body or mind

  Often in combination with

- External features and barriers of the society and environments in which he or she lives

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Inaccessible buildings	People's **assumptions**	People's **attitudes**	Inaccessible transport	Stereotyping **& Stigma**	Online-only recruitment processes
Complex wording	Cost of equipment	High kerbs	Small print sizes	Panel interviews	**Prejudice**

Institutional **Discrimination**

Facing **barriers** because of a **physical or mental characteristic, impairment or condition**

Inaccessible services

Downs Syndrome	Brain injury	Motor Neurone Disease	Learning disability	Mobility impairment	Respiratory disease
Facial disfigurement	Cerebral palsy	Hearing impairment	Fibromyalgia	Diabetes	Epilepsy
Stroke	Autism	Amputation	Dyslexia	Depression	Eczema
Visual impairment	Bi-polar disorder	Multiple sclerosis	Spinal injury	Heart disease	Dementia
					Cancer

What's the problem?

Medical Model	Social Model
Disabled people "**can't**" do things the "**normal way**".	Disabled people are "**excluded**" because of a "**social barrier**".

What's the solution?
(Where would a law focus, and why?)

Medical Model	Social Model
Give disabled people (financial) compensation because they are disadvantaged.	Change the environment – because everyone has a right to be included. ("Reasonable adjustments")
Give disabled people personal aids (to help them do things "better").	Give disabled people personal aids (to help them navigate social barriers).
Change the environment – out of kindness.	Give financial compensation – if an injustice has been done, which can't be fixed by removing social barriers.

Why does it matter? (2/2)

Do you think the **social model** or the **medical model** offers a better framework for achieving the goals we discussed?

✓ Ensuring that everyone has the same access to opportunities.

✓ Giving disabled people confidence to stand up for their rights.

✓ Changing society's attitudes towards disability.

✓ Fulfilling our duties under the UN Convention on the Rights of Person's with Disabilities.

Disability – Personal Characteristics

- **Medical model**: Disability = personal characteristics only

- **Social model**: Disability = social barriers + personal characteristics

- But what are these **personal characteristics** (or "features of a person's body or mind")…?

Why is this relevant?

- Disability laws usually protect against **direct discrimination**.

  - Direct discrimination = "Oi you, we don't like your type here."

  - Everyone may get this type of abuse …

  - … But **who** is entitled to use disability law to protect themselves against it?

  - That depends on **how you define** disability – in terms of the **personal characteristics / features** that someone might react to.

Disability as a Continuum

According to the World Health Organisation, disability is a **continuum** of health, functioning and participation.

All humans are on the disability continuum

Less **Disability Continuum** More

Disability – Personal characteristics

- Some, but **not all**, disability laws define "disability" in terms of personal characteristics.

- Those that do usually include the following characteristics:

  - Lack or loss of physical or mental **organism** (e.g. a hand)

  - Lack or loss of physical or mental **function** (e.g. memory)

  - **Potential for** lack or loss of physical or mental organism or function (e.g. due to presence of a disease, like cancer)

- Some laws add extra requirements in terms of the **severity** of the characteristics, or their **duration**.

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How do different laws approach this?

No definition / Open definition

("disability")

Definition unrestricted by duration or severity

("disability = x")

Restricted by Severity

("disability = x, above a certain threshold")

Restricted by Severity + Duration

("disability = x, above a certain threshold, after a year")

Who has which definition?

No / Open Definition

Bulgaria, Canada, Croatia, Cayman Islands, Denmark, Finland, Spain, France, Netherlands, Slovakia, Latvia, Lithuania, Norway Poland, Portugal, South Africa, St Kitts & Nevis, Turks & Caicos.

Restricted by Severity

China, Malta Romania, Zimbabwe

Unrestricted

Australia, Bermuda, Hong Kong, Italy, Mauritius, New Zealand, Republic of Ireland, Trinidad & Tobago

Restricted by Severity + Duration

UK, Austria, USA, Estonia Liechtenstein, Sweden

Why does it matter?

What kind of **definition** of disability (in terms of **personal characteristics**) is more likely to achieve the goals we discussed?

- ✓ Ensuring that everyone has the same access to opportunities.

- ✓ Giving disabled people confidence to stand up for their rights.

- ✓ Changing society's attitudes towards disability.

- ✓ Fulfilling our duties under the UN Convention on the Rights of Person's with Disabilities.

Reflection (1/2)

Goals of disability legislation:

✓ Ensuring that everyone has the same access to opportunities

✓ Giving disabled people confidence to stand up for their rights

✓ Changing society's attitudes towards disability

✓ Fulfilling our duties under the UN Convention on the Rights of Person's with Disabilities

Reflection (2/2)

- Areas to consider when trying to achieve these goals:

- **Who** is protected?
  - Medical model / social model
  - Continuum & definition of disability

- **When** is a person protected?
  - Types of problem to be tackled by law
  - Areas covered by law (work, goods + services, school)

- **How** is a person protected?
  - Results of legal action – adjustment/award
  - Legal process – dispute resolution / court

Where next?

- **Stage 2:** When and how does a law protect disabled people?

- **Stage 3:** How do we apply these principles in a Guernsey context?

  - What is currently proposed?

  - What are the current unresolved questions?

- More focus on the "how" of disability law – e.g. dispute resolution/tribunal process, and nature of reasonable adjustments.

- Consider what may be expected of employers, schools and businesses if disability law is introduced.