

The Jersey Discrimination Law Consultation highlighted some important issues but missed others. The GDA cannot provide full comment as the details of some of the proposed changes have yet to be drafted.

Positively, the GDA celebrates the fact that many people (though unfortunately not all) will be protected against discrimination by reason of disability, not only in employment but also when accessing education and goods and services.

The UN Convention on the Rights of Persons with Disabilities is clear that protection must be available in all these areas. The GDA has consistently resisted attempts to introduce legislation in Guernsey based on an employment-only or employment-first model. Moreover, the UK government is clear that it will not extend its ratification of the UN Convention to Guernsey until this wider protection for disabled Islanders is brought into force.

Negatively, the GDA is deeply concerned about Jersey's proposed definition of disability. The Consultation recommends reducing the time a person must have experienced a personal impairment in order to qualify as a person with a disability from 12 months to 6 months. While some may take it to be a reasonable compromise, in reality it is still a discriminatory approach, based on an unnecessary and inappropriate medical model. While medical model definitions have a proper place when qualifying for needs-based benefits (such as the blue badge scheme, for example), they should have no place in legislation that protects everyone's right to be free from discrimination on the ground of disability.

To make a relevant comparison, consider the issue of sexuality. Quite rightly, people given protection, by that same Jersey Law, from discrimination on the basis of sexual preference are not subject to invasive questions about their sexual practices; nor do they have to demonstrate how long those preferences have existed or will continue to exist.

The fact is, most countries do not find it necessary to qualify disability in this way. Rather, the focus is on defining discrimination and on removing the barriers (both physical and attitudinal) which, in interaction with impairments, disable people. The result of Jersey's revised definition will be that many people may be required to prove how long they have had a particular impairment. People who experience substantial and possibly long-term disadvantage in connection with a shorter-term impairment (say 5 months and 29 days), will be barred from protection.

It is also a fact that such definitions of disability do not make things easier for anyone. For example, they not only make things more complex for employers, but also have the unintended effect of inviting them to make decisions about whom they may or may not discriminate against. The UK Government advice runs to 50 A4 pages. In contrast, Canada does not define or qualify disability and the Canadian Supreme Court's guidance runs to a couple of paragraphs.

Under Jersey's proposed Law, a person might suffer a short term mental health condition, or perhaps some form of communicable disease (say an STD), either of which could lead to an employer or colleagues at work harassing or otherwise disadvantaging them. The effects of the disadvantage could be substantial and long lasting; yet, if the impairment itself is resolved within six months, that person would not be protected by the Law.

The GDA believes that the Jersey Law, as proposed, offers inferior protection on the basis of disability. People discriminated against by reason of disability have a right to expect better and not, yet again, to suffer the indignity of being treated less favourably than others – the very principle this Law is supposed to be addressing. We need to move on from ugly notions of judging who is 'deserving disabled' or 'genuinely disabled'. The issue at stake is the fundamental right to "full and effective participation in society on an equal basis with others" (as the UN Convention explains); and it is every government's duty to promote and protect that right.