



EQUALITY AND HUMAN RIGHTS: THE CHALLENGES OF INTRODUCING RELEVANT LEGISLATION FOR A CPA SMALL BRANCH LIKE GUERNSEY



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Guernsey is a flourishing community with levels of peace, safety and trust which could be the envy of many other nations. It has long enjoyed the prosperity born of a thriving finance sector, which it continues to carefully cultivate, although its national wealth of over £3bn¹ is far from evenly distributed among the 63,000 people who call this Island home. At the time of writing this article, the government's Committee for Employment & Social Security, of which I am a Member, had just warned that over 700 children in more than 200 households would remain in intolerable poverty unless undue restrictions on welfare benefits were lifted.²

The existence of material deprivation in Guernsey is important, and the particular place it occupies in our society is significant, but the overall picture is undoubtedly one of a small, comfortable community where people have the opportunity to thrive. Our average life expectancy is one of the highest in the world, free primary and secondary education is available to all children, and our unemployment rate hovers around one percent of the working population. In a world where scarcity, disease, violence and neglect still shape the lives of far too many, we have little if anything to complain of.

In that context, formal acceptance of human rights should have been the easiest thing in the world for Guernsey. The rights to live unharmed, and without unjust limits on individual liberty, which form the first half of the Universal Declaration on Human Rights, are seldom threatened here. Protections offered by the second half of the Declaration – including fair pay, social security, decent healthcare and access to education –

would incur little new cost to the community, as well-established public services already deliver on many of those ambitions. Personal responsibility and duty towards the community, which concludes the Declaration, is a longstanding pillar of people's behaviour in an Island where almost five hundred voluntary organisations exist to give service at home and abroad.

The reality is somewhat different. For years, Guernsey's politicians and political commentators held a hesitant, if not begrudging, attitude towards making formal commitments to the protection of human rights. The island's Human Rights Law, incorporating the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, only came into force in January 2001. A framework for non-discrimination laws followed in 2004, but the only legislation made under it to date is a somewhat circumscribed provision offering some protection in the workplace against discrimination based on gender, married status³, or gender reassignment. The argument runs that, because we are small and peaceful and prosperous, we have little need of the legal protections which safeguard citizens of other nations. A formal commitment to human rights, equality and non-discrimination has, until far too recently, been perceived only as box-ticking and bureaucratic red tape.

The tide is turning. In November 2013, to the cheers of more than two hundred disabled people gathered on the steps of Parliament with their families and friends, the States of Guernsey approved a Disability and Inclusion Strategy – the first time the government had made a comprehensive political commitment to improving the

quality of life of disabled islanders, challenging prejudice and preventing discrimination. Among other commitments, the States pledged to introduce laws on non-discrimination and equality for disabled people and a local equivalent to the UK's Mental Capacity Act, and to seek an extension of the UN Convention on the Rights of Persons with Disabilities to the island.

These statutory changes might not have the same immediate impact on disabled people's day-to-day lives as improvements in services and benefits, but they offer an important backbone to our work on inclusion. They are a clear statement of disabled people's equal status and worth as members of our society; a map which shows how, through accessibility and adjustment, we can realise that equality in practice; and a tool which can be used by individuals to seek redress when they've been wronged.

Implementation of the Strategy got off to a painfully slow start. But a restructure of Guernsey's government around the 2016 Election placed responsibility for equality and non-discrimination work with the Committee for Employment & Social Security, which also leads on employment-related and anti-poverty policy – a natural fit. This change, together with the political will of Parliamentarians in the Committee and outside it, has led to a major focus on Disability and Inclusion this term, with a view to delivering the core commitments of the Strategy by 2020.

The Committee has taken the view, with the unanimous support of the States, that Guernsey should have a single Equality law, which will deliver the longed-for protection against discrimination on the grounds of disability, while

also incorporating grounds such as race, religion and sexuality – grounds on which we know people experience discrimination, but for which there has never yet been any legal protection or recourse.

In order to shortcut what has already been a long and drawn-out process, we have also decided to adopt and adapt an equality and non-discrimination law from another country, rather than designing our own from scratch – a sensible decision for a small island with limited resources and limited expertise in this area. We believe this will give us much more than just a robust legal framework: it should also allow us, as a government and as a community, to draw on the knowledge, the case law, and the civil society insights of another jurisdiction in order to get the best out of our law. We kept our search to English-speaking countries, to avoid the risk of a law's best qualities being lost in translation. With the assistance of external experts, we narrowed our options down to five countries earlier this year, and eventually settled on Ireland and Australia (whose non-discrimination laws share a common ancestry) as the jurisdictions that would provide a model for our local Equality legislation.

The process of carefully reviewing the Irish and Australian laws, taking on board the latest thinking around the UN Convention and putting together a skeleton law for Guernsey is ongoing. We hope draft proposals will be shared for public consultation within months, and our aim – ambitious given Guernsey's limited law-drafting resources and the unknown impact of Brexit, but imperative if we are to avoid the slowdown that will follow another General Election – is to get Equality legislation for Guernsey on the statute books by 2020.

The role of civil society has been critical in getting us this far. It was only through campaigns led

by disabled people's organisations and individual disabled people that the issue first made it onto the States' agenda, in around 2008. Civil society campaigns have done the most important thing of all, which is to raise public awareness of the realities of disadvantage, discrimination and exclusion experienced by some, even in our safe and comfortable community. Without that understanding born of personal stories, policies designed to promote equality and non-discrimination would barely have got a foothold among the government's priorities.

Civil society has also wrought changes in other areas of government policy. The sudden flourishing of an LGBT+ organisation on the island about five years ago led to the legalisation of same-sex marriage in 2016. The decision to do so, a few months before the last General Election, was in fact the catalyst that gave me the courage to stand – the political debate around the issue gave me comfort that my sexuality would not be received with hostility. My own experiences convince me that not only does representation in Parliament matter for minorities and marginalised people – so too does Parliament's role in creating a legal framework which actively embraces equality and inclusion. Policies which make it clear that you are wanted and you are welcome can make a profound change.

Matters of equality and human rights, by their very nature, touch on all aspects of human life. It goes without saying that an Equality law – itself complex and challenging enough to get right – is not the only solution to inequality or the structural disadvantages faced by some people in our society. Full inclusion for disabled people, for example, relies on investment in health and care services that provide tailored support, and in accessible environments that exclude no one. Equal recognition of LGBT+ families requires changes to our birth registration and adoption

laws, which are still modelled on the idealised heterosexual household of the 1930s. A true commitment to gender equity calls for an effective package of parental benefits and rights to parental leave, which allow both men and women to play an equal part in the workplace and in the home.

These are policy issues which will continue to be tackled long after our legislation has been drafted, and Parliamentarians of all stripes will recognise that they are not challenges to be resolved overnight. The importance of developing a knowledgeable, independent institution – a local equivalent to an Equality Commission – to champion and advocate for equality and non-discrimination, and to give willing employers and service providers the information and advice they need to be inclusive, will also be apparent. We intend that this should be established before the Equality law comes into effect, to help smooth its introduction, and we have reason to be grateful to other Small Branches of the CPA who have so far been kind enough to share their own approaches and experiences in this matter.

Plans to introduce Equality legislation have been received with warmth, and indeed impatience, by much of the Island community. As a late adopter, we benefit from other jurisdictions having established a business case for equality and inclusion which even the sternest proponents of austerity, and the most textbook capitalists, may find compelling – after all, the profits foregone from excluding disabled shoppers, for example, far outweigh the one-off costs of making the shop environment accessible.

On the other side of that business case, we know that the lines of disadvantage converge on poverty. Not everyone who is poor experiences discrimination, and not everyone who is discriminated against ends up poor. But there is a powerful relationship

nonetheless. From a disability perspective, persistent exclusion from employment opportunities, lower educational expectations, frequent negative attitudes and imperfect health and care services – together with the cost of aids and adaptations needed to compensate for inaccessible environments – combine at once to increase the cost of living and to diminish the resources available to meet it.

Placing responsibility for equality and inclusion with the Committee also responsible for social security puts Guernsey in an ideal position to understand how these things interrelate, and to take a comprehensive approach to mitigating disadvantage in our community. The knots of injustice, which don't show up in our headline statistics but which still colour the lives of too many of our citizens, are capable of being unravelled through careful legislative, practical and financial measures, one of which is effective Equality legislation. If the States of Guernsey invests sufficient resources in this work and holds fast to its determination to deliver in this term of government, we have the opportunity to make substantive progress in the way human rights are recognised and realised, for those who are still on the sharp end of ignorance, prejudice and discrimination, by the time 2020 comes around.

References:

¹ Guernsey Annual GVA and GDP Bulletin – 2017 (First Estimates) – issued 6 September 2018. Available online at <https://www.gov.gg/CHHttpHandler.ashx?id=115170&p=0>

² Committee for Employment and Social Security – Non-Contributory Benefit Rates for 2019. Available online at <https://www.gov.gg/article/167182/Non-Contributory-Benefit-Rates-for-2019>

³ *The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005*, specifically protects 'married persons', rather than protecting all people against discrimination on the basis of marital status.