

GDA reply to GEP article by Mr Kontelj, 5th June 2019

Mr Kontelj, questions (Guernsey Press 5 June 2019) whether Guernsey's proposed discrimination legislation is needed. The title of the piece (Law or Liberty) suggests that law and liberty are in conflict and that we must choose one or other. I disagree.

Without laws to guide behaviour there can be no true liberty or real equality. If people are free to act entirely as they please, then they can, and will, trample over the rights of others. Guernsey cannot afford to be, and cannot afford to be perceived as, a jurisdiction that doesn't respect rights.

Many other jurisdictions are considerably ahead of us, and I see no evidence to back the article's claim that discrimination legislation in those jurisdictions is dividing societies or encouraging identity politics. Guernsey's legislation will provide protection for everyone from discrimination on certain grounds, not just defined groups.

I'd suggest that the issues in Australia mentioned in the article may have more to do with a history of systemic and institutional discrimination, social inequality, and a lack of understanding and respect for human rights than any curb on liberty. The Australian Equality Commission notes on its website *"in Australia, there is a general lack of 'rights consciousness' . . . particularly when compared to other liberal democracies like America. We still face a collective lack of forethought and responsibility..."*

This leads to my next point. Most of the discrimination which occurs here is not the result of people being "bigoted and unreasonable". Most discrimination is indirect or systemic or is caused by not reasonably accommodating difference. People discriminate, often without malice, and often without realising they *are* discriminating.

That is not to say that direct discrimination does not happen in Guernsey. The article suggests that campaigners for the legislation use hypothetical examples which would not happen here. There was a suggestion that "a patron accompanied by a guide dog" would not be turned away from a restaurant in Guernsey; yet that is exactly what has happened, on three occasions in the past 6 months, to Simon de la Mare and his new guide dog, Cyril.

Shortly after Simon was turned away from the first restaurant, a colleague and I met with someone who was equally sceptical about the existence of discrimination here. This person holds a position of responsibility. The person believed that neither they, nor anyone they knew in Guernsey, is racist or discriminates. When we described Simon's experience, they tried to make light of the seriousness of the incident and, without appearing to be conscious of the bias (sex & race) in their statement, said "Oh, that'll just be some stupid Latvian waitress getting things wrong".

In another example, a service provider wouldn't allow children with disabilities to use their service for fear that other clients would be put off by their presence; and in yet another, an employer refused to even consider reasonable adjustments for an employee

with Multiple Sclerosis, which resulted in the employee being forced to resign. Unfortunately, throughout our twelve years, the Guernsey Disability Alliance has been made aware of many other examples of discrimination in Guernsey. Do we really want to be the kind of community that has no means of addressing this sort of behaviour?

The article suggests supporters want legislation simply because everywhere else has it. But this is not about envy politics or keeping up with the Jones's (or Jersey); this is about the realisation of rights. We already have rights to protection from discrimination, expressed through various international agreements; but the citizens of Guernsey are unable to fully exercise and protect those rights. Rights are meaningless unless there are mechanisms for defending them and useless too, if we are all unaware of them.

The vision of eliminating discrimination without legislation is laudable; however, no jurisdiction (even those with a strong history of social equality such as Sweden) has successfully combated discrimination without introducing legislation. But it is also true that no jurisdiction has succeeded through legislation alone.

A government's first duty is to protect its citizens. Governments must take steps to prevent discrimination from happening in the first place; rather than just attempting to remedy discrimination that has already happened. I believe the States are committed to these aims but have some way to go. In addition to legislation, these measures include, for example, reviewing existing law and policy, effective awareness raising within all layers of society, establishing mechanisms to promote, protect and monitor rights (e.g. Equality and Rights Organisation) and, for persons affected by disability, improving (and regulating where necessary), accessibility of public services, the built environment, information, communication, education and support systems.

Guernsey is already party to a number of Human Rights Conventions and the States have resolved to implement a number of others, for example the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and, most recently, the Convention on the Rights of Persons with Disabilities (CRPD).

Measures to eliminate discrimination are at the core of the CRPD. Discrimination legislation is a requirement of that Convention. In fact, legislation must be in place before the UK will extend its ratification to Guernsey. Without ratification, the Convention has no force and the thousands of Islanders affected by disability will not gain the assurance and benefit of its progressive and monitored realisation, which is their right.

Discrimination does occur in Guernsey, and the truth is that substantial disadvantage and inequality results. Currently, there are no legal boundaries and no effective ways of challenging or remedying that inequality. With the legislation and other measures currently in development, we have an opportunity – in fact a duty – to resign that inequality to history. We should hasten to fulfil that duty with purpose and commitment.

Rob Platts MBE, Equality Advisor, Guernsey Disability Alliance