

Draft Proposals for New Discrimination Legislation: Public Consultation Transcript, Monday 15 July 2019

Speakers:

- MLC** Deputy Michelle Le Clerc, President of the Committee for Employment & Social Security
- EY** Deputy Emilie Yerby, Member of the Committee for Employment and Social Security

(MLC)

Welcome everybody, just had to wait a couple of minutes to ensure that we had the live streaming on because we are live streaming tonight for those people that actually can't get here. So thank you for coming along and taking the time to attend this presentation. I think most of you know me but for those who don't my name is Michelle Le Clerc and I am president of Employment & Social Security and I am joined today by Deputy Yerby who will be presenting to you and then we have got our other two committee members Deputy Shane Langlois and Deputy John Gollop who will be available to take questions after the presentation. This is a really really important week for us, we ordered our public consultation last week and the purpose of tonight is to take you through the presentation and the key aspects of our proposals. We are keen to hear your views and that is what this is about, it is consultation at this stage it's not bringing the policy paper yet. So the disability and inclusion strategy was approved by the States in November 2013 and responsibility for the strategy was transferred to the Employment & Social Security Committee in May 2016 and we have come a long way putting these draft proposals together and we believe they are essential to tackle discrimination in Guernsey but we also feel that they are proportionate and it is no longer a question of whether we need discrimination legislation but what form it should take and how it should be implemented.

Before I go any further I have just got a few housekeeping points, if you can ensure your mobile phones are turned off and I have made sure that I have and Deputy Gollop have you got yours turned off? I don't believe there are any fire alarms planned for this evening but if the fire alarm does go off please exit via the main doors to the right and to the left and just to let you know that we are live streaming and when we come to questions we will be taking, hopefully, some questions from online as well as from the audience. I think we will go on and make a start on the presentation.

Okay, so as I said 2016 the States of Guernsey Policy & Resource Plan identified a strategic commitment to one community inclusive and committed to social justice.

The Disability and Inclusion Strategy is one of the priorities in the Policy & Resource Plan.

As part of the Disability and Inclusion Strategy the States agreed that detailed policy proposals should be developed for the introduction of disability discrimination legislation, but when ESS

began the work and having looked at model legislation, we felt that rather than developing a series of laws, first disability, then age, then race and so on, we felt it would be better to address multiple grounds at once and it would ultimately be more efficient and create a fairer and more consistent approach to non-discrimination. So in June 2018, just over a year ago, the States unanimously agreed that the scope of this project should be increased and we should develop proposals for new legislation to protect people on multiple grounds.

The aim of the legislation is to promote and protect people's rights to non-discrimination, equality of status, opportunity and treatment and we think that more equal opportunities will enable people to achieve their potential and will lead to a more inclusive society. It will also be good for the island's reputation and, we believe, for the economy.

Non-discrimination is a cross-cutting theme in human rights law and some of the human rights treaties which have been extended to Guernsey, for example the UN's International Covenant on Civil and Political Rights, require States to introduce legislation to prohibit discrimination. As well as helping us to comply with Conventions we have signed up to having legislation in place that will also help us to seek the extension of other Conventions which the States have agreed to, these include the UN Convention on the Elimination of all forms of Discrimination Against Women, otherwise known as CEDAW, and the UN Convention on the Rights of Persons with Disabilities.

So we have been on a journey, we have worked with consultants from Ireland looking at model legislation and have had discussions over the last 18 months with groups that represent people who will be affected by the legislation - and I see some of those people are here tonight and I thank you for coming along and giving support - both business representatives and groups that represent people who have a particular interest in the protected grounds.

Once the consultation is completed, the team will analyse the results. During this time a business case for an Equality & Rights Organisation, or an ERO, will also be prepared. The feedback from the consultation will feed into the final proposals to be submitted to the States for debate no later than April 2020 and that is along with the business case for the ERO.

If the States agree the proposals, then we will move into phase 2 of the project and phase 2 means that the legislation will be drafted. If approved, the policy letter will be the legislative drafting instructions for the States Legal Draftsmen. We have developed our policy proposals in a high level of detail to remove ambiguity and help expedite the legal drafting process.

We know that this is a big change for many and training and information will be provided to businesses and the public during this time. We will also look at ensuring we have the structures we need to provide advice, hear complaints and so on. I would like to emphasise that it is our aim for an ERO to be set up prior to the legislation coming into force and subject, of course, to the necessary funding being approved.

Phase 3 will be the approval of the legislation by the States and we estimate the timeline on that is likely to be no earlier than 2021 so when the new legislation comes into force we do

intend to repeal the existing Sex Discrimination Ordinance as sex discrimination will be prohibited in the new legislation.

Overview: draft proposals

So there are some new aspects in the draft legislation that we want to bring to your attention. Firstly, the proposals go beyond the field of employment and cover service providers as well, including education, accommodation, clubs and associations and the public sector.

There will be more protected grounds that will allow more people to register a complaint if they feel they have been discriminated against.

There will be some provisions which aren't in our existing legislation: such as Harassment, Equal Pay, Appropriate Adjustments and an Anticipatory Accessibility Duty, but Deputy Yerby will explain these more later on in the presentation.

There will also be a new structure for the Awards and Remedies and the Tribunal can order if they find that discrimination has happened, so we are not just looking at financial compensation.

Presently a discrimination complaint can only be made on the grounds of sex, gender reassignment and marriage. However, the new proposals will allow people to register a complaint on the basis of those shown on this slide and for those people at home that may not be able to see the slide, I will read them out. So, on the basis of carer status, disability, marital status, pregnancy or maternity status, race, religious belief, sexual orientation and trans status and these are what we mean and refer to as the grounds of protection.

Some of these characteristics apply to everyone in Guernsey, for example, everyone has an age and a nationality and anyone can be discriminated against, so the legislation will protect and apply to everyone.

The 'fields' cover when someone will be protected. People will be protected from discrimination:

When applying for a job

At work

In contexts related to work, so for example, apprenticeships, vocational training, employment agencies, company directors and partners in firms, trade unions and so on.

As a consumer when accessing goods or services, so when you are shopping, banking or socialising at the pub or eating at a restaurant.

In education.

When using public services

When buying, leasing or renting a property, both commercial and residential.

When joining or being a member of a club or association.

As mentioned previously there are a number of specific questions that we would like to receive feedback on.

The first is the definition of disability as we are proposing a broad definition similar to that used in Ireland and Australia.

We would also like to hear the public's views on when children and young people should be protected from age discrimination. So we know that there are good reasons why you might treat a 6 year old differently from a 16 year old, whether that is in school or in terms of what they are allowed to buy in the shops or what games they can play or films they can see. We don't want the discrimination law to prevent different treatment when it is in the child's best interests so we are proposing some restrictions on age related discrimination, but to be clear, children will always be protected from other kinds of discrimination such as race or disability. Our question is simply about when children are treated differently because of how old they are.

Thirdly we are proposing that landlords will only be able to specify 'no children' in certain limited circumstances which is a departure from the present practice and this is a key question we would welcome feedback on.

Further questions include whether sex should be defined biologically, based on gender identity, or being defined as a man or a woman and on what basis trans people should have access to single sex spaces or services.

We will highlight some more questions later in the presentation.

Now Deputy Yerby will now take you through some of the key elements of the proposals. Thank you, Deputy Yerby?

(EY)

When I hand back to Mich she is going to touch on how the law is enforced but just to put it in context from the start, I think it would help to be absolutely clear that the Committee has consistently tried to ensure that breaches of non-discrimination law will be dealt with as civil offences, not as criminal offences. We can't see how getting a criminal record would help to achieve the fundamental purpose of the law, which is about changing behaviours and attitudes and building a more inclusive community. So I think it is really clear, just to be helpful, that that is the context which we are talking in.

The next few slides are just a whistle-stop tour of some of the key concepts in our proposals.

The first, of course, is direct discrimination, so when you are introducing a law it is important to be really clear about what types of behaviour you are trying to prevent and the types of discrimination that we are prescribing are fairly standard in non-discrimination laws around the world. So direct discrimination is treating someone differently precisely because of a protected characteristic. So, for example, if an employer refused someone an interview just because their name didn't sound British, that would be direct discrimination on the basis of race.

There are, of course, reasons why you might treat a person differently which have nothing to do with the protected characteristics and we are not trying to impose some kind of cookie-cutter equal treatment on every human interaction so, you know, it will still be perfectly legitimate to hire somebody who is more qualified over somebody who is less qualified, that is a reason for different treatment but isn't based on any protected grounds.

Also we will come on to the question of exceptions in a bit, we have recognised that sometimes there are legitimate policy reasons to be treating people differently even when a protected ground is engaged.

The concept of discrimination of association is also in our proposals and if you think, here, for example, about where a nursery refuses to enrol a child because his mums are gay, now their sexuality is nothing to do with him but he has been discriminated against, denied a service, by association with it and that is, again, something we think is important that the law should prevent.

Indirect discrimination, again it is common in non-discrimination laws but it is a more complex concept to get your head around so I am going to try and talk through this one with a bit of an example. So indirect discrimination is where you have a rule or a policy or a practice which at face value treats everyone the same and applies equally to everyone but it has the effect of disadvantaging a certain group of people more than other people because there is something about the rule and the way which interacted that group that affects them particularly.

If you imagine, for example, if an airline advertises for people who are below a certain height for cabin crew, now in practice this might disadvantage men's access to employment more than it disadvantages women because as a group men, on average, are taller than women so more of them are going to fall foul of the height rule. So arguably this is indirect sex discrimination. It is indirect because it is a rule that applies equally to everyone but in practice it affects the employment prospect of one group of people much more than it does another group. So if there was no good reason to have a rule like that you would expect that the airline would need to get rid of it but there is also this concept of objective justification within non-discrimination laws and within our proposals and the idea behind objective justification is that sometimes you have rules like this for good reasons so the airline might have a legitimate aim, they might be trying to protect the health and safety of their workforce, you know, if you are going up and down the aircraft cabin and you had to stoop every time you go up and down that is not going to be good for your employees backs so the airline's legitimate aim might be to try and protect the health and safety and wellbeing of their employees. So that would be the type of test as to whether the rules would be objectively

justified but the airline would then have to demonstrate that the rule they had in place is the best way of achieving that aim so do they have a legitimate aim and is this the best way of achieving it, is it proportionate, is it appropriate in the circumstances. If they can clear those two tests then they can still have practices which might unfairly disadvantage one group or so, which might disadvantage one group more than another but for which there are genuine reasons. So this concept of objective justification applies in the case of indirect discrimination but you will also see it if you look through our proposals that we are suggesting it can apply to direct age discrimination, that it can apply to discrimination arising from disability, which I will come to in a moment, and it is also used in the concept of genuine and determining occupational requirements, sorry that is a bit of a mouthful but the idea is that sometimes an employer might need to employ a person with a particular characteristic to do a role, say a man or a woman or a person with or without a disability, if that characteristic is intrinsic to the way that the role is done. You might think about things like intimate personal care and if the characteristic really is intrinsic to the role then you can class it as a genuine determining occupational requirement and that means that it is legitimate for employers to recruit within that way.

So as I said discrimination arising from disability is really a belt and braces protection to make sure that the law really is effective in offering disabled people the protection that we want it to. If you think, for example, about a person with a guide dog being denied access to a taxi, what you don't want is the driver to be able to turn around and say 'well it's got nothing to do with their disability, it's because of the dog', you know, 'I just don't allow dogs in my taxi'. The guide dog is only there because the person has a visual impairment, so the circumstances which result in them being denied access arise from disability and so does the discrimination. But as with indirect discrimination it would be possible for the taxi driver to refuse if they could objectively justify doing so, so if you imagine a situation in which, say, the taxi driver is allergic to dogs so there is a reason why he might not be able to – or she might not be able to have dogs in the taxi. Finally there is denial of an appropriate adjustment. So both discrimination arising from disability and denial of an appropriate adjustment are new concepts for Guernsey because, as you know, we do not have any protection on the basis of disability at the moment. I am going to unpack the general concept of appropriate adjustments in a moment, but just to say at this point, this kind of discrimination will apply if you have got a situation where it is clear that a person needs an adjustment, where it is clear that the organisation, so the employer or service provider who is responsible for providing it, is able to do so and where they still refuse to do so. So if all those criteria are fulfilled and there is a refusal to provide that accommodation, then that will also be classed as a type of discrimination.

Now there is already a protection against harassment law in Guernsey and that covers situations that cause distress or fear of violence in any sphere of life. That is a criminal law and it is separate to what we are proposing here.

But we are proposing that harassment or sexual harassment on any of the protected grounds, so the characteristics like age, disability, sex etc, which Mich outlined will be prohibited at work and in the provision of goods and services so in the areas where this law operates. You can see how that is consistent with the aim of this law because what we want is for this law to ensure that people can access employment and can access the life of the community on a

fair basis and harassment operates to create a hostile or degrading environment at work or when you are trying to access a service and it is just as sure as discrimination to prevent people from accessing goods and services.

Then, of course, there is victimisation. Again, this is fairly standard in non-discrimination laws and in the concept of non-discrimination laws it means something quite specific. So, for example, if I have complained about discrimination at work, whether that is complaining about being discriminated against or helping a colleague to make a discrimination complaint, you, as my employer, can't then turn around and treat me worse because of it or similarly, you know, if I am a customer and you as a service provider decide to treat me differently because I have complained about discriminatory treatment, that is not okay, that is victimisation. Non-discrimination laws tend to look particularly harshly on victimisation because it can have the effect of undermining the whole law, so, you know, if you have reason to fear that you are going to be treated worse because you have dared to make a complaint, then it guts the effectiveness of the law as a tool for creating a fair playing field. So we will have a provision in the law that prevents victimisation.

But as I said there will be exceptions carved out in the law. So, again, fairly calmly in non-discrimination laws around the world, exceptions provide for circumstances where it is legitimate to treat people differently even based on the protected grounds. So, for example, it wouldn't be unlawful discrimination to target public health screening services where we know they will have most benefit. So, for example, offering breast screening only to women and only to women within a certain age band. We are also suggesting it wouldn't be unlawful, for example, to offer concessionary fares to families or to older people or to organise competitions along the lines of gender or nationality or age so, for example, on the side you could still have a Guernsey men's under 21 football team.

So, one of the key questions for our consultation is whether we have got this exceptions list right. There are hard copies of the exceptions list to take away, if you haven't already had a chance to look at it, you can also look at it online, we have organised it in two different ways, we have organised it by sector, so employers and service providers and so on and we have also organised it by protected grounds, so things like sex and disability and so on and that is so that you can quickly find the exceptions that you think are most relevant to you if you don't want to have to leaf through all the exceptions to try and work out what is going on.

So we have consulted extensively, particularly with other States committees, to try and make sure that we have identified pretty much all the circumstances where there is a legitimate policy reason why you might want to have an exception. So we think our list is pretty comprehensive but, again, the exceptions right really is one of the most important things so we want to – we are really keen to get feedback, we want to know if you agree that the exceptions are right, if you think that there is anything that we have missed that ought to be included or if you think that there is anything that we have included that actually really ought to be left out. At this stage I think it would be helpful to point out that there is a general exception which says that anything done in accordance with another law isn't going to count as discrimination. So if you take, for example, something that is done in accordance with GDPR, or Data Protection Law, even if that disadvantages one group of people more than any other it isn't going to be unlawful in the context of this law. But having said that, in the context

of looking through Guernsey's legal framework and putting together this list of exceptions, we have identified some very outdated pieces of law. For example Guernsey introduced same sex marriage in 2015 but our registration of births law still doesn't allow for same sex parents. When we go back to the States with our final proposals we are going to include recommendations that some of those outdated laws should be prioritised for review as soon as possible after this.

So those are really the core concept around which our non-discrimination proposals are based. I just need to spend a bit of time on the concepts of appropriate adjustment and accessibility because these are the provisions that could really lead to positive change for disabled people in particular so they really give effect to the law when it comes to disability. I think you will have heard of appropriate adjustments or reasonable adjustments before so the idea here is that sometimes it is necessary to treat disabled people differently from other people in order for them to have equal opportunities and to be included. This can be achieved by making adjustments in the workplaces or to the way that services are provided. Now the important idea behind appropriate adjustment is it has to meet two basic tests, so the first and probably most important, is that it has to be appropriate to the disabled person's needs. So if you have got an employee with a visual impairment and they rely on a screen reader or large print documents then you can't just think 'oh I know how I am going to make my workplace accessible, I am going to offer them copies of all our important documents in braille'. Well, the person doesn't read braille so it is not going work, you need to have an adjustment that is appropriate to the needs of the individual in front of you. But the other test when it comes to appropriate adjustments is that they mustn't pose a disproportionate burden for the employer or service provider who is responsible for providing them. So, if an adjustment isn't practically possible, it is not, you know, physically doable or if it isn't affordable bearing in mind the size and resources of the organisation, then they are not going to be expected to provide it under the law. So, you know, you can imagine that what a larger employer or a larger service provider might have to do in one context is different to what a smaller employer or service provider might have to do in the same context. But, as I said before, if you have got a situation where you have identified an appropriate adjustment is needed, you have identified that the organisation can provide it and they still refuse to do so, that will count as a form of discrimination.

So, as you have probably gathered, appropriate adjustments are most people in the workplace or in other situations where there is a specific disabled person who will be disadvantaged unless an adjustment is made to ensure they are included. If you think about shops or restaurants or other service providers or even schools then you have got lots of people coming and going every day with lots of different disabilities and access needs and we wanted the law to be able to create a more inclusive environment for them without them necessarily having to ask for a specific reasonable adjustment each time. So that is why we are including the concept of an anticipatory accessibility duty. Now this duty is only going to apply to providers of goods and services and that obviously includes the public sector and to education providers, it isn't going to apply to employers, employers will need to consider appropriate adjustments. The idea behind the duty is that service providers will have to think about common needs that might arise and about how those needs can be met in advance. So that will include questions of physical accessibility but also the way that information is provided, the way that staff are trained to serve customers with disabilities and so on and we

are suggesting that the most straightforward way to respond to the duty will be to carry out an accessibility audit, so to do the thinking around what kind of changes might be needed to make your environment more inclusive, to develop an accessibility plan which will set out what you are going to change and over what time period you are going to change and how and then taking steps to implement that plan over a reasonable period of time.

Again, it is important to stress we are not going to be expecting service providers to make changes that will be a disproportionate burden on them, because they are too expensive or because they are not physically feasible and it is not going to be a case of you have got to draw up an action plan and then boom the next day everything has got to be perfect, it is about taking a series of steps so that your service – because we hope everybody will be doing this – the whole island by extension, gradually becomes more inclusive for everyone so it is about progressively realising that goal (inaudible) inclusivity.

So to summarise, appropriate adjustments are responses to individual needs within a specific context but the anticipatory accessibility duty is about anticipating common needs and creating a more inclusive environment for everyone. We are proposing that the duty to provide appropriate adjustments, of course, will be in force from the moment the law itself goes live but we are recommending that the accessibility duty should be introduced more gradually. At the moment what we are suggesting in our consultation is that within three years after the law coming into force you will have to have an accessibility action plan so you will have to work out what the access needs are and how you are going to meet them over the coming years and we would expect people to start making changes to, say, information provision or the way they train their customers or those other kind of needs they might have identified in their plan, not (inaudible) plan in force but physical changes to buildings and infrastructure we are suggesting might need a ten year lead in period. So this is to allow small businesses especially and we have got a really high number of small and micro businesses here in Guernsey so we can't leave them out of the scope of this law because they are so wide spread in Guernsey that would just not result in the law making the desired changes but we also know that we need to introduce the law in a constructive and manageable way that works for them. So, it will be about allowing small businesses to plan for, to manage the possible practical and financial impact of the changes and just give everyone a decent run-in period to get good advice and really think about the kind of changes that they need to make. But of course we will strongly encourage them, there won't be any penalties for people who want to start making physical changes sooner.

Those are the key concepts that relate to how the law, we hope, will change things and will provide added protection particularly for disabled islanders. But just one last concept from me before I hand you back to Michelle, we really think that it is important that this law addresses the pay gap and the general issue of lower pay in occupations that are commonly done by disadvantaged groups which in this context includes women. This is particularly relevant given that this States and probably every States that came before us could emphasise the importance of personal responsibility and when you boil it down personal responsibility in the mouth of a politician usually tends to mean – you go out and earn a wage that will allow you to raise your family without depending on the States and then you retire on your own resources and don't bother the States with your needs. If that is what we mean by personal responsibility fine, but at the moment the decks are very consistently stacked against some

people doing this as effectively as others so we at least owe it to the population to try and create a more level playing field.

The first concept in respect of equal pay is that it would be unlawful for two people who are doing the same or a very similar job for the same employer to have different pay, terms and conditions simply on the basis of a protected ground. So if you think, for example, about an employer who paid their male cleaners more than their female cleaners, simply because they were men, that would not be okay in the context of this law.

Now, of course, it wouldn't be discriminatory to pay people differently for reasons other than a protected ground, so things like length of service or your performance at your job or your seniority, that would continue to be fine.

As well as paying people equally for doing the same work or not discriminating between them on the basis of protected ground, there is a concept of equal pay for equal work and that goes a little bit further. Again, it is a fairly common concept in other non-discrimination laws and it leads towards the achievement of the convention on the elimination and discrimination against women which Mich addressed at the start. The idea here is that if two people are working for the same organisation and doing jobs which require a very similar level of skill or effort or responsibility, so that is the equal value, but if you look at it objectively the two jobs have equal value for the organisation, then those people should have equal pay and, again, this is relevant where the jobs are divided along the lines of protected grounds. If you think, for example, of an organisation where most of their caretakers are men and most of their canteen staff are women and your caretakers are consistently paid more than your canteen staff but if you look at the jobs objectively they require an equal level of skill and effort and responsibility, in that situation there may be a case for an equal pay claim.

Going back to our consultation, we were asking about the rate at which some parts of the law ought to come into force and we recognise that the anticipatory accessibility duty and the concept of equal pay for equal value might require more forward planning by employers and service providers than most other parts of the law.

In the case of the accessibility duty, service providers might want to carry out accessibility audits and develop their own plans, while in the case of equal pay for work of equal value, employers might want to use a job evaluation tool to make sure there is an objective relationship between paid, skilled and responsibility across their staff groups.

Bearing in mind the added complexity of those two areas, we think that there might need to be a lead in period once the law has been introduced before those two provisions come into effect. If you are responding to our consultation we have got a particular question about that asking you to let us know what you think and of course we are also asking are there any other parts of the law that might need a longer lead in period and on the flip side, you know, are there parts of the law where there is an urgent need to bring them into effect, perhaps soon than the committee was anticipating, so, you know, let us know either way. Those questions are in our consultation survey and we would really welcome your feedback.

Hopefully that explains some of the core concepts that structure our non-discrimination law. I will just move the block back into place before I move and I am going to hand back to Mich to explain how people are going to use the law in practice to seek changes.

(MLC)

Thanks Em. We didn't want to have an accident and then worry about health and safety which is also part of our mandate. Right, I am going to go on and talk about the complaints process. We propose the structure of the complaints process will be based on the existing framework in place for sex discrimination complaints with some tweaks.

We know that the majority of discrimination complaints can be resolved informally and we don't really want people going through a legal process and most people, actually, just want to have their issue resolved.

So, we are suggesting that people should first raise their complaint with the employer or service provider that they feel has discriminated against them. This will provide the employer or service provider with the opportunity to put the issue right. We are also saying that free advice will be available for the complainant and the employer or service provider and we are anticipating that that would be through the Equality and Rights Organisation.

If the issue isn't resolved, a person will be able to register a complaint with the Secretary to the Employment & Discrimination Tribunal.

Conciliation is an important part of this process and conciliation will be offered to both parties, as is currently the case in sex discrimination complaints. Conciliation is carried out by a trained person and we know it can be a very effective way of helping people to resolve disputes informally and without going through any further processes and participation, of course, would be voluntary. But, you know, conciliation doesn't always work and if it doesn't resolve the issue the case will be heard by the new Employment & Discrimination Tribunal.

Currently the Tribunal is a panel of three lay people drawn from a wider panel of members and the Tribunal currently hears sex discrimination cases, so they have got experience in sex discrimination field but we know some changes are going to have to be made and we are going to need to widen the experience and the capacity and provide some training and support for this Tribunal to hear the cases under the new legislation, but we are still working on how that will look.

Parties will be able to appeal the decision within one month to the Royal Court but just on a point of law and we are saying that this process will be open to both parties.

At the present time people can represent themselves or they can nominate someone to represent them, such as a friend or trade union so we are hoping they are going to follow the same sort of guidelines and so that it would not be essential for you to have to appoint a lawyer to bring the case forward to the Tribunal.

Awards and Remedies – if you have been listening to BBC Radio Guernsey today, you probably heard some of the conversation about awards and remedies and at that present time the maximum award in a sex discrimination case is three month's pay and actually from the feedback that we have had over the last few months, we actually realise that this puts off a lot of people putting their heads above the parapet and actually bringing forward a case because their names usually appear in the media and on social media and then they often find it very difficult to go back into that employment or to find alternative work. We are proposing that, in future, financial compensation should be proportionate and I am emphasising that **proportionate** and should be based on the actual financial loss someone has experienced.

I think this has been the contentious issue that has been in the media today and we are also saying we are looking at an additional payment and that is an award for injury to feelings and injury to feelings is a payment that is made in other jurisdictions, it is paid in the UK and it is based on what is called the 'Vento' scale and it has three bands, lower, middle and upper and at the lower band, I think the maximum is something like £4,400 and again the upper is £44,000 but the higher limit would be only in exceptional cases and we are talking about cases of discrimination, harassment and victimisation that can often cause great mental distress, humiliation and anxiety so that is what we are proposing and we are asking, through the consultation process, for you to think about whether there should be an upper limit on both of those, an upper limit on the financial compensation and an upper limit on injury to feelings.

We also think that it is important that people seek remedial action, so it is not necessarily about the financial remedy or financial compensation, but it's non-financial remedies so we would be looking to address the cause of discrimination and wanting to put things right so we would be looking to include an order for equal treatment, an order for specific course of action that the employer or the service provider might have to take, a reinstatement, if someone was employed we might order that their employment needs to be reinstated, or re-engagement. So, again, really important that we receive your feedback on that particular question.

That side is just going through what I have already said.

Equality and Rights Organisation:

So 2013 the States approved, in principal, an Equality and Rights Organisation but that was subject to the development and approval of a business plan and to have funding in place so the ESS committee is currently preparing the business plan in liaison with various stakeholders.

We would expect that the ERO would have quite a wide range of functions and we have got a list there, 'what might an equality and rights organisation do' and again I will read that out for people that are at home, 'education and awareness, raising', 'advice about equality and human rights', 'issuing codes of practice', 'research and monitoring of equality and human rights issues' and that, again, is really important because very often we have come up against people saying 'well there's no need' you know, 'there's no discrimination in Guernsey' because actually we have got very little evidence so far. We are grateful to organisations such

as the Citizens Advice because they have already collected some limited data that is helping us but it is really important that we have the data going forward. There are also broader functions that the ERO, in relation to Human Rights, we would want them to carry out and also to support people to bring cases.

So, one of our key questions is saying what would be important for us to include in the mandate of the Equality and Rights Organisation and we will require that information because we need to prepare our business plan and put that to the States of Guernsey.

So, finally, the consultation. This is your opportunity to have your say and shape the legislation. All too often we get to the States and we bring a policy paper and it is only when we have approved that policy paper and the Guernsey Press and the radio and the media cover that the following day, that people actually realise that it affects them and they realise that perhaps they should have spoken up sooner. So this is your opportunity now and I encourage all of you to participate. It is relevant to everyone. The Committee has not made up its mind on the way forward so we really do need your input on this.

Now, the consultation is open till the 30th September and we have issued a huge variety of documents so we have got a technical document which is about 170/180 pages and we are really expecting our stakeholders and people really interested in such as employment legislation etc that they will probably take the time to read that but we have got a summary proposal document and we have also got a questionnaire, we have got a frequently asked questions document, we have got an easy read version because we appreciate we have taken probably 40/45 minutes to go through the presentation this evening, there is quite a lot in there and not everybody will want to read through that so we have got an easy read version and we have got various alternative formats, we have got the Guernsey Blind Association who have got an audio format for people that might need that but if you have got any requirements and they are not met by the existing documentation please contact us and we will be happy to help. We have also issued the consultation in three different languages as well.

So, as I say, please respond by 30th September, the details are on the website and we have got a few copies of various documents so if you come and see us at the end we will be able to give those out to you.

Just to remind people of the timeline. So once we have got the consultation feedback we will then go through that feedback and prepare a policy paper that we hope to bring to the States by April 2020 and once that is approved we hope the legislation will come back for approval in 2021. So we will go on to discussion and questions but before I do, because I know I will forget at the end, I just want to take time to say a huge thank you to all the people who have contributed, all our stakeholders but in particular the staff at Employment and Social Security, they have put in a huge amount of work, they are here again this evening, I think this is our fifth or sixth presentation and I just wanted to say publicly a huge thank you to those people because without them we wouldn't have progressed as far as we have already progressed. Perhaps not as quick as some people wanted but we wouldn't be here today without them so thank you very much and if Shane wants to come up and join us we are very happy to take your questions.