

## **Myth-conceptions – Prevention of Discrimination (Guernsey) Ordinance**

Below is a list of myths, misunderstandings and misconceptions surrounding the Prevention of Discrimination (Guernsey) Ordinance. Each of these myths has been responded to below.

### **Myth-conception 1: “Everyone will qualify as having a disability under the new Prevention of Discrimination Ordinance, so there will be loads of complaints.”**

Response: It’s not true that everyone will qualify as having a disability. Under the draft Ordinance, a person would fall within the protected ground of ‘disability’ if they have one or more long-term impairments. To be considered ‘long-term’, an impairment must have lasted, or be expected to last, for not less than six months or be expected to last until the end of a person’s life. So, for example, short-term medical conditions or injuries would not be considered a disability under the Ordinance.

Even if someone does have a disability, that doesn’t mean they can or will make a discrimination complaint. Everyone has a sex, for example, but it doesn’t mean that everyone is making sex discrimination complaints under the existing legislation.

### **Myth-conception 2: “We have based our draft Prevention of Discrimination Ordinance solely on Ireland’s and Australia’s equivalent legislation, rather than legislation in similar jurisdictions like Great Britain and Jersey.”**

Response: It was originally suggested that our law be based on Ireland’s and Australia’s, but in response to consultation feedback, the new legislation is now closely aligned to equivalent legislation in the Great Britain, the Isle of Man and Jersey.

### **Myth-conception 3: “Guernsey’s Prevention of Discrimination Ordinance creates more ‘red tape’ than other jurisdictions, which will make Guernsey a less attractive place to work and do business.”**

Response: Most modern jurisdictions, including Great Britain, Jersey, the Isle of Man, the Republic of Ireland, Canada and Australia, have similar anti-discrimination laws to Guernsey’s draft Prevention of Discrimination Ordinance, covering similar protected grounds and fields. Guernsey is an outlier by not having this legislation. People considering relocating for work will expect this type of legal protection to be in place, just as it is elsewhere.

**Myth-conception 4: “The office culture will suffer as a result of the Prevention of Discrimination Ordinance, as employees will take advantage of the legislation for their gain.”**

Response: There is no evidence to suggest that employees will take the time and effort to make frivolous complaints against their employers simply because there is legislation in place that offers them protection from discrimination, harassment and victimisation. Sex Discrimination legislation has been in place in Guernsey for some time and this hasn't happened. In any case, the Employment & Discrimination Tribunal has the power to 'strike out' all or part of a complaint that is scandalous, vexatious or has no reasonable prospect of success.

**Myth-conception 5: “People will be able to make a complaint that they've been discriminated against just because someone has hurt their feelings.”**

Response: No, this is not true. A person cannot make a successful discrimination complaint simply because their feelings have been hurt – they need to be able to show that they've been treated less favourably than another person in a similar situation because of a protected ground or been harassed or victimised. If the complaint is upheld, then compensation *could* be awarded for the upset, distress or anxiety that a person might have suffered as a result of discrimination. Awards for 'injury to feeling' vary depending on the seriousness of the case. This is a normal part of the awards structure in discrimination legislation elsewhere.

**Myth-conception 6: “There is no evidence of a discrimination problem in Guernsey.”**

Response: Just because we don't experience or see discrimination in our daily lives, doesn't mean it doesn't exist.

In Jersey, where discrimination legislation is in place, the Employment & Discrimination Tribunal received 59 discrimination law claims in 2020 and 40 in 2021. The situation in Guernsey is unlikely to be very different.

Even if there are only a few cases of discrimination, that is a few cases too many. All civilized societies should have a discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

**Myth-conception 7: “As an employer, I will be forced to employ someone who is disabled who can’t do the job.”**

Response: Employers will not be required to hire anyone who cannot meet the essential functions of a role. Employers will continue to be able to recruit the person who best meets the key criteria for the role, whether that is someone with a disability (with a reasonable adjustment if necessary) or someone without a disability.

**Myth-conception 8: “In the UK, small businesses don’t need to comply with the duties and responsibilities under the Equality Act.”**

Response: This is not true. The Equality Act 2010, which applies in England, Scotland and Wales, protects people from discrimination, harassment and victimisation in the workplace and wider society. No business or employer is exempt from the requirements of the Act because of size, but the expectations that apply to large and small businesses are different. This will be exactly the same in Guernsey. For example, when it comes to the duty to make reasonable adjustments, the duty is limited by the concept of disproportionate burden – so if the adjustment would cost too much, taking into account the financial resources of the organisation, the employer or service provider would not be obliged to make it.

**Myth-conception 9: “If I have to make reasonable adjustments, my business will go under.”**

Response: Many adjustments involve a change in procedures or how work is undertaken, and cost nothing more than the time to consider and implement. Many other potential adjustments are low cost. The legislation will have built-in safeguards and limits to ensure that no organisation will have to undertake anything that is not necessary or appropriate, or would be a disproportionate burden. Good employers have nothing to fear from this legislation.