Employment and Equal Opportunities Service

Service Providers - Complete guide

Content

Introduction

Introduction

The Prevention of Discrimination (Guernsey) Ordinance, 2022 (the Ordinance) introduces legislation in Guernsey to make it unlawful to discriminate against a person on the grounds of disability, race, carer status, sexual orientation and religion or belief. These categories are known in the Ordinance as Protected Grounds.
The Ordinance has effect in Guernsey, Herm and Jethou, but does not extend to Alderney or Sark.

Purpose of this guidance

This guidance is issued by the Committee for Employment & Social Security under Section 67(2) of the Ordinance, to provide guidance in respect of people's rights and duties in relation to providers of:

- goods and services;
- education;
- clubs and associations; and
- accommodation.

For the avoidance of doubt, within this guidance a reference to an “organisation” includes any of the above types of providers. In the event that a claim is brought under this Ordinance, a court or tribunal may take this guidance into account in determining that claim.

At present this guidance does not extend to discrimination on the grounds of sex, maternity or pregnancy, marital status or gender reassignment, as these are not currently Protected Grounds under the Ordinance. Whilst the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 makes it unlawful to discriminate under these grounds in relation to employment, there is no corresponding legislation in relation to the provision of services.

Likewise, this guidance does not cover age discrimination. Age discrimination, at present, is not unlawful in Guernsey, although this may in due course be included as an additional Protected Ground.

All organisations will need to review their existing policies and procedures in light of the introduction of these new duties. Most of the concepts introduced by the Ordinance are similar to equivalent legislation in other jurisdictions such as the UK or Jersey. However, there are a number of key differences to the UK and

Jersey, such as the inclusion of carer status as a discrete Protected Ground in its own right. The purpose of this guidance is principally to provide practical guidance to organisations of all sizes, with a focus on the smaller businesses to help them understand their responsibilities and avoid disputes in the provision of their services. Many smaller local businesses may need to establish new policies and procedures to minimise their risk of complaints under the Ordinance. This guidance may also help service users to understand their rights and identify what they can do if they believe they have been discriminated against.

Scope of this guidance

This guidance applies to anyone who is a provider of services (including goods, services or facilities) to the public in Guernsey. The Ordinance has specific responsibilities for education providers, accommodation providers and clubs and associations which are covered within the guidance.

There is separate guidance issued in respect of employers. It is important to note that many organisations may fall into more than one category and have different responsibilities under the employer and service provision parts of the Ordinance. For example, a school may be both an employer (in respect of its employees), a service provider (when providing services to the public) and an education provider (with respect to students).

It is recognised that smaller and larger organisations may operate with different levels of formality and have different resources. How the duties created by the Ordinance are put into practice may differ from one organisation to another, e.g. depending on the size of the organisation. The guidance should be read in this light.

How the guidance is structured

The guidance is divided into a series of sections as follows:

- **Chapter 1:** Discrimination and other prohibited conduct: explains the different types of discrimination and how they can arise.
- **Chapter 2**: Protected Grounds: provides a detailed explanation of each of the Protected Grounds of disability, race, carer status, sexual orientation and religion or belief.

- **Chapter 3:** Duty to make reasonable adjustments: sets out how the duty to make reasonable adjustments applies.
- **Chapter 4**: Service Providers: covers specific issues relating to all service providers.
- **Chapter 5**: Education: covers specific issues relating to education providers.
- **Chapter 6:** Clubs and Associations: covers specific issues relating to clubs or associations.
- **Chapter 7**: Accommodation: covers specific issues relating to accommodation providers.
- **Chapter 8**: Exceptions: deals with any exemptions provided under the Ordinance
- **Chapter 9:** Preparing for the legislations: explains with how service providers should prepare for the Ordinance.
- **Chapter 10**: Complaints Process: sets out the complaints process.

Please also see the Table of implementation dates.

Examples

Within many of the sections of this Guidance, examples are included to explain how the Ordinance is likely to work. These are all simple examples purely included for illustrative purposes to demonstrate key principles and concepts; they should not be considered as definitive statements of the law, as very often whether or not discrimination has occurred will depend upon the wider context. These examples are all set out in boxes for ease.

Key concepts

In addition, the guidance also contains the key concepts and definitions in **bold** which are based on the actual language contained within the Ordinance. However, a number of these key concepts have been slightly edited for the purposes of this guidance, therefore, these should not be considered to be a definitive statement of the legal position as set out within the Ordinance itself, which can be found at Guernsey Legal Resources.

Chapter 1: Discrimination and other prohibited conduct

Prohibited conduct

The Ordinance makes it unlawful for certain organisations to discriminate against service users because of a Protected Ground. It is important to understand that discrimination arises in lots of different contexts, and often it can be unintentional. However, because of the impact of discrimination on the individual, intent is generally considered irrelevant when considering whether or not there has been discrimination.

Why do we need this legislation?

The Ordinance has been created to give organisations responsibilities to:

- eliminate discrimination, harassment, and victimisation and other prohibited conduct;
- advance equality of opportunity for everyone;
- provide reasonable adjustments to ensure that persons with disabilities are not placed at a substantial disadvantage; and
- in the case of public sector service providers, schools or education providers implement an accessibility action plan.

The Ordinance has been put in place to ensure that organisations take steps to meet different needs and to ensure equality, or a greater degree of equality, for service users, when considering any of the Protected Grounds. This guidance has been prepared to assist organisations in creating policies that make it clear what type of behaviour is unlawful. This should in turn make resolving any issues that occur within this environment easy to resolve internally as most inappropriate behaviour, whether intentional or not, should be clear to identify. In this respect the Ordinance should assist the drafting of procedures to deal with potential complaints by service users, to ensure that there is a framework to follow. We cover such policies in Chapter 9.

Tribunal – a place of last resort

Naturally, the best outcome for a dispute between an organisation and a user is to be able to resolve matters without ever having to involve the Employment and Discrimination Tribunal (the Tribunal). When a party feels that they have been unfairly treated, have notified the organisation of the potential complaint and there has been no resolution, they may consider making a complaint to the Tribunal. For more information on the tribunal process please see Chapter 10.

Intent

It is unhelpful to consider intent when trying to address the issue of discrimination, because it leads to unhelpful stereotypes and attitudes, such as it is only “racists” that discriminate on the grounds of race, because that misses the point. In most instances indirect discrimination will arise not due to any deliberate intent to discriminate, but from a lack of understanding, sub-conscious biases or even a failure to consider the impact of a particular policy on different groups.

Types of discrimination

There are four main forms of discrimination:

- **Direct discrimination**
- **Indirect discrimination**
- **Discrimination by association**
- **Discrimination arising from a disability**

See Part II of the Ordinance

Other types of prohibited conduct

In addition, the Ordinance sets out four main forms of prohibited conduct:

- **Harassment**
- **Victimisation**
- **Advertisements indicating an intention to discriminate**
- **Causing, pressuring or instructing someone to commit a prohibited act**

See Parts III and IV of the Ordinance

This section of the guide therefore seeks to explain in what circumstances someone has committed an unlawful act of discrimination.

1.1 What is direct discrimination?

Under the Ordinance direct discrimination happens where:
A person (A) discriminates against another (B), if because of a Protected Ground, A treats B less favourably than A treats or would treat others.
For these purposes the Protected Grounds at the time of the less favourable treatment may:

- **exist**
- **have previously existed but no longer exist**
- **exist in the future; or**
- **be imputed to B by A**

See section 6 of the Ordinance

Direct discrimination is the most commonly understood form of discrimination and arises when a person is treated worse compared to someone else because of a Protected Ground. Accordingly, in direct discrimination claims it is necessary to make a comparison with the treatment of someone else who doesn't have the Protected Ground. That person is known as a comparator (see below). If an organisation would treat the comparator in the same way, then treatment will not be considered to be direct discrimination.

The less favourable treatment must be because of a Protected Ground. For example, it would not be unlawful to treat someone less favourably because of their socio-economic background. Conduct can amount to direct discrimination even if it is unintentional. Organisations need to ensure that they have appropriate checks in place to enable the swift resolution of any issues involving direct discrimination without the need for formal resolution. Ultimately, however, if the issue did go to the Tribunal, it would have to consider the reason why the person was treated less favourably.

Example

It would be direct discrimination on the grounds of religion or belief for a sports club or association to refuse to admit a member because they are a Muslim. It would also be direct discrimination to refuse to admit a member because it is assumed a candidate was Muslim even if they do not have the Protected Ground (for example they may be of Asian origin).

Exceptions

In addition, direct discrimination cannot be objectively justified. However, it is important to remember that there are a number of exceptions under the Ordinance. For example, there is an exception that means a religious organisation can require its members to be of a particular religion. The purpose of an exception is to permit directly discriminatory treatment that would otherwise be unlawful. For further details on the exceptions to the Ordinance see Chapter 8.

Example

It would be lawful for a Catholic club or association which falls within the definition of a “religious organisation” (which is an organisation with an ethos based on religion) to require its members to be Catholic.

What is meant by a “comparator”?

As mentioned above if you want to show that you have suffered direct discrimination, you need to compare your treatment with the treatment of a comparator. This is someone who doesn’t have the same Protected Ground as you, but is otherwise in the same situation as you, or a sufficiently similar situation. The term comparator isn’t defined by the Ordinance but it may be a real person or if one does not exist, it is possible to use a hypothetical comparator who has all of the same characteristics apart from the Protected Ground in order to make the assessment.

Example

A student who is from an ethnic minority received a fixed term exclusion from school owing to what the education provider claims are concerns around behaviour. Another student with a different racial background who had similar behavioural issues did not receive a fixed term exclusion. If the first student brought a claim for direct discrimination, a comparator could be the second student who was not excluded.

What is meant by someone in a similar situation?

It is not necessary for you to be in an identical situation as the comparator. But there must be sufficient similarities between the two of you to show that the reason for the worse treatment is the Protected Ground and not something else.

Example

A school refuses to allow a Muslim student time off for Friday prayers. One of their fellow students is a Christian and attends a bible study group on Wednesday afternoons. They asked for permission to leave their last lesson 30 minutes early to attend these groups.

The Muslim student could compare their situation with the Christian student as they also need time off from lessons for religious reasons in a similar situation. The comparison can be made because the religions are different but there are similarities between the two requests.

What is a “Hypothetical Comparator”?

When it’s not possible to find a real person who’s in the same or similar enough situation to you to make a comparison, perhaps because the situation you’re in has never happened before, then in this case you can use a hypothetical comparator. This involves considering how an organisation would have treated a

hypothetical person without the Protected Ground in the similar circumstances. It can sometimes be useful to consider how an organisation has treated other people in different circumstances in order to make the comparison.

Example

A bisexual person rents a property from an accommodation provider. One day they have an accident carrying a large piece of furniture into the property, which is dropped and causes some small physical damage to the property. Because of this damage, the accommodation provider evicts the tenant. This situation has never happened before so there's no actual person to be compared with. Six months earlier, the accommodation provider gave a written warning to another tenant and required them to cover the cost of water damage due to leaving their bath running but did not evict them.

Because this was a similar situation, involving damage to the property, the treatment of this service user can be used to try to show that the service provider would not have evicted someone who is not bisexual.

Finding a comparator in disability discrimination cases

If you're directly discriminated against because of disability, the comparator is someone who doesn't share your particular disability but who has the same abilities and skills as you. The comparator can be someone who's not disabled or someone with a different disability.

Example

A student applying for admission to a school has carpal tunnel syndrome and can type 50 words per minute using an adapted keyboard, but only 30 words per minute on a normal keyboard. The admission process used by the school requires students to write an essay on a computer. If the student feels they were discriminated against when applying for admission because of their disability, their comparator would be someone who doesn't share their disability but who can type 50 words per minute using a normal keyboard.

1.2 What is indirect discrimination?

Under the Ordinance indirect discrimination happens where:
A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which has a discriminatory effect on B in relation to a Protected Ground.

- **A provision, criterion or practice has a discriminatory effect on B in relation to a Protected Ground if:**
- **A applies, or would apply, it to persons with whom B does not share the ground;**
- **it puts, or would put, persons with whom B shares the ground at a particular disadvantage when compared with persons with whom B does not share it;**
- **it puts, or would put, B at that disadvantage; and**
- **A cannot show it to be a proportionate means of achieving a legitimate aim.**

See section 8 of the Ordinance

Indirect discrimination happens when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a Protected Ground, and a person is disadvantaged because they are part of this group. If this

happens, the person or organisation applying the policy must show that there is a good reason for it – this is known as objective justification.

To prove that indirect discrimination is happening or has happened there are four distinct steps:

- there must be a policy which an organisation is applying equally to everyone (or to everyone in a group that includes the person claiming the discrimination);
- the policy must disadvantage people with a particular Protected Ground when compared with people without it;
- the individual must be able to show that it has, or will, disadvantage them personally; and
- there is no objective justification for the policy, that is to say that the organisation cannot show that there is a good reason for applying the policy despite the level of disadvantage to people with the same Protected Ground.

Provision, criterion or practice

A policy for these purposes may include any provision, criterion or practice, such as:

- an admission policy for an education provider or a club or association;
- opening hours for a service provider; or
- a housing allocation policy for an accommodation provider.

It is immaterial whether the organisation intended the policy to discriminate or not. The issue is whether people have been disadvantaged by the policy. Care needs to be taken when creating or changing policies to ensure that indirect discrimination does not happen.

It should be noted that there does not need to be a formal policy in place in order for a service user to challenge a decision affecting them. However, generally, a provision, criterion or practice cannot be a one-off action unless there is some form of continuation in the sense of how things are done by the organisation in the future.

Example

A contract for the provision of services to a person with a disability was terminated, but the service provider failed to give proper notice as required under the terms of the contract due to human error. There was no indication the error had anything to do with the service user's disability (i.e. it was not direct discrimination), and as there was no chance of future repetition, in these circumstances this would not amount to a provision, criterion or practice, even if it did place the person with the Protected Ground at a disadvantage.

Objective Justification

If a policy causes a disadvantage, then the onus is on the organisation to objectively justify it. First, they must show their policy is designed to achieve a "legitimate aim". This must be a non-discriminatory reason such as economic efficiency or health and safety. However, a legitimate aim shouldn't solely be about cost, but it could be about cost and something else. An organisation cannot simply argue that to discriminate is cheaper than avoiding discrimination.

Example

A wood-work evening class has a policy of banning necklaces as there is cutting machinery used and there is a risk that this could get caught up. This policy would be considered to be a provision, criterion or practice.

This might place an attendee who wears necklaces to show their faith at a disadvantage. However, if the course provider can show there's a good health and safety reason, this would be considered to be a legitimate aim, and if it is proportionate (i.e. there is no other way to achieve the health and safety objective), then it would still be lawful.

To show that its actions were proportionate, an organisation does not need to show that it had no alternative course of action; rather, it must demonstrate that the measures taken were reasonably necessary. The actions will not be considered proportionate if the organisation could have achieved the same objective through less discriminatory means.

Example

A college that offers catering lessons has a rule that beards are forbidden for people in those lessons. This rule may amount to indirect religion or belief discrimination against the Sikh and Muslim students unless it could be objectively justified.

If the aim of the rule is to meet food hygiene or health and safety requirements, this would be legitimate. However, the college would need to show that the ban on beards is a proportionate means of achieving this aim. In this regard the college would need to be able to demonstrate why same aim could not be achieved by less discriminatory means, such as providing a beard mask.

1.3 What is discrimination by association?

Under the Ordinance discrimination by association happens where:

A person (A) discriminates against another (B) who is associated with another person (C) if:

- **A treats B, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated; and**
- **Similar treatment of C would constitute direct discrimination.**

See section 7 of the Ordinance

Discrimination by association occurs when a person is treated less favourably because they are linked or associated with person with a Protected Ground. There is no actual definition of what an “association” is in the Ordinance. An

“association” might include a relationship with a friend, spouse, partner, parent, child, grandchild or another person with whom they are associated.

Example

It would be discrimination by association if an accommodation provider chose not to rent a property to a parent because they had a disabled child with Tourette’s syndrome and the accommodation provider was concerned that this might annoy the other residents.

As with direct discrimination, discrimination by association cannot be justified. It is irrelevant if it is unintentional. However, in order to show discrimination by association, there must be a comparator. That comparator can either be real or hypothetical, but it is necessary to consider how an organisation would have treated a person who was associated with someone who did not have the Protected Ground.

Example

A member of a club does not attend any club events for 12 months as they have been unable to do so as they were caring for their disabled sister. The club has a rule that if members do not attend club events for 12 months, then their membership is terminated as they have a long waiting list. Individuals can reapply, but they must go to the bottom of the waiting list. If the club can show that another member (as a comparator), failed to attend club events for 12 months also had their membership terminated, then the claim for discrimination by association would fail. The two members had been treated in a similar way.

1.4 What is discrimination arising from a disability?

Under the Ordinance Discrimination arising from a disability occurs where:

A person (A) discriminates against a disabled person (B) if:

- **A treats B unfavourably because of something arising in consequence of B's disability; and**
- **A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**

It is not discrimination if A did not know, and could not reasonably have been expected to know, that B had the disability.

See section 9 of the Ordinance

Discrimination arising from disability occurs when an organisation treats a person unfavourably because of something that arises as a consequence of their disability (and which cannot be objectively justified). However, an organisation will not be liable if they didn't know the person was disabled and could not reasonably be expected to have known.

This protection prevents someone from being treated badly because of something connected to their disability, such as needing time off for medical appointments, or side effects from drugs that alter someone's behaviour.

Discrimination arising from disability is unlawful unless the organisation is able to show that there is a good reason for the treatment of the person and it is proportionate. This is known as objective justification.

Example

A student with a disability is not included within a school trip because of the medical equipment that they would need to take with them. This would constitute unfavourable treatment because of something arising from their disability. It will therefore be necessary for the education provider to demonstrate its treatment was objectively justified.

Objective Justification

If the treatment of a service user is because of something arising from their disability, then the onus is on the organisation to objectively justify it. First, they must show their treatment is designed to achieve a “legitimate aim”. This must be a non-discriminatory reason such as economic efficiency or health and safety. However, whilst a legitimate aim shouldn’t solely be about cost, it could be about cost and something else. An organisation cannot simply argue that to discriminate is cheaper than avoiding discrimination.

To show that its actions were proportionate, an organisation does not need to show that it had no alternative course of action; rather, it must demonstrate that the measures taken were reasonably necessary. The actions will not be considered proportionate if the organisation could have achieved the same objective through less discriminatory means.

This does not mean it is unlawful to take any detrimental steps against a person with a disability that relate to that disability if the reason for doing so relates to their disability, only that any steps taken must be objectively justifiable. For further information and examples of objective justification see chapter 1.2.

Example

Following an accident an existing tenant of a property becomes blind and needs an assistance dog. The accommodation provider has a strict no dogs policy in that particular property, because one of the other residents has asthma and is particularly allergic to dogs, to the extent they would pose a serious health risk.

In these circumstances where the landlord is unable to allow the assistance dog, the landlord should first consider the possibility of relocating the tenant to another property. If there were no relocation opportunities available, ultimately the landlord may be able to refuse to allow the assistance dog, which would ultimately lead to the vacation of the property by the tenant, because even though the less favourable treatment arose because of a disability, it would likely be objectively justified.

Knowledge of the disability

It is not discrimination if an organisation is able to show that they did not know and could not reasonably have been expected to know, that the person had the disability. In this context whilst the Ordinance does not require an organisation to be a medical specialist, equally it is not possible for them to ignore obvious signs that there is a potential issue, and they should do all they can reasonably be expected to do to find out information about potential disabilities in the context of the relationship. Obviously, what will be expected will differ significantly between different types of organisations. It is recommended when making enquiries about disability, organisations should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

Example

A student who has a good attendance and performance record, has recently become emotional and upset during lessons, for no apparent reason, and has started having regular absences. They have also been repeatedly late for school and made some mistakes in their work. The sudden deterioration in the student's time keeping and performance and the change in their behaviour should have alerted the school to the possibility that something is wrong, including that they may have a disability. As such, any action the school may take in relation to these issues would need to be objectively justified, even though they have never been specifically told the student has a long-term impairment.

1.5 What is harassment?

Under the Ordinance, a person (A) harasses another (B) if:

- **A engages in unwanted conduct related to a Protected Ground; and**
- **Such conduct has the purpose or effect of violating B’s dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**

OR

- **A engages in unwanted conduct of a sexual nature;**
- **Such conduct has the purpose or effect of violating B’s dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**

OR

- **A engages in unwanted conduct of a sexual nature or that is related to a Protected Ground;**
- **Such conduct has the purpose or effect of violating B’s dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for B; and**
- **Because of B's rejection of, or submission to, the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.**

See section 11 of the Ordinance

The Ordinance recognises three different forms of harassment, these are:

- Harassment related to a protected ground;
- Sexual harassment; and
- Harassment related to the rejection or submission to unwanted conduct.

Whilst there are similarities between the three types, including the fact that they all relate to unwanted conduct, and require that conduct to have the purpose or effect of violating a person’s dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment, they do subtly differ around the reason for that conduct.

Unwanted Conduct

There is no definition of what is considered as “unwanted conduct” for the purposes of the Ordinance, but this can range from a one-off incident to a campaign of harassment, it can include actions such as spoken or written words, banter, posts on social media, physical gestures, jokes or pranks. However, for “unwanted conduct” to amount to harassment it must first either be related to a Protected Ground or of a sexual nature.

Example: Unwanted behaviour could include:

- offensive emails;
- spoken or written abuse;
- tweets or comments on websites and social media;
- images and graffiti;
- physical gestures;
- facial expressions; and/or
- banter that is offensive to you.

Violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

All forms of harassment require that the conduct must have either the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. For these purposes it is irrelevant whether or not the conduct was intentional or that the victim did not make the perpetrator aware that the conduct was unwanted.

Example

A group of members at a club download and share offensive images amongst themselves that make fun of the Islamic women who wear hijabs. A Muslim member then inadvertently observes this taking place. They could make a claim for harassment if the behaviour creates a hostile and humiliating environment for them.

In this situation, it is does not matter that the members never intended for their fellow member to know this was taking place, and it was only intended as “banter”.

The perception of the recipient

In making the assessment as to whether the conduct constitutes harassment, consideration must be given to the perception of the recipient of the conduct in question. Attention should be given in the circumstances to whether it is reasonable for the conduct to have that effect. In considering whether such conduct would be expected to have the effect it did, an objective test is required. If offence is caused unintentionally, there may be no harassment where it can be shown that the person is being oversensitive. Care should be taken however about rejecting a complaint of harassment as what one person finds is acceptable and not offensive may not be the case for a different person.

The need for a comparator or to have the Protected Ground yourself

It should also be noted that there is no need for a comparator for harassment related to a protected ground or sexual harassment. This means the individual does not have to show that they were, or would have been, treated less favourably than another person. The introduction of a comparator is however a requirement in cases of harassment related to the rejection or submission to unwanted conduct.

In addition, for an individual to be the victim of harassment, they do not necessarily have to have the Protected Ground themselves.

Example

If a landlord racially abuses an African tenant during a tenants meeting, whilst the African tenant would have a clear claim for harassment related to race, equally other tenants offended by the comments, even if they themselves are not African, could also bring a claim of harassment related to race.

Sexual Harassment and Conduct of Sexual Nature

Even though sex is not currently one of the Protected Grounds in the Prevention of Discrimination Ordinance, the Prevention of Discrimination Ordinance does specifically make sexual harassment unlawful. As with harassment related to a Protected Ground, there must be conduct of an unwanted nature and it must also have the required purpose or effect, but in order to constitute sexual harassment the unwanted conduct must be of a sexual nature.

There is no definition of what conduct will be considered to be of a sexual nature, but this is likely to include sexual comments or jokes, displaying sexually graphic pictures, suggestive looks, staring or leering or propositions and sexual advances.

Where there is conduct of a sexual nature which then goes on to violate a person’s dignity or create an intimidating, hostile, degrading, humiliating or offensive environment, then that will constitute harassment.

Example

A private tutor starts making sexual comments about a student’s body, getting very close to them and resting a hand on their arm. It makes the student feel very uncomfortable and intimidated. This is conduct of a sexual nature and has the effect of creating a degrading, humiliating or offensive environment, and so constitutes harassment.

Guernsey has a separate Sex Discrimination Ordinance (Employment) (Guernsey) Ordinance, 2005 which makes sex discrimination in employment unlawful, but which does not cover sexual harassment.

Harassment due to rejection or submission of unwanted conduct

The final form of harassment occurs, where there has been conduct of a sexual nature or that is related to a Protected Ground which has violated a person's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment, and either because of the rejection of, or submission to the conduct, the recipient is subject to less favourable treatment, compared to if they had not rejected or submitted to the conduct. Unlike the other two forms of harassment, this requires the use of a comparator to establish if less favourable treatment has taken place.

Example

Using the example above, if the student rejects the tutor's advances and the tutor then treats the student less favourably as a result of them rejecting the advances, this would be harassment (e.g. by giving poor marks for assignments or by giving a poor reference compared to other students of similar standing). If the student makes an official complaint about the advances and is then treated unfavourably as a result, this would be victimisation.

Freedom of Speech

The Ordinance contains an exception relating to freedom of expression of an opinion, political view, religion or belief or other implied or actual view. However, the exception cannot apply where there has been deliberate or intentional harassment, or, where the conduct occurred in circumstances where it would appear to a reasonable person that the conduct would create an intimidating, hostile, degrading or offensive environment.

Example

A landlord puts up a sign in a block of flats with an anti-gay marriage slogan. The landlord concerned is a devout Christian and strongly believes gay marriage is wrong.

Despite the fact that the landlord is expressing their religious belief, and even if it was not the purpose of putting up the sign to cause offence, if it has the effect of causing offence to a tenant (whether or not they are homosexual), this would not fall under the exception, because viewed objectively the putting up of the sign in this way would likely have the effect of causing offence.

Protection of Harassment (Bailiwick of Guernsey) Law, 2005

It should be remembered that in addition to rights under the Ordinance individuals may have rights under the Protection of Harassment (Bailiwick of Guernsey) Law, 2005 which creates a criminal offence of harassment as well as providing for civil remedies.

1.6 What is victimisation?

Under the Ordinance, victimisation occurs where:

- **A person (A) victimises another person (B), if A subjects B to a detriment because B has:**
- **made a complaint under the Ordinance;**
- **brought proceedings against A or any other person under the Ordinance;**
- **given evidence or information in connection with proceedings brought by any person against A or any other person under the Ordinance;**
- **otherwise done anything under or by reference to the Ordinance in relation to A or any other person (including, for the avoidance of doubt, opposed acts which contravene the**

Ordinance);

- **alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of the Ordinance; or**

because A knows that B intends to do any of these things, or suspects that B has done, or intends to do, any of them.

See section 10 of the Ordinance

Victimisation arises when a person subjected to a detriment because they complained of discrimination or supported another person's complaint of discrimination. This is sometimes known as a protected act.

In claims of victimisation there is no need for a comparator.

What's meant by detriment?

Detriment means you've suffered a disadvantage of some sort or been put in a worse position than you were before.

> **Example**
>
> A Christian club member raises a complaint that they have been the subject of harassment related to their religion. The raising of a complaint in these circumstances constitutes a protected act.
>
> If the club then terminates their membership as a result of them raising the complaint, this would be victimisation because the member has suffered a disadvantage as a result of raising a complaint.

Complaint can be against a different person and does not have to be successful

Victimisation is often carried out by the same person that has been the subject of a discrimination complaint, but this does not have to be the case.

It does not matter if the original complaint that is the subject of the protected act is upheld or rejected. Indeed, victimisation can still occur as a result of someone making or stating they intend to make a compliant, even if they ultimately never raise one.

However, the Ordinance does state that victimisation cannot be claimed where the victim gives false evidence or information, or makes a false complaint or allegation, or where the evidence or information is given, or the complaint or allegation is made, in bad faith.

Example

A person brings an unsuccessful Tribunal claim against their former employer for discrimination on the grounds of sexual orientation. The case is widely reported in the local media.

The person then makes an offer to rent a flat, but during the process the landlord recalls the previous press coverage and rejects the offer because they believe that the person is a troublemaker. This would amount to unlawful victimisation, even though the original complaint was against someone else, and it was unsuccessful.

Chapter 2: The Protected Grounds

The Ordinance makes it unlawful to discriminate against someone because of what are known as Protected Grounds. When the Ordinance comes into force there will initially be five Protected Grounds which are:

- **Race**
- **Carer status**
- **Sexual orientation**
- **Religion or belief**
- **Disability**

See Part I of the Ordinance

This section of the Guide will explain the circumstances when someone is deemed to have a Protected Ground and is covered by the Ordinance.

Discrimination on other grounds

It is intended that a second phase of the discrimination legislation will be brought in at some point from 2025 onwards and that this will expand the current protection to include sex, marital status, gender reassignment, pregnancy and maternity as Protected Grounds under the Ordinance. At the same time this takes place, age will also be added as an additional Protected Ground.

It should be noted whilst it is already unlawful in Guernsey to discriminate in relation to employment on the grounds of sex, gender reassignment, marital status, pregnancy or maternity under The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, this is limited to employment, so does not cover organisations in other capacities.

A comparison between Guernsey, Jersey and the UK

For organisations who either have a presence in other jurisdictions, or who may have worked in other countries, it is important to understand that there are legal differences in Guernsey and elsewhere. Set out below is a table which shows how the Protected Grounds (which are sometimes referred to as protected characteristics elsewhere) will compare with the UK and Jersey:

Legal protection from discrimination for different grounds/characteristics in different jurisdictions

E&SP: Currently in force for employment and service provision
E: Currently in force for employment only
** Not yet in force, but planned

Protected Ground/ Characteristic	Guernsey	Jersey	UK
Disability	E&SP	E&SP	E&SP
Race	E&SP	E&SP	E&SP
Carer Status	E&SP		

Sexual Orientation	E&SP	E&SP	E&SP
Religion or Belief	E&SP		E&SP
Sex	E	E&SP	E&SP
Pregnancy/ Maternity	E	E&SP	E&SP
Gender re-assignment	E	E&SP	E&SP
Marital status	E		E&SP
Age	**	E&SP	E&SP

E: Protection for sex, gender reassignment, pregnancy or maternity and marital status is currently given by the Sex Discrimination Ordinance for employment matters only. Protection from discrimination on these grounds in a non-employment context will be considered in phase 2 which will not come in until at least 2025.

** In Guernsey age will not become a Protected Ground until phase 2.

2.1 Protected Grounds - disability

Disability is one of the Protected Grounds under the Ordinance.

A person has a disability if the person has one or more long term impairments.

A long-term impairment is an impairment which:

- **has lasted, or is expected to last, for not less than six months; or**
- **is expected to last until the end of the person's life.**

For these purposes an impairment means:

- **the total or partial absence of one or more of a person's bodily or mental functions, including the absence of a part of a person's body;**
- **the presence in the body of organisms or entities causing, or likely to cause, chronic disease or illness;**
- **the malfunction, malformation or disfigurement of a part of a person's body;**
- **a condition or malfunction which results in a person learning differently from a person without the condition or malfunction; or**
- **a condition, illness or disease which affects a person's thought processes, perception of reality, social interactions, emotions or judgement or which results in disturbed behaviour.**

See section 1 of the Ordinance

A person has a disability if they have one or more long term impairments. The definition of disability has deliberately been drafted on a wide basis, in order to capture most long-term impairments that individuals may have.

Other jurisdictions- UK and Jersey

The definition is wider than the respective positions in the UK and Jersey. In the UK the impairment needs to have lasted (or be expected to last) 12 or more months and it is necessary to prove the disability has a substantial and long-term negative effect on the person's ability to do normal daily activities. In Jersey, the impairment needs to have lasted (or be expected to last) 6 or more months, (i.e. the same as Guernsey) but the impairment must also be one that could adversely affect the person's ability to engage or participate in certain activities.

Where it is identified that an employee has a disability, then it will trigger certain obligations including the duty to make reasonable adjustments. For further details on this duty see Chapter 3.

Impairment

The first question that needs to be considered in determining whether or not a person has a disability is: do they have an impairment? An impairment can be

physical, mental, intellectual or sensory. It can include illnesses or diseases, or disfigurements and is intended to capture almost any condition, illness or disease as can be seen from the definition. This is regardless of the effect that condition may have on the day-to-day activities of the person.

Example

A student is struggling in lessons and their parent raises a complaint that they prefer to learn complicated concepts through visual means.

Whether or not the student in this example has a disability will depend on if they have an underlying condition that would constitute a disability – even if it has never been diagnosed. However, if this is purely a preference of learning style, then even though they may learn differently from other people this will not constitute a disability.

Long-term

In order to qualify as a disability, any impairment must be “long-term”. This means it must last, or be expected to last, for not less than six months’ or until the end of the person’s life.

For the purposes of considering if an impairment has lasted, or can be expected to last, for six months then you should include any period of remission where the impairment has the potential to recur, or any period where the person is receiving medical treatment which controls the symptoms of the impairment to any extent. This is intended to cover conditions such as multiple sclerosis or cancer which can go into a period of remission.

If there is any doubt as to whether an impairment is a long-term impairment, medical evidence may be sought by the person with the impairment from a registered health professional, special educational needs coordinator or occupational health practitioner, as appropriate, as to the expected duration of the impairment.

If there is any doubt of the severity and, as a result, the length of duration of the condition, an organisation may ask the person to seek medical evidence to

determine whether or not a condition amounts to a disability, but this should only be in exceptional circumstances, as in most circumstances provided a condition is expected to last at least six months, then it is likely to be a disability irrespective of evidence supporting it as such.

Example

Whilst on holiday, a tenant suffers fracture of their leg. Such an injury would likely constitute an impairment, as it constitutes a malfunction of part of their body.

If the break was only a minor fracture and it was expected to heal within six months' then it would not be classed as "long term", so would not constitute a disability. However, if the injury was a serious break, which was expected to take more than six months to treat and heal, then it would be deemed long-term and so would constitute a disability.

Anxiety, depression, stress or other mental health conditions

Where an individual has a mental condition such as anxiety, depression, stress or other mental health conditions on a long-term basis (i.e. has lasted or is expected to last for at least 6 months), then this will likely amount to a disability. In these circumstances, whilst it is not necessary for someone to receive a formal diagnosis of a specific mental health condition in order to be considered to have an impairment, a service user cannot simply self-diagnose that they have a mental health condition. There needs to be a balance. Whether or not they have an impairment will always come down to their individual circumstances, but this is not intended to be a high threshold and there is no requirement to have a particular level of adverse effect on the individual.

It is understood that in the case of anxiety, depression, stress or other mental health conditions, it can be difficult to anticipate the likely duration of the impairment. As noted above, the Ordinance specifically anticipates medical evidence can be used for these purposes. Furthermore, medical evidence can also be useful in considering the legal duty to make reasonable adjustments, particularly in the context of education providers.

Even if someone may not yet technically qualify as having a long-term impairment, it can be good practice for any education providers to consider making reasonable adjustments for students who have anxiety or stress. This is because it is better to keep someone in education than off sick. In addition, where an education provider fails to address issues such as stress, a condition may become a long-term impairment and therefore a disability due to the passage of time.

2.2 Protected Grounds – race

Race is one of the Protected Grounds under the Ordinance.

Race can mean any of the following:

- **colour**
- **nationality**
- **ethnic origins**
- **national origins**
- **descent, which includes caste**

See section 2 of the Ordinance

When someone has been discriminated against on the grounds of their "race" it could include treating someone less favourably because of their "skin colour" or "nationality". It also extends to treating someone less favourably on the grounds of their "national origins" or “descent” which includes being of Bailiwick of Guernsey origin.

The term "caste" is not defined in the Ordinance. In general terms it relates to a hierarchical system within which membership is determined by birth.

The term "ethnic origin" is much broader and covers identifiable groups who might share the same language, religion, literature, or geographical origin etc. such as Jews, Romany Gypsies and Sikhs.

Two or more distinct racial groupings

In addition, it is possible that a racial group can comprise of two or more distinct groupings, such as Russian Jews, Gypsies and Irish Travelers and British Sikhs.

Example

An Irish person claimed that their line manager ridiculed their "funny accent", referring to them as an "Irish gipsy" and made frequent derogatory references to them in relation to a reality TV show.

This would be an example of harassment on the grounds of race, using two distinct racial groupings.

2.3 Protected Grounds – carer status

Carer status is one of the Protected Grounds under the Ordinance.

A person (A) has the Protected Ground of carer status if A provides care or support on a continuing, regular or frequent basis for a person with the Protected Ground of disability (B), and

- **B's disability is of a nature which requires continuing, regular or frequent care or support of the kind that A is providing; and**
- **A lives with B or is a close relative of B.**

For these purposes a close relative means any of the following relationships:

- **Spouse**
- **Parent**
- **Partner**
- **Grandchild**
- **Child**
- **Grandparent**
- **Sibling**

- **Parent of a spouse or partner**

See section 3 and section 72 of the Ordinance

Carer status refers to someone who has total or considerable responsibility for ongoing care and support of another person. The carer must fall within the definition above of a close relative, or otherwise live with the person who receives the care.

Disability

In order to qualify for carer status, the person receiving the care or support must be deemed to have a disability that is covered by the Ordinance, i.e. it must be a long-term impairment.

Continuing, regular or frequent care or support

The disability must be of a nature which requires “continuing, regular or frequent care or support”. This isn’t intended to be a high bar, so it could cover things such as annual hospital visits for check-ups, or a series of continuing issues that may occasionally arise.

There is no requirement that the care or support must be permanent. The Ordinance recognises any impairment which lasts for six months or until the end of a person’s life as a disability.

Attendance at a one-off hospital appointment would unlikely to be considered to be “continuing, regular or frequent care or support” but if the visit was part of a package of support for different appointments relating to the same condition, it may.

Example

A carer applies to rent a property but has their application refused as they are a carer.

The landlord is aware of their position and knows they receive a carers allowance. They assume the individual's financial situation may not be resilient enough to ensure they can pay the rental for the property.

This would be discrimination against the individual on the ground of carer status.

Professional Carers

There is an exception under the Ordinance where the care is support provided by a person in a paid, professional capacity, for example under a contract of employment or in the course of self-employment.

Example

A nurse is employed as a care worker supporting vulnerable adults, and through that role provides care for a close relative. The nurse would not be considered as having carer status.

However, if the support given is unpaid and not part of a professional role/job then they would have carer status.

2.4 Protected Grounds – sexual orientation

Sexual orientation is one of the Protected Grounds under the Ordinance.

Sexual orientation can mean a person's sexual orientation towards:

- **persons of the same sex**
- **persons of a different sex**
- **persons of both the same sex and persons of a different sex**

See section 4 of the Ordinance

Someone’s sexual orientation describes who they are attracted to. It is unlawful to discriminate on the grounds of someone’s sexual orientation. This would include treating someone less favourably because of who they are attracted to, e.g. that they are gay, lesbian, bisexual, heterosexual or other, would be unlawful. The Ordinance would also protect someone who is treated less favourably because they are connected to someone who has a particular sexual orientation. This is known as discrimination by association. The Ordinance would also protect someone who it is believed (imputed) they have a particular sexual orientation even if that is not the case.

Example

A service provider and user get into an argument over an issue. During the course of that argument, the service provider uses a derogatory term relating to what they believe the service user’s sexual orientation to be.

The use of derogatory terminology relating to a person’s sexual orientation in these circumstances is likely to amount to harassment, even if the service user does not have that particular sexual orientation.

It is important to remember that a person’s sexual orientation is different from their sex, gender identity (i.e. how an individual identifies) and/or whether they have undergone gender reassignment. Protection from discrimination in employment due to sex or gender reassignment is set out in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

2.5 The Protected Grounds – religion or belief

Religion or belief is one of the Protected Grounds under the Ordinance.

Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

Religion means any religion and includes any religious background or outlook, and a reference to religion also includes a reference to a lack of religion.

See section 5 of the Ordinance

Religious belief

Religious belief can cover any religion, such as Christianity, Judaism, Islam or Buddhism, or a smaller religion like Rastafarianism, as long as it has a clear structure and belief system. The Ordinance will also protect against those individuals who may be discriminated against because they lack either a specific or any religious belief, as well as manifestations of their belief.

Example

A school operates a strict uniform policy that prevents the wearing of jewellery, and so rejects a request from a Christian student to allow them to wear a plain silver cross as an expression of their faith.

Such a policy could amount to indirect discrimination if the school was unable to objectively justify it.

Philosophical beliefs

The Ordinance also extends to philosophical beliefs. The Ordinance does not define what this term means, but based on decisions in the UK which the Guernsey tribunals are likely to follow in order to be protected any belief:

- must be genuinely held;

- is not just an opinion or view-point based on the present state of information;
- must be weighty and substantial;
- must attain a certain level of cogency, seriousness, cohesion and importance; and
- must be “worthy of respect in a democratic society”.

Example

A person who considers themselves an ethical vegan and who does not eat or wear animal products or use banknotes thought to be produced with animal products is capable of having a philosophical belief within the meaning of the Ordinance.

Accordingly, if a service provider sent them a piece of raw meat as a prank, then if this caused offence, then this would likely constitute harassment related to a Protected Ground.

Chapter 3: Duty to make Reasonable Adjustments

This chapter seeks to explain:

- What is an adjustment?
- What is considered reasonable?
- What is the duty to consult?
- Who pays for adjustments?
- What is the proactive duty to make reasonable adjustments?
- What are the consequences of a failure to make reasonable adjustments?
- Accessibility action plans
- Accessibility of the public highway

The Ordinance recognises that achieving equality for disabled people may mean changing the way that the services are provided in order to create a level playing field for all. This could be amending policies, removing physical barriers or providing extra support for a service user.

The Ordinance introduces a duty on all organisations to take steps to remove, reduce or prevent the obstacles that a disabled person may face in receipt of services, where it is reasonable to do so. This is known as the duty to make reasonable adjustments and where an organisation fails to comply with this duty, this constitutes discrimination under the Ordinance.

A person (A) is under a duty to make reasonable adjustments:

- **where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.**

See section 32 of the Ordinance

The phrase “substantial disadvantage” simply requires there to be a disadvantage that is more than minor or trivial. This is not intended to be a high bar.

In addition to the duty to make reasonable adjustments for a disabled person, service providers and education providers (but not clubs and associations and accommodation providers) are under an additional proactive duty to make reasonable adjustments.

The duty to make reasonable adjustments insofar as this relates to the provision of education will not come into force until 1 September 2025. Schools and education providers will need to make reasonable adjustments for employees and if providing another service to the public from 1 October 2023.

The duty in respect of physical features will not come into force until 1 October 2028. There are separate rules relating to landlords which do not come into force immediately, the majority of which will come into force no earlier than 1 October 2028. See Chapter 9.5 for further details.

Finally, it should be remembered that when dealing with information relating to a disability that this constitutes special category data, and particular care should be taken when using and storing this kind of information in order for organisations to comply with their duties under the Data Protection (Bailiwick of Guernsey) Law, 2017. For further information please refer to the website of the Office of the Data Protection Authority

3.1 What is an Adjustment?

Where it is identified that a disabled person is put at a substantial disadvantage when compared with someone who does not have that disability, then the Ordinance places a duty on organisations to make reasonable adjustments.

The organisation may have to change the way things are done, make changes to a physical feature of a building, or provide aids such as special computer software to help that person.

Changes to the physical feature of a building will not need to be made until 1 October 2028.

This process of change is a two-stage process, in that the organisation must:

- first, consider what adjustments could be made; and
- secondly, whether those adjustments are reasonable.

The purpose of an adjustment is that it must avoid the disadvantage. As such, the Ordinance does not require an organisation to make an adjustment if it will have little or no impact on the disadvantage that they are seeking to resolve.

The need for an adjustment may arise where there is substantial disadvantage which is:

- caused by a provision, criterion or practice;
- caused by a physical feature; or

- able to be removed by an auxiliary aid.

Provision criterion or practice

The term provision, criterion or practice is also used in indirect discrimination, and in broad terms means any form of policy or rule that applies to everyone (such as an admission policy for an education provider or a club or association, opening hours for a service provider, or housing allocation policy for an accommodation provider), but places a disabled person at a substantial disadvantage. It is irrelevant whether the organisation intended the policy to discriminate against a person with a disability or not.

When considering reasonable adjustments in relation to a provision criterion or practice, it is important to remember they are not always related to physical issues. It, might, for example, be about a policy about how to provide information in an accessible format like manuals in bigger typeface or in braille or may involving changing a process or procedure, or adjustments to opening hours, or how a service is provided.

The point is whether a person has been placed at a substantial disadvantage by the policy. If they have, then the reasonable adjustments duty arises. Where a person with a disability is placed at a disadvantage by a provision, criterion or practice, this may also amount to indirect discrimination. For further information on indirect discrimination please refer to Chapter 2.

Example:

A student has a disability that results in reduced productivity in the afternoons, and they are making a large number of errors due to tiredness.

Their timetable is a provision, criterion or practice, and this places students with such a condition at a disadvantage, compared with students who do not have the condition. The education provider may wish to consider adjustments including:

- a specifically adapted timetable;
- changing tasks or the pace of work to avoid exacerbating the condition; and/or
- more frequent and/or longer breaks.

Adjustment to physical features

The duty to make reasonable adjustments in relation to physical features will not come into force until 1 October 2028 at the earliest, and it will not be possible to bring a claim of indirect discrimination due to a physical feature unless the discrimination takes place after this date.

The purpose of this chapter of the guidance therefore is to allow organisations to understand what adjustments they will need to make with respect to physical features once this aspect of the Ordinance comes into force.

A physical feature means:

- **a feature arising from the design or construction of a building;**
- **a feature of an approach to, exit from or access to a building; or**
- **a fixture or fitting in or on premises.**

See section 32(8) of the Ordinance

It should be noted that the terms “fixture or fittings” are not defined under the Ordinance, but they would have their normal meanings, so a fixture would include items such as light fittings or doors, whereas fittings would cover items such as office furniture.

Where it is identified that a physical feature causes a substantial disadvantage then an organisation should consider what adjustments it can make to avoid that disadvantage. In the context of a physical feature this may mean:

- removing the physical feature in question;
- altering it; or
- providing a reasonable means of avoiding it.

Example

A person had a stroke several years ago and as a result, has different impairments, including being partially sighted and reduced mobility. The person is a customer of a bank and needs to come in for a meeting to discuss a mortgage application. The meeting rooms for the bank are up a flight of stairs and through a corridor which is dimly lit, both of which place the person at a disadvantage, and they struggle to gain access to the building.

Both the stairs and lighting within the building are physical features. The service provider should consider whether it is possible to remove, alter or provide means to avoid it.

Remove: consider whether it is possible to install a lift so that there is step free access to the room; *

Alter: the employer could install a handrail on the stairs and improve the lighting in the corridor; *

Avoid: consider if there is another way the person can gain access to the building, such as a rear entrance to avoid both the stairs and corridor, or if there is an option to conduct the meeting virtually or at another location.

* The duty to make reasonable adjustments to physical features does not come into force until 1 October 2028 at the earliest

Auxiliary aids

The Ordinance also places a positive obligation on organisations to provide auxiliary aids, which will avoid a disabled person being put at a substantial disadvantage.

For these purposes an auxiliary aid means equipment or a service that:

- **is used by a disabled person; and**
- **provides assistance which compensates for or removes any disadvantage or inequality connected with their disability.**

but does not include any item of personal equipment which the person would reasonably be expected to own.

See section 32(4) of the Ordinance

The duty in relation to auxiliary aids can often overlap to some extent where there is a provision, criterion or practice that puts a disabled person at a particular disadvantage, although it is important it is still considered separately. Auxiliary aids could include the provision of a specialist piece of equipment such as an adapted keyboard, chair or text to speech software. Whereas auxiliary services could include the provision of a sign language interpreter or a support worker for a disabled person. Obviously, whether these are reasonable adjustments is a separate consideration.

Example

An academically able student has autism. The extent of their condition is such that they would be at a substantial disadvantage in school compared to children without autism. In order to address those disadvantages, the school deploys additional resources to support them.

One point to note is that whilst the obligation to make adjustments to physical features does not come into force until 1 October 2028 at the earliest, the duties in relation to any provision, criterion or practice, or auxiliary aids are in force immediately with the exception of education providers when it is expected to apply from 1 September 2025 onwards.

The three grounds for reasonable adjustments are not intended to be mutually exclusive, so for example one adjustment can both relate to a physical feature and be the provision of an auxiliary aid. Even if the provider’s obligations in relation to the physical feature are delayed, they would be under a duty to supply

the auxiliary aid.

Example

A student has seasonal affective disorder and is allocated a fitted desk for a particular lesson that is in a dark corner of a classroom with no natural daylight. Their desk itself is a fixture and so constitutes a physical feature. Accordingly, moving their actual desk (i.e. the physical feature) would strictly not be a requirement until 1 October 2028. However, from 1 September 2025 the school would still need to consider whether the duty to make reasonable adjustments arises in respect of either a provision, criterion or practice or the provision of an auxiliary aid.

Accordingly, the requirement for the student to sit at a specific desk may be considered a provision, criterion or practice, so allowing the student to sit at a different desk with natural daylight may be considered a reasonable adjustment, if the location of the current desk puts the student at a substantial disadvantage.

Alternatively, the provision of a light box, which replicates natural daylight could be considered an auxiliary aid, and so could also be considered a reasonable adjustment.

3.2 What is considered reasonable?

If a substantial disadvantage does exist, and the organisation is aware or should be aware the person is disabled, then they must make “reasonable” adjustments.

A person (A) does not discriminate against a disabled person if:

- **it fails to make an adjustment to avoid a disadvantage to a disabled person if to do so would be a disproportionate burden on A; or**

- **A does not know and could not reasonably be expected to know that the person was a disabled person.**

See section 32(6) of the Ordinance

At a practical level there are various factors that determine whether a particular adjustment is considered reasonable. This is ultimately an objective test and not simply a matter of what the organisation or the disabled person may personally think is reasonable. These factors can include:

- how effective the adjustment will be to reduce or remove the disadvantage that the disabled person will otherwise experience;
- its practicality;
- the cost;
- the organisation’s resources and size; and/or
- the availability of financial support.

On occasion, the duty to make reasonable adjustments may require a service provider to treat a disabled person 'more favourably' than they would treat someone else, as this is what is this may be what is needed to remove the disadvantage and create equality of opportunity for the disabled person. Making an adjustment in this way is not discrimination against a person who does not have a disability.

The cost of the many adjustments will either be nothing, or a minimal amount and so where this is the case, as long as the adjustment is workable and effective, then it would be considered reasonable.

If the cost of the adjustment is more significant, the size and resources of the organisation will be a relevant factor. If an organisation is a small business with limited resources and an adjustment costs a significant amount, then it is less likely to be reasonable for the organisation to be able to make the requested changes. However, costs should never be looked at in isolation; an organisation should always consider the other factors too, including the availability of financial and other support.

Example

A mortgage broker leases an office on the first floor of an old building with no lift. A new customer wants to have a meeting with the broker but is unable to use the stairs. In the circumstances it would be unlikely that the installation of a lift would be considered reasonable, although the service provider should still consider other alternatives such as whether they could meet with the disabled person at another location or they could conduct a virtual meeting.

Example

An insurance provider sets out the terms and conditions of the policies that it sells in written documentation. As a reasonable adjustment for a disabled service user who has a visual impairment, the service provider should make the terms and conditions available in a different format.

When can an organisation be assumed to know about disability?

Where a member of staff or an agent knows of a person's disability or they are aware of circumstances which may indicate a person may have a disability, the organisation will not usually be able to claim that they do not know of the disability. See here for the definition of disability. They will therefore be under a duty to make reasonable adjustments. Organisations should ensure that where information about a disabled person may come through different channels, there is a route for the sharing of that information in order to comply with their duties. This should be done with the consent of the disabled person and respecting confidentiality.

Particular care should be taken when using and storing this kind of information in order for organisations to comply with their duties under the Data Protection (Bailiwick of Guernsey) Law, 2017. For further information please refer to the website of the Office of the Data Protection Authority.

Example

Before the start of term, a primary school's special educational needs co-ordinator (SENCO) meets with the parents of a new child to discuss their disability and the reasonable adjustments that are required. The SENCO does not pass that information on to the teacher. If the teacher then fails to make the reasonable adjustment because they were unaware of the disability, the school would still be liable in these circumstances.

3.3 The duty to consult

There is no requirement on a disabled person to either make a request for reasonable adjustments, or even when asked to suggest what adjustments should be made, however, the Ordinance does introduce a specific duty on organisations to consult.

Before a person (A) makes a reasonable adjustment, it must consult the disabled person to ask their view as to what steps would avoid the disadvantage, and may also consult such other persons as A considers appropriate.

See section 32(3) of the Ordinance

The duty to consult a disabled person over reasonable adjustments is different to the position in the UK and Jersey, where it is only considered good practice. There is no specific form or duration of consultation required under the Ordinance, but it is recommended that this should take place in a meeting, with minutes kept and any agreed outcomes recorded.

Whilst many adjustments will be straightforward and can be agreed directly with the individual, from time to time it might be useful to consult with third parties, including medical professionals, as well as charities and other third sector organisations. There is no requirement to do so, but this might be helpful and might be free, or available at minimal cost. Wherever advice is sought, it is recommended that this also form part of the consultation process with the

disabled person and must be compliant with data protection legislation.

It should be noted that the duty to consult does not apply to the proactive duty to make reasonable adjustments, although it might be useful to include disabled people in the considerations of these proactive adjustment. See proactive duty-chapter 3.5.

3.4 Who pays for adjustments?

Whilst many adjustments either have no or minimal cost, the Ordinance makes it clear that it is the organisation’s responsibility to pay for any adjustments, and these costs cannot be passed on to the disabled person (with the exception of adjustments requested by tenants in very limited circumstances) - see Chapter 7.4.

A person (A) may not require a disabled person to pay any or all of A's costs of complying with a duty to make reasonable adjustments.

See section 32 (7) of the Ordinance

When assessing cost, and whether an adjustment is reasonable, whether it is cost-effective should be assessed in overall terms. For example, changing the access for a patient to access the second floor of a doctor’s surgery may appear expensive, but this may be less expensive in the long-term than providing services at/from an alternative location.

There may be financial support available to some organisations towards the cost of making an adjustment. As such, it may be unreasonable to decide not to make an adjustment based on its cost before finding out whether financial assistance for the adjustment is available.

There are specific rules in relation to adjustments to physical features for rented property. For further information see chapter 7.4.

3.5 What is the proactive duty to make reasonable adjustments

Service providers and education providers have an additional proactive duty to make reasonable adjustments for disabled persons generally, rather than an identified disabled person. This does not apply to clubs and associations or accommodation providers in relation to the disposal of premises unless they are

also service providers.

A person (A) is under a proactive duty to make reasonable adjustments:

- **where a provision, criterion or practice of A puts disabled persons at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a physical feature puts disabled persons at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where disabled persons would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.**

See section 33 of the Ordinance

Example

A shop provides a quiet hour for customers with sensory impairments. This is an anticipatory change in the service to provide an environment which suits those with different disabilities. A reasonable adjustment can also be about changing how a service is provided.

The proactive duty operates in a similar fashion as the standard duty but with the following key differences:

- In the case of service providers, where the disadvantage is caused by a physical feature the duty is to take such steps as it is reasonable from 1

October 2028 to either avoid the disadvantage or adopt a reasonable alternative method of providing the service. Education providers also have a duty to take reasonable steps to avoid such a disadvantage caused by a physical feature, but the duty is to remove, alter or provide a means of avoiding the physical feature rather than adopting a reasonable alternative means of providing the service.
- There is no duty to consult with any one in relation to the adjustments and knowledge of a specific person's disability is irrelevant for proactive adjustments.

The duty to make proactive adjustments for most service providers comes into force on 1 October 2023.

The duty in respect of schools and education providers for adjustments to either a provision, criterion or practice, or the provision of an auxiliary aid for students does not come into force until 1 September 2025.

The duty to make adjustments to physical features does not come in until 1 October 2028.

3.6 What are the consequences of a failure to make reasonable adjustments?

A failure on the part of an organisation (including a landlord) to take steps to avoid a disadvantage to a disabled person is a failure to comply with a duty to make reasonable adjustments. The organisation is deemed to have committed an act of discrimination. This is why it is important to consult with the disabled person in respect of any reasonable adjustments and where appropriate to seek advice.

It may be that the conversation about reasonable adjustments did not take place. It is important to note that the complaints process starts with trying to realise the issues between the organisation and disabled person.

It may be that the organisation did not identify the disadvantage the disabled person was experiencing, or that the reasonable adjustment to avoid the disadvantage was not identified. In this case both parties are encouraged to find a resolution to the situation.

For schools, education providers and service providers where they fail to make reasonable adjustments for disabled persons generally, this also amounts to

discrimination and a complaint could be made.

For more on the complaints process please see Chapter 10.

3.7 Disability: Public sector accessibility action plans

In addition to the specific proactive duty to make reasonable adjustments that applies to service providers and education providers, there is an additional duty for public sector service providers and public sector school or education providers to develop accessibility action plans. This will not come into effect before 1 October 2028.

"**accessibility action plan**"
means a reasonable and adequate plan, proportionate to the size and financial and other circumstances of the service provider, school or education provider, in which the service provider, school or education provider sets out how they will improve access for disabled people to their service

"public sector service provider"
means a service provider which is owned, maintained, managed, funded or under the authority of the States or any Committee thereof, but does not include a service provider who receives partial funding from the States by way of grant, loan or otherwise.

"public sector school or education provider"

means a school or education provider which is maintained by the States, and for the avoidance of doubt does not include:

- **an independent school within the meaning given in section 1 of the Education (Guernsey) Law, 1970;**
- **a school in respect of which grants are made by the States; or**
- **a private education provider.**

See section 37(2) of the Ordinance

Whilst the duty will not come into force before 1 October 2028, it is open to public service and education providers to develop a plan in advance of this date. The purpose of an accessibility action plan is to demonstrate how a service provider or education provider plans to improve access for disabled people. Any accessibility action plan will go beyond the consideration of reasonable adjustments for a specific disabled person. When developing an accessibility action plan, a key part of that should be consultation with all stakeholders, including the service users themselves who may have a disability. Their personal experiences may identify barriers that the provider has never previously considered and may assist in coming up with solutions to those issues.

Whilst the goal for any service should be to make progress around inclusivity as soon as it can, it is recognised that resources and time are often limited, and so part of the plan should be about setting realistic timeframes for implementation as well as prioritising any issues that have been identified. Progress towards these goals should be subject to regular review, and if adequate progress is not being achieved, then the provider should seek to understand the issue and identify a solution.

Framework for an accessibility action plan

The Ordinance does not prescribe any particular form of Accessibility Action Plan that must be used and they are not one size fits all. An example framework Accessibility Action Plan is attached at Appendix III.

This example is not intended to be prescriptive, and it should only be used as a starting point to outline how the organisation intends to communicate the goals and targets of its Accessibility Action Plan.

It is recommended that within any organisation, certain key staff members are delegated the responsibility over certain aspects of the Accessibility Action Plan to ensure engagement in the process across all levels of the service.

3.8 Disability: Accessibility of the public highway

The States of Guernsey is under a duty in relation to disabled people to consider how the section of public highway which is being constructed, altered or repaired could be made more accessible for disabled people and to make any changes the States considers appropriate to increase accessibility for disabled people.

Chapter 4: Service providers – practical guidance

In this chapter we will cover the following topics:

See also section 9 for advice on preparing for the legislation and here for the table with the timeline for when sections of the Ordinance are expected to come into force.

The Ordinance provides that anyone who offers, goods, services or facilities to the public is considered a “service provider” and therefore must not discriminate against service users. For example, shops will be included as they sell “goods”, financial services businesses or healthcare providers will be included as they provide “services” and a car hire company or a sporting venue, will also be included as they provide “facilities”. In each instance the business must not discriminate in the selling of its goods, services or facilities as the case may be.

The Ordinance is not limited to businesses and would extend to charities and not for profit organisations who provide goods, services or facilities to the public.

The purpose of this section is to try to provide some practical guidance to those service providers who have responsibilities under the Ordinance. However, compliance should not be viewed as purely a “tick box” exercise, particularly for businesses, because by making the provision of your goods, services or facilities accessible to all, it will expand the consumer base of the business, and is likely to make the business more successful.

This section should be read in conjunction with the exceptions, both the general exceptions and those exceptions that are specific to the provision of goods, services or facilities see Chapter 8.

4.1 What is meant by goods, services or facilities?

A service provider means a person who provides goods, services or facilities to the public or a section of the public (for payment or not) Facilities includes access to premises or vehicles which is granted to the public or a section of the public (for payment or not).

See section 28 (5) of the Ordinance

The definition of service provider is very broad as it covers any organisation who provides goods, service or facilities to the public, or a section of the public – even if they do not advertise to the public and applies whether or not they are paid for doing so.

There is no specific definition for goods or services within the Ordinance, and these would be interpreted based on their normal meaning, but the term “facilities” includes providing access to premises or vehicles, whether for payment or not. This could include car hire companies, as well as any organisation that hire out sporting venues.

So, the Ordinance will cover almost every business that deals with the public in some way as service providers, from shops who sell goods and businesses that provide services or facilities. It will also include many charities who provide services to members of the public, even though they do not charge.

4.2 Discrimination when providing goods, services or facilities

The Ordinance makes it unlawful for a service provider to discriminate when providing goods, services or facilities.

A service provider must not discriminate against any person:

- **by refusing to provide goods, services or facilities to the person;**
- **as to the terms on which it provides goods, services or facilities to the person;**
- **in the manner in which it provides the person with goods services, or facilities; or**

- **by terminating the provision of goods, services or facilities to the person, including by requiring the person to leave premises.**

See section 28(1) of the Ordinance

This covers all of the different forms of discrimination set out in chapter 1 of the Guidance including direct discrimination, indirect discrimination, discrimination by association and discrimination arising from disability. In addition, a service provider must not, in relation to the provision of any of its services, either victimise or harass a person and is subject to the duty of reasonable adjustments.

Example: Refusal to provide

A coffee shop refuses to serve a disabled person in a wheelchair, because they believe there isn't enough room in the shop for them to sit down and suggests a nearby larger shop would be better for them. This is a refusal of service and therefore could be discrimination, even if the coffee shop had the best interests of the person in mind.

Example: The terms of the provision

A hotel owner insists that a single sex couple have separate rooms, rather than a double room. The requirement to have separate rooms could amount to direct discrimination because of sexual orientation in respect of the terms of the provision. The refusal to allow them to stay in a double room, would also constitute a refusal of service as well.

Example: The manner of the provision

A bank has a policy of speaking only to the named account holder and not to a third party. This could amount to indirect discrimination for a deaf person who uses a registered interpreter to call the bank.

Example: Termination of the provision

A gardener gets into an argument with one of their customers over their religious views, and as a consequence of their differing religious views the gardener terminates their services. This could amount to direct discrimination.

Whilst service providers are under a duty to not to discriminate when providing goods, services, or facilities, the Ordinance makes it clear that they are not required to take a step which would fundamentally alter:

- the nature of the service; or
- the nature of the service provider's trade or profession.

Example: Fundamental nature of the service

A customer asks a butcher if they are able to supply Kosher meat for an upcoming wedding, where a large proportion of the attendees are Jewish. The butcher apologises and explains they do not have the necessary skills or experience to supply Kosher meat.

Whilst this could amount to indirect discrimination on the grounds of religion or belief, this would be likely to be an example of taking a step which would fundamentally alter the nature of the service offered. Therefore a complaint of discrimination would not be likely to be successful.

Exceptions

It should be noted that there are a number of general exceptions within the Ordinance, as well as specific exceptions relating to service providers where it is not necessarily unlawful to discriminate against a person on a Protected Ground. The specific exceptions for service providers are as follows:

- Financial services businesses involving an assessment of risk (e.g. insurance and pension providers) can take into account disability and race where relevant and reasonable to do so, i.e. where the assessment is undertaken by reference to information which is both relevant to the actuarial (or other) assessment of risk and is from a source on which it is reasonable to rely.
- A pension scheme or occupational benefit scheme may provide ill health benefits to one or more disabled people and not to others, or different benefits according to the severity of the disability.
- A religious mutual association does not contravene the Ordinance, on the ground of religion or belief, only by restricting the provision of its services to persons of the particular religion or religious denomination to which the association is affiliated.
- Broadcasters and publishers can exercise editorial discretion over their content (not advertising) to be able to publish a range of views and

permit free speech.

- In relation to an information society service, the Ordinance is not contravened by providing caching, hosting or acting as a mere conduit.
- In relation to dramatic performances and entertainment, it is not discriminatory on grounds of disability or race to do anything reasonably required for the purposes of authenticity, aesthetics, tradition or custom.
- Where a service provider provides specialist goods or services for the purposes of a religion or belief, they may restrict provision of those goods and services to persons of that religion or belief. In addition, in relation to religious premises, it is permitted to restrict the use of the building on the grounds that the use would not comply with the doctrine of the religion or belief.

Please note that certain types of service providers like accommodation providers, clubs and associations and education providers will also have additional specific exceptions.

For further information on the exceptions please refer to Chapter 8.

4.3 Service providers acting in other capacities

Whilst an organisation may fall under the definition of a service provider, it is important to remember that there are separate sections under the Ordinance which deal with schools and education providers, clubs and associations and accommodation providers which may also apply when the organisation is acting in a different capacity. In addition, service providers will often also have employees, and so the relevant sections within the Ordinance will apply to that employment relationship.

Accordingly, in each instance it is important to consider in what capacity an organisation is acting, and therefore which part of the Ordinance will apply. Not only are there different rules for each category of provider, but the implementation of certain provisions of the Ordinance are delayed.

Example

A school when providing education in relation to students is covered by the provisions relating to education when acting in this capacity (from no earlier than 1 September 2025).

A school which hires out its facilities at the weekend to members of the public is covered by the provisions relating to service providers when acting in this capacity (from 1 October 2023).

A school which has staff accommodation which it provides to them as part of their job is covered by the provisions relating to accommodation providers when acting in this capacity. (From 1 October 2023 although certain specific reasonable adjustment duties for landlords would not apply until 1 October 2028 – see accommodation section for further guidance).

A school (or the States of Guernsey) which employs staff is covered by the provisions relating to employment when acting in this capacity (from 1 October 2023).

(The duty to make reasonable adjustments to physical features will not come into force before 1 October 2028 for any provider).

For further information on provisions relating to:

- Schools and education providers see Chapter 5
- Clubs and associations see Chapter 6
- Accommodation providers see Chapter 7

For information in relation to employment, please refer to the separate Employers' Guide.

Please also see the more detailed table of implementation dates here.

4.4 Understanding the needs of service users

Service providers are subject to a proactive duty to make reasonable adjustments in respect of disabled persons generally. In addition, public sector service providers are required to implement accessibility actions. This duty cannot come into force until 1 October 2028, although providers may wish to have their plans in place earlier than this. For further information on this duty please refer to Appendix III.

Neither or these provisions are intended to require service providers to anticipate the needs of every individual who may use their service. What they are required to think about, and take reasonable steps to overcome, are barriers that may impede people with different kinds of disability. This is relevant for the proactive duty to make reasonable adjustments. For example, people with mental health conditions or people with a visual impairment will face very different types of barriers.

Understanding the needs of disabled service users

Disability is diverse and individuals will have different requirements.

> **Example**
>
> Visually impaired people who use guide dogs will be prevented from using services with a ‘no dogs’ policy, whereas visually impaired people who use white canes will not be affected by this policy.

In the context of the proactive duty to make reasonable adjustments there is no duty to consult.

This does not mean that service providers can or should wait for an issue to arise, rather the duty requires a service provider to seek to actively engage with the issues and start by addressing the obvious ones. Whilst there is no single exhaustive list of issues that a service provider must consider, the following may be a useful starting point:

- planning in advance for the requirements of any known service users who are disabled and reviewing the reasonable adjustments in place;
- conducting access audits on premises;
- asking disabled customers for their views on reasonable adjustments;
- consulting local disability groups;
- considering how best to draw people's attention to existing reasonable adjustments;
- ensure any auxiliary aids are properly maintained and having a plan in place in case one doesn't work;
- training employees to appreciate how to respond to requests for reasonable adjustments;
- ensuring that employees are trained to interact with people with disabilities and that they are aware of the duty to make reasonable adjustments and understand how to communicate with disabled customers so that reasonable adjustments can be identified and made.

The general duty to make reasonable adjustments will apply as soon as a service provider has become aware of the requirements of a particular disabled person who uses or seeks to use its services.

Whilst there is no obligation on the disabled person to necessarily point out the difficulty, or come up with the solution, the law imposes on service providers a duty to consult. In practical terms this may often be as simple as having a conversation with the service user.

Example

A disabled person with a bad back attends an all-day conference. At lunchtime the person explains that the hard chairs are causing their back condition to flare-up. Despite the lack of notice, those organising the conference were able to find a more suitable chair and make this available to the person.

In addition, in the case of a public sector service providers from 1 October 2028 onwards they may also become subject to a duty to implement an accessibility access plan.

Understanding the needs of people with other Protected Grounds

Whilst the duty to make reasonable adjustments only applies to people with a disability, service providers may wish to consider how they address the needs of individuals with other Protected Grounds, and in particular seek to address issues around indirect discrimination, where service users might experience barriers. There is no specific duty to consult other than in the context of the duty to make reasonable adjustments for a disabled person, although inevitably, the best way to understand the needs of people with other Protected Grounds, is to communicate with them to gain their views. This can be done in person in the course of providing the service, but equally it can be undertaken through other means such as by sending online surveys or providing other means for service users to provide feedback.

Once barriers have been identified, then next step is to take action to address them. For service providers, this may include improving awareness of and access to services, adjusting the services to meet the particular needs of a protected group, or training the staff to recognise such needs.

What is positive action?

On occasion the service provider may wish to go further through what is known as positive action.

The Ordinance recognises that certain groups who share a Protected Ground may be disadvantaged or may be affected by the consequences of past or present discrimination. The Ordinance therefore contains provisions which enable service providers to take action with the aim of ensuring equality, or a greater degree of equality on any of the Protected Grounds in order to address these matters. This is known as ‘positive action’.

Please refer to Chapter 8 on Exceptions which provides more detail about positive action.

4.5 Reasonable adjustments when providing goods, services and facilities

Service providers are under a duty to make reasonable adjustments when providing goods, services or facilities where a disabled person is placed at a substantial disadvantage (or disabled people generally are placed at a disadvantage) due to:

- a provision, criterion or practice;
- a physical feature (not before 1 October 2028); and
- the lack of an auxiliary aid.

For further information on the reasonable adjustments duty please refer to Chapter 3 of the Guidance.

In order to comply with this duty, it will be helpful for service providers to identify the different kinds of barriers that their service users might experience. Whilst the proactive duty to make reasonable adjustments in respect of physical features (which applies to all service providers) and the duty to prepare an accessibility action plan (which only applies to public sector service providers) does not come into force until 1 October 2028 see Appendix III, it would be useful to go through this process in advance of that date.

Provision, criterion or practice

It is important for service providers to understand how they could place a person with a disability at a substantial disadvantage. This might be the way in which goods, services or facilities are delivered or the terms and conditions by which they are provided. This will amount to a provision, criterion or practice. Where a substantial disadvantage is identified, the person providing the service should consider the situation and consult with the disabled person as to what steps would avoid that disadvantage. This should then be implemented if it does not cause a disproportionate burden to do so.

What is reasonable will obviously vary from case to case. See here for more information about what is reasonable. Service providers need to consider the following when considering reasonableness and reasonable adjustments:

- how information is provided;
- when services are provided; and
- in what form services are provided.

Example

A hotel has a policy that all bookings must be made in writing using a paper form. This policy places some disabled people at a disadvantage, for example those with visual impairments. The hotel amends the policy to permit disabled people and others who cannot complete the form to make their booking over the telephone. This is likely to be a reasonable adjustment.

Physical feature

Physical features are widely defined, but in the context of commercial premises, would include:

- a feature arising from the design or construction of a building;
- a feature of an approach to, exit from or access to a building; or
- a fixture or fitting in or on premises.

The duty to adjust features such as steps, fitted desks, lighting, and the lay out will not come into force until at least 1 October 2028.

Example

A small shop has narrow aisles. The physical features will place some disabled people at a disadvantage, for example those with mobility impairments. The manager of the shop (the service provider) will need to consider what adjustments it would be reasonable for it to make to the layout of the shop to improve accessibility.

Auxiliary aid

An auxiliary aid is a piece of equipment or a service that is used by a person with a disability which compensates for or removes any disadvantage or inequality connected with the disability, but does not include any item of personal equipment which the person would reasonably be expected to own. Where a

service provider is under a duty to provide an auxiliary aid under the Ordinance, then this duty will be in force from 1 October 2023.

Example

An events company which organises team building events for businesses arranges an archery course. One of the attendees of the course has a restricted growth syndrome, so is unable to use the full-size adult bows. The company does hold children's events too, and so supplies a smaller bow to the attendee as an adjustment so they are able to participate.

Fundamental nature of the service

Whilst service providers are under a duty to make reasonable adjustments in relation to the provision of their goods, services, or facilities, they are not required to take a step which would fundamentally alter:

- the nature of the service; or
- the nature of the service provider's trade or profession.

Example

A company promotes a star gazing event. By its very nature these events must take place at night which may place people with certain impairments, such as a visual impairment or sensory condition, at a disadvantage. However, the company would not be under a duty to change the time of the event to during the day as it would change the fundamental nature of the service.

4.6 Common reasonable adjustments for service providers to think about

There is no exhaustive list of reasonable adjustments that service providers need to consider but a number of illustrative examples are set out below.

Example: Provision of information in braille

A bank account holder with a visual impairment is regularly sent printed bank statements, despite the fact that on previous occasions they have indicated their need for braille and braille statements have been provided in the past. The customer is initially told that the software which generates the bank statements does not enable a record to be kept of customers' needs for alternative formats. However, the bank identifies an alternative means through which it can issue monthly bank statements in braille, on the basis this amounts to a reasonable adjustment, and would otherwise have left the disabled person at a substantial disadvantage.

Example: Assistance dogs

A large department store amends its 'no dogs' policy to allow entry to assistance dogs. It helps dog users with a tour of the store to acquaint them with routes. This is likely to be a reasonable step for it to have to take from October 2023

The store then undergoes a renovation with a series of building works over several months and so has to regularly change its internal layout. Given the changes the initial tour is no longer an effective adjustment, and so the service provider decides to help dog users with appropriate additional assistance from staff while the building work is being undertaken. This is likely to be a reasonable step for the service provider to have to take in the circumstances.

Example: Text to speech

A library has a number of computers for the public to use. When the computers were originally installed, the library considered installing text-to-speech software for people with a visual impairment, but decided not to do so, because cost and its effectiveness. After a period of time the library proposes to replace some of the computers and reconsiders the inclusion of the option of text-to-speech software. Given the passage of time the software is now more efficient and the cost has significantly reduced. The library decides to install the software on a number of the replacement computers and to give priority access to those computers to persons with a visual impairment. This is likely to be a reasonable adjustment for the library to take at this time.

Example: Allow patient to be accompanied by a friend or relative

A patient who has a hearing impairment with a loss of 40% hearing in both ears could find attending a medical appointment to be a daunting experience as they may have difficulty understanding what they are being told. A reasonable adjustment could be to allow a friend to attend the medical appointment to ensure that they could understand everything that the doctor said. Such an adjustment would not cost any money.

Similar adjustments could be made for a person who stammers who may find the assistance or presence of a friend helpful (or indeed necessary) to communicate.

Example: Voice Activation Software on Telephone Systems

A person with a stammer or speech impediment may find voice – activated phone systems difficult to use. They may take too long to answer a question and be disconnected. A reasonable adjustment would be to either have a touchphone option system or the option to speak with a real person.

Example: Disabled seat on bus

A transport company should ensure that it has a policy and priority seating/space for persons with a mobility impairment. It would not be enough to have a policy which simply asks the driver/conductor to ask a non-disabled person to move from their seats in favour of a disabled person, as this would not actually require them to move. A pro-active reasonable adjustment would be to have specific areas for persons with a mobility impairment and for those people to have priority in those spaces.

Example: Long Queues

People waiting to check in at an airport are served by staff at a check-in desk after queuing in line. A disabled customer with severe arthritis visits the airport, but they experience pain if they have to stand for more than a few minutes. Accordingly, the airport's queuing policy would place the disabled customer at a substantial disadvantage.

In order to address this disadvantage, the airport has a policy to provide special assistance to any passengers who have a disability, which in this example would allow the person to take a seat and then be served in the same way as if they had queued.

Example: Difference between small and large service providers

A small business which offers guided tours of Guernsey cliff paths decides to communicate with its customers who have a hearing impairment, by providing them with a written script of what is said during the tour. They are also given the opportunity to raise any questions by exchanging written notes. This is likely to be a reasonable step for this service provider to have to take.
However, if there were a publicly owned museum, then this might be considered inadequate given their greater resources. Instead, they may consider installing an induction loop system.

Example: Engaging with customers who have difficult in providing written instructions

An estate agent normally obtains its instructions either by meeting in person in their offices or exchanging emails. A customer with multiple disabilities may be unable to effectively communicate in writing or to attend their offices, so the estate agent arranges to meet the customer at their home and with their consent, to record that conversation in order to obtain instructions. This is likely to be a reasonable adjustment.

Example: Installation of ramps

The head office for a building company has two steps at the main entrance, which means that those who are wheelchair users or people with mobility impairments cannot enter. The building company decides to install a permanent ramp at the side of the two steps to enable disabled customers to attend meetings. This is likely to be a reasonable step to have to take.

Example: Accessibility of websites

A local shop establishes a website which allows users to buy their groceries online and have them delivered to their home. After consulting with the Royal National Institute of Blind People (RNIB) and local charity groups who provide guidance, in order to ensure the website is accessible to people who are visually impaired, the shop ensures that its website is set up so that the contents of its website can be used with a screen reader and any images that are used have a text alternative. This is likely to be a reasonable adjustment.

4.7 Discriminatory acts or requests by service users and situations with competing Protected Grounds

Occasionally, a service provider may find themselves in a position where they are in receipt of discriminatory actions or requests by service users or third parties to undertake what would be a discriminatory act. Whilst the Ordinance does not expressly deal with such matters, this can sometimes be as a result of different and competing Protected Grounds between the service provider (and sometimes their employees) on the one hand and the service user on the other.

This conflict, for example, may arise from the religion or belief of one of those parties, against either the race, religion or belief, or sexual orientation of the other party. Such cases involve careful consideration of the facts and are best illustrated with an example.

Example:

A gay rights activist placed an order for a cake decorated with the slogan “support gay marriage”. The owners of the bakery are devout Christians and refused the order on the basis they found it offensive to their religious beliefs.

This would not amount to direct discrimination or discrimination by association by the bakery on the basis of the customer’s sexual orientation, as the refusal was on the grounds that they disagreed with the message they were being asked to put on it. However, if rather than having a message on the cake, the bakery was simply asked to make a wedding cake for a gay couple, and refused to do so, then this would amount to direct discrimination on the grounds of sexual orientation. As this is direct discrimination it cannot be justified, regardless of the religious beliefs of the owners of the bakery.

Alternatively, a service user may themselves commit discriminatory acts towards either other service users, or the employees of the service provider.

There is nothing within the Ordinance which makes the service provider liable either to the other service users, or its employees in respect of the discriminatory actions of other service users, unless the refusal of the service provider to act is itself discriminatory. The exception to this would be if the service provider were under a duty to make reasonable adjustments, for example in relation to harassment received by a service user in relation to their disability.

Example

A shop assistant has bad acne and eczema. They work correctly under strict hygiene procedures whilst handling food in this environment.

They are upset though as some customers and other assistants call them names. The shop has a duty to have policies in place to stop this kind of behaviour.

4.8 Overcoming bias when providing goods, services, or facilities

One of the biggest challenges for all service providers is dealing with unconscious bias (which is also known as implicit bias). Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness based on their own background, culture, context and personal experiences.

It is important to recognise that we all have unconscious biases. We each have an in-built tendency to organise our social worlds by categorising people into groups. These biases are very often automatically triggered by our brain making quick judgments and assessments.

Direct discrimination is unlawful, no matter what the service provider's motive or intention, and regardless of whether the less favourable treatment of the service user is conscious or unconscious. Service providers may have prejudices that they do not even admit to themselves or they may act out of good intentions or simply be unaware that they are treating the service user differently because of a Protected Ground.

Example

An events company organises trips to attend music festivals in the UK and refuses to accept a booking from a customer with a hearing impairment, because they do not believe they would enjoy the event without being able to hear the music. Although the company may be well-intentioned in rejecting the booking, this is likely to amount to direct discrimination on the ground of disability.

Example

An events company organises trips to attend music festivals in the UK and refuses to accept a booking from a customer with a hearing impairment, because they do not believe they would enjoy the event without being able to hear the music. Although the company may be well-intentioned in rejecting the booking, this is likely to amount to direct discrimination on the ground of disability.

Example

A bank offers its Indian customers the chance to win a ticket to a cricket match when they come in to discuss their finances. They do not extend the same opportunity to customers of other nationalities. This is likely to amount to direct discrimination on the grounds of race.

Overcoming these biases can sometimes be difficult. The starting point for service providers is to ensure all staff have received training around how unconscious bias can arise, challenging those assumptions in themselves and others, and understanding what steps can be taken to avoid those biases. For service providers who are required to implement an accessibility action plan, overcoming unconscious bias will be important when preparing the plan ahead of the duty to have the plan in place from 1 October 2028.

Chapter 5: Education- practical guidance

In this chapter we will cover:

- Reasonable adjustments in education
- Understanding the needs of students
- Common reasonable adjustments for education providers to think about
- Discriminatory acts or requests by students
- Overcoming bias in the provision of the provision of education

See also Chapter 9 for advice on preparing for the legislation and the table here which sets out the timeline for when sections of the Ordinance are expected to come into force.

The Ordinance requires that the responsible body of a school or education provider must not discriminate against students or prospective students in relation to their education.

Where schools and education providers are operating in an educational capacity and dealing with students or prospective students, it is important to note that the Ordinance is not due to apply to these relationships before 1 September 2025. Where there is a duty to make a reasonable adjustment that relates to a physical feature, that duty will not come into force before 1 October 2028. However, the purpose of this section is to try to assist schools and education providers to prepare for the Ordinance coming in to force. For further information on the dates of implementation of the Ordinance please see the table here.

It should however be noted that often schools and education providers will also operate in different capacities, such as an employer or as a service provider to the public, and so they will still have obligations under the Ordinance as soon as it comes into force on 1 October 2023. Those obligations are detailed in Chapter 4 and the guidance for employers .

This section is intended to try to provide some practical guidance to schools and education providers who have responsibilities under the education provisions of the Ordinance. This section should also be read in conjunction with the exceptions relating to Schools and Education Providers.

5.1 What is meant by an Education Provider or Responsible Body of a School?

The Ordinance can apply in an education context to either an education provider or the responsible body of a school.

An education provider means:

(i) an educational institution in Guernsey; or

(ii) an organisation which develops or accredits curricula or training courses for use by a school or educational institution in Guernsey.

A school has the meaning given in section 1 of the Education (Guernsey) Law, 1970

An educational institution means an institution in Guernsey at which education is provided for five or more students of any age, not being a school, and for the avoidance of doubt includes registered pre-schools and day nurseries.

A responsible body means the governing body, committee of management or the proprietor of the school or education provider, as the case may be.

See section 29(6) of the Ordinance

The term ‘education provider’ is widely defined and covers any educational institution in Guernsey or any organisation which develops or accredits curricula or training courses for use by a school or educational institution in Guernsey, Herm or Jethou. For these purposes, an educational institution would include any institution at which education is provided for five or more students of any age and would include registered pre-schools and day nurseries, but would also apply to education provided to adults.

The definition of school follows the existing statutory definition of a school which is an institution for providing primary or secondary education or both primary and secondary education:

- a school maintained by the States;
- an independent school; or

- a school in respect of which grants are made by the States to the proprietor of the school.

This definition will cover all existing primary and secondary schools in Guernsey and includes both States providers and private providers, as well as any new school that is developed through reform of the current educational model.

The term ‘responsible body’ in relation to any school will depend upon the type of school. For those States’ Schools operated by the Committee for Education Sport & Culture of the States of Guernsey, the responsible body would be that Committee. For those schools not maintained by the States of Guernsey, the responsible body would be the body which operates the school in question, for example this may be a company or a board of governors depending upon the constitution of the school (and similarly for a pre-school or nursery).

5.2 Discrimination when providing Education

The Ordinance will make it unlawful for the responsible body of a school or education provider to discriminate in relation to its admission process as well as when providing education to its students. Regulations are required for this section to come into force. Under the Ordinance these regulations cannot bring the education provisions into force before 1 September 2025.

The responsible body of a school or education provider must not discriminate against any person:

- **in the arrangements it makes for deciding who is offered admission as a student;**
- **as to the terms on which it offers to admit a person as a student; or**
- **by not admitting a person as a student.**

See section 29(1) of the Ordinance

The responsible body of a school or education provider must not discriminate against any student:

- **in the way it provides education to a student;**
- **by denying a student access, or limiting a student's access, to any benefit, facility or service;**
- **by permanently excluding a student; or**
- **by subjecting a student to any other detriment.**

See section 29(2) of the Ordinance

This covers all of the different forms of discrimination set out in Chapter 1 of the Guidance, including:

- direct discrimination;
- indirect discrimination;
- discrimination arising from disability; and
- discrimination by association.

In addition, a school or education provider must not, in relation to the provision of education, either victimise or harass a person and is subject to the reasonable adjustment duty.

There is no exhaustive definition of what is meant by arrangements in section 29 (1) of the Ordinance but it would include:

- Admissions policies;
- Drawing up of admissions criteria;
- Application of admissions criteria;
- Information about the school, including marketing material;
- Open events and schools visits;
- Application forms;
- Decision-making processes;
- Interviews; and
- Admission tests.

All examples will not become effective before Sept 2025 at the earliest.

Example: Arrangements for admission

A selective school requires all prospective students to undertake a written admission test. There is a specific exemption which allows schools to select students by reference to general or special ability or aptitude, with a view to admitting only students of high ability or aptitude. However, the duty to make reasonable adjustments still applies to an admission test, where students might meet the admission requirements but are put at a disadvantage because of the arrangements for admission, such as a student who might be visually impaired. The failure to make a reasonable adjustment, to provide that student with the test in a larger font size, would amount to discrimination.

The terms of admission should not discriminate against a student because of a Protected Ground.

Example: Terms on which admission is offered to a person as a student

Under Guernsey law, children should receive full-time education. A disabled student is allowed to attend school only on a part-time basis because the school does not have the resources to provide the student with the support they require on a full-time basis. This would be discrimination arising from disability, unless it can be objectively justified.

The school might be able to justify certain actions if it can be shown that it is a proportionate means of achieving a legitimate aim. However, it should be considered whether there might be a more proportionate means of achieving efficient education for both the student and their peers, such as different provision for a small group of students for part of the time, rather than not allowing them to attend school.

Example: Terms on which admission is offered to a person as a student

A disabled student is assessed and it is agreed that they need to have additional learning support to overcome a substantial disadvantage to participate in the school day. If the school does not provide it, then this could be failure to provide a reasonable adjustment unless the adjustment would be a disproportionate burden for the school to provide. However, the school decides to make the provision and duly charges extra for that learning support as a condition of entry. This could also amount to discrimination arising from a disability as it is unlawful to pass on the costs of reasonable adjustments. Passing on the cost would only be possible if providing the learning support was not a reasonable adjustment (because paying for the adjustment would place a disproportionate burden on the school). What is a disproportionate burden will vary depending on the size and resources of the school and the impact on other students. If the school refused a place to a disabled student because of the additional learning support they would require, then this would also need to be objectively justified, or it could amount to discrimination arising from disability.

A school's obligation to its students is wide ranging and isn't just limited to what takes place in the confines of the classroom and covers everything that a school provides for students including extracurricular and leisure activities, afterschool and homework clubs, sports activities and school trips, as well as school facilities such as libraries and IT facilities.

Example: The way in which education is provided

During a history lesson on the second world war, a teacher mocks the German accent. Whilst the teacher does not know it, one of the students is half-German and is greatly upset by these remarks. This would amount to harassment on the grounds of race.

A school should not discriminate against a student due to a protected ground by permanently excluding them, but the Ordinance also covers other actions short of permanent exclusion which might amount to a detriment.

The term ‘detriment’ is not defined within the Ordinance but will be interpreted very broadly. It is generally taken to mean some disadvantage and can include denial of an opportunity or choice, or anything that a reasonable student would consider altered their position for the worse, so could include steps such as detentions, or excluding students from a school trip or excursion.

Example: Subjecting a student to any detriment

A school has a policy that if a student breaks the school rules on three occasions, they will automatically be given a detention. A student who has attention deficit hyperactivity disorder (ADHD) is much more likely to break the school rules than other students. The issuing of a detention to that student will amount to a detriment. Accordingly, if the school applies the policy on rigid basis to students with ADHD this is likely to amount to indirect disability discrimination and/or failure to make a reasonable adjustment. A school may find it difficult to justify the treatment as a proportionate means of achieving a legitimate aim.

Whilst schools and education providers are under a duty to not discriminate when providing education, they are not required to take a step which would fundamentally alter the nature of the educational service provided.

Example: Fundamental nature of the education

An education provider offering a catering qualification would not need to restrict its teaching to vegan food to accommodate a potential student who was an ethical vegan.

Example: Disproportionate burden

A child had an accident and now has to attend school in a specialist wheelchair and needs access to a hoist, changing places toilet facilities and regular physiotherapy throughout the school week. Whilst a school would be required to make adjustments that were reasonable, particularly around wheelchair use, this may not necessarily extend to installing equivalent facilities for disabled students to those provided at specialist schools, as this would be likely to be a disproportionate burden.

Exceptions

It should be noted that there are a number of general exceptions within the Ordinance, as well as specific exceptions relating to schools and education providers where it is not necessarily unlawful to discriminate against a person on a Protected Ground. The specific exceptions for schools and education providers are as follows:

- Schools can make arrangements for selective admission based on a student’s general or special ability or aptitude without this being discrimination,
- Schools with a religious ethos may base their admission criteria on student's being of a particular faith,
- A school with a religious ethos may teach a curriculum which focuses primarily on the religion of the school, without this being discrimination, provided the school also teaches that other religious beliefs exist and are worthy of respect,
- A school may provide additional educational services to students with additional assessed needs, without this being discriminatory against other students.

For further information on the exceptions please refer to Chapter 8.

5.3 Education providers acting in other capacities

Whilst an organisation may fall under the definition of a school or an education provider, it is important to remember that there are separate sections under the Ordinance which deal with service providers, clubs and associations and accommodation providers and there are times when a school could be acting in a capacity other than as an education provider. For example, if a school puts on a play and sells tickets to the public, then it would be acting as a service provider. It would also act as a service provider if hiring out facilities, such as a meeting room or swimming pool, or holding a school fete or fayre. In addition, schools and education providers will often also have employees, and so the relevant sections relating to employers within the Ordinance will also apply.

It is important to consider in what capacity an organisation is acting to understand which part of the Ordinance will apply. There are different requirements for each category and the implementation of certain provisions of the Ordinance will come into force on different dates.

Schools and education providers should, however, be aware that the provisions relating to employment and service providers in the Ordinance will apply from 1 October 2023 when they are providing a service to the public or in relation to their employees.

Example

When a school provides education in relation to students it is subject to the duties relating to an education provider (from no earlier than 1 September 2025).

When a school hires out its facilities at the weekend to members of the public it is subject to the duties relating to a service provider (from 1 October 2023).

When a school offers staff accommodation which it provides to them as part of their job it is subject to the duties relating to accommodation providers (from 1 October 2023 although certain specific reasonable adjustment duties for landlords would not apply until 1 October 2028 – see accommodation section for further guidance).

When a school (or the States of Guernsey) employs staff it is subject to the duties relating to employment when acting in this capacity (from 1 October 2023).

(The duty to make reasonable adjustments to physical features will not come into force before 1 October 2028 for any provider.)

For further information on provisions relating to:

- Service providers see Chapter 4
- Clubs and associations see Chapter 6
- Accommodation providers see Chapter 7

Please also see the table of implementation dates here.
For information in relation to employment, please refer to the separate Employers' Guide.

5.4 Reasonable Adjustments when providing Education

Schools and education providers will be under a duty to make reasonable adjustments, when providing education, where a disabled person is placed at a substantial disadvantage.

The duty to make reasonable adjustments for a disabled person is set out below and a person on whom the duty is imposed is referred to as "A"

- **where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a physical feature puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, for A to take such steps as it is reasonable to have to take to avoid the disadvantage;**
- **where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.**

Before A takes such steps as it is reasonable to have to take to avoid the disadvantage as set out above, A must consult the disabled person to ask their view as to what steps would avoid the disadvantage, and may also consult such other persons as A considers appropriate.

See section 32(2) and (3) of the Ordinance

The general duty on schools and education providers to make reasonable adjustments for students will not come into force before 1 September 2025 (or not before 1 October 2028 where the adjustment is to a physical feature of premises) . The duty to make reasonable adjustments for employees and members of the general public (where the school or education provider is acting as a service provider) comes in to force on 1 October 2023 (again, unless the adjustment relates to a physical feature of premises, in which case it will not come into force before 1 October 2028).

Service providers, schools and education providers are also under the proactive duty to make reasonable adjustments for disabled persons described in subsections 33 (2) and 33 (3).

See section 33 of the Ordinance

The Committee may by regulation impose a duty on public sector service providers and public sector school or education providers to prepare and implement an accessibility action plan This will involve the creation of a reasonable and adequate plan, proportionate to the size and financial and other circumstances of the service provider, school or education provider, in which the service provider, school or education provider sets out how they will improve access for disabled people to their service.

See section 37 of the Ordinance

In addition to the general duty to make reasonable adjustments, schools and education providers will also be subject to a proactive duty to make reasonable adjustments (again for students this comes into force from 1 September 2025 at the earliest).

Public sector schools and education providers will also be required to prepare an accessibility action plan, although this obligation will not come into force before 1 October 2028. This will be expected to cover physical accessibility, accessible communication and, in the case of education providers, access to the curriculum. See Appendix III.

For further information on the duty of reasonable adjustments generally please refer to Chapter 3.

Provision, criterion or practice

It is important for schools and education providers to understand how they could place a student with a Protected Ground at a disadvantage. This is because the way in which education is delivered or accessed will generally amount to a provision, criterion or practice. Where a disadvantage is identified, then the school or education provider will need to consider and consult with the disabled student (or their parent or carer) as to what steps would avoid that disadvantage, and then implement such steps as it is reasonable to do. What is reasonable will obviously differ from case to case.

Example

A school has a uniform policy that students must wear a shirt and a blazer and are not permitted to wear a jumper under their blazer. That uniform policy will amount to a provision, criterion or practice. If a disabled student with a circulatory condition, who was particularly susceptible to the cold, was placed at a substantial disadvantage by not being able to wear a jumper under their blazer, then it would likely be a reasonable adjustment to amend the policy to permit this.

Physical feature

Physical features are widely defined, but in the context of schools and other education institutions, would include:

- a feature arising from the design or construction of a building;
- a feature of an approach to, exit from or access to a building; or
- a fixture or fitting in or on premises.

The duty to make adjustments to features such as steps, fitted desks, lighting, and the lay out will not come into force until 1 October 2028 at the earliest. However, it should be noted that where a school or education provider is under a duty to provide an auxiliary aid under the Ordinance (see the next section), then this duty will be in force earlier, potentially from 1 September 2025 onwards.

Examples of physical features would be steps, fitted desks, lighting, and the lay out of the school.

The duty to make adjustments to physical features will not come into force until 1 October 2028 at the earliest. However, if the relevant adjustment could also be construed as an adjustment to a policy, criterion or practice, or as the provision of an auxiliary aid, (see the next section), then the adjustment may need to be made earlier, potentially from 1 September 2025 onwards.

Example

A public sector education provider has a narrow entrance due to shelving installed either side of the main door. The shelving will amount to a physical feature which will place some disabled people at a disadvantage, for example those with mobility impairments. The education provider will need to consider what adjustments it would be reasonable for it to make to the physical feature to improve accessibility, such as whether those shelves could be relocated elsewhere.

Auxiliary aid

An auxiliary aid is a piece of equipment or a service that is used by a person with a disability to compensate for, or remove, any disadvantage or inequality connected with the disability. This does not include any item of personal equipment which the person would reasonably be expected to own. Examples of common auxiliary equipment in an education setting would include coloured overlays, pen grips, adapted PE equipment, adapted keyboards and computer software. However, auxiliary aids also includes auxiliary services, an example of which might include the provision of a support assistant.

Example

Providing a student who is a wheelchair user with someone to assist them when navigating around school would be an auxiliary service. Providing a suitable and secure step so that a student with a short stature due to a genetic condition can reach the desks in the science lab would be an example of providing an auxiliary aid.

Fundamental nature of the service

Whilst schools and education providers are under a duty to make reasonable adjustments in relation to the provision of education, the Ordinance makes it clear that they are not required to take a step which would fundamentally alter

the nature of the education service provided.

Example

An education provider college of further education promotes a star gazing event. By its very nature these events must take place at night, which will place some students with a particular disability at a disadvantage. However, the college would not have a duty to change the time of the event to during the day as it would change the fundamental nature of the event (the service).

5.5 Understanding the needs of students

Schools and education providers will be subject to the general duty to make reasonable adjustments as well as a proactive duty to make reasonable adjustments in respect of disabled persons generally and to anticipate such needs in advance of being asked, from no earlier than 1 September 2025. However reasonable adjustments relating changes to physical features which will not come in before 1 October 2028. In addition, public sector schools and education providers will be required to implement accessibility action plans although this obligation will not come into force before 1 October 2028. For further information on implementation dates, please see the table.

These provisions are not intended to require schools or education providers to anticipate the needs of every student who may attend the school. They are required to think about, and take reasonable steps, to overcome the barriers that may impede students with different kinds of disability and to make reasonable adjustments.

If a student or their parent/carer indicates that the student may require a reasonable adjustment (on application or once admitted), and it is determined that the student has a disability and that the student would be placed at a substantial disadvantage, then a school or education provider must consult with that student (or the parents/ carer as appropriate) and put in place a reasonable adjustment as long as it is not a disproportionate burden for them to do so.

Understanding the needs of disabled students

Some disabled students will already have identified special educational needs (SEN) and may be receiving support via school-based SEN provision or have a Determination or other plan in place. This does not take away a school's duty to make reasonable adjustments for that student, rather this will simply be the framework through which the school seeks to comply with its duties. It is important to remember that even if a student does not have identified needs they may still meet the definition of disability and need reasonable adjustments to be made for them to ensure that they are not placed at a substantial disadvantage, and so the onus will be on the school to ensure this takes place.

As for other employers and general service providers, reasonable adjustments may involve changing a policy, criterion or practice, providing an auxiliary aid or, from 1 October 2028, removing or altering a physical feature (or finding another way of providing the service).

Disabled people are individuals who have different requirements, so the same adjustment will not mitigate a disadvantage for everyone even if two people have the same impairment. The example below describes a policy that would only discriminate against visually impaired persons with guide dogs.

Example

A visually impaired adult student who wanted to use a guide dog to attend evening classes at a college of further education would be prevented from accessing services if the college has a 'no dogs' policy, whereas a visually impaired student who uses white canes would not be affected by this policy.

There is no requirement to consult in the context of the proactive duty to make reasonable adjustments. Schools or education providers should not wait for an issue to arise but should seek to actively engage with issues, and should start by addressing the obvious ones. Whilst there is no single exhaustive list of issues that a school or education provider must consider, the following may be a useful starting point:

- planning in advance for the requirements of any known disabled students and reviewing the reasonable adjustments in place;

- having a process to review the adjustments in place to ensure they remain appropriate;
- conducting access audits on premises thereby considering a range of different impairments;
- asking disabled students or parents for their views on reasonable adjustments; consulting local disability groups;
- considering how best to let a student know about existing reasonable adjustments;
- ensuring any auxiliary aids are properly maintained and having a plan in place in case they do not work;
- considering how communications can be as inclusive and accessible as possible;
- ensuring that staff are aware of the duty to make reasonable adjustments and understand how to communicate with disabled individuals so that reasonable adjustments can be identified and made (as noted above);
- training staff to understand how to respond to requests for reasonable adjustments; and
- encouraging staff to develop additional skills for disabled students (for example, communicating with a student with a hearing impairment).

From 1 September 2025, the duty to make specific reasonable adjustments (excluding to physical features) will apply as soon as a school or education provider has become aware that a particular student or prospective student might have a disability. The school or education provider should consider how they can meet these requirements. Whilst there is no obligation on the disabled student to necessarily disclose their disability, or to come up with the solution, the school or education provider has a duty to consult with the individual once they know or suspect that the student has a disability. In practical terms this will usually be engaged when an issue is identified by the school or education provider, and often will be as simple as having a conversation with the student or their parent/carer.

Example

A disabled student at a primary school finds it difficult to remain seated in a normal chair for long periods as it causes them significant back pain, although the student has not informed their teacher of the issue. The parents of the child raise the issue with the school at a parents evening, and it is agreed that the school will provide the student with a specially adapted rise and fall desk and special chair in their classroom as a reasonable adjustment to provide greater support for their back during lessons and so the student can alter their stance during the lesson to provide an alternative option to sitting all of the time.

Understanding the needs of people with other Protected Grounds

Whilst the duty to make reasonable adjustments only applies to people with a disability, schools and education providers may wish to consider how they address the needs of individuals with other Protected Grounds. They could consider issues around indirect discrimination, where students might experience barriers. There is no specific duty to consult other than in the context of the duty to make reasonable adjustments for a disabled person, although inevitably, the best way to understand the needs of different people, is to communicate with them to gain their views. This can be done in person in the course of providing their education, but equally it can be undertaken in other ways such as by sending online surveys, or providing other means to enable students to feedback.

Once barriers have been identified, then the next step is to take measures to address them. For schools and education providers, this may include improving awareness of and access to educational opportunities, adjusting the way in which education is delivered to meet the particular needs of a protected group, or training the staff to recognise such needs.

What is positive action?

Positive action has a strict legal definition within the Ordinance and the exception will apply differently depending upon the context. In general terms, it covers any steps which are taken with the aim of promoting greater equality of opportunity on any of the Protected Grounds.

Students may be disadvantaged for reasons connected to a Protected Ground or for reasons to do with past or present discrimination. The Ordinance allows education providers to take action to tackle a particular disadvantage, different needs or disproportionately low participation of a particular student group, provided that certain conditions are met.

This is known as positive action and allows (but does not require) education providers to take proportionate action to remedy the disadvantage faced by particular groups of students. Such action could include specific provision or resources directed towards a particular disadvantaged student group.

Positive action is not the same as positive discrimination which involves preferential treatment for a particular disadvantaged student group but which does not meet the positive action conditions, for instance by imposing quotas. Positive discrimination is discrimination and is therefore not generally lawful. However, it is never unlawful to treat disabled students (or applicants) more favourably than non-disabled students (or applicants) if this action is taken to address a disadvantage to which the disabled person would otherwise be put.

Whilst there is no obligation on organisations to take positive action, where steps are taken, they can be lawful, providing that the action is taken with the aim of achieving greater equality. If an education provider wanted to take positive action in this way with respect to admissions, any advertisement for admissions should clearly state the school is seeking applications from everyone but wishes to encourage applications from people with a particular Protected Ground on the basis that they are underrepresented or face disadvantage.

Please also refer to Chapter 8 on Exceptions.

Unlike in the UK, it is not necessary to demonstrate positive action is a proportionate means of achieving a legitimate aim, but rather positive action must have the aim of achieving one of the following:

- the prevention, compensation for or removal of any disadvantage or inequality connected with a protected ground;
- the promotion of equality of opportunity on any of the protected grounds, including in relation to recruitment and promotion; or
- the catering for the particular needs of persons, or a category of persons, who, because of a protected ground, may require facilities, arrangements, services or assistance not required by persons who do

not have those particular needs.

Positive action can include:

- providing additional or bespoke services;
- providing separate facilities;
- giving accelerated access to services; and/or
- targeting resources or induction or training opportunities to benefit a particular disadvantaged group.

Where action does not meet one of the criteria set out above, then it would amount to positive discrimination, which is unlawful.

By taking appropriate and proportionate positive action, schools and education providers are likely to improve their education and services for students, and to overcome barriers for particular groups.

Example

A school analyses its student data and identifies that boys from certain ethnic groups are disproportionately more likely to leave school at the age of 16 and not continue in education or training. The school is aware of gradual disengagement from education by these students from the age of 14. The school decides to run activities for these groups to try to raise aspirations and prevent this disengagement. These activities include targeted careers education, giving the students the opportunity to visit local employers and training providers, and being assigned a mentor from the same background studying at university. This would be positive action and is allowed under the Ordinance.

5.6 Common Reasonable Adjustments for Schools and Education Providers to Think About

There is no exhaustive list of reasonable adjustments that schools and education providers need to consider but a number of illustrative examples are set out

below.

Example: Adjustments to parental consent forms

A school has a policy that all parental consent forms must be made in writing using a paper form. This policy places some disabled people at a disadvantage, for example those with visual impairments. The school amends the policy to permit people who cannot complete the form to come into the school office to give their consent in person with a witness present. This is likely to be a reasonable adjustment.

Example: Adjustments in relation to written work

A disabled student with severe manual dexterity difficulties finds it difficult to write large amounts of text by hand and so this takes them considerably longer than other students. Where assignments that are set which require large amounts of text to be handwritten, they would be at a substantial disadvantage. The student however is able to touch type, and so as a reasonable adjustment they are permitted to use a laptop to submit their assignments instead.

Example: Adjustments in relation to a visually impaired student

A visually impaired student who needs a larger font so that they can see documents, will be at a substantial disadvantage compared to other students if materials are provided in the usual font size. Accordingly, as a reasonable adjustment and following the discussion with the student the school arranges for all worksheets to be reproduced in the larger font size.

Example: Adjustments in relation to a student with chronic fatigue syndrome

A student with chronic fatigue syndrome finds it harder to concentrate in lessons in the afternoon as a result of an increase in their tiredness. Following a meeting with the student, parents and the SEN co-ordinator and input from any other professionals, it is agreed as a reasonable adjustment that a specially adapted timetable will be implemented which builds in breaks for the student in the afternoon.

Despite the amendments, the student continues to have difficulties in the afternoon and is too exhausted to complete the school day. The school then makes further adjustments, arranging for the student to have a ‘buddy’ to carry their books, and for the teacher to record those lessons that are missed and amending the school policy so as not to issue sanctions for late arrival to lessons. These adjustments enable the student to attend more lessons and to be less disadvantaged when lessons are missed.

Example: The importance of the duty to consult

A school admits a disabled student who is deaf and decides, without consulting the student, to install an induction loop in all teaching rooms – but the student does not use a hearing aid and so is unable to benefit from the induction loop. The student reads lips and so a reasonable adjustment would instead have been to tell all staff to ensure that they face the student when speaking to them. Because of the failure to consult with the student, they were unaware of the adjustment that was required. From 1 September 2025 this would lead to a failure to make an appropriate reasonable adjustment.

Example: Adjustments for a student with an impairment that affects reading

A student with a disability is struggling to read text typed on white paper. The school therefore initially agrees to provide handouts on yellow paper. It is then identified that the student finds it difficult to read text on any colour of paper without a plastic overlay sheet. Therefore, the school provides the student with a plastic overlay sheet to use in all lessons. This would be a reasonable adjustment for this student.

Example: Adjustments for a student with epilepsy

An application is submitted to the reception class of a local primary school for a student with epilepsy to attend. The parents speak to the head teacher and ask for someone at the school to be trained to provide the necessary medical support if the student has a seizure in school.

Following a risk assessment and after seeking advice, the school decides to provide training to all staff and afterwards asks for staff volunteers to agree to support the student and to administer the necessary medication. The school also puts in place an individual healthcare plan for the student, which includes instructions on how the medication is to be administered. This could be a reasonable adjustment for the school to make.

Example: Adjustments for a student with an impairment that impacts their speed of processing

A student who has an impairment that impacts their speed of processing would be at a disadvantage in completing times tasks compared to another student who does not have the impairment as they need longer to read and process written questions. A reasonable adjustment may be for them to be granted extra time for these tasks. (In respect of formal public exams such as GCESs, this would need to be considered against formal exam access arrangement criteria.)

Example: Adjustments for a student with a medical condition, adjustment to policy

A school has a lunch policy that students must take lunch at one sitting and are not permitted to eat outside of the canteen area. That eating policy will amount to a provision, criterion or practice. If a student with a long-term medical condition, who must take medication with food at a particular time is not allowed to do this, they will be placed at a substantial disadvantage by not being able take their medication on time. It would likely be a reasonable adjustment to amend the policy to permit them to eat outside these hours or elsewhere on site.

Example: Adjustments for a student with ADHD, auxiliary support

A school has a zero-tolerance policy to distractions in class. A student has attention deficit hyperactivity disorder (ADHD). This is a neurodevelopmental condition that has a learning and behavioural impact and often individuals show signs of inattention, distractibility, hyperactivity and impulsivity. The student sometimes displays behaviour that may be considered disruptive.

A reasonable adjustment could be for them to have a learning support assistant in the classroom for some lessons.

Example: Adjustments for a student with different needs

It could be a reasonable adjustment for a student who has an impairment that affects their reading to have their work printed on yellow paper as it has been shown that a light but not white background is beneficial to some people. It may also be reasonable to change the background colour of any computer and visual aids like whiteboards.

Another student in the class is colour blind and is visually impaired. They could not work with green or red backgrounds and may need access to larger font. Any solution or solutions would have to work for both competing disabilities.

Example: Car parking

A college has a policy of only allowing students to park in allocated student car parks. A student has a mobility impairment which means that they need to be able to park close to where their lessons are.

This isn’t always possible as the allocated car parks are situated on one side only of the campus. Allowing the student with the mobility impairment to park in designated disabled parking spaces in all parts of the campus is likely to be a reasonable adjustment to their current parking policy and will ensure that the student can attend their classes.

Example: Separation anxiety disorder

A child in year one has a separation anxiety disorder. It is very difficult for the parent to drop the child off at normal school times. A reasonable adjustment could be to allow the parent to deliver the child to school 15 minutes late each day for an agreed period of time to avoid the other parents and children arriving and/or to have a learning support assistant meet the child, so that the separation can take place in a quieter environment to relieve stress in the school drop off.

Example: Adjustments to physical features

A day nursery is housed in an old building which has narrow corridors. The physical features will place some disabled people at a disadvantage, for example those with mobility impairments. The nursery will need to consider what adjustments it would be reasonable for it to make to the layout of the building to improve accessibility.

If layout changes are too costly for the nursery’s financial circumstances, it may be acceptable to show that the considered improvements would be a disproportionate burden. In this case the nursery should consider whether different reasonable adjustments can be made. For example, it might be possible to find a wheelchair that is thinner than the standard for use within the building for children or parents to use whilst they are there.

The general duty to carry out reasonable adjustments to physical features will not come into force before 1 October 2028.

Example: Adjustments for wheelchair users

A student who is a wheelchair user is unable to access classes on the first floor of the school due to lengthy maintenance works on the lift. A reasonable adjustment would be for the school to temporarily rearrange the timetabling and location of classes so that all of their classes are in accessible areas. Although this may be difficult, it does not mean that the school should not make this adjustment on a temporary basis.

If specialist facilities such as science laboratories are available only on the first floor, then it may not be possible to move classes that require the use of the specialist equipment to a different classroom; in this case, the school will need to consider what other adjustments it could make to enable the disabled student to access learning opportunities of greater equivalence to those of their peers, including potentially attending the classes through video conferencing facilities.

The general duty to carry out reasonable adjustments to physical features will not come in force before 1 October 2028. The general duty to make reasonable adjustments to a policy, criterion or practice or to provide an auxiliary aid is expected to come in from 1 September 2025 for education providers. If this problem could be resolved by changing a policy or providing an auxiliary aid, then the reasonable adjustment duty to implement such reasonable adjustments could come into effect from 1 September 2025.

5.7 Discriminatory acts by students, discriminatory requests by students and competing Protected Grounds

Occasionally, a school or education provider may find themselves in a position that they are in receipt of discriminatory actions or requests by students or third parties. Whilst the Ordinance does not expressly deal with such matters the school or education provider (or their staff) may also find themselves in the position of considering conflicting requests based on competing Protected Grounds.

The conflict may, for example, arise from the religion or belief of one party, against either the race, religion or belief, or sexual orientation of the other party. Parties may include the education provider (and sometimes their employees), the student themselves or third parties. Such cases involve careful consideration of the facts.

Alternatively, a student may themselves commit discriminatory acts towards either other students, or the employees of the school or education provider.

There is nothing within the Ordinance which makes the school or education provider liable for the action of the student to the other students, or to its staff, unless the refusal of the education provider to act is itself discriminatory. One exception to this is if the school or education provider were under a duty to make reasonable adjustments. See Chapter 3.

An example of the school discriminating through their refusal to act might be if they address complaints about racial language but do not address homophobic comments.

Example

A student arrives late to the swimming pool in a swimming lesson and a classmate verbally chastises them in front of others. The student is visibly embarrassed and upset by this. They are late because they have mobility issues and cannot get ready in the same amount of time as the other children who do not have a disability. The school should consider whether it is able to make reasonable adjustments to make it easier for the student to get changed and ready for the lesson. They should also address the action of the classmate as they are harassing the student.

Example

The Personal Assistant (PA) to the head teacher at a school has a mobility impairment.
Students are overheard referring to them as “the cripple”. This makes the PA feel hurt intimidated and harassed. The school needs to make it clear that such harassment is not acceptable, to try to prevent this kind of behaviour, otherwise the PA could bring a claim against the school.

5.8 Overcoming bias when providing education

One of the biggest challenges for all schools and education providers is dealing with unconscious bias (which is also known as implicit bias). Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness based on their own background, culture, context and personal experiences.

It is important to recognise that we all have unconscious biases. We each have an in-built tendency to organise our social worlds by categorising people into groups. These biases are very often automatically triggered by our brain making quick judgments and assessments.

Direct discrimination is unlawful, no matter what the motive or intention, and regardless of whether the less favorable treatment of the student is conscious or unconscious. Schools or education providers may have prejudices that they do not even admit to themselves or may act out of good intentions – or simply be unaware that they are treating the student differently because of a Protected Ground.

Example

A teacher decides to deny a student with a facial disfigurement a place in the school play, because they believe that other students who will watch the performance will make fun of the student and cause them distress. Although the teacher may think that they have good intentions, denying the student a chance to be part of the school play is likely to be direct disability discrimination.

Example

A school organises a trip to watch a football match. The school believes that this might upset a student who used to be a member of the school football team until an accident which left them needing to use a wheelchair and so doesn't inform them of the trip. The student only finds out about the game afterwards and is upset because they would have liked to have gone with their friends. Although the school may consider its intentions to be good, preventing the student from attending the match is likely to be direct disability discrimination.

Overcoming these biases can sometimes be difficult. The starting point for schools or education providers is to ensure all staff have received training around how unconscious bias can arise, challenging those assumptions in themselves and others, and understanding what steps can be taken to avoid those biases. For those schools or education providers who are required to implement an accessibility action plan, overcoming unconscious bias will be important when preparing the plan.

Chapter 6: Clubs and Associations – practical guidance

In this chapter we cover:

See also Chapter 9 for advice on preparing for the legislation and this table which sets out the timeline for when sections of the Ordinance are expected to come into force.

This section of the guidance focuses on the provisions within the Ordinance requiring that certain clubs and associations, of a minimum size and with rules regarding selection, must not discriminate in relation to membership or against their members.

It should however be noted that even if clubs and associations fall below the minimum size (as outlined below), and don't have responsibilities under the Ordinance in that capacity, they might also operate as an employer or as a service provider to the public, and so they may still have obligations under the Ordinance regardless of whether they are covered in relation to their members.

6.1 Which clubs and associations are covered by the Ordinance?

The Ordinance makes it unlawful for clubs and associations of a certain size to discriminate in relation to membership and against any of its members.

A club or association means any association of persons, whether or not incorporated or whether or not carried on for profit, other than a professional or trade organisation, which has:

(a) at least 25 members; and

(b) rules regarding admission to membership, and where membership involves a process of selection.

A club or association victimises or harasses a person for the purposes of this Ordinance if one or more employees of, or persons otherwise involved in the management of, the club or association victimise or harass the person in the course of that employment or management, or otherwise victimise or harass the person when acting or purporting to act on behalf of the club or association.

See section 30(6) of the Ordinance

The Ordinance applies to all clubs and associations, regardless of whether they are incorporated, and whether their activities are carried out for profit. There are only two specific conditions for the club or association to be covered by the Ordinance in relation to its members.

- The club must have at least 25 members; and
- The requirement for a club or association to have rules regulating admission to membership.

This does not mean every club or association must have a formal set of written rules on membership; it will be sufficient if the rules for admission of new members are known to those members involved in the selection. An organisation that merely requires the public to pay a fee to join it, without any form of selection, such as a gym or sports facility is acting as a service provider, not a club or association. For further information on service providers please refer to Chapter 4.

Example

A golf club with over 200 members applies a rule that any potential member must play against two members of the committee who will certify whether their game is of a sufficient standard before a decision is made on their membership application. This club is likely to come within the provisions on clubs and associations

It is important to remember that even if a club or association is not covered by the Ordinance in respect of its members, it might still be covered if it is acting as

a service provider, for example in renting facilities to members of the public. For further information on this please refer to Chapter 4.

The Ordinance contains additional provisions in relation to harassment and victimisation. A club or association is only deemed to be potentially liable where the harassment or victimisation is committed by one or more employees, or persons involved in the management of the club or association. This is when the action of harassment or victimisation is in the course of their employment or management, or when they are acting on behalf of the club or association. Accordingly, where the harassment or victimisation is by one ordinary member against another, and the member carrying out the act is not employed by or involved in the management of the club or association, then the club or association will not be liable.

6.2 Discrimination by clubs and associations

The Ordinance makes it unlawful for clubs and associations of a certain size to discriminate in relation to membership and to discriminate against any of its members.

A club or association must not discriminate against a person:

- **in the arrangements it makes for deciding to whom to offer membership;**
- **as to the terms on which it offers a person membership; or**
- **by not offering a person membership.**

See section 30(1) of the Ordinance

A club or association must not discriminate against a member of the club or association:
in the terms of membership that are afforded to a member;

- **by refusing or failing to accept a member's application for a particular class or type of membership;**

- **by denying a member access, or limiting a member's access, to any benefit, facility or service provided by the club or association;**
- **by depriving a member of membership; or**
- **by subjecting a member to any other detriment.**

See section 30(2) of the Ordinance

This covers all of the different forms of discrimination set out in Section 1 of the Guidance [insert link], including direct discrimination, indirect discrimination, discrimination by association, and discrimination arising from disability. In addition, a club or association must not, in relation to any of its members or persons who have applied for membership, either victimise or harass them. A club or association is also subject to the duty to provide reasonable adjustments. There is no exhaustive definition of what is meant by arrangements but it would include:

- Membership policies;
- Drawing up of selection criteria;
- Application of selection criteria;
- Information about the club or association, including marketing material;
- Open events;
- Application forms;
- Decision-making processes;
- Interviews; and
- Selection tests.

Example: Arrangements for selection

A person seeking to become a member of a private members club, who had previously made an allegation of discrimination at work against a member of the committee of the club. They need two members to nominate them in order to be selected for membership. The association usually ensures that applicants are put in touch with two members but on this occasion fails to do so because of the previous allegation, and the belief that the individual is a troublemaker. This would amount to victimisation in the arrangements for selecting new members.

The terms of membership should not discriminate against a person because of a Protected Ground.

Example: Terms on which membership is offered to a person

A disabled person applies to become a member of a club. There are currently no other disabled members, and so the committee decide to increase the membership fee of the disabled person to cover some of the costs of redeveloping the disabled toilets which need attention. This is likely to amount to direct discrimination on the grounds of disability as to the terms for admission.

Once a person becomes a member, then clubs and associations must not discriminate against them on a Protected Ground. This includes in the provision of any benefit, facility or service provided by the club or association, and would cover a wide range of things such as invitation or admission to meetings or events, use of equipment or facilities, discount schemes, bar or restaurant services, receipt of journals or newsletters.

A club or association also should not discriminate due to a Protected Ground against a member either by depriving them of membership, or subjecting them to other any other action which amounts to a detriment. A detriment would include anything which a member would consider alters their position for the worse, such as denial of an opportunity or choice or a temporary ban from attending club

events. Discriminating against a member or prospective member in this way is unlawful, even if the club or association believe they are acting in the best interests of the member.

Example: Subjecting a member to a detriment

A members' club has invited a controversial speaker to attend an event about ISIS and the war on terror. The club has a number of members who it is believed would likely be offended by the content of the talk due to their religious beliefs, and so doesn't inform them of the event. Even though the club believed it was acting in the best interests of the members, this would still amount to discrimination on the grounds of religion or belief.

Whilst clubs and association providers are under a duty to not to discriminate in relation to their members, the Ordinance makes it clear that they are not required to take a step which would fundamentally alter the nature of the club or association.

Example: Fundamental nature of the club or association

A wine tasting club holds regular events once a month to sample the latest wines. Whilst a person could not be excluded from membership simply because they held religious views that prohibited them from consuming or being around alcohol, the club itself would not have to stop its core activity of wine tasting, as this would change its fundamental nature.

Exceptions

It should be noted that there are a number of general exceptions within the Ordinance, as well as specific exceptions relating to clubs and associations where it is not necessarily unlawful to discriminate against a person on a Protected Ground. The specific exceptions for clubs and associations are as follows:

- A club or association does not contravene the Ordinance by restricting membership to persons who share a Protected Ground (except skin colour in relation to race), so a Latvian or Portuguese Association is permitted under the exception, but not a white person's club; and
- In relation to disability and nationality, there is a specific exception for sport whereby not selecting someone, where there has been a selection based on skill or ability or where the person is unable to perform the actions required by the sport after a reasonable adjustment has been made, is not discrimination. It is also not discrimination to follow rules of a sport regarding who may represent a country, place or area.

For further information on the exceptions please refer to Chapter 8.

6.3 Clubs and associations acting in other capacities

Whilst an organisation may fall under the definition of a club or association for the purposes of its membership, it is important to remember that there are separate sections under the Ordinance which deal with service providers, schools and education providers and accommodation providers, and those sections can apply to clubs and associations regardless of their size. In addition, some clubs and associations may also have employees, and so will have responsibilities in that capacity.

It is important, in each instance, to consider, in what capacity an organisation is acting and so which part of the Ordinance will apply, because not only are there different rules for each category, the implementation of certain provisions of the Ordinance are delayed. Where an organisation has responsibilities as a club or association and is acting in that capacity in relation to its members, the provisions within the Ordinance relating to service provision will not also apply, as set out in the example below.

Example

A snooker club with a membership of 50 people only allows its members to play on its tables during the week, but allows members of the public, regardless or not whether they are members to play at weekends.

During the week in relation to granting access to play snooker, the snooker club is covered by the provisions relating to clubs and associations.

At weekends, in relation to granting access to play snooker, the snooker club is covered by the provisions relating to service providers.

When the snooker club also employs bar staff, it is covered by the provisions relating to employment.

If the snooker club only had 20 members, whilst it would still fall within the provisions relating to service providers and employment, the Ordinance would not apply in relation to membership of clubs and associations.

For further information on provisions relating to:

- Service providers see Chapter 4
- Schools and education providers see Chapter 5
- Accommodation providers see Chapter 7

Please also see the table of implementation dates here.
For information in relation to employment, please refer to the separate Employers' Guide.

6.4 Understanding the needs of members

Clubs and associations are subject to the general duty to make reasonable adjustments in respect of disabled people. The proactive duty to make reasonable adjustments for disabled people generally does not apply to membership, although it would apply where the club or association is acting as a service

provider and is providing services to the general public. The duty to implement accessibility action plans does not apply.

Even though there is no proactive duty to make reasonable adjustments, clubs and associations may find it helpful to consider what barriers are in place that may impede potential members from joining, as ultimately if these can be removed, it is likely to benefit the club or association.

The duty to make reasonable adjustments for clubs and associations comes into effect from 1 October 2023, with the exception of changes to physical features, which will not come into force before 1 October 2028.

Understanding the needs of disabled members

Once a person applies or indicates an intention to apply for membership, where the organisation is either aware (or ought to be aware) that the person has a disability, the duty is on the club or association to ensure it that it consults with them about reasonable adjustments. This duty then continues once the person becomes a member.

It is acknowledged that many clubs and associations are run by volunteers, and so what will be expected in this context in relation to a member will be very different than what a school might do around consulting with a student. However, as a minimum the club must discuss with the person (whether face to face or via email) about any potential reasonable adjustments.

Disabled people may have different requirements and trying to consider them as a single group can often be unhelpful, which is why consultation is important.

Example

A hearing-impaired member who uses a hearing dog will be prevented from accessing services such as a member's bar, if the club has a 'no dogs' policy, whereas a hearing-impaired member who does not have an assistance dog will not be affected by this policy.

Whilst there is no proactive duty to make reasonable adjustments on clubs and associations, and there is no single exhaustive list of issues that they must

consider, the following may be a useful starting point around considering reasonable adjustments:

- planning in advance for the requirements of any known members who have a long-term impairment and reviewing the reasonable adjustments in place;
- conducting access audits on premises thereby considering various impairments;
- asking disabled members for their views on how to improve accessibility;
- consulting local disability groups;
- considering how best to draw member’s attention to existing reasonable adjustments;
- ensuring any auxiliary aids are properly maintained and having a plan in place in case they do not work; and
- ensuring that staff and members of the management committee are aware of the duty to make reasonable adjustments and understand how to communicate with disabled members so that reasonable adjustments can be identified and made.

The duty to make reasonable adjustments will apply as soon as a club or association has become aware of the requirements of a particular disabled member or prospective member. This means that it might be reasonable for the club or association to take a particular step to meet these requirements. Whilst there is no obligation on the disabled member to necessarily point out the difficulty, or come up with the solution, the Ordinance imposes a duty to consult on clubs and associations. In practical terms this will usually be engaged when an issue is identified by the club or association and may often be as simple as having a conversation with the member.

6.5 Reasonable adjustments by clubs and associations

Once the Ordinance comes into force on 1 October 2023 clubs and associations will be under a duty to make reasonable adjustments, in respect of their members and applicants for membership, when they are placed at a substantial disadvantage due to:

- a provision, criterion or practice;
- a physical feature (not before 1 October 2028); and
- the lack of an auxiliary aid.

For further information on the reasonable adjustment duty please refer to Chapter 3 of the guidance].

In order to comply with this duty, it will be helpful for clubs and associations to identify the different kinds of barriers that members, or prospective members, might experience. Whilst clubs and associations are not subject to the proactive duty to make reasonable adjustments or the duty to prepare accessibility actions plans, they may find it useful to prepare an accessibility action plan.

Provision, criterion or practice

It is important for clubs and associations to understand how they could place a member, or prospective member, who has a Protected Ground, at a disadvantage. This might be because how applications for membership need to be made, or the way in which membership, benefits facilities or services are accessed, will often amount to a provision, criterion or practice. Where a disadvantage is identified, then the club or association will need to consider and consult with the disabled member about how to avoid that disadvantage, and then implement reasonable steps. What is reasonable will obviously vary from case to case.

Example

A private members club has a dress code for its dining room that men must wear a shirt, tie and jacket when eating in the evening. That dress code will amount to a provision, criterion or practice. If a disabled member had a physical disability that meant they were unable to wear a tie, they would be placed at a substantial disadvantage, and so it would likely be a reasonable adjustment to adjust the dress code to permit them to eat without wearing a tie

Physical feature

Physical features are widely defined, but in the context of clubs or associations, would include:

- a feature arising from the design or construction of a building;
- a feature of an approach to, exit from or access to a building; or
- a fixture or fitting in or on premises.

Physical features may include, for example, steps, fitted desks, lighting, and the lay out of the premises.
The duty to make adjustments to physical features will not come into force until at least 1 October 2028. However, if the relevant adjustment could also be construed as an adjustment to a provision, criterion or practice, or as the provision of an auxiliary aid (see the next section) then the adjustment may need to be made from 1 October 2023.

Example

An amateur dramatic society with over 50 members, two of whom are wheelchair users. It normally holds its annual general meeting in a room on the first floor of a pub, where there is no lift. The society recognises that the wheelchair users would be unlikely to attend the meeting due to its location and therefore could not fully participate as members. The pub has a ground-floor room of similar size. While the society prefers the privacy of the upstairs room, it changes its meeting venue to the downstairs room. This is likely to be a reasonable step for the society to make.

Auxiliary aid

An auxiliary aid is a piece of equipment or a service that is used by a member with a disability and provides assistance which, compensates for, or removes any disadvantage or inequality connected with the disability. It does not include any item of personal equipment which the person would reasonably be expected to own. In assessing the reasonableness of an adjustment which requires the provision of an auxiliary aid, especially where it involves a cost, consideration will always be given to the resources of the club or association. Often these are not for profit organisations run by volunteers. However, the fact that there may be a

cost associated with a particular adjustment does not necessarily make it an unreasonable adjustment, especially if that cost is minimal. A club or association must consider all of the normal factors, to decide whether or not the adjustment is reasonable and appropriate.

Example

A debating club organises a monthly event. A hearing loop is purchased to allow a member with a hearing impairment to participate. The person would be expected to have their own hearing aid if they wished to use one, as this is an item of personal equipment which they would reasonably be expected to own.

Fundamental nature of the club or association

Whilst clubs and associations are under a duty to make reasonable adjustments in relation to members and applicants for membership, the Ordinance makes it clear that they are not required to take a step which would fundamentally alter the nature of the club or association.

Example: Fundamental nature of the club or association

A wine tasting club holds regular events once a month to sample the latest wines. An existing member contracts a condition which mean they are unable to consume alcohol. The member asks if they could still attend the events and asks could the club expand its activity to include the tasting of fruit juices. Whilst the club is happy to allow the member to attend the events on a purely social basis, there is no requirement to expand the tasting activities, as this would change its fundamental nature

6.6 Common Reasonable Adjustments for Clubs and Associations to Think About

There is no exhaustive list of reasonable adjustments that clubs and associations need to consider but a number of illustrative examples are set out below.

Example: Allow members to be accompanied by a friend or relative

A member of a club wants to stand for election at a forthcoming annual general meeting. The club member has a hearing impairment and so will be at a substantial disadvantage at the meeting. The member asks the club if a friend who is a British Sign Language (BSL) translator could attend the meeting to assist, even though they are not a member of the club.

The club's policy is that non-members are not permitted to attend the annual general meeting, however, in this instance the club permits the attendance of the BSL translator as a reasonable adjustment.

Example: Car parking

A golf club has designated parking spots only for the club captain and the club professional coach. All other parking is undesignated. A member with a mobility impairment approaches the club to ask if they could designate some of the parking bays for disabled members, as at busier times the member is placed at a substantial disadvantage as they struggle to get across the car park, as parts of it are uneven.

The club agrees to designate two spaces for disabled parking near the club house as a reasonable adjustment.

Example: Difference between small and large clubs and associations

A small local club with limited resources is contacted by a potential applicant who although blind, reads braille. In order to join the club, all potential applicants must complete a written membership application form which places the potential applicant at a substantial disadvantage. As this is a small club, it would not necessarily be a reasonable adjustment to require it to reproduce the membership form in braille. However, the club secretary agrees to meet with the applicant and goes through the form with them verbally and fills in the details on their behalf. This is likely to be a reasonable step for this club to have to take.

However, if the club or association was large and well-funded organisation, (e.g. it was the Guernsey branch of an international association), then this might be considered inadequate given their greater resources. Instead, they may be required to make membership forms available in braille.

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Example: The importance of the duty to consult

A large well-funded club with its own premises admits a member who is deaf and decides, without consulting the member, to install an induction loop in the club bar – but the member does not use a hearing aid and so is unable to benefit from the induction loop. The member reads lips and so a reasonable adjustment would have been to tell all other members of the committee and staff working at the bar, to ensure that they face the member when speaking to them. Because of the failure to consult with the member they are unaware of the adjustment that is required, and this leads to a failure to make a reasonable adjustment.

Example: Adjustments for members with medical conditions

A member of a junior sports team has a heart condition. Their parents speak to the club secretary and express their concern that the coaches need to be trained to provide the necessary medical support if the child has a cardiac arrest attack during a game.

Following a risk assessment and after seeking advice, the club decides to purchase a defibrillator (having obtained partial funding from a charity) and provide training to all coaches on the device. The club also puts in place an individual healthcare plan for the child, which includes instructions on how the defibrillator is to be administered and details of their medication. This could be a reasonable adjustment for the club to make. Whilst the club did incur some cost in purchasing the defibrillator, it was able to obtain a substantial contribution towards the cost from a charity.

Example: Difficulties with physical access

A club only has step access at the front of the club. The step free access is at the back of the building, which is not usually accessed by the public. A wheelchair user is given permission to use that entrance to access the club as a reasonable adjustment to a policy, criterion or practice.

Example: Provision of a handrail

The access to the building where a club is held only has step access. The club provides a handrail by the steps to assist access for anyone with a physical impairment. This will be a reasonable adjustment after 1 October 2028.

6.7 Discriminatory acts or requests by members and competing Protected Grounds

Occasionally, a club or association may receive a request from a member or third party which appears to be discriminatory, or a member or a third party may appear to act in a discriminatory way. Whilst the Ordinance does not expressly deal with such matters, there may sometimes be competing Protected Grounds between the club or association (and sometimes their staff or members or the management committee) on the one hand and the member on the other.

In most instances the conflict arises from the religion or belief of one of those parties, against either the race, religion or belief, or sexual orientation of the other party. Such cases involve careful consideration of the facts and the relevant exceptions and are best illustrated with an example.

Example

A bible reading club which is only open to practising Christians who attend church, refuses an application from a person on the basis they are homosexual, despite them meeting the criteria for membership. Whilst there is a specific exception for clubs to restrict membership to persons who share a Protected Ground, such as Christianity, (i.e. they could reject an application on the basis someone is not a practising Christian), it would be direct discrimination on the grounds of sexual orientation to exclude an applicant for membership on the basis of a different Protected Ground.

Alternatively, a member may commit discriminatory acts towards either other members, or the employees of the club or association. There is nothing within the

Ordinance which makes the club or association liable either to the other members, or its staff in respect of the discriminatory actions performed by another member, unless the refusal of the club or association to act is itself discriminatory, or the discriminatory act is by an employee or a member of the management of the club or association, acting or purporting to act in that capacity. One further exception to this would be if the club or association were under a duty to make reasonable adjustments.

Example: harassment received by a member in relation to their disability

A member of a club is harassed by another second member, who is volunteering at the club, because they are always late (as they struggle to navigate the car park in the dark and climb the steps due to a disability). The club or association should be considering whether it is able to make reasonable adjustments to make it easier for the member to access the club house. They should also address the action of the second member and make them aware that harassment will not be tolerated.

6.8 Overcoming bias in clubs and associations

One of the biggest challenges for all clubs and associations is dealing with unconscious bias (which is also known as implicit bias). Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness. These are based on their own background, culture, context and personal experiences.

It is important to recognise that we all have unconscious biases. We each have an in-built tendency to organise our social worlds by categorising people into groups. These biases are very often triggered by our brain making quick judgments and assessments.

Direct discrimination is unlawful, no matter what the club or association’s motive or intention, and regardless of whether the less favourable treatment of the member is conscious or unconscious. Clubs or associations may have prejudices that they do not even admit to themselves or may act out of good intentions – or simply be unaware that they are treating the member differently because of a Protected Ground.

Example

A sporting club reaches a cup final which will be played in front of a large crowd which contains a small but vocal racist group of supporters. One of the players is from an ethnic minority, and rather than expose them to potential racist abuse, the coach decides to drop them from the game. Although the coach may think that they have good intentions, denying the player a chance to be part of the match is likely to be direct discrimination on the grounds of race.

Overcoming these biases can sometimes be difficult, but the starting point for clubs and associations is to ensure that wherever possible all members of the management have received training about unconscious bias.

This should include:

- how it can arise;
- the importance of challenging those assumptions in ourselves and others; and
- what steps that can be taken in, relation to members, to avoid those biases.

Where those clubs or associations are affiliated to a national body, training might be available. Where the club or association does not have this kind of link, then it should explore other training that may be available either online or locally. For further information on preparing for the legislation please refer to the Consortium Training.

Chapter 7: Accommodation providers – practical guidance

In this section we will cover the following topics:

- What is meant by accommodation providers?
- Discrimination in the provision of accommodation

See also Chapter 9 for advice on preparing for the legislation and this table which sets out the timeline for when sections of the Ordinance are expected to come into force.

The Ordinance considers certain organisations to be accommodation providers. These are those who have the right to dispose of premises, whose permission is required to dispose of premises or who manage occupied premises. This definition is important as the Ordinance places a number of different obligations on accommodation providers that do not apply to other organisations who would fall under the definition of a service provider. All accommodation providers must not discriminate against their service users or tenants or prospective tenants. For example, a landlord must not discriminate against a customer or tenant, and it does not matter whether they are renting, selling, buying or providing property services or facilities on a commercial or residential basis as the case may be.

Accommodation providers are not subject to the proactive duty to make reasonable adjustments. If they are also a service provider or a school or education provider, they will be subject to a duty to make proactive reasonable adjustments in that capacity, but not in their capacity as an accommodation provider. In addition, where an accommodation provider is acting either as a residential or commercial landlord, then they are not subject to the duty to make reasonable adjustments in respect of physical features, instead the Ordinance imposes three additional separate duties on them which apply to minor adjustments and in relation to giving consent for tenants to make their own adjustments. See Chapter 7.4. It should be noted though that landlords remain subject to the duty to make reasonable adjustments in respect of a provision, criterion or practice and/or auxiliary aids.

The definition of accommodation provider in the Ordinance does not only include commercial businesses, but would also cover individuals, charities and not-for-profit organisations, who provide accommodation or rented facilities.

Finally, it should be noted that whilst the specific reasonable adjustment duties in relation to landlords will not come into force before 1 October 2028, the overriding duty not to discriminate on a Protected Ground and the duty to make reasonable adjustments relating to a provision criterion or practice and/or auxiliary aids will be in force from 1 October 2023.

For further information on the dates of implementation of the Ordinance please see the table here.

The purpose of this section is to try to provide some practical guidance to accommodation providers who have responsibilities under these provisions of the Ordinance.

This section should also be read in conjunction with the exceptions relating to accommodation providers .

7.1 What is meant by an accommodation provider?

An accommodation provider means a person who has the right to dispose of premises, a person whose permission is required for the disposal of premises and a person who manages premises which are occupied, and for the avoidance of doubt:

- **includes any person who has the right to provide commercial or residential property to another person whether by way of sale, tenancy or otherwise (including by granting a right to occupy): and**
- **does not include a person who provides premises which fall within a visitor economy use class within the meaning of Schedule 1 to the Land Planning and Development (Use Classes) Ordinance, 2017, namely a provider of serviced or non-serviced visitor accommodation.**

See section 31(7) of the Ordinance

A landlord is an accommodation provider who has disposed of property by way of a tenancy to a tenant.

See section 72(1) of the Ordinance

The term accommodation provider will be widely interpreted. The definition covers a number of different scenarios relating to provision, including both commercial and residential accommodation, and it is important to consider these each in turn:

- A person who has the right to dispose of premises could be a residential or commercial landlord or a property owner;
- A person whose permission is required for the disposal of premises could be a bank with a charge over a property;
- A person who manages premises which are occupied could be a property management company; and
- A person who has the right to provide commercial or residential property to another person whether by way of sale, tenancy or otherwise (including by granting a right to occupy) could include a letting agent.

In some instances anyone who is acting as an accommodation provider would also fall within the definition of a service provider.

Example

A sheltered housing scheme is an accommodation provider but if it offers art classes or alternative medical therapies to its residents it is also a service provider.

However, the Ordinance makes is clear that the provision of accommodation is not itself considered to be the provision of a service, for the purposes of the Ordinance. And the duty to make proactive reasonable adjustments will not apply in relation to the disposal of premises.

There is no specific definition for accommodation within the Ordinance, and what is meant by accommodation would be interpreted based on the normal meaning, including both residential and commercial property, as well as temporary or permanent accommodation.

The Ordinance will cover almost every business or person that deals with the public in some way as an accommodation provider. It will also include many

charities who provide accommodation services to members of the public, irrespective of whether they charge for the service.

7.2 Discrimination when providing accommodation

The Ordinance makes it unlawful for an accommodation provider to discriminate when providing accommodation. The term disposal of premises encompassing both the selling and renting of properties.

An accommodation provider (A) must not discriminate against another person (B):

- **as to the terms on which A offers to dispose of premises to B;**
- **by not disposing of premises to B;**
- **in A's treatment of B with respect to things done in relation to other persons seeking premises;**
- **by not giving permission for the disposal of premises to B;**
- **by denying B access, or limiting B's access, to any benefit, facility or service provided by the accommodation provider;**
- **by evicting B (or taking steps for the purpose of securing B's eviction);**
- **by subjecting B to any other detriment in respect of the provision of accommodation.**

See section 31(1) of the Ordinance

This covers all of the different forms of discrimination set out in Chapter 1 of the guidance, including:

- direct discrimination;
- indirect discrimination;
- discrimination arising from a disability; and
- discrimination by association.

In addition, an accommodation provider must not either victimise or harass a person and is subject to the duty of reasonable adjustments where a provision

criterion or practice or lack of an auxiliary aid places a disabled person at a substantial disadvantage. However, accommodation providers have a separate duty to make reasonable adjustments to physical features of premises, which is different from the general duty owed by others under the Ordinance.

An accommodation provider would be prevented from refusing to provide accommodation to someone because of a Protected Ground. This could be both in terms of selling or renting that accommodation.

Example: Refusal to provide

A development company that is looking to sell a number of newly built homes asks an estate agent to make sure they don't sell to individuals of a particular national or ethnic origin.

This would amount to direct discrimination on the grounds of race by the estate agent. The development company would also have breached the Ordinance by instructing the estate agent to discriminate.

It is unlawful to apply different terms in relation to the provision of accommodation on the basis of a Protected Ground. This restriction applies to both financial and non-financial terms.

Example: The terms of the provision

A property management company manages and controls a residential block of flats on behalf of a landlord-owner. The block has a basement swimming pool and a communal garden for use by the tenants. A disabled tenant with a severe disfigurement is told by the company that they can only use the swimming pool at restricted times because other tenants feel uncomfortable in their presence. This would likely be direct discrimination because of disability.

Discrimination doesn't only arise in relation to the start or end the provision of accommodation but also applies equally to services provided in relation to the

accommodation, and in particular how they are provided.

Example: The manner of the provision

A letting agency or estate agent has a policy of speaking only to the person named on the lease holder and not to a third party, even with the person's express permission. This could amount to indirect discrimination against a deaf person who uses a registered interpreter who has been appointed by them to act on their behalf to call the letting agency or estate agent.

Finally, an accommodation provider cannot terminate the provision of accommodation because of a Protected Ground. This will often arise in the context of an eviction, but also applies to other services.

Example: Termination of the provision

A landlord serves notice to evict following the same sex partner of an existing tenant moving into the shared flat. If the landlord made this decision because the partner is the same sex as the tenant, this would be direct discrimination because of sexual orientation.

Whilst accommodation providers are under a duty not to discriminate when providing accommodation, the Ordinance makes it clear that an accommodation provider is not required to take a step which would fundamentally alter:

- the nature of the accommodation service provided; or
- the nature of the accommodation provider's trade or profession.

Example: Fundamental nature of the service

A person with a disability rents out a shop as part of a commercial lease. However, following a deterioration of their condition they want to extend the property and build a bedroom and bathroom off the back of the shop in order to allow them to live and sleep on the premises on days when commuting to and from the shop is too difficult. The installation of a bedroom and bathroom in this way would change the fundamental nature of the service.

Exceptions

It should be noted that there are a number of general exceptions within the Ordinance, as well as specific exceptions relating to accommodation providers where it is not necessarily unlawful to discriminate against a person on a Protected Ground. The specific exceptions for accommodation providers are as follows:

- An accommodation provider does not contravene the Ordinance if they dispose of private residential premises, without advertising or using an estate agent;
- An accommodation provider does not contravene the Ordinance where the accommodation being rented or otherwise disposed of is in the person's main home where they will continue to reside (or in the home of a close relative where that relative will continue to reside) and where the rooms disposed are not separate or self-contained and where the property is not a guest house or a house in multiple occupation;
- A provider of social housing can allocate housing in accordance with a person’s needs without it being discrimination on the grounds of carer status, disability or race; and
- An accommodation provider can provide specialist accommodation which caters to the needs of persons with a Protected Ground without it being discrimination where they are doing so as a positive action or to assist in the recruitment of persons for employment from outside Guernsey where it is in the public interest to do so.

For further information on the exceptions please refer to Chapter 8.

7.3 Accommodation providers acting in other capacities

Whilst an organisation may fall under the definition in the Ordinance of an accommodation provider, it is important to remember that there are different responsibilities for service providers, schools and education providers, and clubs and associations which may also apply when the organisation is acting in a different capacity. Accommodation providers may also have employees, and so the relevant sections relating to employers within the Ordinance will also apply to that relationship.

It is important to consider in what capacity an organisation is acting and so which part of the Ordinance will apply. There are different rules for each category and the implementation of certain provisions of the Ordinance will come into force on different dates. When acting as an accommodation provider the relevant parts of the Ordinance apply, but if that organisation is also providing a service then they need to be aware of the additional sections of the Ordinance that apply.

Example:

A university which has staff accommodation which it provides to them as part of their job, has duties as an accommodation provider when acting in that capacity.

A university has duties as an education provider in relation to its students and prospective students when acting in that capacity.

A university which hires out its facilities at the weekend to members of the public has duties as a service provider when acting in that capacity.

A university which employs staff, has duties as an employer when acting in that capacity.

For further information on the duties which apply to:

- Service providers see Chapter 4

- Schools and education providers see Chapter 5
- Clubs and associations see Chapter 6

Please also see the table of implementation dates at Chapter 9.5.
For information in relation to employment, please refer to the separate Employers' Guide

7.4 Reasonable adjustments when providing accommodation

Accommodation providers are subject to the general duty to make reasonable adjustments for disabled persons, but they are not subject to the proactive duty in relation to the disposal of premises. The proactive duty applies to service providers, schools and education providers.

In addition, where the accommodation provider is acting as a landlord, the duty to make reasonable adjustments in respect of physical features does not apply, instead the Ordinance imposes three additional separate duties which are explained later in this section.

It should be noted that all accommodation providers, including landlords remain subject to the duty to make reasonable adjustments where a provision, criterion or practice or lack of an auxiliary aid places a disabled person at a substantial disadvantage. See Chapter 3.

Provision, criterion or practice

It is important for accommodation providers to understand how they could place a person with a disability at a disadvantage. This might be because of the way in which accommodation is provided or the terms and conditions upon which it is provided. These will generally amount to a provision, criterion or practice. Where a disadvantage is identified, then the accommodation provider will need to consider and consult with the disabled person as to what steps would avoid that disadvantage, and then implement such steps as it is reasonable to do so.

What is reasonable will obviously vary from case to case. Accommodation providers need to consider matters such as how information is provided, when accommodation is provided, and in what form when determining reasonableness and reasonable adjustments.

Example: How is information provided?

An estate agent has a policy that all bookings must be made in writing using a paper form. This policy places some disabled people at a disadvantage, for example those with visual impairments. The estate agent amends the policy to permit disabled people and others who cannot complete the form to make their booking over the telephone. This is likely to be a reasonable adjustment.

Example: Arrangement for a reasonable adjustment about the timing?

Keys must be delivered and returned at a particular time or on a particular evening to a letting agency, which clashes with the tenant's medical appointment for dialysis. A reasonable adjustment could be to arrange for the tenant to collect and return their keys at a different time.

Physical feature

Where an accommodation provider is acting as a landlord the duty to make reasonable adjustments in respect of physical features will not apply but other duties will apply instead (please see below). The term physical features are widely defined, but in the context of accommodation would include:

- a feature arising from the design or construction of a building;
- a feature of an approach to, exit from or access to a building; or
- a fixture or fitting in or on premises.

The term fixtures and fittings will be interpreted to have its normal meaning so would cover steps, fitted desks and lighting, for example.

If the accommodation provider is not acting as a landlord, but in another capacity (for example, as a service provider) then the normal duty to make reasonable

adjustments in respect of physical features (which does not come into force until 1 October 2028) can still apply in to the accommodation provider in that other capacity.

Example

The main office of a housing association has a flight of steps up to their main entrance which has no handrail and makes it difficult for residents and potential residents with a mobility impairment to attend meetings to discuss their accommodation needs. Although the housing association is an accommodation provider, and will in certain circumstances be subject to the landlord duty, in this example the main office is not a rental property, a service is being provided from it, therefore the housing association is a service provider for the context for the Ordinance, and would be still be subject to the duty to make reasonable adjustments in respect of their own office relating to its physical features from 1 October 2028.

Auxiliary aid

An auxiliary aid is a piece of equipment or a service that is used by a person with a disability and provides assistance which compensates for or removes any disadvantage or inequality connected with the disability. This does not include any item of personal equipment which the person would reasonably be expected to own. Accommodation providers are required to provide auxiliary aids, where this would constitute a reasonable adjustment, and they are not permitted to pass the related costs on to the disabled person.

Example

A tenant who suffers from severe asthma complains to their landlord that their flat is damp and has mould which is exacerbating their condition.
In these circumstances it would be a reasonable adjustment for the landlord to pay for a cleaning company to remove the mould from the flat as an auxiliary service and to install a dehumidifier as an item of auxiliary equipment.

Landlord duties

In the case of landlords of residential and commercial accommodation, in place of the duty to make reasonable adjustments relating to physical features of premises, they will be subject to the following three separate duties:

- Duty to carry out minor improvements – this applies to both **residential and commercial landlords**
- Duty on **residential landlords** to allow reasonable adjustments where a physical feature places a disabled person at a substantial disadvantage and the accommodation is their principal residence
- Duty to **commercial landlords** to allow reasonable adjustments to rented property

Commencement regulations need to be made before this section comes into force and, except for the duty to carry out minor improvements, these duties cannot come into force before 1 October 2028. The landlord could however opt to carry out or allow the relevant changes earlier.

After commencement, where a landlord fails to carry out minor improvements or unreasonably refuses permission to carry out works, then the landlord itself is considered to have failed to comply with their duty to make reasonable adjustments, and so would be deemed to have discriminated against the disabled person.

Duty to carry out minor improvements – residential and commercial landlords

Where the tenant is a disabled person or a disabled person lives in the accommodation as their principal residence (irrespective of whether they are the tenant or leaseholder on the lease or tenancy, for example they may be a member of the tenant’s or leaseholder’s household), then the landlord is under a specific duty to make minor improvements to the property, where the lack of that improvement places the disabled person at a substantial disadvantage.

For these purposes minor improvements are:

- **the replacement or provision of a sign or notice;**
- **the replacement of a tap or door handle;**
- **the replacement, provision or adaptation of a doorbell or door entry system; and**
- **changes to the colour of any wall, door or other surface.**

Section 34(7) of the Ordinance

The only exception to this duty is where the making of the minor improvements would be considered to place a disproportionate burden on the landlord, although given the limited nature of the duty, it would only be in limited circumstances this would arise. For the avoidance of doubt, it does not matter whether the property in question is commercial premises or residential premises.

Example

A disabled person with arthritis in their hand rents a house. The tenant has difficulty gripping the bathroom taps due to their condition and needs a grab rail installed in the shower.

Taps would fall under the duty to make minor adjustments, following discussions with the person, the landlord installs specially adapted taps.

The grab rail does not fall under this duty in respect of minor improvements, therefore the person needs to seek permission under the terms of the lease to install the rail, and the landlord will then consider that request in accordance with their residential landlord duty – see below.

Adjustments to rented property – residential landlords

There is also a specific duty on residential landlords to allow reasonable adjustments to be made by the disabled tenant where a physical feature places them at a substantial disadvantage and the accommodation is their principal residence. This will not come into force before 1 October 2028.

The duty is limited to certain prescribed works which at present are either:

- **an alteration to, or the addition of, fixtures and fittings (including, without limitation, grab rails, special bathroom or sanitary fittings and stair lifts); or**
- **an alteration or addition to a physical feature connected with the provision of services to the accommodation.**

See section 35(5) of the Ordinance

In addition, in granting permission for reasonable adjustments, a landlord may require the tenant to:

- **pay any or all of the costs of any works on the prescribed list of works undertaken;**
- **engage an appropriately qualified tradesperson to undertake the work on the prescribed list of works;**
- **demonstrate that the tenant has or will have the resources to restore the property to it its original condition at the end of the tenancy; and**
- **restore the property to its original condition at the end of the tenancy.**

See section 35(3) of the Ordinance

Where a landlord unreasonably refuses permission to carry out works, then the landlord itself is considered to have failed to comply with its duty to make reasonable adjustments, and so would be deemed to have discriminated against the disabled person.

See section 35(4) of the Ordinance

Where a landlord is considering a request from a tenant who is wanting to carry out adjustments to the accommodation they will need to seriously consider any request and act reasonably. This will always need to be considered in the context of the specific request. For example, if the request would result in a permanent reduction in the value of the property or would cause significant disruption or inconvenience to other adjoining tenants then these might be the kinds of factors a landlord could reasonably take into account. However, a trivial or arbitrary reason would clearly be unreasonable, and unless the landlord could demonstrate it would materially harm its or a relevant third party's interests it would generally be unreasonable to withhold consent.

The tenant would be required to pay for some or all of the adjustments themselves, if they wanted the adjustments made and could also be required to use an appropriately qualified tradesperson and restore the property to its original condition at the end of the tenancy.

Example

The disabled person with arthritis then writes to their landlord to ask for permission install a grab rail in the shower.

The landlord considers the request in accordance with their residential landlord duty, and agree on the condition that the person has to pay the costs of the rail, gets an appropriately qualified tradesperson to undertake the work and agree to restore the property to its original condition at the end of the tenancy.

Adjustments to rented property – commercial landlords

In practice many organisations do not own the premises in which they operate, rather they rent the building or office as tenants from a commercial landlord. In most instances, the organisation will have restrictions under the terms of their lease in relation to adjusting the property they occupy. Where this is the case, the Ordinance also creates a specific duty on landlords to allow reasonable adjustments for the benefit of employees or service users of a tenant. This is similar to the duty in respect of residential landlords and will also not come into force until 1 October 2028.

In granting permission for reasonable adjustments to a physical feature, a landlord may require a tenant to:

- **pay any or all of the costs of any works undertaken;**
- **engage an appropriately qualified tradesperson to undertake the work; and**
- **restore the property to its original condition at the end of the tenancy.**

See section 36(3) of the Ordinance

The two key differences for commercial premises compared with the duty in respect of residential properties are that for commercial premises:

- the duty is not limited to a prescribed list of works, it can extend to any physical feature; and
- there is no equivalent ability on the part of the landlord to require the tenant to demonstrate they have the resources to restore the property.

Example

A small business occupies a shop premises in a row of shops. This is part of a new development which is rented from the developer. To comply with its duties under the Ordinance, the shopkeeper wishes to improve the accessibility of the shop for disabled people by providing a wider front door. It seeks permission to do so from the developer who refuses permission on the ground that all the shops in the row must have the same appearance. It is likely to be unreasonable to withhold consent in these circumstances unless planning permission is not granted.

Fundamental nature of the service

Whilst landlords are under a duty to make reasonable adjustments in relation to the provision of their goods, services, or facilities an accommodation provider is not required to take a step which would fundamentally alter:

- the nature of the service; or
- the nature of the service provider's trade or profession.

Example:

Following a car accident, a tenant suffers injuries that result in neurological condition that requires 24-hour access to nursing care. The accommodation owner does not provide this service in the housing that it offers. Although the landlord must allow the person to obtain the nursing care and comply with its landlord duties in respect of any adjustments required to the property, it would constitute a fundamental alteration in the nature of the service to require the landlord to provide sheltered accommodation as an auxiliary service.

Reasonableness of the adjustment

A reasonable adjustment does not have to be made where it would be a disproportionate burden on the accommodation provider. Factors that might be taken into consideration when considering whether something is a disproportionate burden might include, for example:

- In a common area of a block of flats, the effect on other residents may be something to consider
- Benefit to all users including visitors to the building
- Length of tenancy i.e. where the term is deliberately short due to the fact that the landlord is letting out the property during a six-month holiday, it may not be reasonable for the tenant to be allowed to convert a bath to an accessible wet room

See section on disproportionate burden in Chapter 3.

7.5 Understanding the needs of accommodation users

Accommodation providers are subject to a duty not to discriminate on a Protected Ground as well as the general duty to make reasonable adjustments in respect of disabled persons. However, they are not subject to the proactive duty to make reasonable adjustments and where they are acting as commercial or residential landlords, then the normal duty to make adjustments in respect of physical features does not apply, and instead they will become subject to the specific

duties in respect of minor works and considering requests by tenants as explained above.

It is important for an accommodation provider to understand what obligations it is subject to, as this will assist it in understanding the needs of accommodations users, and ultimately comply with the Ordinance.

Neither the general duty to make reasonable adjustments, nor the specific landlord duties (when they come into force) are intended to require accommodation providers to anticipate the needs of every individual who may use their accommodation or their accommodation provision services. It is also important even though the duty in respect of physical features does not apply to landlords, they are still subject to the duty to make reasonable adjustments in respect of any provision, criterion or practice (PCPs), and auxiliary aids.

Before the accommodation provider takes such steps as it is reasonable to have to take to avoid the disadvantage as set out in the Ordinance in relation to any provision, criterion, or practice and/or aid, the accommodation provider must consult with the disabled person to ask their view as to what steps would avoid the disadvantage, and may also consult such other persons as the accommodation provider considers appropriate.

See section 32(3) of the Ordinance

There is no obligation on the disabled person to necessarily point out the difficulty, or come up with the solution, but where the accommodation provider is aware that the person is disabled and is placed at a substantial disadvantage, then the accommodation provider should consult with the disabled person about reasonable adjustments.

Although this duty to consult does not specifically apply to the landlord duties, from a practical perspective in order to comply with the duties it will often be necessary for there to be a dialogue when an issue is identified. This may be as simple as having a conversation with the accommodation user. Where there has been no consultation with the accommodation user, the failure to do so could be taken into account in considering whether there has been an unreasonable refusal.

Understanding the needs of disabled accommodation users

Disabled people are individuals who have different requirements, so the same adjustment will not mitigate a disadvantage for everyone even if two people have the same impairment. The example below describes a policy that would only discriminate against visually impaired persons with guide dogs.

Example:

Visually impaired people who use guide dogs will be prevented from renting a flat with a ‘no dogs’ policy, whereas visually impaired people who use white canes will not be affected by this policy.

There is no proactive duty on accommodation providers to make reasonable adjustments in relation to the disposal of premises. However, this does not mean that accommodation providers should always wait for an issue to arise. The general duty still requires an accommodation provider to seek to actively engage with any issues and start by addressing the obvious ones.

It is recommended that accommodation providers may find it helpful to proactively consider what issues may arise so that they are in a better position to respond to any requests that do arise.
Whilst there is no single exhaustive list of issues that an accommodation provider must consider, the following may be a useful starting point:

- planning in advance for the requirements of any known accommodation users who are disabled and reviewing the reasonable adjustments in place;
- consideration of what might be seen as a disproportionate burden;
- conducting access audits on premises considering different impairments;
- asking disabled customers or tenants for their views on reasonable adjustments;
- consulting local disability groups;
- considering how best to draw people’s attention to existing reasonable adjustments;

- ensure any auxiliary aids are properly maintained and having a plan in place in case they do not work;
- training employees to appreciate how to respond to requests for reasonable adjustments;
- encouraging employees to develop additional skills for disabled people (for example, communicating with hearing impaired people);
- consider any adverts, websites, policies that stipulate how queries are handled, and any policies to ensure that a property will not be refused on the grounds that the prospective tenant has or is indirectly associated to a person with protected grounds;
- ensuring that employees are aware of the duty to make reasonable adjustments and understand how to liaise with disabled customers so that reasonable adjustments can be identified and made; and
- if carrying out any renovation or redecoration work, new kitchen, new bathroom etc then think how to make the property the most accessible. It will increase the market for the property as well as complying with duties under the Ordinance.

7.6 Common reasonable adjustments for accommodation providers to think about

There is no exhaustive list of reasonable adjustments that accommodation providers need to consider but a number of illustrative examples are set out below:

Example: Provision of information in other formats

A flat owner with a visual impairment is regularly sent printed statements providing a breakdown of service charges, despite the fact that on previous occasions they were unable to read them. The customer is initially told that the software which generates the statements does not enable a record to be kept of customers' needs for alternative formats. However, the property manager following discussion with the person identifies that if these can be sent in an electronic format then the person has the audio reader software on their computer and can then access the information. This is likely to be a reasonable adjustment.

Example: Allow tenant to be accompanied by a friend or relative

A person wishing to deal directly with a property management company who has a hearing impairment could find attending an appointment with the property management company to be a daunting experience as they may have difficulty understanding what they are being told. A reasonable adjustment could be to allow a friend to attend the appointment to ensure that they could understand everything that the property management representative said. Such an adjustment would not cost money but the accommodation provider may need certain permissions to be allowed to deal with a friend/agent on the tenant's behalf.

Similar adjustments could be made for a person who stammers who may find the assistance or presence of a friend helpful (or necessary) to communicate.

Example: Voice Activation Software on Telephone Systems

A person with a stammer or speech impediment may find voice – activated phone systems difficult to use. They may take too long to answer a question and be disconnected. A reasonable adjustment could be to either have a touchphone option system or the option to speak with a real person.

Example: Car parking

A block of flats has a number of unallocated parking slots for its residents. A tenant has a mobility impairment which means that they need to be able to park close to the main entrance.

This isn’t always possible as the parking is unallocated, so if they are late home from work, they have no choice but to park in one of the spots furthest away from the main entrance. Following consultation with the tenants the landlord decides to implement a system of allocated parking, and assigns the parking spot nearest to the front door to the person with the mobility impairment. This is likely to be a reasonable adjustment.

Example: Accessibility of websites

A local estate agency establishes a website but is contacted by a member of the public to say they have difficulty accessing it due to a visual impairment. After consulting with the RNIB and local charity groups who provide guidance, to ensure the website is accessible to people who are visually impaired, the estate agency ensures that its website is set up so that the contents of its website can be used with a screen reader and any images that are used have a text alternative. This is likely to be a reasonable adjustment.

Example: Corresponding with tenants

A tenant has bipolar disorder. Sometimes when they are feeling unwell they don't pay attention to their post. The tenant writes to their landlord and asks them to send any important letters about the tenancy or rent to their parents as well as sending them to the tenant. This is so the tenant can be sure that they know about changes in rent, when repairs happen and whether they owe any money, and ultimately to ensure that they comply with the terms of the lease. This is likely to be a reasonable adjustment.

Example: Engaging with customers who have difficulty in providing written instructions

An estate agent normally obtains its instructions either by meeting in person in their offices or exchanging emails. A customer with multiple disabilities is unable to effectively communicate in writing or to attend their offices, so the estate agent arranges to meet the customer at their home and with their consent, to record that conversation in order to obtain instructions. This is likely to be a reasonable adjustment.

Example: Installation of ramps

The head office for a housing association has two steps at the main entrance, which means that those who are wheelchair users or people with mobility impairments cannot enter. The housing association owns the building and decides to install a permanent ramp next to the two steps to improve access for all. This is likely to be a reasonable step to have to take from 1 October 2028 but would not be required before.

Example: Duty not to unreasonably refuse reasonable adjustments

A tenant has short stature due to a genetic condition. They have problems reaching normal height appliances. They ask the landlord for the following changes:

- request from a tenant to lower a kitchen work top;
- request to change a bath to a walk-in shower;
- request to install a stairlift; and
- grab rails outside the front door step.

The requests listed above may need to be permitted from 1 October 2028. However, they are not things that a residential landlord would need to pay for; the tenant must fund these changes. Requests do not have to be considered before 1 October 2028, but the landlord can choose to consider any requests made before then if they wish.

Example: Minor improvements duty

A tenant has multiple sclerosis and uses a wheelchair. The tenant finds it hard to use some fixtures in the home.

The tenant writes to the landlord to:

- provide accessible door handles;
- provide accessible taps in the kitchen; and
- change the colour of the walls because the tenant doesn't like it.

The first two of these requests would fall under the minor improvements duties for landlords, which will not be in force on 1 October 2023, but will come into force at a later date when a commencement regulation is approved. Whilst changing the colour of the walls can fall under the same minor improvement duty, there must be a disadvantage to the disabled person for it to apply, and so in this example the landlord would not be under an obligation to make the change.

7.7 Discriminatory acts or requests by accommodation users and competing Protected Grounds

Occasionally, an accommodation provider may find themselves in a position where they are aware of discriminatory actions or requests by accommodation users or third parties, such as other tenants. Whilst the Ordinance does not expressly deal with such matters, the accommodation provider may also find themselves in the position of considering conflicting requests based on competing Protected Grounds.

The conflict may, for example, arise from the religion or belief of one party, against either the race, religion or belief, or sexual orientation of the other party. Parties may include the accommodation provider (and sometimes their employees), the accommodation user or other tenants. Such cases involve careful consideration of the facts.

It could be that an accommodation user may themselves commit discriminatory acts towards either other accommodation users, or the employees of the accommodation provider. There is nothing within the Ordinance which makes the accommodation provider liable for these actions, unless their refusal to act is itself discriminatory. The exception to this would be in relation to a harassment claim by an accommodation user in relation to their disability which placed them at a substantial disadvantage, where the accommodation provider failed to act to try and stop this behaviour and to provide a reasonable adjustment, or where the accommodation user was acting as the accommodation provider's agent or employee..

Example: Objection because of religious beliefs

A landlord rents an open market shared house to a number of tenants. Following a viewing by a potential tenant, one of the existing tenants writes to the landlord objecting to renting a room to the person based on their conflicting religious beliefs. Regardless, of how strong the views of the existing tenant, it would be discrimination for the landlord to decline a prospective tenant upon receiving a discriminatory request from an existing tenant stating that they do not want to house share with a member of a particular religion.

Example: Chronic fatigue

A hotel provides staff accommodation to its employees and so they are then acting as an accommodation provider. One of the rooms is next to a loud generator and the occupant who suffers from chronic fatigue syndrome is unable to sleep because of the noise. Staff at the hotel are aware that the occupant wishes to move and, because they do not wish to be reallocated to the room, harass them about it.

Whilst all occupants would be affected by the noise, because a person with chronic fatigue syndrome would be placed at a particular disadvantage by not being able to sleep, in these circumstances the hotel may be under a duty to make reasonable adjustments by allocating the person to a different room. They should also have a clear policy that harassment of other occupants is not acceptable.

7.8 Overcoming bias when providing accommodation

One of the biggest challenges for accommodation providers is dealing with unconscious bias (which is also known as implicit bias). Unconscious biases are social stereotypes about certain groups of people that individuals form outside their own conscious awareness based on their own background, culture, context and personal experiences.

It is important to recognise that we all have unconscious biases. We each have an in-built tendency to organise our social worlds by categorising people into groups. These biases are very often automatically triggered by our brain making quick judgments and assessments.

Direct discrimination is unlawful, no matter what the motive or intention, and regardless of whether the less favourable treatment is conscious or unconscious. Accommodation providers may have prejudices that they do not even admit to themselves or may act out of good intentions – or simply be unaware that they are treating the accommodation user differently because of a Protected Ground.

Example

A person from an ethnic minority makes an appointment with an estate agent and explains that they are looking to relocate to Guernsey and want to buy a large open market property. The person attends the appointment wearing traditional dress from their country, rather than a suit. The agent jumps to the conclusion that the person does not have sufficient funds to buy a property because of their appearance and so asks the person for financial information to be able to demonstrate they have the means to purchase a property.

On the basis the agent wouldn't normally take this step before arranging a viewing of the property, this would amount to direct discrimination on the grounds of race. This is true regardless of whether the person could actually afford the property.

Overcoming these biases can sometimes be difficult, but the starting point for accommodation providers, is to ensure all staff have received training around:

- how unconscious bias can arise;
- the importance of challenging those assumptions in ourselves and others; and
- steps that can be taken to avoid those biases.

Chapter 8: Exceptions

In this chapter we will cover the following exceptions that are set out in the Ordinance:

- General exceptions
- Goods, services or facilities
- Education
- Clubs and associations
- Accommodation
- Health

The Ordinance sets out a number of exceptions where it is lawful to discriminate on a Protected Ground, some of which are general and the others which are specific to different kinds of organisations.

This section of the guidance sets out in what circumstances those exceptions will apply.

8.1 General exceptions

The Ordinance provides for 15 general exceptions where it is lawful to discriminate because of a Protected Ground – the titles of which are as follows:

- Positive action
- Act done under legislative or judicial authority
- Compliance with law of another country
- National security
- Freedom of expression [See freedom of speech Chapter 1.5]
- Immigration
- Population Management
- Crown employment, etc
- Protection from harm
- Race: act done pursuant to States' policy
- Charities and non-profit organisations
- Acts of worship
- Religious organisations
- Tribunal members
- Animals

This section of the guidance does not seek to cover all of these exceptions, but it does cover some of the more common ones that are not covered elsewhere. For those that are covered elsewhere within the guidance these can be accessed from the hyperlinks embedded in the list above.

Positive action

Positive action has a strict legal definition within the Ordinance and can apply differently depending upon the context in which it arises. The Ordinance recognises that certain groups who share a Protected Ground may be disadvantaged, or may be affected by the consequences of past or present

discrimination. The Ordinance therefore contains provisions which enable service providers to take action with the aim of ensuring equality, or a greater degree of equality on any of the Protected Grounds in order to address these matters. This is known as ‘positive action’.

Unlike the UK, it is not necessary to demonstrate positive action is a proportionate means of achieving a legitimate aim, but rather positive action must have the aim of achieving one of the following:

- the prevention, compensation for or removal of any disadvantage or inequality connected with a protected ground;
- the promotion of equality of opportunity on any of the protected grounds, including in relation to recruitment and promotion; or
- the catering for the special needs of persons, or a category of persons, who, because of a protected ground, may require facilities, arrangements, services or assistance not required by persons who do not have those special needs.

Positive action can include:

- providing additional or bespoke services;
- providing separate facilities;
- giving accelerated access to services; or
- targeting resources or induction or training opportunities to benefit a particular disadvantaged group.

Provided the action falls within the stated aims set out in the Ordinance, it will not amount to discrimination. In particular, positive action is often used by organisations in both the public and private sector in order to improve their services or to increase take-up or participation by particular groups within the community. Where action does not fall within one of the options set out above, for instance by setting quotas, then that would amount to positive discrimination, which is unlawful.

Example

In monitoring users of its facilities, a leisure centre has noted that members of the Polish community use these facilities far less than other groups, proportionate to the size of the local Polish community.

In meetings with members of the Polish community, the leisure centre identifies that many have never been to a leisure centre at all, and are concerned about attending as they don’t believe they would be welcomed and have concerns over language.

The leisure centre decides to arrange a special open day for the Polish community and also provides separate swimming and gym taster sessions for groups, with a trainer who speaks Polish. This would be considered to be positive action as it amounts to the promotion of equality of opportunity.

Act done under legislative or judicial authority

The Ordinance provides an exception for acts done for the purpose of complying with:

- an enactment (any Law, Ordinance or subordinate legislation, and also any UK legislation which has effect in Guernsey or any convention which is extended to Guernsey);
- a requirement or condition imposed under an enactment; or
- an order of a court or tribunal.

Example

As a result of UK Sanctions which have effect in Guernsey, it is prohibited to provide accountancy services to an individual who is ordinarily resident in Russia. The refusal to provide services to an individual based on where they are ordinarily resident could amount to indirect discrimination on the grounds of race. However, in these circumstances as the provision of those services is not permitted under an enactment it is deemed exempt, therefore there is no discrimination.

Compliance with law of another country

In addition to the exemption above which provides an exception for domestic legislation, there is a further exception for acts which are done in Guernsey which are for the purposes of complying with the law of, or order of a court or Tribunal of, another country, territory or jurisdiction.

Protection from harm

The Ordinance provides an exception in relation to protecting people or property from harm. The exception relates to things done to any person who has a tendency to commit a criminal offence punishable with imprisonment, if the act done is a proportionate way of achieving the aim of protecting people or property from harm.

Example

If a person with a drug addiction and mental health condition and a proven tendency to steal from neighbours is not offered a tenancy in a particular housing development next door to a vulnerable, elderly resident, this refusal is not discrimination arising from disability as it can be justified by the accommodation provider as a proportionate way to protect the elderly resident from harm.

Example

If a sixth form pupil with additional needs had a proven tendency towards violence (as assault is a criminal offence), then provided any protective measures introduced by a school or college were proportionate, this would not be considered discrimination arising from a disability. What those steps would be and whether they would be proportionate will obviously depend upon the circumstances.

For the purposes of this exception, the phrase, “proportionate means” will cover an organisation taking steps which are both appropriate and necessary. In the context of the example the school or college would need to have considered alternatives to exclusion and reasonable adjustments that would avoid the risk.

Charities and non-profit organisations

The Ordinance provides a specific exception for charities and non-profit organisations in respect of allowing them to restrict the provision of benefits to persons who share a Protected Ground. That action must be done in accordance with the governing instrument of that body and the provision of benefits be either a proportionate means of achieving a legitimate aim, or for the purpose of preventing or compensating for a disadvantage linked to the Protected Ground.

For the purposes of the Ordinance charities and non-profit organisations have the same meaning as under the Charities etc. (Guernsey and Alderney) Ordinance, 2021. In the case of non-profit organisations, they must be established solely or principally for the purpose of preventing or compensating for a disadvantage linked to a Protected Ground to fall under this exception.

Example

A charity is established for the purposes of providing respite care for parents with a disabled child. As part of the benefits provided by the charity, not only do they provide care services for the child, they also arrange for the parents to stay in a local hotel for free to ensure they have a proper break.

The parents with a disabled child will have the Protected Ground of carer status if the disability is of a nature which requires continuing or frequent care or support. Provided that the provision of respite care in this way is in accordance with the governing instrument of the charity and it is a proportionate means of achieving a legitimate aim, the fact that the provision of these benefits is limited to carers, or even a particular class of carers (in this example parents with disabled children) then this will not amount to discrimination.

Religious organisations

The Ordinance provides a specific exception for religious organisations in relation to membership of, or registration with the organisation, or appointment to a board or committee of the organisation, when there is a requirement to be of a particular religion. For these purposes a religious organisation means any organisation with an ethos based on religion.

Example

In order to join a bible reading study club, it is a requirement of the group that members must be practising Christians. As the club has an ethos based on religion, it would not be discrimination to refuse to admit non-Christians to the group.

Animals

The Ordinance provides an exception such that it would not be indirect discrimination or discrimination arising from disability to not allow, or put restrictions in place in respect of animals, unless that animal is a dog trained by a

prescribed organisation to:

- guide a visually-impaired person;
- assist a hearing-impaired person;
- assist a person with epilepsy or diabetes; or
- assist a disabled person who has an impairment that affects the person's mobility, manual dexterity, physical co-ordination or ability to move everyday objects.

Other animals or dogs working for different reasons are allowed to be restricted or disallowed.

What is a prescribed organisation for training purposes is set out in regulations.

It should be noted that animals other than dogs or for assistance with other types of disability can be added through regulations at a later date.

Example

A landlord has a strict no animals policy in all of the flats they rent out. The policy regarding animals would amount to a provision, criterion or practice. In the case of a visually impaired person who had a guide dog, the landlord would be required to either objectively justify its policy or make an exception for the guide dog. However, if the potential tenant had an emotional support animal that was not trained by a prescribed organisation specifically to assist an individual who has anxiety and depression, then this would fall within the exception and so the landlord would not have to allow the tenant to keep the animal in the flat, even if they could not objectively justify the policy.

8.2 Goods, services or facilities – exceptions

The Ordinance provides for seven specific exceptions where it is lawful to discriminate on a Protected Ground in relation to the provision of goods, or services or facilities – the titles of which are as follows:

- Financial services involving an assessment of risk
- Financial services arranged by an employer and personal pension schemes
- Financial services: religious mutual organisations
- Television, radio and online broadcasting and distribution
- Information society services
- Dramatic performances
- Goods and services: religion or belief

This section of the Guidance does not seek to cover all of these specific exceptions, but it does cover some of the more common ones that are not covered elsewhere.

Financial services involving an assessment of risk

The Ordinance recognises that a key aspect of providing certain financial services such as insurance, pensions or annuities will inevitably involve an assessment of risk posed based on the health of the individual, that could otherwise be considered either direct or indirect discrimination on the Protected Ground of disability. In addition, other financial services businesses are under a regulatory obligation to undertake risk assessments (whether from the Guernsey Financial Services Commission or elsewhere) that often involves assessments based on the nationality of an individual, which would otherwise be considered either direct or indirect discrimination on the Protected Ground of race.

Accordingly, the Ordinance provides for an exception for decisions based on these Protected Grounds as part of a risk assessment by a financial services provider provided it is done from a source on which it is reasonable to rely.

Example

A financial services business receives an approach from a new client who is a Russian national to establish a new structure. Whilst the business is satisfied that what is proposed by the potential client is entirely lawful and not contrary to any sanctions, nonetheless, having undertaken a risk assessment (in line with its regulatory obligations), which includes utilising risk screening tools, it is determined the structure is too high risk, and therefore the service provider declines to provide services to the individual.

Whilst the decision not to provide services to this individual could fall within the definition of direct discrimination on the grounds of race, in these circumstances, because it would fall within the exception the actions of the service provider would not be unlawful.

Financial services arranged by an employer and personal pension schemes

The Ordinance also creates another exception for service providers in relation to payments made under a pensions scheme (whether that be an employer or a personal pension scheme) or under policies of insurance that are provided by employers as benefits in kind to their employees (such as permanent health or private medical insurance).

This exception applies where the payment is made to a disabled person in respect of their disability and it might be said that the service provider treats the person more favourably than another disabled person to whom a payment has not been made. In these circumstances, in recognition that pensions and insurance policies have terms and conditions which allow payment in certain circumstances but not others, such as in the case of permanent health insurance, whether someone is considered fit to return, it clarifies this would not be considered discrimination on the grounds of a disability.

Dramatic performances

The Ordinance provides for an exception, in relation to service providers and clubs and associations, in relation to the Protected Grounds of disability and race for things done (for example, a casting decision) that are reasonably required for reasons of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.

Example

A local amateur dramatics group is putting on a play which involves a character who has a particular skin colour and the story is about the racism they experience. It would be reasonable and lawful to require that the person playing that role should have the relevant skin colour.

Goods and services: religion or belief

The Ordinance provides an exception in relation to service providers who either:

- Restrict the provision of goods or services which are for the purposes of a particular religion or belief to persons of that religion or belief; or
- Restricting the use of religious premises (which broadly means any building which is used for a religious purpose) by a person on the grounds that allowing the use would not comply with the doctrine of the religion or belief.

Example

A local mosque allows some of its rooms to be used for free by members of the community. If a group of individuals wanted to use the room and bring alcohol on to the premises, it would not be unlawful on the part of the mosque to refuse to permit this, as it would not comply with the doctrine of the Islamic religion.

8.3 Education – exceptions

The Ordinance provides for four specific exceptions where it is lawful to discriminate on a Protected Ground for education providers:

- Disability: admission to schools;
- Religion or belief: admission to schools;
- Curricula; and
- Students with assessed needs.

Disability: admission to schools

The Ordinance provides an exception in relation to arrangements for selective admission which provide for some or all of a school's students to be selected by reference to general or special ability or aptitude, with a view to admitting only students of high ability or aptitude, and that where such arrangements are in place this will not constitute discrimination on the Protected Ground of disability. Reasonable adjustments would need to be made to ensure that a disabled student is not placed at a substantial disadvantage during the admissions process.

Religion or belief: admission to schools

The Ordinance provides an exception in relation to admissions policies for schools based on a particular religion or belief, where that school has a religious ethos.

Example

A Catholic school can prioritise admissions for those who follow the Catholic faith and have been baptised.

Curricula

The Ordinance provides two specific exceptions in relation to school curricula which provide as follows:

- It is not discrimination for an education provider or school to develop, accredit, set or teach curricula which do not represent people of a

particular protected ground; and
- It is not discrimination for a school with a religious ethos to teach a curriculum which focuses primarily on the religion of the school, provided that the curriculum also teaches that other religious beliefs exist and are deserving of respect.

Students with assessed needs

The Ordinance provides an exception that it is not discrimination for a school or education provider to put in place arrangements which provide for a student to receive additional or alternative educational services, where this is done in order to meet the assessed needs of that student.

8.4 Clubs and associations – exceptions

The Ordinance provides for two specific exceptions where it is lawful to discriminate on a Protected Ground for Clubs and Associations:

- Clubs – restricted membership; and
- Sport – disability and nationality

Clubs – restricted membership

The Ordinance allows clubs or associations to restrict membership to persons who share a particular ground, other than skin colour.

Example

A group of friends who have all moved to Guernsey from South Africa decide to establish an “ex pats” club who put on various networking events and help support others who are moving to Guernsey in the future. Even though it is a condition of the club that it is only open to South African nationals, this would not amount to race discrimination as it would fall within the exception.

Sport – disability and nationality

The Ordinance provides three exceptions for sports teams as follows:

- It is not discrimination to exclude a disabled person from participation in a sport because the person is unable to perform the actions required by the rules of the sport, after (if applicable) a reasonable adjustment has been made in respect of the person;
- It is not discrimination not to select a disabled person as part of a sports team or to participate in a sporting event where there has been a fair and reasonable selection process for the team or event which provides for participants to be selected by reference to skill or ability; and
- It is not discrimination where a sporting event is organised or sporting facilities are provided in relation to the disability, nationality or national origins of competitors, provided that the actions are an appropriate way of achieving a legitimate aim. For instance, where the selection process is undertaken in accordance with the rules regarding who may represent a country, place or area.

Sport includes a sport, game or other activity of a competitive nature.

Example

In order to be able to represent a country at a forthcoming sporting event the individual must be a national of that country. If an individual is not selected to represent Guernsey as they are not eligible to do so, this would not be discrimination on the grounds of race.

8.5 Accommodation – exceptions

The Ordinance provides for four specific exceptions where it is lawful to discriminate on a Protected Ground for accommodation providers:

- Private disposals of residential premises;
- Accommodation provided in a person's home;
- Social housing; and

- Specialist accommodation.

Private disposals of residential premises

The Ordinance provides an exception in relation to accommodation providers who make a private disposal of residential premises i.e. the accommodation provider does not either use the services of an estate agent or advertise the premises.

Accommodation provided in a person's home

The Ordinance provides an exception where the accommodation provider themselves or their close relative resides, and intends to continue to reside, in the premises as their only or main home. In this case the accommodation provider is free to do anything in relation to the disposal or occupation of rooms within the premises without committing an act of discrimination provided that:

- the rooms disposed of or occupied do not comprise separate and self-contained accommodation; and
- the premises does not comprise of a guest house or a house in multiple occupation. A house in multiple occupation is defined as a dwelling comprised of accommodation for three or more households (in addition to the person whose main home it is or their close relatives) where the accommodation is let on a separate tenancy or similar agreement .

Social housing

The Ordinance provides an exception from discrimination on grounds of carer status, disability and race for social housing providers who seek to allocate social housing in accordance with a person’s needs. In the case of race, the social housing provider can only take into account a person's place of birth or length of residency in Guernsey.

Specialist accommodation

The Ordinance provides an exception in relation to accommodation providers who provide accommodation which:

- caters for the needs of persons who have a particular Protected Ground, where this constitutes a positive action on the part of the provider; or
- where it is accommodation provided for people coming into the Island to aid recruitment where it is in the public interest to do so.

8.6 Health – exceptions

The Ordinance provides for six specific exceptions where it is lawful to discriminate on a Protected Ground for health providers:

- Infectious diseases;
- Blood donation services;
- Care within the family;
- Clinical judgement;
- Persons who lack capacity; and
- Preventative health services.

Infectious diseases

The Ordinance provides an exception in relation to infectious diseases. It applies where:

- a person is discriminated against on grounds of disability;
- that person’s disability is an infectious disease, or the person with the disability has an assistance animal and that animal has an infectious disease; and
- the discrimination is necessary to protect public health.

Example

A person has a guide dog. The dog is infected by rabies after it is bitten by another dog on the beach. Rabies is a virus that attacks the nervous system and is fatal in almost all cases. The guide dog requires medical attention, but the local taxi driver will not take the owner with partial sight nor the guide dog in their taxi. Under the Ordinance, an assistance guide dog is protected by the Ordinance and the refusal to prevent it from going in the taxi would be illegal. However, given the fact the guide dog now has an infectious disease, this refusal to transport it would be a permitted exemption.

Blood donation services

The Ordinance provides an exception in relation to blood donors. A person operating a blood donation service is allowed to refuse the blood of an individual where an assessment (based on clinical, epidemiological or other data) suggests that there is a risk to the public or to the individual.

Care within the family

The Ordinance provides an exception in relation to where the person with a Protected Ground is looked after by another person as a member of their family and within their home.

Example:

A university student brings home their partner from university. The partner develops long-COVID and remains living in their partner's family home for over a year due to the illness. The student's parent looks after the student's partner. The effect of the exception is that the parent is not bound by the Ordinance as either a service provider or an accommodation provider. They therefore do not legally have to make reasonable adjustments to the house to take into consideration the partner's exhaustion and difficulties moving around the family home.

Clinical judgement

The Ordinance provides an exception in relation to clinical judgement for a person's treatment.
A registered health professional will not be acting unlawfully when treating a person where exercising clinical judgement solely in connection with the diagnosis of illness or medical treatment.

Example:

A person is living in a residential care home. They are offered community nursing visits four times a week.

Another patient has recently been diagnosed with the same condition. They live at home and have difficulties with transport. They are offered the similar nursing visits but only once a week.

The difference in frequency of the treatment could be seen as discriminatory if the two patients differ with respect to a Protected Ground. However, if in the clinical judgement of a registered health practitioner the first patient needs more treatment than the second person who has recently been diagnosed, then this is not discrimination.

Persons who lack capacity

The Ordinance provides an exception in relation to treating a person differently where such person lacks capacity. The definition of capacity is described within the Capacity (Bailiwick of Guernsey) Law, 2020.

Preventative health services

The Ordinance provides an exception for heath care providers that offer or provide preventative public health service, where the service is offered or provided to the individual based on clinical, epidemiological or other relevant data.

Example:

A person of Afro-Caribbean ethnicity is offered screening for sickle cell disease in pregnancy. Their friend who is of Western European descent is not offered the test. Sickle cell disease (SCD) is an inherited blood disorder. Anyone can be a carrier of haemoglobin disease but it's more common among people with ancestors from Africa, the Caribbean, the Mediterranean, India, Pakistan, south and southeast Asia, and the Middle East. It would not be unlawful to limit the screening test offer to people at highest risk.

Chapter 9: Preparing for the Ordinance

This chapter will cover the following:

- Equal opportunities policy
- Training
- Monitoring
- Reviewing policies and procedures
- Implementation dates for legislation
- Accessibility

This section should be read in conjunction with Chapter 4 - service providers, Chapter 5 - education providers, Chapter 6 - clubs and associations or Chapter 7 - accommodation providers, as appropriate to the organisation.

There is no single exhaustive or definitive check list that every single organisation must complete before the Ordinance comes into force, although there are a number of points that are going to be common to all organisations, regardless of size or complexity, as well as certain points that are going to be specific to service providers, schools and education providers, clubs and associations and accommodation providers, including for example the different dates for implementation.

Probably the single most important thing an organisation can do in preparing for the legislation is to raise awareness within the workforce around equality issues – particularly in the context of their business. The issues that a large financial services company might have to address in relation to their clients, will inevitably be quite different from a school in relation to their students, and again very different to a small club or association in relation to their members. This will require organisations to reflect on how they operate and what barriers are put in place that affect the people they interact with and who have a particular Protected Ground. They must ask themselves is that barrier actually needed or could things be done in a different way.

It is hoped that by organisations asking themselves these questions, not only will it help them prepare for the implementation of the Ordinance, but it will also cause them to question how they operate, and also find new and better ways of working.

One of the key areas of preparation for organisations is to think about their current service users, students or members as the case may be, and identify those individuals who might have a disability, and then consult with them in relation to what reasonable adjustments they might need. In many instances, organisations may find that they are already making the reasonable adjustments that are required. For schools this might be provided through an existing Special Educational Needs (SEN) framework for some students, or for other organisations just through good practice of looking after service users or members. Some students may have a disability but not a specific additional learning need. By consulting with individuals, it might lead organisations to identify other ways in which they can support their service users, students, tenants or members.

9.1 Equal opportunities policy

An equal opportunities policy is a document which an organisation can use to set out its commitment to tackle discrimination and promote equality and diversity. The Ordinance does not require an organisation to have an equal opportunities policy, or if it does have one, what that policy should contain, but it is highly recommended as such a policy might form part of the organisation's defence in some circumstances if a claim were to be made against the organisation.

An equal opportunities policy should apply to every aspect of the relationship with service users, students, tenants or members including how grievances are managed.

A policy might include:

- Statements outlining an organisation's commitment to equality;
- Identification of the types of discrimination and the Protected Grounds covered by the policy i.e. disability, race, carer status, sexual orientation, and religion or belief;
- In addition, a policy may also cover other areas of equality that are not currently Protected Grounds under the Ordinance, such as sex, age, gender reassignment, and pregnancy and maternity;
- Statements outlining the type of environment and culture you are aiming to create, including what is not acceptable behaviour;
- Information about how policy will be put into action, including how individuals can raise concerns through grievances and how breaches of the policy will be dealt with; and
- Who is responsible for the policy and how it will be monitored and reviewed.

To make sure an equal opportunities policy has real meaning an organisation should:

- Demonstrate a commitment to equal opportunities from the top of the organisation;
- Promote the policy both to existing staff and other relevant individuals involved with the management of the organisation;

- Provide training for staff on what the policy says and what it means to them;
- Show a willingness to challenge poor behaviour and where necessary, take action against anyone not complying with the policy; and
- Regularly review the effectiveness of the policy.

Equal opportunities policies are not one size fits all. For example, a large commercial organisation based in multiple locations providing services to sophisticated clients will likely need something more complex and could wish to include details of equal opportunities monitoring. A small club or association run by volunteers is likely to need to have a more simplified document.

For an example of an equal opportunities policy, please see Equal Opportunities Policy- Appendix I.

9.2 Training

Equality training is a key part of any good equal opportunities policy, because if staff and those responsible for management understand what the Ordinance means for them as individuals, then an organisation is more likely to comply with its obligations.

Whilst there is no general legal requirement on organisations to undertake equality training it can be an important part of being able to demonstrate, in the event a claim is brought, that the organisation is taking actions to prevent discrimination, harassment and victimisation. Also, it is more likely to create an inclusive atmosphere where everyone in the organisation can succeed.

For those organisations that are subject to either the proactive duty to make reasonable adjustments or the public sector duty to prepare accessibility action plans, or wish to take positive action, then equality training will often be a key element.

When should training take place?

As part of preparing for the introduction of the Ordinance, it is recommended that organisations should consider arranging training for their staff about equality issues. In order to assist in this process, there is free training available, Consortium training.

In addition, once the Ordinance is in force then organisations might choose to provide training:

- During the induction process for new starters; and
- Periodically asking staff to either attend update courses or by completing online training.

What should the training cover?

There is no exhaustive list what equality training should cover, and it should be relevant to your organisation. However, in most instances training should include:

- An explanation of the Protected Grounds and what behaviour is and is not acceptable.
- The risk of ignoring or seeming to approve inappropriate behaviour.
- The impact that generalisations, stereotypes, unconscious bias, and inappropriate language can have on people's chances of obtaining work, promotion, recognition and respect.
- What is the reasonable adjustment duty and how does it work.
- The organisations equality policy and how it operates in practice, including any monitoring undertaken.

The Consortium training will help with the first four bullet points but it is important for organisations to also consider how its internal policies and procedures will operate, including grievance policies, complaints handling and what to do when requests for reasonable adjustments are received.

9.3 Diversity monitoring

As part of their equal opportunities policy, some organisations monitor and report on matters relating to their service users, students or members. There is no legal requirement on organisations to undertake diversity monitoring but doing so can help organisations to assess whether, for example, they are:

- engaging with individuals who are disadvantaged or under-represented;

- providing opportunities to people fairly whatever their Protected Grounds; and
- making progress towards the aims set out in their equal opportunities policy.

Why consider monitoring?

Monitoring of equality-related issues by an organisation (and taking action where the information suggests there may be a cause for concern) can also be used as evidence if someone brings a tribunal case against them – although simply collecting the data without analysing it is not enough. It may also help to identify areas where taking positive action may be appropriate, for example by highlighting groups of service users with certain Protected Grounds who are disproportionately underrepresented.

Diversity monitoring will vary greatly from one type of organisation to another and can cover a wide range of matters.

- How many people with a particular Protected Ground use a service, or are students or are applying for membership, as the case may be;
- The satisfaction levels of different service users, students or member with different particular Protected Grounds; and
- Whether an action is disproportionately taken against service users, students or members with a particular Protected Ground.

How should monitoring take place?

Organisations also need to consider how they wish to collect the information, and whether this should be done on an anonymised basis. As part of this they also need to communicate the process to reassure people who provide information that it will not be used to discriminate against them and explain how the information will be used.

Example

As part of its admissions process, a school asks potential candidates to complete a voluntary diversity monitoring form. The school makes it clear that there is no obligation to complete the diversity monitoring form, which is to be filled in on an anonymised basis and will be separated from their personal details by someone who is not involved in the admissions process.

Whenever organisations are processing the personal or special category personal data of their employees, including as part of any diversity monitoring, they must always be aware of their obligations under the Data Protection (Bailiwick of Guernsey) Law, 2017.

9.4 Reviewing policies and procedures

An important aspect of preparing for the introduction of the Ordinance will be a review of the organisation's policies and procedures to consider what (if any) changes might be required. What will be expected of each organisation will differ according to their size and resources, so a large organisation with the necessary resources that already has extensive policies and procedures to review may need to do more than a small club or association, where polices are largely unwritten.

Every organisation should spend time thinking about the interaction they have or could have with individuals who have different Protected Grounds, and consider whether their policies might have a greater impact on those individuals than others. This does not mean that the policy or procedure is necessarily discriminatory, but policies that indirectly discriminate would need to be objectively justified, and if someone has a disability, then the duty to make reasonable adjustments should be considered.

It is not expected that an organisation needs to consider every possible eventuality and come up with a new policy to address an issue that in reality may never happen. However, organisations are advised to consider their policies and procedures prior to the Ordinance coming into force and be able to justify a particular policy when necessary.

Organisations are not expected to be legal experts, and particularly in the case of smaller clubs and associations there is no expectation that they need to engage third parties to undertake a review of their policies and procedures. Indeed, the best person to consider whether or not a particular policy is justified is someone from within the organisation as they will understand their operations better than anyone else.

Indirect discrimination

Indirect discrimination can occur where an organisation has a policy or procedure in place (referred to in the Ordinance as being a provision, criterion or practice) which places people with a particular Protected Ground at a disadvantage and cannot be objectively justified. For further details on the concept of indirect discrimination please see Chapter 1.

When reviewing policies and procedures, the first aspect is to identify if it could disadvantage individuals with a Protected Ground. The disadvantage could arise in different ways and some examples are set out below.

Example

Enrolment application for a school – Written application forms place people who are visually impaired at a disadvantage as they may have difficult in reading it.

Club social events – A club hosting a social event, at which only alcoholic drinks are served, may place people who are Muslim at a disadvantage as they are unable to drink alcohol.

Terms on which services are provided – Offering financial services products only to heterosexual married couples, but not to same sex married couples or civil partners would place people with a particular sexual orientation at a disadvantage.

Once a disadvantage is identified then it is necessary for the organisation to be able to objectively justify the policy. This is a two-stage process for the organisation. It first needs to show that the policy achieves a legitimate aim and secondly consider whether the policy is a proportionate means of achieving that

legitimate aim. A policy will not generally be considered proportionate if the organisation could have used less discriminatory means to achieve the same objective. Using the same examples above, the potential justification is considered below for the policies.

Example

Enrolment application for a school – The need to obtain information regarding potential students would be considered to be a legitimate aim. However, because the use of written forms place anyone who is visually impaired at a disadvantage, this is unlikely to be considered proportionate, unless the application form is made available in different formats such as using an increased font size or a format that can be read out using reading software.

Club social events – Promoting team culture and spirit would be a legitimate aim, but a club could make non-alcoholic drinks available so that the Muslim members could participate.

Terms on which services are provided – It would be difficult to demonstrate that not offering a benefit to same sex couples constituted a legitimate aim, therefore such a policy is not likely to be objectively justified.

Reasonable adjustments

An organisation will also need to consider its policy on reasonable adjustments. Where an individual has a disability, an organisation may also need to consider potential reasonable adjustments, and the precise nature of this duty will depend upon the capacity in which it is acting. For further details on the concept of reasonable adjustments please see Chapter 3.

As part of the duty to make reasonable adjustments, organisations have a specific duty to consult. It is recommended that before the Ordinance comes into force, organisations should arrange a discussion with any individuals who have a disability to consider what reasonable adjustments should be made, unless arrangements are already in place. There is no particular form or duration of

consultation required, but it is recommended that notes be kept, and any agreed outcomes recorded. Data protection legislation must also be complied with.

It should be remembered that, when the Ordinance initially comes into force, the duty to make reasonable adjustments will not apply to physical features until 1 October 2028. It will also not be possible to bring a claim for indirect discrimination due to a physical feature occurring before this date.

In addition to the above, service providers from 1 October 2023 and schools and education providers from 1 September 2025 will be subject to an additional proactive duty to make reasonable adjustments. For further information on this duty please refer to Chapter 3.5.

Disability: Public sector duty to prepare accessibility action plans

In addition, in the case of public sector service providers, from no earlier than 1 October 2028, they will become subject to a duty to implement an accessibility action plan. For further information on this duty please refer to Appendix III.

9.5 Implementation dates for the legislation

If you are on a mobile device or would like to print the table below, please download the PDF version here:

Implementation dates for the legislation.pdf

Provision of Ordinance	**Employer**	**Service providers**	**Schools and education providers**	**Clubs and associations**	**Accomm provider**
General prohibitions on discrimination	1 Oct 2023	1 Oct 2023	Not before 1 Sept 2025*	1 Oct 2023	1 Oct 202

General reasonable adjustments duty (Excluding physical features	1 Oct 2023	1 Oct 2023	Not before 1 Sept 2025*	1 Oct 2023	1 Oct 202
General reasonable adjustment duty to physical features	Not before 1 Oct 2028	Not before 1 Oct 2028	Not before 1 Oct 2028	Not before 1 Oct 2028	Not befor 2028
Pro active duty to make reasonable adjustments (Excluding physical features	N/A	Not before 1 Oct 2028	Not before 1 Sept 2025*	N/A	N/A
Pro active duty to make reasonable adjustments to physical features	N/A	N/A	N/A	N/A	N/A
Duty to carry out minor improvements	N/A	N/A	N/A	N/A	Not in for Oct 2023 determin Regulatio
Duty to allow reasonable adjustments to physical features- residential landlords	N/A	N/A	N/A	N/A	Not befor 2028
Duty to allow reasonable adjustments to physical features- commercial landlords	N/A	N/A	N/A	N/A	Not befor 2028

Public sector duty to prepare accessibility action plans	N/A	Public sector only - 1 Oct 2028	Public sector only - 1 Oct 2028	N/A	Not befor 2028

*Where a school or education provider is acting as an employer or general service provider, rather than an education provider, duties will come into force from 1 Oct 2023, in line with the dates in the first two columns.

If an act of discrimination occurs before the relevant implementation date, an individual will not be able to bring a claim under the new Ordinance. Claims cannot be brought after the implementation date for acts or omissions that occurred prior to the implementation date.

Those duties which are due to come into force after 1 October 2023 will require a commencement regulation to be made by the Committee for Employment & Social Security and shall not have effect unless and until approved by a resolution of the States.

It should also be noted that the intention is that different Protected Grounds will be introduced over the next few years, including age, and that the existing Sex Discrimination Ordinance will be replaced, with sex, pregnancy, marital status and gender reassignment being added as Protected Grounds under the Ordinance.

9.6 Accessibility

Accessibility audit

An accessibility audit (also known as disabled access audit or access audit) could be a useful tool when considering reasonable adjustments or preparing accessibility action plans. An access audit is an assessment of a building, an environment or a service against best-practice standards to benchmark its accessibility to disabled people. Please go to the checklist in Appendix II for an example of an accessibility audit for a building. This will help you assess getting to your premises, ease of navigating around the building, the environment and the facilities available. The responses to the questions will then help you to develop an accessibility action plan. See Appendix III

You may also wish to undertake an accessibility audit in relation to your online and digital systems and products, and for schools and education providers to consider the accessibility of the curriculum.

We have not supplied an example for online and digital systems as we recommend that you review these regularly as they may change in relation to digital developments. Please look at the following recommended links to assist you in creating your own audit for these resources.

Recommended Links

Accessible documents

Information for businesses - States of Guernsey

Publishing accessible documents - GOV.UK

Overview of the Accessible Information Standard- NHS England

Make it easy- Making information easy for people with a learning disability https://www.england.nhs.uk/wp-content/uploads/2018/06/make-it-easy-easy-read.pdf

Accessible websites and digital accessibility

Information for businesses - States of Guernsey

Guidance and tools for digital accessibility - GOV.UK

Accessible Information Standard NHS England

Supporting disabled colleagues

Employment guide - Guernsey Employment Trust (get.org.gg)

Accessible services

Making your service accessible: an introduction - Service Manual - GOV.UK

Chapter 10: Complaints

In this chapter we will cover the following:

Wherever possible, it is good practice – as well as being in the interests of both the provider/organisation (who is the duty bearer) and the individual – to seek to resolve any potential complaints under the Ordinance as they arise in order to avoid discrimination occurring in the first place. It is recognised that this will not always take place or that sometimes an organisation may not immediately recognise that there is a potential issue. Where this is the case, a written complaint should be made to the provider/organisation to give them an opportunity to address the issue. In most cases, the written complaint **must be made within 6 weeks** of the discrimination occurring or the individual will be precluded from bringing a claim to the Employment Tribunal (see section 10.1). Whilst there is no legal obligation on organisations to have a complaints policy in place, it will be in everyone's interest to provide an open and fair way for individuals to make their concerns known, and for their issues to be resolved quickly, without having to bring legal proceedings.

The Ordinance recognises that it will not always be possible for complaints to be resolved between the parties. In such cases, the individual has a right to make a complaint to the Employment & Discrimination Tribunal. This section provides an overview of the process for making a complaint, conciliation and the role of the Employment & Discrimination Tribunal, although it is not intended to be a procedural guide as to how to go about presenting a claim. There are strict time limits for making a formal complaint to the Tribunal.

10.1 Notification of potential complaint

One of the differences between complaints relating to work, and those relating to the provision of services, education, accommodation and clubs and associations is that, the individual will in most cases have to inform the provider / organisation of any **non-work complaints in writing (within six weeks)**, and give them a month to resolve the issue, before the individual can proceed with making a formal, legal complaint. The purpose of this notification step is to ensure that the provider / organisation is aware of the potential claim and given an opportunity to resolve it before legal proceedings are commenced.

This notification requirement applies to any form of discrimination or harassment or victimisation or the proactive duty to make reasonable adjustments.

It does not apply to the sections of the Ordinance relating to:

- reasonable adjustments (other than proactive reasonable adjustments made not in consultation with a disabled individual);
- minor improvements; and
- the duties on landlords not to unreasonably refuse a request for a tenant to make a reasonable adjustment.

A person ("A") who considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed must before making a complaint to the Tribunal:

- **within six weeks of the act occurring notify B in writing of the potential complaint; and**
- **inform B that, if the potential complaint is not resolved within one month of the notification to B, A may exercise their right to make a complaint under this Ordinance.**

A may not make a complaint to the Tribunal until the one month period referred to above has elapsed.

See section 40 of the Ordinance

The Ordinance indicates the compliant must be in writing, this could include email or other forms of electronic communication. Templated letters will be available from the 1st October from the EEOS website. It is advised that a copy of this letter is retained. It is recommended that the notification should ideally identify the following:

- The person making the notification of intent to complain, and if it is submitted on behalf of someone else (for example a child) it should clarify the basis upon which it is made;

- The nature of the potential complaint/s, providing as much detail as possible about any issue or incident;
- The relevant Protected Ground or Grounds;
- The nature of the discrimination complained about, if possible (i.e. direct or indirect discrimination, discrimination arising from a disability, discrimination by association, harassment or victimisation).
- The date on which the potential complaint/s arose;
- If known, the identify of any individuals in respect of which the potential complaint or complaints are against;
- How the person complaining would like to be contacted, whether that be a meeting, a phone call or in writing;
- What resolution the person complaining is seeking – this may simply be an apology, or even a commitment from the organisation to ensure internal training is provided to avoid similar issues arising again in the future; and
- The fact that if the potential complaint is not resolved within one month of the notification, then the person may exercise their right to make a complaint to the Employment & Discrimination Tribunal (the Tribunal) under the Ordinance.

The person making the notification of intent to complain, and if it is submitted on behalf of someone else (for example a child) it should clarify the basis upon which it is made.

Notification of an intent to complain must take place within six weeks of the act occurring, therefore it is important that any notification is made as soon as possible. Where a notification is not made within this period, the Tribunal does not have the discretion to extend time period and the ability to pursue a complaint through the Employment & Discrimination Tribunal will be lost. In addition, as part of making a complaint to the Tribunal, a complainant will be required to confirm that they have complied with the notification requirements, therefore it is important that a copy of any correspondence is retained.

A person is not allowed to make a formal complaint to the Tribunal until at least a month after their notification. This allows the service provider the opportunity to resolve the matter first.

However, the complainant may contact the Employment and Equal Opportunities Service (EEOS) for advice during this time and/or submit notification of intent to complain to the EEOS see chapter 10.2.

From 1 October 2023 there will be a step-by-step process on the Employment & Equal Opportunities Service's website to walk people through the complaints process, with letter templates to assist with notification.

For more information on bring a claim before the Tribunal and the relevant time limits, please see Chapter 10 - the Complaints process.

10.2 Conciliation

When parties are unable to resolve the issues between themselves through notification of a potential complaint, early resolution of any complaint is encouraged through the Employment and Equal Opportunities Service (EEOS) and a pre-complaint conciliation process, the details of which are set out below.

Pre-complaint conciliation

Before anyone makes a formal complaint to the Employment & Discrimination Tribunal (Tribunal), providing they have complied they must notify the EEOS of their intended complaint. This requirement to inform the EEOS about an intent to complain applies to all complaints of discrimination, victimisation, harassment or a failure to comply with the duty to make reasonable adjustments. Upon receiving a notification, the EEOS will ask the person who wishes to make the complaint and the service provider if they wish to engage in pre-complaint conciliation. If they do, the EEOS will then facilitate the conciliation to see if it is possible to reach a settlement. Any settlement agreement concluded by the EEOS will be legally binding and the complainant will then be unable to bring a claim before the Tribunal.

In order to make it easier to help parties reach an amicable resolution, any settlement discussions between the parties conducted through the EEOS will take place on a without prejudice basis. This means that nothing that is said, or any offers made, can be used as evidence as part of any subsequent Tribunal claim, unless both parties agree.

If either party does not wish to engage in pre-complaint conciliation, or the EEOS believes that it is not possible to settle the matter, then a certificate will be issued to the person who wishes to bring the claim. A person is not entitled to progress with their claim to make a formal complaint to the Tribunal until they receive a certificate from the EEOS. If they attempt to do so, then their claim will be rejected by the Tribunal. It is important to note that the period for bringing a complaint will be extended by pre-complaint conciliation – for further details see

below.

Ongoing conciliation following a formal complaint

When pre-complaint conciliation is unsuccessful, a person can then decide if they wish to proceed with a formal claim. The relevant paperwork would need to be submitted to the Secretary of the Tribunal. The matter will again be referred to the EEOS. The parties will be given a further period to attempt to settle the matter through conciliation. Normally, six-weeks will be allowed for the parties to settle the complaint before the matter is referred to the Tribunal. If the complaint is not settled, then the claim may proceed to a hearing. The time period for conciliation can be extended where negotiations are in progress. The parties can engage in discussion to settle the complaint at any stage up to the conclusion of the final hearing.

Compromise agreements

Alternatively, it is open to the parties to settle complaints between themselves without referring the matter to the EEOS through a compromise agreement. In order for a compromise agreement to be valid:

- the agreement must be in writing;
- it must relate to the particular complaint;
- the person must have received advice from an independent adviser (being a lawyer or a trade union representative) as to the terms and effect of the proposed agreement;
- the agreement must identify the adviser; and
- the agreement must include a statement that the above conditions are satisfied.

10.3 Tribunal claims

Following conclusion of the conciliation process, and provided they have complied with the requirement to make a notification to the provider/organisation (the duty bearer) of the potential complaint (if applicable), if a person is still dissatisfied then they can bring a claim before the Employment & Discrimination Tribunal (the Tribunal).

Responding to a claim

Responses by the organisation/provider are also submitted using a prescribed form. The appropriate forms are available on the Tribunal website or upon request from the Tribunal.

Time limits

There are strict time limits for bringing claims. The formal complaint to the Tribunal should be made within a period of three months, beginning on the day when the act complained of was done. However, the period of time between the person notifying the EEOS of the intended complaint, in order to initiate pre-complaint conciliation, and the date on which they receive a certificate at the end of any pre-conciliation, will not count towards the time limit for bringing a claim before the Tribunal. In addition, if the time limit is due to expire within one month of the end of conciliation, it will also be extended so that a person would always have at least a full month in order to present their claim.

Example

A service user wishes to bring a claim of discrimination for an event which took place on 10 January, and so three months from that date would be 9 April.

The service user notifies the provider of the potential complaint on 17 January, so they are unable to make a claim to the Tribunal until 16 February.

The service user completed the intent to complain form and submitted it to the EEOS on 1 March. Following a period of pre-complaint conciliation, the parties were unable to resolve the matter, so the EEOS issued a certificate to the employee on 8 March. The period of time from the day on which the notification was made to the day on which the certificate was issued was a total of 8 days. So, the final day for bringing a claim would be 17 April.

Alternatively, if the service user contacted the EEOS on 1 April and then received a certificate on 8 April, because even with the extra 8 days the final day for bringing a claim would normally be less than a month after the end of pre-complaint conciliation, the final day would be extended to be 7 May.

The period of time can sometimes be extended, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been made within the 3-month time frame, or that it would be just and equitable in the circumstances of the case to allow the further time.

When does the period for bringing the claim start?

The time for bringing a claim will run from the date on which the act complained of was performed. Where the act extends over a period of time, or relates to the term of a contract, then the act is treated as being done either at the end of the conduct or the contract as the case may be.

> **Example**
>
> If on 1 March 2026 a student were to bring a claim for discrimination and victimisation about a series of related acts taking place over the last 6 months leading to their eventual temporary exclusion from the school. Even though the first of these acts would have taken place more than three months ago, the period of time for bringing a claim will run from the final act, which was their exclusion.

Where the complaint is about a failure to do something, then the Ordinance has specific rules for the purposes of time limits. If the duty bearer (i.e. the person who is deemed to be liable for the acts of their agents) explicitly decides not to take the step, such as making a reasonable adjustment, then the time for bringing a claim will run from that point. Where there is not an express decision, then time will begin to run either from the point at which the provider acts inconsistently, or after the passage of what would be considered to be a reasonable period of time.

Example:

A tenant with a disability asks their landlord to make a reasonable adjustment to one of their policies. The landlord initially agrees to the request, but never actually makes the adjustment. After a period in which it would have been reasonable for the landlord to make the adjustment, they will be treated as having failed to do so.

Liability of principal and agent

Claims for discrimination can often be brought against both the organisation/provider (the principal), who is also deemed to be liable for the acts of their agents (where another person or entity takes action on their behalf), as well as the individuals themselves who commit the act.

An organisation will still be liable for the acts of their agents, even if they were done without their knowledge or approval, unless the organisation can demonstrate that they took all such steps as were reasonably practicable to prevent the agent from doing that act. This is sometimes referred to as the “statutory defence”.

As a minimum this would require organisations to:

- have an equal opportunities policy;
- provided equality training to staff; and
- seek to address issues when they became aware of them.

Example

A club member makes a notification of a potential complaint of harassment on the grounds of race by a member of the club's committee. The club has an equal opportunities policy in place. The club provided adequate equality training to all committee members and the individual in question attended all of the sessions. The club has a strong record of dealing with any examples of harassment when they arise, as well as promoting equality and diversity in their membership and activities, and in this instance removes the individual from the committee and fully deals with the complaint.

In this scenario the club may be able to rely on the statutory defence that it did everything it should have, but the committee member may be personally liable for their actions.

Burden of proof

Where an individual brings a claim, they must prove that there are facts from which the Tribunal could decide or draw an inference that there has been discrimination. This is sometimes referred to as demonstrating a prima facie case.

If an individual has satisfied the Tribunal that there are facts from which it could conclude that there has been discrimination, then the burden of proof shifts to the organisation/individual responsible under the Ordinance (the duty bearer). In order to be able to defend a claim, the duty bearer will have to prove, on the balance of probabilities, that they did not act unlawfully. If the duty bearer's explanation is inadequate or unsatisfactory, the Tribunal may decide that the act was unlawful.

Awards

Where the Tribunal upholds a complaint of discrimination, it can either make an award of compensation, a non-financial award or both.

With respect to the landlord duties a) to make minor improvements and b) not to unreasonably refuse a tenant's request to make reasonable adjustments to

physical features in the event of a complaint, only a non-financial award can be made. For further detail of the specific landlords duties see Chapter 7.4. These duties will not come into effect until a later date, and in relation to (b) this will not be until at least 1 October 2028.

A non-financial award is an order for the provider to undertake such steps that the Tribunal is satisfied:

- are practical;
- will not impose a disproportionate burden;
- relate to the discriminatory act; and
- will reduce the impact of that discrimination on the individual.

These steps must be undertaken within a specified period of time.

Example

The Tribunal upholds a claim for harassment on the grounds of sexual orientation due to a series of inappropriate comments made by a number of different members of staff towards a service user. None of the staff have ever received and equality training, therefore the Tribunal makes an order requiring this training to take place.

Compensation

The basic compensation for claims of discrimination against a provider of goods, services, facilities, education, accommodation or a club or association is that a person is entitled to an award consisting of:

- An amount for any financial loss up to a maximum of £10,000; and
- An amount payable for injury to feelings up to £10,000.

Compensation for injury to feelings will be awarded using a series on payment bands depending upon the seriousness of the discrimination and impact on the individual. For further details please see the Prevention of Discrimination (Compensation) Regulations, 2023.

In addition, the Tribunal has a further discretion to reduce any award if it determines the person has unreasonably refused an offer by the provider of the service, which if it had been accepted would have had the effect of putting the person in the position in which they would have been, had the act of discrimination not occurred.

Joined complaints

Where a person makes more than one complaint against the same provider/ organisation, or against a number of connected persons, for example the service provider and a number of individuals who all work for them, then the Tribunal may decide to hear those complaints together (known as joined complaints).

Where there are joined complaints against connected respondents then the maximum award the Tribunal can make is:

- An amount for any financial loss up to a maximum of £10,000; and
- An amount payable for injury to feelings up to £10,000.

The exception to this is where there is a claim or multiple claims of victimisation in addition to other complaints. In that scenario the Tribunal may make a further award of:

- An amount for any financial loss up to a maximum of £10,000; and
- An amount payable for injury to feelings up to £10,000.

Example

A tenant successfully brings a claim for direct discrimination and harassment on the grounds of race and religious belief, and victimisation in relation to a complaint they raised which led to their eviction. The maximum the Tribunal could award the person would be financial loss of up to £20,000 and a further award of injury to feelings of up to £20,000.

Appendix I

Example

Equal Opportunities Policy

Purpose of the policy

The purpose of this policy is to set out our approach to equal opportunities and avoiding discrimination. The policy may be amended from time to time.

Our commitment

As an organisation we are committed to:

1. Encouraging equality, diversity and inclusion;
2. Creating a working environment free of bullying, harassment, victimisation and unlawful discrimination;
3. Promoting dignity and respect for all, and where individual differences and the contributions of all staff are recognised and valued; and
4. Taking seriously complaints of bullying, harassment, victimisation and unlawful discrimination.

As an employer we are therefore committed to promoting equal opportunities in employment. Our employees and any job applicants will receive equal treatment regardless of carer status, disability, race (including colour, nationality, ethnic or national origin), religion or belief, sexual orientation or sex (including pregnancy or maternity, gender reassignment, marital status) (Protected Grounds). At the time of writing there is no approved legislation requiring employers to ensure that they do not discriminate on the ground of age. However, employers who are thinking ahead to phase two, may also wish to consider whether to include age discrimination as well.

What is discrimination?

No one should unlawfully discriminate against or harass other people including current and former employees, job applicants, clients, customers, suppliers and visitors. This applies both when an individual is at work, but also potentially outside too, for example when dealing with customers, suppliers or other work-

related contacts in the course of their employment, or on work-related trips or social events.

There are different types of discrimination and often discrimination can be unintentional or due to sub-conscious biases. The following forms of discrimination are prohibited under this policy:

Direct discrimination: treating someone less favourably because of a Protected Ground. For example, rejecting a job applicant because of the colour of their skin or their sexual orientation.

Indirect discrimination: a provision, criterion or practice (e.g. a policy) that applies to everyone but adversely affects people with a particular protected ground more than others, and is not objectively justified. For example, refusing to allow employees to wear religious symbols due to a dress code will adversely affect people of a particular religion. In order to be lawful this would need to be objectively justified, for example by reference to health and safety grounds.

Harassment: this includes sexual harassment and other unwanted conduct related to a protected ground, which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. For example, this might include making unwanted sexual advances to another member of staff.

Victimisation: this occurs where there is retaliation against someone who has either complained or has supported someone else's complaint about discrimination or harassment. For example, this might include an employee being disciplined who has raised a grievance against their manager.

Disability discrimination: this includes direct and indirect discrimination, any unjustified less favourable treatment because of the effects of a disability that can’t be objectively justified, and failure to make reasonable adjustments to alleviate disadvantages caused by a disability. For example, this includes including disability related absences when carrying out a redundancy scoring exercise.

Recruitment and selection

Recruitment, promotion and other selection exercises will be conducted on the basis of merit, against objective criteria that avoid discrimination. Shortlisting should be done by more than one person if possible.

We commit to avoid stereotyping or using wording in advertising that may discourage particular groups from applying, and will target as wide a range of candidates as possible. Everyone working in our organisation should adhere to this and should also include a short policy statement on equal opportunities.

Generally, job applicants will not be asked questions which might suggest an intention to discriminate on grounds of a Protected Ground except in the very limited circumstances: for example, to check that that an applicant could perform an intrinsic part of the job – taking account of any reasonable adjustments.

Where necessary, job offers might be made conditional on a satisfactory medical check. Health or disability questions may be included in equal opportunities monitoring forms. These will not be used for selection or decision-making purposes.

We all endeavour to ask all applicants if any adjustments might be needed at interview because of a disability.

Disabilities and reasonable adjustments

If you are disabled or become disabled, we encourage you to tell us about your condition so that we can support you as appropriate. Disability for these purposes has a wide meaning and includes any long-term impairment, including chronic diseases or illnesses, malfunction or disfigurement of a person's body, a condition which affects a person's ability to learn, or a condition, illness or disease which affects a person's thought processes, social interactions or emotions.

Where it is identified that you have a disability or might have a disability we will contact you to consult with you in relation to any potential reasonable adjustments. In addition, if you experience difficulties at work because of your disability, we would encourage you to raise this with your line manager so we can arrange a time to consult with you to explore any reasonable adjustments that would help overcome or minimise the difficulty. From time to time we may also discuss with you whether or not it would be appropriate to seek medical guidance relating to potential reasonable adjustments and their effectiveness.

We will consider the matter carefully and try to accommodate your needs within reason. If we consider a particular adjustment would not be reasonable we will explain our reasons and try to find an alternative solution where possible.

Complaints of discrimination

We take our commitment to equality very seriously and the [Managing Director] is the person who has ultimate responsibility for this policy and any necessary training on equal opportunities.

If breaches of this policy occur, this may result in disciplinary action being taken in accordance with our Disciplinary Procedure. Where this involves serious cases of deliberate discrimination, harassment or victimisation this may be considered gross misconduct and result in your summary dismissal.

If you believe that you have suffered discrimination you can raise the matter with us. Complaints will be treated in confidence and investigated as appropriate. You will not be victimised or retaliated against for complaining about discrimination, even if the complaint is not ultimately upheld. However, making a false allegation deliberately and in bad faith will not be tolerated.

Appendix II

Example

Accessibility audit

An accessibility audit (also known as disabled access audit) is an assessment of a building, an environment or a service against best-practice standards to benchmark its accessibility to disabled people. The checklist below will help you assess getting to your premises, ease of navigating around the building, the environment and the facilities available. The responses to the questions will then help you to develop an accessibility action plan. You may also wish to undertake an accessibility audit in relation to your online and digital systems and products.

Getting to you		
Criteria	**Y/N**	**Comments**

Do you have a section on your website about transport to and parking facilities at your premises?		
Is there car parking which is easy to access and close to the building?		
is there designated parking for blue badge holders in the nearby car parking?		
Is there adequate space for drop off and pick-up outside the entrance?		
Is the approach to the building in good order and step free?		
Do you have clear signage and directions to the main entrance and the most accessible entrance (if that is not the main entrance)?		

Entering the building		
Criteria	**Y/N**	**Comments**
Are there any steps to access the main entrance?		
Is a handrail provided by any level change such as ramp or steps?		

If there are steps, is there an alternative entrance or is there access via ramp or lift to provide step-free access to the building?		
Are there clear instructions on how to access the alternative entrance or how to request assistance?		
Is there a buzzer or speaker entry system? Is this accessible to people who cannot speak or hear?		
Is there someone available to provide assistance if there are difficulties entering the building?		
Is access across the door threshold level or is there a gradient? Can all wheelchairs pass through without difficulty?		
Are entrance doorways easily opened?		
Is there adequate space both sides of the door?		
Is the reception area easy to locate from the entrance? Is it clearly signposted?		

Navigating within the building		

Criteria	Y/N	Comments
Is the reception area clearly signposted and easy to locate from the entrance?		
Is the entrance easily visible to staff so they can see if someone needs assistance?		
Are doorways and access routes wide enough for wheelchairs?		
Are access routes kept clear?		
Are corridor widths at least 120cm wide?		
Is the flooring solid, level and in good condition?		
Is the signage clear and easy to understand?		
Are maps of the building available to help people navigate?		
Is the building well-lit throughout? It is important to realise that people will have different lighting requirements		
Does the floor surface create a glare?		
Is there step-free access to all areas on each floor?		

If rooms/floors are inaccessible, can visitors be hosted in alternative rooms that are accessible?		

A comfortable environment		
Criteria	**Y/N**	**Comments**
If there is a reception desk does it have a lowered height section for wheelchair users.		
Is there a range of seating available to accommodate for different needs? This should be different seating heights and some chairs with arms		
Are there induction loop facilities available?		
Do all staff know how to use the induction loop?		
Can any televisions and/or radios be turned off when necessary to reduce background noise? Or is there a quieter area that visitors can use.		
Are staff well trained and informed to assist with visitors' needs?		

Stairs		
Criteria	**Y/N**	**Comments**
Are there handrails on both sides of the stairs?		
Are the steps consistent in size and shape?		
Are the edges of the steps clearly visible?		
Are the access routes well maintained and always kept clear?		

Lifts		
Criteria	**Y/N**	**Comments**
Do you have lifts available to all floors?		
Are the lifts well signposted?		
Is the lift at least 110cm wide and 140cm deep?		
Are the controls within the lift accessible? (E.g. easy to reach, buttons with braille)		

Is there a mirror to assist with maneuvering?		
Have the lifts been mentioned on your website?		
Do you provide information to visitors to let them know if the lift is not available?		
Is someone responsible for regular maintenance and daily checks?		

Accessible facilities		
Criteria	**Y/N**	**Comments**
Is there an accessible toilet on the ground floor?		
If not on the ground floor, are there other accessible facilities elsewhere in the building.		
Are there support bars to help with the transfer between the chair and the toilet?		
Does the toilet have an assistance alarm which drops all the way to the ground level and isn’t tied around anything? Does the cord have two red handles, on 10cm and another 80cm – 100cm above ground level?		

Is the toilet clear of obstacles and wide enough for a wheelchair user to turn their chair around inside? Standard size should be at least 220cm long x 150cm wide.		
Are facilities positioned at an appropriate height for wheelchair users? E.g. sinks, hand dryers, mirrors		
Do you have an accessible showering facility?		
Does the shower have plenty of space for wheelchair users with appropriate seating?		
Are these facilities well maintained and frequently checked?		

Meetings		
Criteria	**Y/N**	**Comments**
Do you ask anyone attending a meeting of they have particular requirements?		
Is the equipment and furniture easily accessible?		
Do meeting rooms have adequate space for wheelchairs?		

Can furniture be moved to accommodate different people’s requirements?		
Are the meeting rooms soundproof or free from background noise?		
Are the acoustics in the room good (there is no echo)?		
Do you have policies for inclusive meetings?		
Do you have guidelines for accessible meetings?		

Evacuation procedures		
Criteria	**Y/N**	**Comments**
Are there policies and procedures in place for assisting disabled people with evacuation from your building?		
Are first aiders available?		
If any fire drills are expected is this communicated in advance?		
Are the fire alarms audible and visible to all? Do you have flashing lights and sound alarms?		

Appendix III

Example

Accessibility Action Plan

Purpose of the plan

The purpose of this Accessibility Action Plan (“Plan”) is to set out how we improve access for disabled people to our service in accordance with the duty set out at Section 37 of The Prevention of Discrimination (Guernsey) Ordinance, 2022.

As an organisation, we are committed to encouraging equality, diversity and inclusion in all aspects, and this includes in the delivery of our services. This Plan sets out how we will seek to achieve that objective, as well as how progress will be reviewed and monitored.

[Insert explanation of the nature of your service that is covered by the Plan, the identified barriers that have been identified, and what consultation has taken place]

[Insert here your organisation’s short, medium and long-term goals]

Communication

[Insert how will the Plan be promoted both internally and externally to service users]

[Will the Plan be published, and if so to who and in what form?]

[Will progress against the Plan be published, and if so to who and in what form?]

Implementation

[Who is responsible within your organisation for the implementation of the plan, and ensuring the goals are achieved]

[How will the Plan be implemented]

Evaluation

[How will progress against the Plan be monitored and measured]

[How and when the implementation of the Plan will be formally reviewed by key stakeholders]

[How and when will feedback be obtained on the implementation of the Plan from service users]

[What is the process for a service user to follow if they are unhappy with the Plan or its implementation and has that been effectively communicated]

Accessibility: (insert heading of overall accessibility heading e.g. physical or information accessibility]

Objective

[Insert overall objectives around accessibility issues in the context of the services.]

Goals

[Insert below goals using the SMART methodology (i.e. specific, measurable, achievable, relevant, and time-bound). An example is included below.

Issue / Barrier	**Action required**	**Person responsible**	**Target date**	**Outcome measure**
Example:				

Lack of awareness amongst staff in dealing with users who have hidden disabilities has led to issues with them accessing the service.	Identify a suitable external training provider and then ensure all staff attend session on hidden disabilities	John Smith	30 Jun 23	100% of staff trained