

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

**PREVENTION OF DISCRIMINATION ORDINANCE: PROPOSALS FOR THE GROUND OF AGE
AND OTHER MATTERS**

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Prevention of Discrimination Ordinance: Proposals for the Ground of Age and Other Matters', dated 21st March 2025, they are of the opinion:

1. To agree that the Prevention of Discrimination (Guernsey) Ordinance, 2022 be amended by Ordinance to include the Protected Ground of age, as set out in section 5 of this Policy Letter, including the exceptions set out in that section and in Appendix 2.
2. To agree that the amendment Ordinance referred to in proposition 1 shall come into force six months after its approval by the States.
3. To note the Report by the Director of the Employment and Equal Opportunities Service, which is attached at Appendix 3 and is submitted to the States under section 7(2) of the Employment and Equal Opportunities Service (Guernsey) Law, 2023.
4. To note the update on the Review of Phase 1 of the Prevention of Discrimination (Guernsey) Ordinance, 2022, set out in section 7 and Appendix 4 of this Policy Letter.
5. To agree that section 36(3) of the Prevention of Discrimination (Guernsey) Ordinance, 2022, be amended as set out in paragraphs 7.5 and 7.6 of this Policy Letter.
6. To agree that section 75 of the Prevention of Discrimination (Guernsey) Ordinance, 2022 be amended to provide that Regulations made under the powers conferred on the Committee by paragraphs 15(3) and 22(2) of the Schedule to the Ordinance (i.e. to prescribe organisations which train dogs or other animals for the purposes of paragraph 15 of the Schedule, and to prescribe "a person who provides supported employment" for the purpose of paragraph 22 of the Schedule) shall not require an affirmative resolution of the States prior

to entry into force, and instead will conform to the normal procedure whereby they must be laid before a meeting of the States, where they may be annulled.

7. To direct the Committee *for* Employment & Social Security to investigate and report back to the States on whether:
 - i) there should be a requirement under the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001 and Minimum Wage (Guernsey) Law, 2009 for applicants to notify the Employment and Equal Opportunities Service of their intended complaint, whether pre-complaint conciliation should be available in respect of complaints made under these laws, and whether to enable discrimination complaints to be joined with complaints under these laws; and
 - ii) to give the Employment and Discrimination Tribunal express power to amend a certificate issued by the Employment and Equal Opportunities Service under the powers conferred on it by section 41(3)(b) of the Prevention of Discrimination (Guernsey) Ordinance, 2022 ('the Intent to Complain Certificate') where it is just and equitable to do so.
8. To approve the Prevention of Discrimination (Education) (Commencement) Regulations, 2025 (as set out in Appendix 5 to this Policy Letter).
9. Noting the underspend on the discrimination transition budget set out in Table 1 of paragraph 8.2, to agree that a budget of £82,000 should be allocated to the Prevention of Discrimination Ordinance project (the budget for which is to be managed by the Committee *for* Employment & Social Security), to be spent across 2025, 2026 and 2027 to complete the remainder of the transition work for Phase 1 and to implement the proposals for Phase 2, outlined in this Policy Letter.
10. To direct the preparation of such legislation as may be necessary to give effect to the above decisions, including consequential amendments to other legislation.

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AND OTHER MATTERS

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

21st March 2025

Dear Sir

1. EXECUTIVE SUMMARY

- 1.1 This Policy Letter sets out proposals to amend the Prevention of Discrimination (Guernsey) Ordinance, 2022¹ ('the Ordinance' or 'the Prevention of Discrimination Ordinance') to provide protection from discrimination and harassment, as well as victimisation, on the ground of 'age'. It is proposed that this protection will apply in the fields of employment, in the provision of goods and services, accommodation and education, and in the membership of clubs and associations. The Committee *for* Employment & Social Security's ('the Committee') proposals are informed by the results of a public consultation on the matter which was carried out in Q3 of 2024. The consultation document and the consultation findings are set out in Appendices 1 and 2 to this Policy Letter.
- 1.2 The Committee proposes that objective justification of direct age discrimination be permitted under the legislation so that employers and service providers are allowed to treat people differently on the basis of age, where doing so can be shown to be a proportionate means of achieving a legitimate aim. This would differ to the position in relation to all other Protected Grounds, where direct discrimination can never be objectively justified.
- 1.3 The Committee recommends that a number of exceptions, specific to the new ground of age, be included in the Prevention of Discrimination Ordinance, and

¹ [Prevention of Discrimination \(Guernsey\) Ordinance, 2022](https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84425)
<https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84425>

that a number of the exceptions already included in the Ordinance be extended to cover the ground of age, as set out in section 5 and Appendix 2 of this Policy Letter. This will provide employers and service providers with greater clarity in respect of the circumstances in which differential treatment on the ground of age would be permissible.

- 1.4 The Committee also recommends that young people under a certain age cannot make complaints of discrimination on the ground of age - under school leaving age with respect to employment; under 18 with respect to accommodation, and under 16 with respect of the other fields in the Ordinance. To clarify, young people are able to make complaints of discrimination on any of the Protected Grounds currently covered under the Ordinance (i.e. disability, carer status, race, sexual orientation and religion or belief).
- 1.5 The first report of the Director of the Employment and Equal Opportunities Service and the results of an interim review of the Prevention of Discrimination Ordinance (Phase 1) and are attached at Appendices 3 and 4, respectively.
- 1.6 Further to the review of Phase 1 of the Ordinance, the Committee recommends that a minor amendment is made to section 36(3) to correct a drafting error, as set out in paragraphs 7.5 and 7.6. The Committee also recommends that the Committee be directed to report back to the States on whether the option of pre-complaint conciliation (and requirement to notify the Employment & Equal Opportunities Service ('EEOS') of an intent to complain) should be included in the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001² and the Minimum Wage (Guernsey) Law, 2009³, and whether a complaint made under these laws may be joined with a related complaint under the Prevention of Discrimination Ordinance.
- 1.7 At present, all Regulations or Orders made by the Committee under the Prevention of Discrimination Ordinance do not have effect unless and until approved by a resolution of the States. This stipulation followed a successful Amendment to the Ordinance⁴. The Committee recommends that Regulations to prescribe organisations which train dogs or other animals for the purposes of paragraph 15 of the Schedule to the Prevention of Discrimination Ordinance, and Regulations to prescribe "a person who provides supported employment" for the purpose of paragraph 22 of the Schedule to the Ordinance, shall not require an affirmative resolution of the States prior to entry into force, and instead should conform to the normal procedure whereby they must be laid before a meeting of the States, where they may be annulled. This is considered a more proportionate process for legislative matters of a very minor nature.

² [The Employment Protection \(Sunday Shop Working\) \(Guernsey\) Law, 2001.](#)

³ [The Minimum Wage \(Guernsey\) Law, 2009.](#)

⁴ <https://gov.gg/article/189239/States-Meeting-on-28th-September-2022-Billet-dEtat-XVII>

- 1.8 The Committee has made Regulations (Appendix 5) to bring the education section (section 29) of the Prevention of Discrimination Ordinance into force. That section prohibits discrimination or harassment on any of the Protected Grounds, as well as victimisation, by schools or education providers in relation to students or prospective students. The Regulations also bring into force parts of sections 32 and 33, insofar as those sections impose a duty on a school or education provider to provide reasonable adjustments when acting in relation to students. If these Regulations are approved by the States, these sections of the Ordinance will come into force on 2nd January 2026.

2. INTRODUCTION

- 2.1 Discrimination is when someone is treated unfavourably due to a Protected Ground.
- 2.2 The Prevention of Discrimination Ordinance came into force on 1st October 2023. It applies in Guernsey, Herm and Jethou. It does not apply in Alderney or Sark. The Ordinance prohibits discrimination, harassment and victimisation on the grounds of race, disability, carer status, sexual orientation and religion or belief in the fields of employment, the provision of goods and services, accommodation, and membership of clubs and associations. The field of education and discrimination complaints relating to physical features have a later entry into force date. This is known as ‘Phase 1’ of the development of the Ordinance.
- 2.3 The intention of the Prevention of Discrimination Ordinance is to promote and protect people’s right to equality of status, opportunity and treatment on the basis of various Protected Grounds.
- 2.4 This Policy Letter partly discharges States resolution 3 arising from consideration of the Policy Letter entitled ‘Proposals for a New Discrimination Ordinance’⁵ (‘the July 2020 Policy Letter’), which was superseded by the outcome of resolution 19 arising from consideration of the Policy Letter entitled ‘Government Work Plan – 2021-2025’⁶. Effectively, the Committee was directed to undertake the following next steps:

- i) To undertake a review to allow the Assembly to understand the impact of Phase 1 of the Prevention of Discrimination Ordinance

⁵ Committee *for* Employment & Social Security - Proposals for a New Discrimination Ordinance (Billet d’État XV of 2020, Article XV). Available at <https://gov.gg/article/176559/Proposals-for-a-New-Discrimination-Ordinance>.

⁶ Policy and Resources Committee - Government Work Plan 2021-2025 (Billet d’État XV of 2021, Article I). Available at <https://gov.gg/article/183162/States-Meeting-on-21-July-2021-Billet-dtat-XV>

- before bringing to the States further policy proposals in respect of the further development of the Ordinance; and
- ii) To bring back to the States detailed policy proposals to expand the grounds covered in the Ordinance, including the ground of age.

The full wording of resolution 3, as amended by resolution 19, and the timeline for the review of Phase 1 is set out in Appendix 6.

- 2.5 This Policy Letter also discharges resolution 4 arising from consideration of the Policy Letter entitled ‘Longer Working Lives’⁷:

“To agree that the Committee *for* Employment & Social Security will return to the States with detailed proposals for the enactment of legislation to prevent age discrimination in Guernsey under the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 as outlined in section 6.4 of this Policy Letter.”

3. STRUCTURE OF THE POLICY LETTER

- 3.1 Section 4 of this Policy Letter sets out the background to the development of the Prevention of Discrimination Ordinance and associated legislation and operational changes. It also sets out which of the States resolutions from the July 2020 Policy Letter have been discharged.
- 3.2 Section 5 outlines the consultation process and the Committee’s recommendations with respect to proposals for the Protected Ground of age.
- 3.3 Section 6 covers the commencement of the delayed duties for education providers.
- 3.4 Sections 7 covers the review of Phase 1 of the Prevention of Discrimination Ordinance and the Committee’s recommendations arising from the review.
- 3.5 Section 8 sets out financial information.
- 3.6 Section 9 sets out compliance with Rule 4 of the Rules of Procedure.
- 3.7 The following additional information is appended:
- Appendix 1 – The consultation document that was issued to stakeholders in August 2024 in relation to protection from discrimination on the ground of age.

⁷ Committee *for* Employment & Social Security – Longer Working Lives (Billet d’État V of 2018, Article IV). Available at: <https://gov.gg/article/162603/Longer-Working-Lives>.

- Appendix 2 – A summary of the consultation responses; the revisions the Committee has made to its original proposals for protection from age discrimination; and the rationale for these changes.
- Appendix 3- The report from the Director of the EEOS covering the period 1st October 2023 to 31st December 2024.
- Appendix 4 – A summary of feedback from the review of Phase 1 of the Prevention of Discrimination Ordinance
- Appendix 5 – The Prevention of Discrimination (Education)(Commencement) Regulations, 2025.
- Appendix 6 – The States Resolution relating to the timeline for review of the Prevention of Discrimination Ordinance and additional phases.

4. BACKGROUND

- 4.1 In 2003 (Billet d'État XXI of 2003, Article XIV⁸), the States discussed the principle of introducing multi-ground discrimination legislation. The first tranche of this legislation, prohibiting discrimination on the grounds of sex, marriage and gender reassignment in employment only, was introduced in 2006.⁹ Maternity leave and adoption leave were added to the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 with effect from 1st April, 2016.¹⁰
- 4.2 In 2013 (Billet d'État XXII of 2013, Article IX¹¹), the States unanimously agreed to develop proposals for legislation to protect disabled people and carers from discrimination as part of the Disability and Inclusion Strategy. In June 2018¹², the States unanimously agreed to expand this to the development of proposals for a piece of legislation to cover multiple grounds of protection. In the summer of 2019, the Committee consulted on draft policy proposals for multi-ground discrimination legislation. The quantity of feedback on the details of these proposals, and the desire of some key stakeholders (who supported the principle of introducing new discrimination legislation) for a phased approach to implementing the legislation, meant that the previous Committee decided to recommend a phased approach to the introduction of the new multi-ground

⁸ States Advisory and Finance Committee – Proposals for Comprehensive Equal Status and Fair Treatment Legislation (Billet d'État XXI of 2003, Article XIV). Available at: <https://www.gov.gg/CHttpHandler.ashx?id=3754&p=0>.

⁹ The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (Billet d'État XX of 2005, Article V). Available at: <https://gov.gg/article/150548/States-Meeting-on-30th-November-2005-Billets-XVIII-XIX-XX>

¹⁰ [Maternity Leave and Adoption Leave \(Guernsey\) Ordinance, 2016 \(Consolidated text\)](#)

¹¹ Policy Council - Disability and Inclusion Strategy (Billet d'État XXII of 2013, Article IX). Available at: <https://www.gov.gg/article/150421/States-Meeting-on-27th-November-2013-Billet-XXII>.

¹² Policy & Resources Committee – Policy & Resource Plan 2017 Review and 2018 Update P.2018/45 (Billet d'État XV of 2018, Article I). Available at: <https://gov.gg/article/163879/States-Meeting-on-5-June-2018-Billet-dtat-XV>. As Amended by P.2018/45 Le Clerc and Langlois Amendment 2. Available at: <https://gov.gg/CHttpHandler.ashx?id=113327&p=0>.

discrimination legislation.

- 4.3 In July 2020, the States of Deliberation considered the Committee's policy proposals for a new Prevention of Discrimination Ordinance¹³. On 17th July 2020, the States agreed unanimously to the preparation of an Ordinance to prohibit discrimination on the grounds of disability, carer status and race. The States also approved an amendment¹⁴ to the Committee's proposals, which added religious belief (later amended to 'religion or belief')¹⁵ and sexual orientation into the first phase of the development of the Ordinance and reduced the number of implementation phases from three to two.
- 4.4 In November 2021, the States approved exceptions with respect to the grounds of religious belief and sexual orientation¹⁶.
- 4.5 On 30th September 2022, the Prevention of Discrimination (Guernsey) Ordinance, 2022 was approved by the States, with some amendments, including substituting the ground of 'religion or belief' for 'religious belief'. The majority of Phase 1 of the Ordinance came into effect one year later on 1st October 2023.¹⁷ Some aspects of Phase 1 have later commencement dates – commencement of duties for education providers; complaints relating to physical features of a building, landlord reasonable adjustment duties; and the public sector duty to prepare accessibility action plans.
- 4.6 The EEOS was established in the autumn of 2023. This service evolved from the previous Employment Relations Service and offers, in addition to the services provided by that former Service, advice and conciliation services with respect to alleged discrimination in service provision contexts.
- 4.7 The EEOS is managed by the Director of the EEOS, an independent holder of public office appointed by the States of Deliberation. The Employment and Equal

¹³ Committee *for* Employment & Social Security – Proposals for a New Discrimination Ordinance (Billet d'État XV of 2020, Article XV). Available at <https://gov.gg/article/176559/Proposals-for-a-New-Discrimination-Ordinance>.

¹⁴ P.2020/41 Parkinson and Tooley Amendment 2 to the Committee *for* Employment & Social Security's Proposals for a New Discrimination Ordinance (Billet d'État XV of 2020, Article XV). Available at <https://gov.gg/CHttpHandler.ashx?id=127724&p=0>.

¹⁵ <https://gov.gg/CHttpHandler.ashx?id=158040&p=0>

¹⁶ Committee *for* Employment & Social Security – Discrimination Ordinance – Grounds of i) Religion or Belief and ii) Sexual Orientation (Billet d'État XX of 2021, Article XIV). Available at: <https://gov.gg/article/183936/States-Meeting-on-2-November-2021-Billet-dEtat-XXI>.

¹⁷ Committee *for* Employment & Social Security – The Prevention of Discrimination (Guernsey) Ordinance, 2022 (Billet d'État XVII of 2022, Article V). Available at: <https://gov.gg/article/189239/States-Meeting-on-28th-September-2022-Billet-dEtat-XVII>.
<https://gov.gg/article/190813/The-Prevention-of-Discrimination-Guernsey-Ordinance-2022>.

Opportunities Service (Guernsey) Law, 2023¹⁸ sets out the functions of the Director.

4.8 Three sets of regulations have been made by the Committee under the Prevention of Discrimination Ordinance, all of which have required States approval to come into force. These are:

- The Prevention of Discrimination (Compensation) Regulations, 2023¹⁹
- The Prevention of Discrimination (Animals) (Guernsey) Regulations, 2023²⁰
- The Prevention of Discrimination (Supported Employment) (Guernsey) Regulations, 2023²¹

4.9 The Employment and Discrimination Tribunal ('the E&D Tribunal') hears discrimination complaints made under the Prevention of Discrimination Ordinance and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, which have not been resolved through pre-complaint or post-complaint conciliation facilitated by the EEOS. A person can represent themselves in E&D Tribunal hearings, or they can nominate another person to represent them. There is no requirement for the representative to be a lawyer or hold a legal qualification. This provides access to justice for a person who has experienced discrimination, as defined within the Prevention of Discrimination Ordinance. The E&D Tribunal has the power to make financial or non-financial awards where a discrimination complaint is upheld. The maximum compensation limit for a discrimination complaint in the field of employment is six months' pay plus up to £10,000 for hurt and distress. For any non-employment complaint, the maximum amount of compensation is £10,000 plus up to £10,000 for hurt and distress. There are special provisions for complaints joined with a complaint of unfair dismissal (maximum compensation of nine months' pay plus up to £10,000 for hurt and distress) or joined with a complaint of victimisation (where an additional award may be made).

4.10 This Policy Letter sets out proposals to introduce protection from discrimination on the ground of age. It also seeks States approval of Regulations to bring into force the education section (section 29) of the Prevention of Discrimination Ordinance, and parts of sections 32 and 33, insofar as those sections impose a duty on a school or education provider to make reasonable adjustments when acting in relation to students, with effect from 2nd January 2026.

¹⁸ The Employment and Equal Opportunities Service (Guernsey) Law, 2023. Available at: [Employment and Equal Opportunities Service \(Guernsey\) Law, 2023](#).

¹⁹ The Prevention of Discrimination (Compensation) Regulations, 2023. Available at: <https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84411>.

²⁰ The Prevention of Discrimination (Animals) (Guernsey) Regulations, 2023. Available at: <https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84548>.

²¹ The Prevention of Discrimination (Supported Employment) (Guernsey) Regulations, 2023. Available at: <https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84770>.

4.11 If the States approves the proposals contained in this Policy Letter, the following aspects of the development of the multi-ground Prevention of Discrimination Ordinance will remain outstanding:

Phase 1: i) Development of rules of procedure for the E&D Tribunal – currently in progress;
 ii) Entry into force of the public sector duty to prepare accessibility action plans (section 37 of the Ordinance) – but not before 1st October 2028; and
 iii) Entry into force of the reasonable adjustment, minor improvement and landlord duties in respect of physical features (set out in sections 32 to 36 of the Ordinance) and indirect discrimination complaints relating to a physical feature of a building – but not before 1st October 2028.

Phase 2A: i) Incorporation of the grounds of sex, marriage and gender reassignment, that are currently covered in the Sex Discrimination (Employment) (Guernsey), Ordinance, 2005, into the Prevention of Discrimination Ordinance, with appropriate reframing, and expansion to apply, in addition to the field of employment, to the provision of goods and services, accommodation, education and in the membership of clubs and associations; and
 ii) Consideration of whether to allow people to make complaints of intersectional discrimination²².

Phase 2B: Consideration of the introduction of the right to equal pay for work of equal value in relation to the ground of sex (there are already provisions for equal pay for equal work and equal treatment within the Prevention of Discrimination Ordinance).

Review: The next review is planned to follow the implementation of Phase 2A.

4.12 Progression of Phase 2A in the next States term may enable the States of Guernsey to request extension of the UK's ratification of the Convention for the Elimination of All Forms of Discrimination Against Women ('CEDAW') to

²² The term 'intersectional discrimination' reflects the understanding that the interaction of two or more grounds of discrimination can produce a disadvantage which is qualitatively different to the operation of those grounds separately. It differs from "multiple discrimination", which is an overarching term for all instances of discrimination on several grounds.

Guernsey. CEDAW was extended to Jersey in 2021²³. This would discharge a States resolution on CEDAW from 2003²⁴.

5. PROPOSALS FOR AGE DISCRIMINATION LEGISLATION

- 5.1 On 12th August 2024, a consultation document on the additional ground of protection of age and related exceptions was sent to 70 stakeholders. The consultation document is attached to this Policy Letter at Appendix 1. It was also made available on the States of Guernsey's website at www.gov.gg/discrimination and a media release was issued inviting responses from any interested person or party. The consultation findings are attached at Appendix 2.
- 5.2 As was the case in Phase 1 of the development of the Prevention of Discrimination Ordinance, these proposals have been drafted along the lines of international standards and tailored to be proportionate and effective for Guernsey. The proposals largely mirror equivalent provisions in either the UK's Equality Act 2010 or the Discrimination (Jersey) Law 2013, or both. This policy letter sets out the policy proposals and, in accordance with usual practice, legislative counsel in St James' Chambers will be responsible for the technical drafting of the legislation.

Definition of 'age'

- 5.3 The Committee is proposing that age is a Protected Ground under the Prevention of Discrimination Ordinance. Age would include a person's age, including a person's numerical age and/or their age group. If someone says they have been discriminated against, this means that they have been treated in a less favourable way than a person who does not share the same Protected Ground. In order to show this, they would need to make a comparison between themselves and someone (real or hypothetical). For age, it is proposed that someone may compare themselves to a person of a different age or age group.

Objective justification of different treatment on the ground of age

- 5.4 In considering age as a Protected Ground, an important starting point is recognising that age is in some ways different to the other Protected Grounds, and, therefore, requires specific policy consideration. Other grounds, such as

²³ CEDAW extended to Jersey in 2021:
<https://www.gov.je/Government/Departments/JerseyWorld/Pages/TreatiesConventionsDetail.aspx?id=293>.

²⁴ States Advisory and Finance Committee – Proposals for Comprehensive Equal Status and Fair Treatment Legislation (Billet d'État XXI of 2003, Article XIV). Available at:
<https://gov.gg/CHttpHandler.ashx?id=3754&p=0>.

race and sexual orientation, are fixed and unrelated to a person's experiences, abilities, circumstances and needs. This makes differences in treatment based on these grounds unjustifiable except in a number of limited circumstances set out in specific exceptions. A person's age, on the other hand, is constantly changing. This means that differential treatment based on age can often be justified and beneficial. For example, a younger individual may not have the same training and experience as an older individual and therefore treating the two differently may not be discriminatory but instead a way of recognising that people of different ages have different capabilities and levels of experience. This means there are a number of policy points which need to be considered to ensure that the Ordinance is practical and only prohibits genuinely harmful treatment.

- 5.5 The Committee consulted on whether 'objective justification' should be a defence for direct discrimination on the grounds of age. Direct discrimination is treating someone less favourably than another person (or people) in a similar situation or circumstances. The reason for the different treatment must be clearly linked to one or more of the Protected Grounds for it to be unlawful. In order to objectively justify a provision, criterion or practice ('PCP'), an employer or service provider would need to show that the PCP is designed to achieve a 'legitimate aim' and the action being taken is a proportionate means of achieving that aim (i.e. the aim cannot be achieved in a less discriminatory way).
- 5.6 Objective justification is not available as a defence for direct discrimination on the five Protected Grounds currently covered under the Prevention of Discrimination Ordinance (i.e. race, disability, carer status, sexual orientation and religion or belief). Consequently, direct discrimination on these grounds would be determined as unlawful in all circumstances except those set out in specific exceptions.
- 5.7 However, age is different to the other Protected Grounds in that there are many instances where there are good reasons for treating someone differently due to their age. The Committee believes that it may be difficult to capture all the possible instances of justified age-based differential treatment in a list of exceptions.
- 5.8 By permitting objective justification as a defence for direct age discrimination, an employer or service provider would be able to assert that a difference in treatment was not unlawful by demonstrating that their PCP was a proportionate means of achieving a legitimate aim. Examples of aims accepted as legitimate by UK Employment Tribunals include promoting equality and diversity in the workplace and the efficient planning of the departure and recruitment of staff. An aim related purely to cost reduction would not be considered legitimate. Proportionality refers to whether the measure taken was an appropriate and necessary way of achieving that aim. The more significant and serious the impact of a PCP is in disadvantaging the person, the harder it will

be to justify that it is proportionate. A Tribunal would likely look at whether there were other ways that a person or organisation could have met the legitimate aim and whether the importance of the aim outweighed any discriminatory effects.

- 5.9 The Committee recommends that objective justification be a permitted defence for direct discrimination on the grounds of age in order to ensure that the legislation is proportionate and only prohibits unjustifiable and harmful treatment. This will ensure that the legislation is not too burdensome for employers and service providers, enabling them to justify policies which differentiate based on age when there is a good reason for doing so. While providing flexibility, it should not weaken the protection of individuals from age discrimination as objective justification is a strict legal test.
- 5.10 Both the Discrimination (Jersey) Law 2013 and the Equality Act 2010 permit objective justification as a defence in cases of direct age discrimination. The majority of consultation respondents agreed that objective justification of direct age discrimination should be a permissible defence, in line with the position in the UK and Jersey.

Exclusions for young people

- 5.11 Under 18s are protected under the Prevention of Discrimination Ordinance from discrimination on the grounds of carer status, disability, race, religion or belief and sexual orientation. So, for example, if a child was discriminated against because they were disabled, they could bring a disability discrimination complaint, no matter what age they were. If a child were discriminated against on the basis of race, they could bring a race discrimination complaint. However, the position is more complicated when considering whether a child or young person should be able to be treated differently because of their age.
- 5.12 Many services and organisations treat young people differently in order to take into account the needs of persons of that age. It is important that the Prevention of Discrimination Ordinance does not stop or limit organisations from providing age-appropriate services for children and young people and taking their wellbeing into account appropriately. If under 18s were protected from age discrimination under the Ordinance, extensive 'exceptions' to the rule of non-discrimination would be required for the many circumstances where a child or young person's age needs to be taken into account to ensure the provision of appropriate services or support. Exceptions set out the circumstances in which an act will not be treated as a prohibited act of discrimination.
- 5.13 Relying on specific exceptions creates a risk that some will be missed, or not be taken into account sufficiently. This could lead to organisations that are trying to meet the welfare needs of children in an age-appropriate way having to

objectively justify their age-based approach at a Tribunal hearing if a complaint were made. The Committee is of the view that this would not be reasonable or in the best interests of children and young people. Consequently, the Committee is proposing lower age limits on the ability to make an age discrimination complaint which differ depending on the field of the Ordinance.

- 5.14 In the field of employment, it is proposed that people who are below school leaving age (currently 31st August after a child's 16th birthday) will not be able to make a discrimination complaint on the ground of age, while people who have attained that age will be able to make such complaints.
- 5.15 Guernsey has very limited legislation regulating the employment of minors and young people. There is no minimum working age in Guernsey Law, meaning that employers are free to use their judgement when determining whether a person is old enough to carry out a particular role. The Education (Guernsey) Law, 1970 requires that employment must not be prejudicial to the health or education of minors under the school leaving age, but this does not preclude a person under this age from working (e.g. a weekend job).
- 5.16 In the absence of minimum working age legislation, the Committee is of the view that employers should be free to exercise their judgement when determining if a child under school leaving age is mature enough to carry out a particular role, without the risk of an age discrimination complaint being brought against them. Also, this would allow employers to adopt, for example, different terms and conditions for employees under school leaving age, recognising that this may be appropriate given that a young person's primary focus should be on their education. The Committee is strongly of the view that people who have attained school leaving age should be protected from age discrimination in employment because young people may cease full-time education at this age and enter employment on a full-time basis.
- 5.17 In goods and services provision, the Committee recommends that a person must be aged 16 or over to make an age discrimination complaint. This is to ensure that service providers can ensure age-appropriate treatment of people aged under 16 without fear of an age discrimination complaint being made. The Committee sought views through its consultation exercise on a proposal to set this threshold at 18, but as some respondents argued strongly that this age should be 16, as a 16 year old is old enough to vote and get married and a 17 year old is old enough to drive; it would therefore seem illogical for them to be denied service in a shop, restaurant or similar (with the sale of alcohol excepted) on the basis of their age. The same age limit (i.e. 16) is recommended in respect of complaints regarding the membership of clubs and associations.
- 5.18 Notwithstanding paragraph 5.17, separate adult and children's services (such as

those provided by the Committee *for* Health & Social Care, or with a cut off at age 18) and separate clubs and associations for adults and children would be permissible and it would not be age discrimination for a 16 or 17 year old to be denied access to adult services or if an adult were denied access to children's services or if services for adults and children were provided differently.

- 5.19 In relation to accommodation provision, the Committee recommends, by a majority, that a person must be aged 18 or over to make an age discrimination complaint. The Committee's rationale is explained in Appendix 2 due to the limited legal capacity of minors to enter into contracts.
- 5.20 In response to the consultation, it was suggested that the Committee may wish to consider adopting a similar position to Jersey, where it is unlawful for a person to discriminate against someone who intends to live with a child under the age of 18. The Committee supports this policy objective and agreed that parents should be able to make a claim of age discrimination by association if they are denied access to accommodation because they intend to live with a child. It is noted that the Ordinance will need to recognise that not all properties are suitable for families (e.g. due to health and safety or space considerations). This may require a change to the definition of discrimination by association to ensure that this is recognised as discrimination in spite of the fact that a young person under 18 cannot make a successful age discrimination complaint in relation to accommodation.
- 5.21 In the field of education, it is recommended that age discrimination complaints with regard to the provision of education in schools, nurseries or preschools cannot be made by persons of any age, because it is common for different age groups to be educated separately, for provision to be targeted at specific age groups and also, for safeguarding reasons, for adults and older students to be educated separately from younger children.
- 5.22 The Committee is recommending that a person must be aged 16 or over to make a discrimination complaint with respect to the provision of further or higher education on the ground of age. Above this, access to further and higher education should generally be dependent on whether a person meets the entry requirements of a course, not their age. However, the Committee is recommending an exception to allow existing policies of the Committee *for* Education, Sport & Culture on further and higher education funding plus further education admissions and course organisation to continue (as explained in paragraph 5.27(xi)).

Exceptions

- 5.23 Exceptions set out the circumstances in which an act will not be treated as a prohibited act of discrimination.
- 5.24 As a general rule, any instance of unfavourable treatment based on a Protected Ground is unlawful. However, there are exceptions to that rule where different treatment is not considered discrimination for the purposes of the Prevention of Discrimination Ordinance. These are intended to cover some everyday instances where decisions are made based on one of the Protected Grounds which the government does not view as unfair. In the Ordinance, there is a Schedule which sets out a list of general exceptions to prohibited acts as well as specific exceptions in relation to work, education, health, goods and services, clubs and sports, and accommodation.
- 5.25 For details of the exceptions currently set out in the Ordinance, please see Chapter 8 of the guidance documents on employment and service provision available at the EEOS website.²⁵
- 5.26 Providing exceptions in the legislation is important to ensure that specific practices cannot be challenged, removing the associated risks, and costs of, litigation for employers and service providers. This is particularly important for the ground of age given that differential treatment on this ground is often justified and beneficial. Therefore, a number of exceptions specific to age are required.
- 5.27 The Committee recommends that the following exceptions be included in the Schedule to the Prevention of Discrimination Ordinance when the ground of age is added:
- i. **Preferential charging/age related concessions** (i.e. family tickets, child or 'OAP' ticket prices)- It is recommended that it be permissible to set preferential fees, charges, or rates for anything offered or provided to children or older people. This would be in the fields of goods and services provision, education and membership of clubs and associations. It would not apply to the fields of employment or accommodation.

²⁵ Chapter 8: Exceptions | EEOS for general exceptions and exceptions relating to employment. Available at: <https://eeos.gg/resources-organisations-my-issue-about-employing-people-discrimination-prevention-discrimination-10>.
Chapter 8: Exceptions | EEOS for general exceptions and exceptions relating to goods and services, education, accommodation and clubs and associations. Available at: <https://eeos.gg/resources-organisations-my-issue-about-providing-service-discrimination-and-rights-service-1>.

- ii. **Preferential customer terms and conditions when accessing public transport, including that operated by taxi, bus, coach and tour operators** – It is recommended that it be permissible to set preferential terms and conditions when accessing public transport (e.g. for OAPs at off-peak times or for students travelling to/from school/college).
- iii. **Household composition** – It is recommended that an officer or panel may make determinations which consider age in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States.
- iv. **Minimum wage** – It is recommended that it be permissible to base pay structures for people who would qualify for the young persons' minimum wage rate (currently 16 and 17 year olds) on rates set out in minimum wage legislation, or linked to those rates, and to have different rates of pay for apprentices aged 16 and 17. Also, an employer who pays a person less than a rate of the minimum wage where the person does not qualify for that rate does not contravene the Prevention of Discrimination Ordinance in relation to the Protected Ground of age.
- v. **Length of service and seniority** – It is recommended that it be permissible to base different rates of pay or terms and conditions on length of service and seniority. The Committee proposes a similar exception to that in the Equality Act which states that "it is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility or service in so far as the disadvantage is because B has a shorter period of service than C". However, unlike under the Equality Act, it is proposed that this would *not* be limited to five years of service. This proposal aligns with the position under the Discrimination (Jersey) Law, 2013. For example, it is recommended that it be permissible for redundancy awards to be based on length of service. This would allow higher redundancy payments to be made to anyone who had worked for a company for a longer period of time.
- vi. **Redundancy** – It is recommended that it be permissible for an employer to give an employee a redundancy payment of an amount less than that of another employee provided that payments are calculated on the same basis using the same formula for all employees, for example this could be to provide different rates of severance payment based on length of service or based on the difference between the current age of the employee and their State Pension Age. Selection for redundancy could also be based on length of service (but not directly related to age).

- vii. **Pension schemes** – It is recommended that the provision and the terms of an occupational pension scheme, or any personal or group personal pension scheme, do not contravene the Discrimination Ordinance in relation to the Protected Ground of age. This includes trustees and administrators in the context of administering such schemes. The exclusion of occupational pension schemes, or any personal or group personal pension scheme, aligns with the position under the Discrimination (Jersey) Law, 2013²⁶ but differs to the position under the Equality Act in the UK where certain age-based practices in the provision of occupational pensions are exempt, such as setting minimum or maximum ages for scheme entry, but other practices must be objectively justified.

The Committee suggests that the scope of this exception is subject to review as part of the next post-implementation review, unlikely to take place before 2029/30, with input from pension industry representatives.

- viii. **Occupational benefits** – It is recommended that employers or providers of occupational benefits can use age criteria when administering occupational benefits in limited circumstances.

The Committee recommends, by a majority, that age criteria can only be used when administering occupational benefits that have an actuarial or risk-based element (e.g. insurance schemes). The Committee's majority view is that while there is some rationale for ceasing to provide, for example, health insurance as an occupational benefit when an employee reaches pensionable age, as statistical evidence shows that the cost of healthcare generally increases with age, it is not justifiable to cease other occupational benefits, that have no connection to age (e.g. the payment of performance-based bonuses or annual leave entitlement) when a person reaches pensionable age.

The Committee also recommends that Guernsey should take the same approach as the UK and Jersey by making it discriminatory to set a maximum upper age limit that is lower than States pension age for an occupational benefit unless it can be objectively justified in the specific circumstances of the case.

- ix. **Childcare provided by employers** – It is recommended that it be permissible for an employer who provides or facilitates the provision of care for the children of their employees to only provide such benefits in respect of children of particular ages.

²⁶

Section 33 of Schedule 2 to [the Discrimination \(Jersey\) Law, 2013](#).

- x. **Education** – As explained in paragraph 5.21, much of a child’s school life is determined by their age; including the classes and exams that they may take and so decisions and opportunities based on age are an inherent and necessary factor in education. It is proposed that, as in the UK and Jersey, age discrimination is not a prohibited act of discrimination in relation to the admission and treatment of pupils in schools. (N.B. this exception would apply to nurseries, schools and preschools but not to further education or higher education providers).
- xi. **Further or higher education (mature students)** – It was proposed in the Committee’s consultation document that it be permissible for further and higher education institutions to treat mature students differently in allocating places, fees and grants/funding. It is now recommended that this exception covers in greater detail current education policies on further and higher education. Some further and higher education courses are organised to give different treatment (in terms of organisation of courses, admissions and funding) for students aged 16-19 (or in some circumstances up to 25). Also, financial assessments for higher education funding may be subject to an assessment of parental income up to a certain age (where a student is dependent on their parent(s)). An additional exception(s) to continue to permit these policies is recommended and this is explained in greater detail in Appendix 2.
- xii. **Risk** – It is recommended that it be permissible for providers of annuities, policies of insurance or any other financial services product related to the assessment of risk to use age to assess risk when providing these financial services and vary the service that they provide accordingly. This must be by reference to information which is both relevant to the actuarial or other assessment of the risk in question and from a source on which it is reasonable to rely and the difference in services provided should be proportionate to risk.
- xiii. **Preventative public health services** – It is recommended that it be permissible to target preventative public health services at particular age groups where this is objectively justified through epidemiological or relevant data.
- xiv. **Clinical judgement** – It is recommended that the existing exception on clinical judgement be extended to age so that it would not be discrimination if a clinician was advising of the most appropriate care or treatment for a patient in their professional opinion taking age into account.
- xv. **Age-related holidays** – It is recommended that it be permissible to offer

holidays aimed at particular age groups.

- xvi. **Requesting identification** – It is recommended that it be permissible for age restricted services to be able to request identification and refuse to serve individuals who appear to be below the required age. This would ensure that businesses that sell age-restricted goods (such as alcohol, fireworks and cigarettes) can continue to ask for proof of age where a customer appears to be younger than the required age without fear of an age discrimination complaint being brought against them.
- xvii. **Drama and entertainment** – It is recommended that it be permissible to treat individuals differently in relation to age where this is reasonably required for purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.
- xviii. **Sports, games, and other competitive activities** – It is recommended that it be permissible to treat people differently according to age in relation to providing or organising sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant.
- xix. **Social housing and housing association allocation** – It is recommended that it be permissible to treat people differently in relation to age when allocating accommodation or managing waiting lists based on prioritisation in line with an allocation's policy related to people's needs.
- xx. **Specialist accommodation** – It is recommended that it be permissible to apply age criteria with respect to provision of accommodation for older people. For example, sheltered housing would be permitted to use age criteria and so would housing developments for over 55s.
- xxi. **Clubs restricted to persons who share a Protected Ground** – It is proposed that this existing exception should also cover age.
- xxii. It is noted that the existing **general exceptions** in the Ordinance will also need to cover the ground of age. For example, the **Population Management** exception should also cover age, thereby ensuring that action taken to give effect, in a proportionate way, to population management policy may take into account age.

Exception not recommended

- 5.28 When Jersey introduced its Discrimination Law, it included a time-limited exception in the Law which permitted employers to lawfully dismiss employees

when they reached pensionable age. This exception only applied for two years, after which any dismissal by reason of age would constitute direct discrimination unless it could be objectively justified. This effectively gave employers time to remove this type of clause (if present) from their employees' contracts of employment and to adjust to a new position where it would no longer be permissible to dismiss an employee due to their age, unless this could be objectively justified.

- 5.29 In its consultation, the Committee asked: "Do you think that a time-limited exception should be introduced so that employers would be permitted to lawfully dismiss employees who reach pensionable age for a limited period of time?" Most respondents were of the view that it would not be necessary to introduce a time-limited exception because an adequate period of time had elapsed since the States agreed in principle that Phase 2 of the Prevention of Discrimination Ordinance would cover the ground of age. When considering the consultation feedback, the Committee noted that any legislation regarding age discrimination was unlikely to be in force until 2027, thereby giving employers further notice. Therefore, the Committee has decided not to recommend the inclusion of a time-limited exception to allow employers to lawfully dismiss employees when they reach pensionable age, as this is considered unnecessary.

Timeline

- 5.30 If the States approves the proposals for legislation preventing age discrimination, then the earliest that this could come into force would be 2027. An indicative timeline is set out below:

- Drafting of amendment Ordinance Q3/4 2025 or Q1 2026
- Committee consideration and consultation Q1/2 2026
- Submission to States Q3/4 2026
- Earliest in force date Q2/3 2027

6. COMMENCEMENT OF EDUCATION PROVISIONS OF ORDINANCE

- 6.1 Section 29 of the Prevention of Discrimination Ordinance prohibits discrimination or harassment on any of the Protected Grounds, as well as victimisation, by schools or education providers in relation to students or prospective students. The Ordinance provides that section 29 (amongst other sections) shall come into force on the day appointed by regulations of the Committee, although that day shall not be any earlier than 1st September 2025.
- 6.2 This later entry into force date (compared to the majority of the other provisions of the Ordinance which entered into force on 1st October 2023) also applies to

section 32 (duty to make reasonable adjustments for a disabled person) and section 33 (proactive duty of service providers, schools and education providers in respect of disabled persons generally), insofar as those sections impose a duty on a school or education provider, when the provider is acting in relation to students. The Committee *for* Education, Sport & Culture (CfESC) has been working on the basis that section 29 and parts of sections 32 and 33, insofar as those sections impose a duty on a school or education provider to make reasonable adjustments when acting in relation to students, will enter into force on 1st September 2025.

- 6.3 By way of background, this later entry into force date was proposed in the July 2020 Policy Letter to enable further discussions to take place between the Committee and the CfESC regarding the most appropriate mechanism for the adjudication of education complaints. At the same time as the Committee was developing its policy proposals for a new Prevention of Discrimination Ordinance, the CfESC was reviewing the Education (Guernsey) Law, 1970 ('the Education Law'). If the CfESC's proposals to reform the Education Law had included a proposal to introduce an appeals mechanism for complaints relating to special educational needs, then it was considered that it might be prudent for disability discrimination complaints in schools to be heard by the same appeals body.
- 6.4 The Committee has met with the CfESC and has discussed, and corresponded, on options for hearing disability discrimination complaints and discrimination complaints relating to admissions (which are also most likely to be on the ground of disability). It is not intended that CfESC would set up a separate tribunal for discrimination complaints related to disability or admissions, which would be expensive.
- 6.5 Instead, education complaints would be heard by the E&D Tribunal, as is currently already provided for in the Prevention of Discrimination Ordinance. Both the complainant and respondent will need to provide evidence to the Tribunal to support their case. This may include statements from witnesses, including people with expertise in relevant fields (including witnesses with educational expertise). This aligns with the normal process of presenting and hearing cases relating to alleged discrimination in other fields, such as employment, provision of goods and services, etc. In extremis (exceptional and rare circumstances), it may be possible for the Tribunal to appoint an independent expert to advise the Tribunal. The Committee could give the Tribunal the explicit power to appoint an independent expert as and when required through an Order made under the provisions of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005²⁷.

²⁷ [The Employment and Discrimination Tribunal \(Guernsey\) Ordinance, 2005.](#)

- 6.6 The Committee has agreed that section 29 of the Prevention of Discrimination Ordinance, and parts of sections 32 and 33, insofar as those sections impose a duty on a school or education provider to make reasonable adjustments when the school or education provider is acting in relation to students, should come into force on 2nd January 2026. This will give education providers more notice of the commencement. The latter is also important if, due to the volume of States business, this Policy Letter is not considered at the States meeting commencing on 30th April 2025 and is deferred until the start of the next term of government.
- 6.7 On 12th March 2025, the Committee made the Prevention of Discrimination (Education) (Commencement) Regulations, 2025, as set out in Appendix 5 to this Policy Letter. These regulations are not effective unless or until approved by the States. The Committee recommends that these Regulations be approved by the States.
- 6.8 Subject to States approval of these Regulations, schools and education providers will be prohibited from discriminating against or harassing their students and prospective students on any of the Protected Grounds, or victimising them, from 2nd January 2026. The reasonable adjustment duties will also apply to schools and education providers from this date, however, they will not have to make changes to physical features of a building or prepare accessibility action plans (this latter duty only applies to the public sector) before 1st October 2028.

7. REVIEW OF PHASE 1 OF THE PREVENTION OF DISCRIMINATION ORDINANCE - RECOMMENDATIONS

- 7.1 In late 2024/early 2025, the Committee carried out a review of Phase 1 of the Prevention of Discrimination Ordinance. The Committee wrote to 70 stakeholders requesting feedback and a general invitation for feedback was also issued through the media. A summary of the feedback received by the Committee is provided at Appendix 4. The recommendations arising from this review are set out in this section of the Policy Letter.
- 7.2 Separately, the Committee has received a report from the Director of the EEOS covering the period between 1st October 2023, when the Ordinance came into force, and 31st December 2024 (attached at Appendix 3). Section 7(2) of the Employment and Equal Opportunities Service (Guernsey) Law, 2023, requires the Committee to submit reports from the Director to the States.
- 7.3 The Committee is pleased with the progress that has been made during this term of government on implementing the Prevention of Discrimination Ordinance. The report from the Director of the EEOS demonstrates that this legislation is required, and that concern that it would 'open the floodgates' to many opportunistic employees and members of the public filing complaints which might be frivolous or malicious, was misplaced. Almost 50% of complaints have

been resolved through conciliation, demonstrating the important role of alternative dispute resolution. 16 formal complaints were lodged with the Tribunal under the Prevention of Discrimination Ordinance during the reporting period of 1st October 2023 to 31st December 2024.

- 7.4 In response to consultation feedback, the Committee recommends that the States direct it to consider, in relation to the Minimum Wage (Guernsey) Law, 2009 and the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001, whether:
- i) there should be a requirement for applicants to notify the EEOS of their intended complaint,
 - ii) pre-complaint conciliation should be available, and
 - iii) the Tribunal should be able to join a complaint made under either of these laws with a complaint made under the Prevention of Discrimination Ordinance when the Tribunal is satisfied that the complaints relate to the same facts and circumstances, and there is sufficient connection between the respondents to make it expedient to join the complaints.
- 7.5 The Committee also recommends that section 36(3) of the Prevention of Discrimination Ordinance be amended to correct a drafting error in respect of the references to “T” and “Tenant”. This section is not yet in force and, under the provisions of the Ordinance, cannot be brought into force before 1st October 2028, but needs to be corrected prior to this date.
- 7.6 The policy position in respect of this matter, as agreed by the States in July 2020, is that while commercial landlords have a duty to *allow* a reasonable adjustment to be made for both a tenant and a tenant’s employees or service users, the tenant alone is responsible for *paying* for the reasonable adjustment that is not a disproportionate burden for them to make. There is no financial liability on the tenant’s employees or service users (as incorrectly indicated by use of the letter “T” in this provision which has a wider definition).
- 7.7 The Committee would like to see more awareness raising and guidance documents issued by the EEOS with respect to those topics identified by stakeholders.
- 7.8 All regulations made under the Prevention of Discrimination Ordinance cannot come into force unless and until they have been approved by a resolution of the States. This stipulation followed a successful Amendment to the Ordinance²⁸. In practice, the Committee needs to prepare an accompanying Policy Letter for consideration by the States. The Committee considers this to be

²⁸ <https://gov.gg/article/189239/States-Meeting-on-28th-September-2022-Billet-dEtat-XVII>

disproportionate in respect of changes of a very minor nature, such as adding a supported employer, or adding an approved trainer of assistance dogs or other animals, to a list. This is borne out by the fact that such regulations have, to date, been approved unanimously by the States. Also, the requirement to obtain States approval for very minor changes reduces the ability of the Committee to respond in a timely manner.

- 7.9 Therefore, the Committee recommends that regulations to prescribe organisations which train dogs or other animals for the purposes of paragraph 15 of the Schedule to the Prevention of Discrimination Ordinance, and regulations to prescribe “a person who provides supported employment” for the purpose of paragraph 22 of the Schedule to the Ordinance, shall not require an affirmative resolution of the States prior to entry into force, and instead should conform to the normal procedure whereby they must be laid before a meeting of the States, where they may be annulled. This is considered a more proportionate process for legislative matters of a minor nature.
- 7.10 All other regulations made by the Committee under the powers conferred on it under the Prevention of Discrimination Ordinance would continue to require an affirmative resolution of the States before taking effect. For example, regulations prescribing changes to the exceptions set out in the Schedule to the Ordinance, regulations prescribing the circumstances in which Part V of the Ordinance (conduct prohibited at work) applies in relation to employment on board a ship, and employment on an aircraft, regulations relating to compensation and commencement regulations, would still require the approval of the States.
- 7.11 The final area for further consideration relates to the Intent to Complain Certificate/pre-complaint conciliation process and the administrative and legal complications with applicants needing to lodge more than one intent to complain form for related complaints where the defendant and circumstances are largely the same, but where the applicant may wish to add a different ‘head of claim’ to their complaint. Currently, the E&D Tribunal has the power to extend the time-period for making a formal complaint where it is just and equitable to do so. It is not clear whether or not the Tribunal has the power to review or amend the intent to complain certificate, which is a legal requirement before progressing to a formal complaint. It is recommended that this is investigated early in the next term of government, also noting that this is contrary to other feedback from some respondents who wanted more certainty regarding the full scope of complaints at the intent to complain stage.
- 7.12 The Committee recommends that the States notes the outcome of this review and the report from the Director of the EEOS.

8. FINANCIAL INFORMATION

Transition costs (one-off expenditure)

- 8.1 Following approval of the proposals set out in the 2020 Policy Letter, the Committee was granted a transition budget of £395,000 for the implementation of Phase 1 of the Prevention of Discrimination Ordinance for the period 2020-2023. In July 2023, the Committee's Vice-President wrote to the President of the Policy & Resources Committee asking if the unspent balance of the transition budget could be carried forward to 2024 and 2025 because the implementation timeline had been delayed by about 18 months. This was agreed for 2024.
- 8.2 Table 1 (below) shows the expenditure from the transition budget in 2022, 2023 and 2024. It also shows the expected expenditure for the project during the period 2025 to 2027 (inclusive) - this relates to the delayed provisions from Phase 1 and implementation of part of Phase 2A (in respect of age). This shows that it is anticipated that £142,000 of the originally agreed transition budget for Phase 1 of the project will remain unspent following the implementation of Phase 1 and the part of Phase 2A covered in this Policy Letter.

Table 1 – Discrimination Ordinance Transition Budget – Actual expenditure in 2022 to 2024 and forecast expenditure in 2025 to 2027²⁹

Year	Actual/Forecast* Expenditure (£000's)	Underspend/Anticipated Underspend* Against £395,000 Project Budget (£000's)
2022	30	
2023	117	
2024	24	
TOTAL 2022-2024	171	224
2025	50*	
2026/2027	32*	
TOTAL – 2022-2027	£253*	142*

- 8.3 The transition budget has been used through 2022 to 2024 to fund the development of the EEOS and its website www.EEOS.gg, project management expenses for the introduction of the Ordinance, the preparation of training and guidance materials relating to the Ordinance, the provision of training for EEOS staff and Employment and Discrimination Panel Members and project management support to assist States Committees to prepare for the entry into force of the Ordinance.

²⁹ Figures rounded to the nearest £1,000.

8.4 There are some aspects of the original transition plans that the Committee has decided not to progress in order to make savings. These include:

- i. The previously planned survey on prejudice and discrimination will not proceed. Instead, information on levels of discrimination has been gathered through the Guernsey Young People's Survey 2022³⁰ and the Guernsey and Alderney Wellbeing Survey 2023.³¹
- ii. The EEOS will not be relocated from Edward T Wheadon House to an independent location. The EEOS is led by an independent holder of public office and is not subject to political direction. Locating the service in a non-States building would do no more than enhance the *impression* of independence, which, while desirable, is not considered essential in the current financial climate.
- iii. A code of practice will not be prepared. Instead, the Committee has prepared non-statutory guidance, which is available on the EEOS website, with further guidance on accessibility to follow if funding is approved.

8.5 The key areas of Phase 1 that are due to come into force on or after 1st October 2028 are as follows:

- Sections 32(2)(b) (reasonable adjustments relating to physical features of a building) and section 33 (also in respect of physical features);
- Sections 34 to 36 (landlord duties); and
- Section 37 (public sector duty to prepare accessibility action plans).

8.6 The above provisions all relate to the physical accessibility of buildings. Subject to the provision of the necessary funding, the EEOS will outsource the development of guidance for employers and service providers with respect to accessibility ahead of the above listed final aspects of Phase 1 coming into force in 2028. The Director of the EEOS has made a request to Treasury that £50,000 of the £224,000 unspent balance of the original £395,000 budget be allocated to the Committee for 2025 for this purpose. As this request was made recently and has not yet been resolved at the time of writing, this amount is included in proposition 9 and is part of the £82,000 requested.

8.7 Some amendments will need to be made to the EEOS website to include

³⁰ The Guernsey Young People's Survey 2022. Available at:
<https://www.gov.gg/youngpeoplesurvey>.

³¹ The Guernsey and Alderney Wellbeing Survey 2023. Available at:
<https://www.gov.gg/wellbeingsurveys>.

reference to age discrimination and the delayed provisions of Phase 1 coming into force. Some additional project management resource is also required in 2026 and 2027 to ensure that both the EEOS, and the States as a whole, are ready for the delayed aspects of Phase 1 (as set out in paragraph 8.5) and Phase 2A. Combined, these are expected to cost approximately £32,000 in 2026/27.

- 8.8 Together, the £50,000 requested for accessibility guidance in 2025 and the £32,000 for 2026/27 amounts to £82,000. The States is, therefore, asked to agree that a budget of £82,000 should be allocated to the Prevention of Discrimination Ordinance project (the budget for which is to be managed by the Committee), to be spent across 2025, 2026 and 2027 to complete the remainder of the transition work for Phase 1 and to implement the proposals for Phase 2A, as outlined in this Policy Letter. £67,000 of this £82,000 relates to the implementation of Phase 1 provisions which are due to come into force from 2028. It should be noted that it is forecast that £142,000 of the original £395,000 transition budget for the project will remain unspent (taking into account the funding request for £82,000) for the reasons set out in paragraph 8.4.

Ongoing General Revenue budgets

- 8.9 The budgets for the EEOS and the E&D Tribunal were both increased in line with the proposals set out in the July 2020 Policy Letter. The EEOS budget was underspent in 2023 and 2024 largely as a result of staff vacancies and the fact that the Ordinance entered into force later than originally anticipated. The E&D Tribunal budget was also underspent in 2023 and 2024 due to staff vacancies and the reduced number of available Tribunal Chairs, which reduced the Tribunal's capacity to hear complaints; the latter issue has now been rectified.
- 8.10 With education complaints and age discrimination complaints imminent, and now that the Tribunal has more Tribunal Chairs to progress hearings, it is anticipated that both the EEOS and E&D Tribunal budgets will be fully utilised from 2026/2027 onwards. It is envisaged that the additional enquiries and complaints arising as a result of the commencement of the education section of the Ordinance and the introduction of protection from discrimination on the ground of age, can be met within the existing budgets allocated to the EEOS and E&D Tribunal because they have been underspent in 2023 and 2024. Therefore, no additional ongoing funding is required.
- 8.11 With respect to the States responsibilities as an employer and a service provider, a Project Board has been set up to co-ordinate access audits, the development of accessibility action plans and reviews of policies and procedures. The access audits have identified some relatively low-cost improvements across the States' estate such as signage, handrails, colour contrast, doors etc and it is expected that these will be included within a routine capital bid for 2026 and 2027.

- 8.12 No additional budget request is being made with respect to the entry into force of the field of education. However, it is noted that, as is already the case in respect of those parts of the Ordinance already in force, there is a risk of a discrimination complaint(s) made against the States being upheld. This could have financial implications with respect to compensation payments or the cost of implementing reasonable adjustments. That said, Jersey's Employment and Discrimination Tribunal heard its first case of discrimination in relation to education in 2023, ten years after the Discrimination (Jersey) Law, 2013 came into force.³²

9 COMPLIANCE WITH RULE 4 OF THE RULES OF PROCEDURE

- 9.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended, to, propositions laid before the States.
- 9.2 In accordance with Rule 4(1)(a), this Policy Letter contributes to strategic portfolio three of the Government Work Plan regarding housing, infrastructure and the economy. The introduction of age discrimination legislation will result in the removal of compulsory retirement ages from contracts of employment; this will remove a barrier to employment of people who are over States pension age.
- 9.3 In accordance with Rule 4(1)(b), it is confirmed that the Committee has consulted with all Principal States Committees in advance of, and as part of, the public consultation regarding the draft policy proposals for a multi-ground Discrimination Ordinance (which included the ground of age) in 2019. More recently in 2024, the Committee has carried out a consultation on the proposals for age discrimination legislation and invited feedback with respect to the review of Phase 1 of the Prevention of Discrimination Ordinance. These have both been made public and on each occasion the Committee has written to over 70 stakeholders (including Principal States Committees), inviting them to take part.
- 9.4 In accordance with Rule 4(1)(c), it is confirmed that the propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 9.5 In accordance with Rule 4(1)(d), financial implications have been set out in section 8 of this policy letter.
- 9.6 In accordance with Rule 4(2)(a), the Propositions relate to the Committee's purpose:

³² [Jersey Employment and Discrimination Tribunal Annual Report 2023](#).

“To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation.”

9.7 In particular, the Propositions relate to the Committee’s mandated responsibilities:

“To advise the States and to develop and implement policies on matters relating to its purpose, including... equality and social inclusion, including in relation to disability... [and] labour market legislation and practices;”

9.8 In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of the Committee.

Yours faithfully

P J Roffey
President

H L de Sausmarez
Vice-President

T L Bury
S J Falla
L C Queripel

M R Thompson
Non-States Member

R J Le Brun
Non-States Member

CONSULTATION – LEGISLATION TO PROTECT AGAINST AGE DISCRIMINATION

This consultation invites comments from stakeholders on the proposed scope of protection against discrimination on the grounds of age.

Please contact us if you require the document in a different format.

Please respond by **30th September 2024** to: -

Address: Age Discrimination Legislation Consultation
Committee *for* Employment & Social Security
Edward T. Wheadon House
Le Truchot
St Peter Port
Guernsey
GY1 3WH
Email: equality@gov.gg

How we will use your information

The information you provide will be processed by the Committee *for* Employment & Social Security and its officers in an appropriate manner and in accordance with the Data Protection (Bailiwick of Guernsey) Law, 2017 for the purposes of this consultation. The States of Guernsey may quote or publish responses to this consultation but will not publish the names and addresses of individuals or organisations without consent. Confidential responses will still be included in any summary of statistical information received and views expressed but without attributing them to an individual or organisation.

In responding to the consultation, you are providing your explicit consent for the data controller to process your personal data, contained within your responses, for the purposes detailed in the summary above.

Further information about how your personal data is processed by the Committee *for* Employment & Social Security can be found in Appendix 2 and at www.gov.gg/dp or by calling 01481 220012.

Introduction

The Prevention of Discrimination (Guernsey) Ordinance, 2022 ('the Discrimination Ordinance') came into force on 1st October 2023. It provides protection against discrimination on the grounds of race, disability, carer status, sexual orientation and religion or belief in employment, the provision of goods and services, education¹, accommodation and in the membership of clubs and associations. The intention of the Ordinance is to promote and protect people's right to equality of status, opportunity and treatment on the basis of the above 'Protected Grounds'. Further information about discrimination and other prohibited conduct covered by the Ordinance is provided at Appendix 1.

The Committee *for* Employment & Social Security is now looking to progress Phase 2 of the Discrimination Ordinance. This involves extending the provisions of the Discrimination Ordinance to protect people in Guernsey, Herm and Jethou against discrimination on the ground of age and the grounds covered in the existing Sex Discrimination (Employment) (Guernsey) Ordinance, 2005² (i.e. sex, marriage, and gender reassignment) (with possible reframing of those grounds).

In 2019, a technical consultation was undertaken on the first draft of the policy proposals for a multi-ground Discrimination Ordinance during which the public were asked some questions in relation to the ground of age. This consultation is intended as a follow-up and offers the opportunity to give your views specifically on proposals relating to the ground of age.

As was the case in the first phase of the development of the Discrimination Ordinance, these proposals have been drafted along the lines of international standards and tailored to be proportionate and effective for Guernsey. The proposals largely mirror both the UK's Equality Act 2010 and the Discrimination (Jersey) Law 2013.

If someone is saying that they have been discriminated against this means that they have been treated in a less favourable way than a person who does not share the same Protected Ground. In order to show this, they would need to make a comparison between themselves and someone (real or hypothetical). For age, it is proposed that someone may compare themselves to a person of a different age or age group.

In considering age as a Protected Ground, an important starting point is recognising that age is in some ways different from the other Protected Grounds, requiring specific

¹ The field of education will come into force no sooner than 1st September 2025.

² The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

policy consideration. Other grounds, such as race and sexual orientation, are fixed and unrelated to a person's experiences, abilities, circumstances, and needs. This makes differences in treatment based on these grounds unjustifiable except in a number of limited circumstances set out in specific exceptions. A person's age on the other hand is constantly changing. This means that differential treatment based on age can often be justified and beneficial. For example, a younger individual may not have the same training and experience as an older individual and therefore treating the two differently may not be discriminatory but instead a way of recognising that people of different ages have different capabilities and levels of experience.

This means there are policy points which need to be agreed to ensure that the Ordinance is practical and only prohibits genuinely harmful treatment.

The Committee would like to hear what you think about:

- the list of proposed exceptions which would permit age-based differential treatment in certain circumstances;
- whether objective justification should be a permitted defence for direct discrimination on the grounds of age; and
- the scope of protection to be afforded to young people.

These policy considerations are explained in more detail in Parts A and B below.

Part A- Exceptions

What are 'exceptions'?

Exceptions set out the circumstances in which an act will not be treated as a prohibited act of discrimination.

As a general rule, any instances of unfavourable treatment based on a Protected Ground in the legislation are unlawful. However, there are exceptions to that rule where different treatment is not considered discrimination for the purposes of the Ordinance. These are intended to cover some everyday instances where decisions are made based on one of the Protected Grounds which the government does not view as unfair.

In the Ordinance, there is a list of general exceptions to prohibited acts as well as specific exceptions in relation to work, education, health, goods and services, clubs and sports, and accommodation.

For details of the exceptions currently set out in the Discrimination Ordinance, please see Chapter 8 of the guidance documents on employment and service provision, which can be accessed via the links below:

- [Chapter 8: Exceptions | EEOS](#) for general exceptions and exceptions relating to employment.
- [Chapter 8: Exceptions | EEOS](#) for general exceptions and exceptions relating to goods and services, education, accommodation and clubs and associations.

Providing exceptions in the legislation is important to ensure that specific practices cannot be challenged through a Tribunal, removing the associated risks and costs of litigation for employers and service providers. This is particularly important for the ground of age given that differential treatment is often justified and beneficial. Therefore, a number of exceptions specific to age will be required.

Proposed exceptions regarding the ground of age

The Committee's agreed position is that the following exceptions should be included in the Ordinance. The proposed list has been drafted to largely correspond with the exceptions included in Jersey's Discrimination Law and the Equality Act. This list may change in response to feedback received through this consultation, as a result of successful amendments when the matter is debated by the States, and also at the legal drafting stage (if the legal drafters identify something that is required to make this legislation coherent with other legislation or the legal system in Guernsey).

- Preferential charging/age related concessions – Permissible to set preferential fees, charges, or rates for anything offered or provided to people in specific age groups.
- Preferential customer terms and conditions when accessing public transport, e.g. at off-peak times and/or for OAPs or for students travelling to/from school/college.
- Population Management – Guernsey has a Population Management Law. The Law is designed to regulate the size and make-up of the population in order to support the Island's economy and community both now and into the future. It

is proposed that action taken to give effect, in a proportionate way, to population management policy may take into account age.

- Household composition – An officer or panel may make determinations which consider age in ways which are proportionate and necessary to give effect to the social insurance or social assistance policy agreed by the States.
- Minimum wage – Permissible to base pay structures for young people on rates set out in minimum wage legislation or to have different rates of pay for apprentices.
- Length of service and seniority – Permissible to base different rates of pay or terms and conditions on length of service and seniority. The Committee proposes a similar exception to that in the Equality Act which states that “it is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility or service in so far as the disadvantage is because B has a shorter period of service than C”. However, if B’s period of service exceeds five years, the employer may only rely on this if it reasonably believes that doing so fulfils a business need.
- Occupational benefits and pension schemes – Employers or providers of occupational benefits and pension schemes can use age criteria when administering occupational benefits and pension schemes:
 - to fix ages for admission to a scheme or to fix an age at which you can claim benefits from it,
 - to use ages in actuarial calculations when operating a scheme,
 - to provide different rates of severance payment based on the difference between the current age of the employee and their State Pension Age,
 - occupational pension schemes may also impose a maximum length of pensionable service or set different age-banded contribution levels for money purchase schemes (where the aim is to equalise the resultant benefit for comparable members).
- Childcare provided by employers – Permissible for an employer who provides or facilitates the provision of care for children to only provide such benefits to children of particular ages.
- Redundancy payments – Permissible for an employer to give an employee a redundancy payment of an amount less than that of another employee provided that payments are calculated on the same basis using the same

formula for all employees regardless of age (for example related to length of service).

- Mature students – Permissible for further and higher education institutions to treat mature students differently in allocating places, fees and grants/funding.
- Risk – Permissible for providers of pensions, annuities, insurance policies or any other services related to the assessment of risk to use age to assess risk when providing pensions, financial services, or insurance policies and vary the service that they provide accordingly. This must be based on reliable and relevant data and the difference in services provided should be proportionate to risk.
- Preventative public health services – Permissible to target these at particular groups where this is objectively justified through epidemiological or relevant data.
- Age-related holidays – Permissible to offer holidays aimed at particular age groups.
- Requesting identification – Age restricted services can request identification and refuse to serve individuals who appear to be below the required age. This would allow businesses that sell age-restricted goods (such as alcohol, fireworks and cigarettes) to continue to ask for proof of age where a customer appears to be younger than the required age.
- Drama and entertainment – Permissible to treat individuals differently in relation to age where this is reasonably required for purposes of authenticity, aesthetics, tradition or custom in connection with a dramatic performance or other entertainment.
- Sports, games, and other competitive activities – Permissible to treat people differently according to age in relation to providing or organising sporting or gaming facilities or events or other competitions but only if the differences are reasonably necessary and relevant.
- Social housing and housing association allocation – Permissible to treat people differently in relation to age when allocating accommodation or managing waiting lists based on prioritisation in line with an allocation's policy related to people(s) needs.

- Specialist accommodation – Permissible to apply age criteria with respect to provision of accommodation for older people. For example, sheltered housing would be permitted to use age criteria.
- Education – Much of a child’s school life is determined by their age; including the classes and exams that they may take and so decisions and opportunities based on age are an inherent and necessary factor in education. An exception is proposed so that, as in the UK and Jersey, age discrimination is not a prohibited act of discrimination in relation to the admission and treatment of pupils in schools. (N.B. this exception would apply to nurseries, schools and preschools but not to further education, higher education or tertiary education providers).
- Clubs restricted to persons who share a Protected Ground – This is already an exception in the Prevention of Discrimination Ordinance which it is proposed should also cover age.

The Committee would also like to hear your views on whether compulsory retirement ages in employment contracts should be excluded from the list of exceptions so that it would be unlawful to dismiss an employee due to their age unless this could be objectively justified³. Currently in Guernsey, it is lawful for employers to stipulate in employment contracts that an employee must retire when they attain States pension age (or, indeed, any other age).

When Jersey introduced its Discrimination Law, it included a time-limited exception which permitted employers to lawfully dismiss employees when they reached pensionable age. This exception only applied for two years, after which any dismissal by reason of age would constitute direct discrimination unless it could be objectively justified. The Committee believes that employers should not be permitted to dismiss an employee due to their age, therefore, this should not be specified in the list of exceptions. It wants your views on this position and whether a similar time-limited exception should be included, as was the case in Jersey, to provide employers with time to amend employees’ contracts of employment if required.

Part A questions

- 1. Do you agree that it should be unlawful to dismiss an employee due to their age unless this can be objectively justified?**

³ Objective justification involves showing that any difference in treatment is ‘a proportionate means of achieving a legitimate aim’.

2. Do you think that a time-limited exception should be introduced so that employers would be permitted to lawfully dismiss employees who reach pensionable age for a limited period of time (e.g. two years)?
3. Do you agree with the proposed list of exceptions?
4. Are there any exceptions which you would like to provide further comment on?
5. Do you think there are any additional exceptions in relation to age which should be included in the Discrimination Ordinance? If so, please provide details.

Part B

Objective justification

Secondly, the Committee is seeking views on whether ‘objective justification’ should be a defence for direct discrimination on the grounds of age. Direct discrimination is treating someone less favourably than another person (or people) in a similar situation or circumstances. The reason for the different treatment must be clearly linked to one or more of the Protected Grounds for it to be unlawful. In order to objectively justify a policy, an employer or service provider would need to show that their policy is designed to achieve a “legitimate aim” and the action being taken is a proportionate means of achieving that aim (i.e. the aim cannot be achieved in a less discriminatory way).

Objective justification is not available as a defence for direct discrimination on the five Protected Grounds currently covered under the Discrimination Ordinance (i.e. race, disability, carer status, sexual orientation and religion or belief). As a result, direct discrimination on these grounds would be ruled unlawful in all circumstances except those set out in specific exceptions.

However, age is a bit different to the other Protected Grounds in that there are many instances where there are good reasons for treating someone differently due to their age. The Committee believes that it may be difficult to capture all the possible instances of justified age-based differential treatment in the list of exceptions.

Objective justification would allow an employer or service provider to assert that a difference in treatment was not unlawful by demonstrating that their policy, rule or practice was a proportionate means of achieving a legitimate aim. Examples of aims accepted as legitimate by UK Employment Tribunals include promoting equality and diversity in the workplace and the efficient planning of the departure and recruitment of staff. An aim related purely to cost reduction would not be considered legitimate. Proportionality refers to whether the measure taken was an appropriate and necessary way of achieving that aim. The more significant and serious the impact of the provision is in disadvantaging the person, the harder it will be to justify that it is proportionate. A Tribunal would likely look at whether there were other ways that a person or organisation could have met the legitimate aim and whether the importance of the aim outweighed any discriminatory effects.

The Committee believes that permitting objective justification as a defence for direct discrimination on the grounds of age is important to ensure that the legislation is proportionate and only prohibits unjustifiable and harmful treatment. It ensures that

the legislation is not too burdensome for employers and service providers, enabling them to justify policies which differentiate based on age when there is a good reason for doing so. While providing flexibility, it should not weaken the protection of individuals from discrimination as objective justification is a strict test.

Both the Discrimination (Jersey) Law 2013 and the Equality Act 2010 permit objective justification as a defence in cases of direct discrimination based on age. Australia's equivalent legislation does not permit objective justification as a defence.

Age discrimination complaints in respect of young people

Lastly, the Committee would like your views on whether the following individuals should be able to make complaints of age discrimination:

- young people with respect to education;
- those below school leaving age in employment; and
- people under 18 in the provision of goods and services and of accommodation, and membership of clubs and associations.

The rationale for excluding young people from bringing complaints of discrimination on the grounds of age is to ensure that the legislation permits employers, education providers, providers of goods and services and of accommodation to provide age-appropriate services and take the wellbeing of children and young people into account appropriately. Much of a young person's life, for example in education, is determined by their age. This is justified and beneficial therefore the law should not prohibit different treatment due to age in a preschool or school setting.

It is important to note that individuals under the age of 18 are still protected from discrimination based on the other Protected Grounds, including race, sexual orientation, religion or belief, disability and carer status. Preventing them from bringing a complaint of age discrimination, therefore, would not leave them without any legal protection. For example, if a child was discriminated against on the basis of race, they could bring a race discrimination complaint no matter their age.

The Committee believes that, if under 18s were protected from age discrimination in all contexts in the legislation, extensive exceptions would be required for the many circumstances where a child or young person's age needs to be taken into account to ensure the provision of appropriate services or support. Relying on exceptions creates a risk that some important elements will be missed, or not be taken into account sufficiently. This could lead to organisations that are trying to meet the welfare needs of children in an age-appropriate way having to justify their approach to a Tribunal.

The Committee's suggested approach, therefore, is to follow the legislation in the UK and Jersey where young people are protected in the context of employment but not in the context of accommodation provision, the provision of goods and services, and membership of clubs and associations.

In summary, the Committee's agreed position is that the legislation should:

- provide protection from age discrimination for individuals of all ages in the context of employment;
- not provide protection from age discrimination in the context of education for individuals in nursery, preschool, primary and secondary education because it is common for different ages to be educated separately and for provision to be targeted at specific age groups; and
- not provide protection from age discrimination for individuals under the age of 18 in the context of accommodation provision, the provision of goods and services, and membership of clubs and associations.

Part B questions

1. **Do you agree or disagree with the Committee's position that objective justification should be a permitted defence in relation to complaints concerning direct discrimination on the grounds of age?**
2. **The Committee's agreed position is that the legislation would provide protection from age discrimination for individuals of all ages in the context of employment. Do you agree or disagree with this position?**
3. **The Committee's agreed position is that the legislation would not provide protection from age discrimination for individuals in nursery, preschool, primary or secondary education. In these contexts, it is common for different ages to be educated separately and for provision to be targeted at specific age groups. Do you agree or disagree with this position?**
4. **The Committee's agreed position is that the legislation would not provide protection from age discrimination for individuals under the age of 18 in the context of accommodation provision, the provision of goods and services, and membership of clubs and associations. Do you agree or disagree with this position?**

Have your say

You are invited to provide your views in writing on the policy questions set out in Parts A and B of this document:

Address: Age Discrimination Legislation Consultation
Committee *for* Employment & Social Security
Edward T. Wheadon House
Le Truchot
St Peter Port
Guernsey
GY1 3WH
Email: equality@gov.gg

Please ensure that any responses have reached us by **30th September 2024**.

If you have any questions, please do not hesitate to contact us at the above email address or by telephone on 01481 222882.

What will happen next?

A summary of the feedback we have received will be published by the end of Q1 2025.

The Committee will consider the feedback and decide whether to modify its proposals based on this.

The Committee recognises that there is a lot of interest in the extension of the Discrimination Ordinance to cover the grounds in the Sex Discrimination Ordinance and any updates in the framing of these grounds.

Policy work is being carried out on this and the intention is to consult on draft proposals in relation to these grounds later in the year. At that time, the Committee is also intending to consult on the operation of the Discrimination Ordinance over its first year in force.

A Policy Letter setting out final policy proposals will be brought to the States no later than April 2025.

Appendix 1: Overview of discrimination and prohibited conduct under the Prevention of Discrimination (Guernsey) Ordinance, 2022

Discrimination and other prohibited conduct

Discrimination is when someone is treated unfavourably. It is important to understand that discrimination arises in lots of different contexts, and it can often be unintentional. However, because of the impact of discrimination on the individual, intent is generally considered irrelevant when considering whether or not discrimination has taken place.

Why do we need this legislation?

To ensure that employers, and providers of services, education, accommodation and clubs and associations:

- eliminate discrimination and other unlawful conduct (i.e. harassment and victimisation);
- advance equality of opportunity for everyone;
- provide reasonable adjustments to ensure that persons with disabilities are not placed at a substantial disadvantage; and
- to ensure employers provide equal pay and equal treatment.

Types of discrimination

Direct discrimination is treating someone less favourably than another person (or people) in a similar situation or circumstances. The reason for the different treatment must be clearly linked to one or more of the Protected Grounds for it to be unlawful. Direct discrimination cannot be objectively justified, but there are some exceptions under the Ordinance which allow discriminatory treatment that would otherwise be unlawful; for example, where an employer is able to demonstrate that there is an occupational requirement for a person to have a particular Protected Ground and that requirement is a proportionate means of achieving a legitimate aim. This is known as a “**genuine and determining occupational requirement**”.

Indirect discrimination happens when there is a policy (which may include any provision, criterion or practice) 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. It can be lawful to have specific rules or arrangements in place which lead to a disadvantage for an individual, as long as there is a good reason for it – this is known as **objective justification**. In order to

objectively justify a policy, an employer or service provider would need to show that their policy is designed to achieve a “legitimate aim” and the action being taken is a proportionate means of achieving that aim (i.e. the aim cannot be achieved in a less discriminatory way).

The following must be considered to prove indirect discrimination:

- there must be a policy which applies equally to everyone (or to everyone in a group that includes the person making the discrimination complaint);
- the policy must disadvantage people with a particular Protected Ground when compared with people without it;
- it must be possible to show that it has disadvantaged the individual personally or that it will disadvantage them;
- there is no objective justification for the policy (i.e. there is no good and proportionate reason for applying the policy).

Discrimination by association occurs when a person is treated less favourably because they are linked or associated with a person who has a Protected Ground.

Discrimination arising from disability is when a person is treated unfavourably because of something that arises as a consequence of their disability (e.g. having an assistance dog, needing time off for medical appointments, or side effects from drugs that alter behaviour) and which cannot be objectively justified.

If the employer could show that they did not know the employee was disabled, and could not reasonably have been expected to know that they were disabled, then the employer would not be liable.

Other unlawful treatment

Harassment and victimisation are both unlawful.

Harassment is any form of unwanted conduct related to a Protected Ground which has the purpose or effect of violating a person’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Sexual harassment is any unwanted conduct of a sexual nature which has the purpose or effect of violating a person’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Harassment can also be related to the rejection or submission to unwanted conduct. It doesn’t matter if the conduct was intentional or whether the victim did or did not make the perpetrator aware that the conduct was unwanted.

There is an exception under the Prevention of Discrimination Ordinance relating to freedom of expression of an opinion, political view, religious belief and any other implied or actual view. However, the exception cannot apply when 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 was create an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation arises when a person is subjected to a detriment because they have complained about discrimination or harassment or they intend or make a complaint, or they have helped someone else make a complaint.

Appendix 2: Fair Processing Notice

This consultation invites comments from stakeholders (individuals and organisations) on the proposed scope of protection against discrimination on the grounds of age.

The information you provide will be processed by the Committee for Employment & Social Security and its officers in an appropriate manner and in accordance with the Data Protection (Bailiwick of Guernsey) Law, 2017 for the purposes of this consultation.

Further information about how your personal data is processed by the Committee for Employment & Social Security (The Controller) can be found at www.gov.gg/dp or by calling 01481 220012.

1. The Data Protection Law

The controller acknowledges its obligations as per the data protection law, which provides a number of requirements in terms of processing activities involving personal data. The controller further acknowledges the general principles of processing as well as the rights of a data subject and more information in relation to these provisions are provided within this fair processing notice.

2. The Principles of Processing

a. Lawfulness, fairness and transparency

Personal data must be processed lawfully, fairly and in a transparent manner.

Data collected from individuals and organisations will include the respondents name and organisation name (if they are responding on behalf of an organisation) and their views on the questions in the consultation document, which relate to what exceptions there should be within the Prevention of Discrimination Ordinance with respect to age discrimination, whether objective justification of direct age discrimination should be permitted and how young people should be protected from age discrimination.

The States of Guernsey may quote or publish responses to this consultation, but will not publish the names and addresses of individuals or organisations without consent. Confidential responses will still be included in any summary of statistical information received and views expressed but without attributing them to an individual or organisation.

In responding to the consultation, you are providing your explicit consent for the data controller to process your personal data, contained within your responses, for the purposes detailed in the summary above. In terms of the lawful basis for processing, the personal data

set out above is processed in accordance with Part I, Section 5(b) of Schedule 2 of the Law, which state:

“The processing is necessary for the exercise or performance by a public authority of a task carried out in the public interest.”

b. Purpose limitation

Personal data must not be collected except for a specific, explicit and legitimate purpose and, once collected, must not be further processed in a manner incompatible with the purpose for which it was collected.

The controller acknowledges its responsibility with regards to this data protection principle and therefore the controller maintains that it will not further process that personal data in a way which is incompatible to its original reason for processing as specified in section 2a, unless the controller is required to do so by law. The personal data will not be transferred to a recipient in an authorised or an unauthorised jurisdiction (as per the definition within data protection law).

c. Minimisation

Personal data processed must be adequate, relevant and limited to what is necessary in relation to the purpose for which it is processed.

The controller maintains that it will only process the personal data which is detailed in section 2a, and will not process any further personal data that is not necessary in relation to the original reason for processing personal data as specified in section 2a, unless the controller is required to do so by law.

d. Accuracy

Personal data processed must be accurate, kept up-to-date (where applicable) and reasonable steps must be taken to ensure that personal data that is inaccurate is erased or corrected without delay.

The controller will ensure that all personal data that it holds is accurate and kept up-to-date, and any personal data that is inaccurate will be erased or corrected without delay.

e. Storage limitation

Personal data must not be kept in a form that permits identification of a data subject for any longer than is necessary for the purpose for which it is processed.

The information with respect to individual responses will be held until Phases one and two of the Prevention of Discrimination Ordinance are fully in force.

f. Integrity and confidentiality

Personal data must be processed in a manner that ensures its appropriate security, including protecting it against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

Responses will be held electronically within the ESS Policy and Legislation Team electronic filing system and, if provided in hard copy format, a copy may also be temporarily stored in a locked filing cabinet until the information has been scanned filed and analysed to protect that data from unauthorized or unlawful processing and against accidental loss, destruction or damage.

g. Accountability

The controller is responsible for, and must be able to demonstrate, compliance with the data protection principles.

3. Contact Details

The contact details of the controller are as follows:

The Committee for Employment & Social Security

Tel: 01481 222882

Email: employmentandsocialsecurity@gov.gg

The contact details for the Data Protection Officer of Employment & Social Security are as follows:

Data Protection Officer, the Committee for Employment & Social Security

Tel: 01481 220012

Email: data.protection@gov.gg

CONSULTATION FINDINGS: LEGISLATION TO PROTECT AGAINST AGE DISCRIMINATION

Introduction

The Committee *for* Employment & Social Security ('the Committee') carried out a consultation to obtain feedback on policy questions relating to protection against age discrimination as part of the second phase of the development of the Prevention of Discrimination (Guernsey) Ordinance, 2023 ('the Prevention of Discrimination Ordinance'). The consultation documents were sent to a number of targeted groups including employer and employee representative organisations, third sector organisations and other States Committees. It was also made publicly available on the States of Guernsey website and feedback was invited from the wider community. The consultation period ran from 12th August 2024 to 30th September 2024.

A total of 43 responses were received, 34 of which provided specific comments in respect of the policy proposals. One organisation representing businesses indicated that they had collated 49 responses from their members. Other organisations may also have canvassed views from their membership but did not advise. The Committee would like to thank all those who participated for the time and effort invested in responding. Key themes, viewpoints and policy issues raised have been summarised without attributing them to an individual or organisation, with the exception of the formal comments received from States' Committees, Boards and Authorities.

Summary of responses to policy questions

Part A – Exceptions

In Part A of the consultation, the Committee invited respondents to provide comments on exceptions which set out the circumstances in which an act would not be treated as a prohibited act of discrimination.

1. Do you agree that it should be unlawful to dismiss an employee due to their age unless this can be objectively justified?

A significant majority of respondents agreed that it should be unlawful to dismiss an employee due to their age unless this could be objectively justified. The main reasons given for supporting this position were that continued employment should be based on the individual's competency to perform a particular job role rather than an arbitrary age. Nonetheless, this group of respondents stated that they valued having the flexibility to use objective justification in appropriate circumstances, such as when a duty was

physically demanding and difficult to perform at an older age, as well as for succession planning purposes.

Indeed, many businesses stated that they did not set a mandatory retirement age, indicating that they were willing to allow employees to work beyond traditional retirement ages, if considered appropriate. It was acknowledged that there was becoming a greater need for people to work later in life due to economic and demographic challenges faced in Guernsey.

One respondent argued that mandatory retirement ages should never be allowed. A couple of independent respondents were of the view that the decision to set a compulsory retirement age should sit with the organisation rather than being mandated by law. The Committee is not proposing a mandatory retirement age but instead that age should not be an acceptable reason for dismissal.

After consideration of the feedback, the Committee is proposing that it should be unlawful to dismiss an employee due to their age unless this can be objectively justified.

2. Do you think that a time-limited exception should be introduced so that employers would be permitted to lawfully dismiss employees who reach pensionable age for a limited period of time (e.g. two years)?

Most respondents were of the opinion that it would not be necessary to introduce a time-limited exception because an adequate time period had already elapsed since the States agreed in principle that Phase 2 of the Prevention of Discrimination Ordinance would involve extending the provisions of that Ordinance to protect people in Guernsey, Herm and Jethou against discrimination on the ground of age. It was generally felt that organisations had already had adequate time to prepare.

A few respondents seemingly misunderstood this question as relating to the ability to extend existing contracts by mutual agreements for two additional years.

When considering the consultation feedback, the Committee noted that any legislation regarding age discrimination was unlikely to be in force until 2027, thereby giving employers further notice.

The Committee is of the view that employers should not be permitted to dismiss an employee due to their age unless this can be objectively justified and is not proposing to introduce a time-limited exception to provide employers additional time to amend employees' contracts of employment as a sufficient notice period will have been given by the time the legislation comes into force.

3. Do you agree with the proposed list of exceptions?

Respondents were generally in agreement with the Committee's proposed list of exceptions but there were a few specific comments which the Committee considered important. These are outlined in the subsequent sections.

4. Are there any exceptions which you would like to provide further comment on?

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Preferential charging/age related concessions – Permissible to set preferential fees, charges, or rates for anything offered or provided to people in specific age groups.

The Committee for Economic Development recommended that "discounts" be added to this exception to allow pensioners and students to continue to receive reduced rates. The Committee notes that such discounts are already covered through the proposed exception on age related concessions.

Another consultee noted that this exception should not apply to accommodation providers (i.e. that they should not be able to set preferential fees, charges or rates for anything offered to people in specific age groups). The Committee agrees that this exception should not apply to accommodation providers. For the avoidance of doubt, providers of serviced or non-serviced visitor accommodation are 'service providers' (rather than 'accommodation providers') under the Prevention of Discrimination Ordinance. It is proposed that the exception would apply to service providers, therefore, this exception would apply to serviced or non-serviced visitor accommodation, meaning that they would be able to offer 'family' rates if they wished.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Redundancy payments - Permissible for an employer to give an employee a redundancy payment of an amount less than that of another employee provided that payments are calculated on the same basis using the same formula for all employees regardless of age (for example related to length of service).

An employee representative group suggested consideration should be given to policies and agreements that have an age structure that was negotiated before the age discrimination provisions enter into force with a view to these being objectively justifiable. An example of this could be redundancy terms that have an age element to award larger redundancy payments based upon age, recognising the additional difficulties in obtaining employment at a later age.

The Committee is proposing that objective justification of direct (and indirect) age discrimination be permitted as a defence (i.e. that it would be permissible to treat people differently on the basis of age provided that the treatment is a proportionate means of achieving a legitimate aim). It is also proposed that an exception be included in the Ordinance which will permit redundancy awards to be based on length of service.

Although this is different to recognising possible difficulties in obtaining employment at a later age, it would allow higher redundancy payments to be made to anyone who had worked for a company for a greater length of time or based on the difference between the current age of the employee and their State Pension Age. Selection for redundancy could also be based on length of service (but not directly related to age).

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Length of service and seniority - Permissible to base different rates of pay or terms and conditions on length of service and seniority. The Committee proposes a similar exception to that in the Equality Act which states that “it is not an age contravention for a person (A) to put a person (B) at a disadvantage when compared with another (C), in relation to the provision of a benefit, facility or service in so far as the disadvantage is because B has a shorter period of service than C”. However, if B’s period of service exceeds five years, the employer may only rely on this if it reasonably believes that doing so fulfils a business need.

While respondents to the consultation broadly agreed with the Committee’s proposal that employers should be able to use length of service to differentiate employee benefits, there was divergence in opinion on whether a limitation in relation to length of service of five years should apply. A small majority stated that their preference would be to have an exception for length of service and seniority but not to apply a limitation of five years.

Legal representatives suggested following Jersey’s approach and not limiting the exception to service under five years as this could lead to a significant amount of uncertainty for employers.

The Committee has decided to revise its position and is proposing to not set a limitation of five years on length of service-based differentiation. If cases later arise that indicate the exception is being abused, its scope could be reconsidered and narrowed, if necessary, subject to States approval.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Occupational Benefits and Pension Schemes – Employers or providers of occupational benefits and pension schemes can use age criteria when administering occupational benefits and pension schemes:

- ***to fix ages for admission to a scheme or to fix an age at which you can claim benefits from it,***
- ***to use ages in actuarial calculations when operating a scheme,***
- ***to provide different rates of severance payment based on the difference between the current age of the employee and their State Pension Age,***
- ***occupational pension schemes may also impose a maximum length of pensionable service or set different age-banded contribution levels for money purchase schemes (where the aim is to equalise the resultant benefit for comparable members).***

Pension Schemes

Legal representatives suggested giving consideration to widening the exception further and adopting Jersey's position in respect of pension schemes, which carves out all pension schemes from the operation of the Discrimination Law in relation to age¹. The Committee noted that an advantage of Jersey's approach is that the blanket exemption is simple to administer and provides legal certainty for employers and pension scheme operators. However, it may also result in unfair practices that cannot be challenged, potentially disadvantaging older or younger workers and creating inequity in access to retirement savings, although in Guernsey this would be mitigated to some extent by the pre-existing secondary pensions legislation².

By comparison, pension schemes in the UK are subject to age discrimination rules. While certain age-based practices in pensions are exempt, such as setting minimum or maximum ages for scheme entry, other practices must be objectively justified. Those who manage occupational or personal pension schemes (the employer, the trustees, the scheme manager) must ensure that age-related provisions in pension schemes serve legitimate aims and are proportionate.

The UK's approach seeks a greater balance between fairness and flexibility by requiring justification for age-based rules but is significantly more complex and administratively burdensome. It is noted that the position in the UK in respect of occupational pension schemes, personal pension schemes and employment benefits is different in each case with regulations setting out narrower parameters for age discrimination. If Guernsey adopted the UK rules, this may pose difficulties for any employers providing pan-island arrangements for employees in Jersey and Guernsey.

The Committee is reluctant to follow Jersey's approach and carve out all pension schemes from the operation of the law in relation to age due to concerns that older or younger employees may be disadvantaged, however, it is being proposed as the most pragmatic solution available at the present time. The Committee suggests that this matter is subject to review, with input from pension industry representatives, in future. Given the revised timescales, the Phase 2 implementation review will likely begin in 2029/2030.

The Committee received some detailed feedback from a respondent relating to its initial proposal in the consultation document, who suggested making it explicit in the legislation that the exceptions also apply to trustees and administrators who manage pension schemes. The respondent also suggested extending the scope of the exceptions so that they applied to both occupational pension schemes and to personal pensions and benefit schemes (i.e. retirement annuity contracts and retirement annuity trust schemes). Although this feedback is not applicable to the Committee's modified

¹ Section 33 of Schedule 2 to the Discrimination (Jersey) Law, 2013

² [Billet d'État IX 2022](#)

proposal, which excludes all pension schemes from the provisions of the law in relation to age, it will be taken into consideration at the time of the review and if a more comprehensive set of rules are subsequently developed.

Occupational Benefits

The exception proposed by the Committee in the consultation document also covered occupational benefits. A business representative group reported that a majority of its members that responded to the survey that it ran either did not offer occupational benefits or limited them by age.

After further consideration, the Committee has agreed to distinguish occupational benefits that have an actuarial or risk-based element (e.g. insurance schemes) from those that do not in its definition of occupational benefits. The Committee, by a majority, is of the view that there is some rationale for ceasing to provide, for example, health insurance as an occupational benefit when an employee reaches the States pension age as statistical evidence shows that the cost of healthcare generally increases with age, but considers it unjustifiable to cease other occupational benefits that have no connection to age, such as the payment of performance-based bonuses or annual leave entitlement.

In the case of insurance schemes, a respondent suggested that as some may have hardcoded age specific benefits into their rules (rather than rely on actuarial calculations) which could make it challenging to implement changes retrospectively, especially in regard to service accrued to the date of the change, the wording of the second bullet point of the exception should be extended to “to use ages in actuarial or benefit calculations”, noting that some age requirements were, in any event, imposed by the Guernsey Revenue Service as a condition of tax approval. In defined contribution arrangements where the investment strategy was determined by the pension provider, it was common for the strategy to shift towards lower-risk investments as members approached their anticipated retirement age.

In Schedule 1, Part V of the Prevention of Discrimination Ordinance, under ‘financial services involving an assessment of risk’, occupational benefit providers are permitted to use disability or race as a factor in assessing risk if it is supported by current and reliable evidence. The terminology “assessment of risk” is used rather than “actuarial calculations”. The Committee is proposing to extend the wording of this exception to widen the terminology for actuarial calculations; the exact drafting will be for the legal drafting team to determine, based on the policy intent set out.

Legal representatives suggested that further guidance be provided to employers in respect of whether employers can set a maximum age limit, for admission to an insurance scheme that is provided to employees as an occupational benefit, lower than pensionable age unless it can be objectively justified in order to align with principles of fairness in the workplace. The Committee has agreed to follow the same approach as

the UK and Jersey and make it discriminatory to set a maximum upper age limit that is lower than pensionable age unless it can be objectively justified in the specific context of the case.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Mature students - Permissible for further and higher education institutions to treat mature students differently in allocating places, fees and grants/funding.

Students with Additional Learning Needs

Several respondents in the field of education noted that ‘mature students’ had not been defined in the consultation document but should not exclude SEND³ students from accessing education up to the age of 25. The Committee notes that the Prevention of Discrimination Ordinance does not determine education policy in respect of access to education for disabled persons, and a person who does not have a disability is not able to bring a discrimination complaint if a disabled person is treated more favourably than them for the purpose of removing or mitigating a disadvantage to which the disabled person would otherwise be put as a result of having that particular disability.

Other students who may require support beyond that normally available

A third sector organisation commented that some individuals have atypical routes through the education system in terms of access and support, for other reasons. It was suggested that different treatment for ‘mature students’ could be based not on age but on other reasons such as not already being educated to degree-level or lack of support (e.g. Children in Care or those with significantly disrupted childhoods and/or high Adverse Childhood Experience (ACE) scores).

The Committee notes that none of the reasons listed in the above paragraph are Grounds of Protection on the basis of which a person could make a discrimination complaint, therefore the Committee has not changed its proposals in response to these comments.

Further and Higher Education Admissions, Organisation and Funding

The Committee for Education, Sport & Culture (CfESC) also requested that the proposed schools/preschools/nurseries exclusion from age discrimination complaints should include Further Education where this is provided for learners up to the end of the academic year in which they reach the age of 18. CfESC is content for the exception not to apply to Further and Higher Education offered to adults commencing a course of study in the academic year after the one in which they reach 18 years of age.

Further conversations with officers at CfESC have taken place to explore the reasons behind the request for this exception to include Further Education where this is provided for learners up to the end of the academic year in which they reach the age of 18. This

³ Special Educational Needs and Disabilities (CfESC in its most recent Code of Practice uses the term Additional Learning Needs).

has shown that there is a need for an exception that covers different treatment with respect to admissions and fees charged for students of different ages for Further *and* Higher Education admissions and funding, although not necessarily with a cut off/threshold of age 18. This was the original intention behind the proposed mature student exception, but this is not sufficiently clear as there is not one single definition of a mature student within existing education policies.

Issues to consider when drafting any such exception are:

- i) whether the Sixth Form Centre falls within the definition of 'school' under the Prevention of Discrimination Ordinance because if it did, learners at the Sixth Form Centre would not be able to bring an age discrimination complaint under the Prevention of Discrimination Ordinance under the Committee's proposal. However, in the Education Law, 1970 a school is defined with reference to providing primary or secondary education and the age limit for compulsory education is 31st August after a learner's 16th birthday. In policy terms CfESC refers to a 'Secondary school' as a States-maintained setting that has Year 11 (aged 15-16) learners, but this is not specifically stated in the Education Law, whereas the Sixth Form Centre is only for learners aged 16+. So, it is not clear whether it would be considered a 'school' under the definition of the term in the Prevention of Discrimination Ordinance;
- ii) CfESC treats 16-19 year olds (plus, by exception, some students in their twenties) differently to students above this age range, in terms of free access to further education courses at The Guernsey Institute and its post-16 admissions policy includes admissions to all post-16 Further Education in Guernsey and Alderney, including the Sixth Form Centre;
- iii) a desire for the same exception to apply to the Further Education provided at the Sixth Form Centre and The Guernsey Institute; and
- iv) Higher Education funding grants are assessed differently depending on the age of the student, as set out later in this section.

In practice, schools, pre-schools and day nurseries are operationally fully age structured and are almost always not for learners beyond 31st August following their 18th birthday, unless the child meets the criteria for being educated out of year group and this would normally only mean attending school in a different year group by one school year. Therefore, the Committee's proposal is to completely exclude schools, preschools and day nurseries (a subset of "education providers" within the Prevention of Discrimination Ordinance) from complaints of age discrimination. Having the same exception for Further and Higher Education institutions as for schools, preschools and day nurseries (i.e. parity across all educational institutions) would be different to the position in the UK under the Equality Act, which does not entirely exclude age discrimination complaints in relation to Further and Higher education.

Further Education is generally targeted at age 16 plus (including adults) with, in Guernsey, some specific secondary age, linked courses provided by The Guernsey Institute for 14-16 year-olds, but not for under 14s.

In the UK, students in Further Education and Higher Education may be able to make a complaint of age discrimination; therefore, it is more consistent with the UK not to completely exclude Further Education and Higher Education establishments.

If the Committee proposed that it would be appropriate to have a *different* exception for providers of **Further Education** where courses are targeted at ages 16 plus, that could be applicable to both the Sixth Form Centre and The Guernsey Institute. This could allow different admissions, course organisation and funding arrangements for those aged 16-19 at the start of the school year in the first year of their course (with flexibility in certain circumstances up to age 25 – compared with students outside that age range). It should also preclude an age discrimination complaint being able to be made by anyone under the age of 16 for any Further Education course. The exact wording of the exception would need careful consultation with the CfESC at the legal drafting stage.

In addition to Further Education admissions and funding, discussions have uncovered that the mature student exception proposed is not quite right to exempt from a potential age discrimination complaint the current policy on **Higher Education** funding, where different policies apply to courses of study in Guernsey and the UK. Currently, a dependent student's financial assessment for off island study is determined by parental income and assets unless they meet the criteria for an independent student. An independent student is currently defined as a student who has reached 25 at the start of the course or has reached the age of 22 and has worked for at least three years. Further and Higher Education students at The Guernsey Institute can apply for funding under a different on-island policy from age 20. A specific exception would be necessary to cover this difference in treatment based on age and is recommended – the precise wording to be determined at the legal drafting stage, in consultation with the CfESC. These ages could be subject to change and therefore it is recommended that the ages within the specific exception should be able to be amended by Regulation.

It is also proposed that an exception be included in the Ordinance to preclude a learner under the age of 16 from being able to make an age discrimination complaint with respect to Higher Education, although in practice Higher Education is usually undertaken by learners aged 18 and over, but it may theoretically be possible for a younger student to achieve the necessary entry qualifications prior to their 18th birthday.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Education – Much of a child's school life is determined by their age; including the classes and exams that they may take and so decisions and opportunities based on age are an inherent and necessary factor in education. An exception is proposed so that, as in the UK and Jersey, age discrimination is not a prohibited act of discrimination in relation to the admission and treatment of pupils in schools. (N.B. this exception would apply to nurseries, schools

and preschools but not to further education or higher education providers).

Most respondents agreed with the Committee's proposal.

One respondent raised a concern about the scope of this exception being too broad and inadvertently preventing justifiable complaints of discrimination being brought (e.g. restricting access to some extra-curricular activities or services may not be justifiable on grounds of age alone, but it would seem unfair that in such instances young people would not be protected by the legislation). The Committee considered that the practicality of any alternatives are likely to be prohibitive, especially considering that this exception is only intended to apply to schools (as defined in the Education Law) nurseries and preschools. For example, if a school runs a yoga club for years 1 and 2 but a football club for years 3 to 6, or a field trip is only open to year 9 and up, etc. then it may be impractical for them to run all clubs and trips for all ages and stages. To not be able to restrict such activities to particular year groups would run the risk of schools not providing such activities at all.

Further feedback on education has been considered under the 'mature students' proposal above.

The Committee has agreed to maintain its original position with respect to this issue of extra-curricular activities and propose an exception so that age discrimination is not a prohibited act of discrimination in relation to the admission and treatment of pupils in schools, preschools and nurseries.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Population management – Guernsey has a Population Management Law. The Law is designed to regulate the size and make-up of the population in order to support the Island's economy and community both now and into the future. It is proposed that action taken to give effect, in a proportionate way, to population management policy may take into account age.

A concern was raised that this exception could be detrimental to the recruitment of individuals to fill skills gaps in an employment setting, whose age or demographic categorisation might be considered by the Population Management team to be less favourable in regulating the size and make-up of the population.

As population management is already a general exception with the Prevention of Discrimination Ordinance applying to all grounds, the Committee is not proposing to exclude age from this exception.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Preventative public health services – Permissible to target these at particular groups where this is objectively justified through epidemiological or relevant data.

The Committee for Health & Social Care (CfHSC) are in favour of this exception, noting the importance of being able to maintain the ability to provide services on an age-related basis, particularly when there is clear evidence supporting the approach.

CfHSC also made the comment that in order to mitigate increasing health costs, including potential review of prescription fees and possible changes to exemptions, it was important that some flexibility was permitted within the law.

No views in opposition to the Committee's proposal were expressed.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Minimum wage – Permissible to base pay structures for young people on rates set out in minimum wage legislation or to have different rates of pay for apprentices.

Some respondents felt that the need for additional training and supervision was likely to come with new employees irrespective of their age and felt that the young person's rate of minimum wage should therefore be equal to the adult rate of minimum wage.

The Committee has consulted separately on the minimum wage rate for young people and agreed to set it at 90% of the rate for adults. It is proposing to include an exception that makes it permissible to base pay structures for people who would qualify for the young persons' minimum wage rate (currently 16 and 17 year olds) on rates set out in minimum wage legislation, or linked to those rates, and to have different rates of pay for apprentices aged 16 and 17. Also, an employer who pays a person less than a rate of the minimum wage where the person does not qualify for that rate does not contravene the Prevention of Discrimination Ordinance in relation to the Protected Ground of age.

PROPOSAL IN 2024 CONSULTATION DOCUMENT: Preferential terms and conditions when accessing public transport, e.g. at off-peak times and/or for OAPs or for students travelling to/from school/college.

The Committee for the Environment & Infrastructure requested that this exception be extended to commercial operators of public transport such as taxi, coach and tour operators. The Committee has agreed to propose that this exception is extended as requested.

5. Do you think there are any additional exceptions in relation to age which should be included in the Prevention of Discrimination Ordinance? If so, please provide details.

Respondents suggested the following additional exceptions:

#	Additional exception	Committee comments
1	Social events should be exempt from age discrimination complaints	<p>To clarify, private social events are not covered by the Prevention of Discrimination Ordinance. The Ordinance operates in the following fields:</p> <ul style="list-style-type: none"> - Employment - The provisions of goods and service - The provision of accommodation - The provision of education (although this field is not yet in force) - Membership of clubs and association. <p>Therefore, work social events, for example, would fall within the scope of the Ordinance. In some instances where there is good reason to restrict social events by age this could either be objectively justified or may already be covered by another exception in the Prevention of Discrimination Ordinance (such as supply of alcohol to persons under the age of 18 and the legislative requirement exception). A specific exception is not considered to be required.</p>
2	Religious activities should be exempt from age discrimination complaints	<p>There is already an exception for acts of worship in relation to the ground of religion and belief. Requirements of the law are already covered by an exception, and it is proposed that under 16s be excluded from making age discrimination complaints that would cover religious activities. Objective justification would also be a potential defence if any different treatment is a proportionate means of achieving a legitimate aim.</p>
3	Efforts by organisations to have a balanced and diverse workforce of varying ages should be permissible	<p>If an organisation were to encourage equality and diversity, then in some circumstances this could be a form of positive action which is already permitted through an existing exception to the Prevention of Discrimination Ordinance.</p>
4	Graduate training courses and other opportunities for professional trainees should be permissible	<p>Graduate training programmes are indirectly age-targeted due to their connection to recent university graduation. While these are not explicitly exempt from age discrimination provisions in the UK or Jersey, employers can justify their focus on younger applicants through legitimate aims, such as</p>

		<p>providing entry-level opportunities to those starting their careers.</p> <p>Similarly, opportunities for professional trainees might indirectly target younger employees who may be early on in their career development. If a complaint of indirect discrimination were made in respect of a recruitment process for such a role, the employer would need to demonstrate that the process was objectively justified (i.e. a proportionate means of achieving a legitimate aim).</p> <p>Both graduate and professional training programmes may be objectively justified under the Committee's current proposal and therefore no separate exceptions are required.</p>
5	Allow age to be taken into consideration in the assessment of risk for insurance calculations and premiums	<p>In both Jersey's Discrimination Law and the UK Equality Act, financial service providers and insurers are permitted to use age as a factor in assessing risk if it is supported by current and reliable evidence. For example, a health insurer charging higher premiums for older customers must rely on up-to-date, credible data showing that people in certain age brackets are statistically more likely to experience health issues requiring medical care.</p> <p>Such a provision already exists in the Prevention of Discrimination Ordinance for the grounds of disability and race in Schedule 1, Part V under 'financial services involving an assessment of risk'. The Committee, by a majority, has agreed to propose that the exception be extended to apply to the protected ground of age, in line with the UK Equality Act and Jersey's Discrimination Law.</p>
6	Pension accrual beyond pensionable age (noting that pension accrual beyond age 75 is inconsistent with the current tax conditions)	<p>The Prevention of Discrimination Ordinance does not prohibit a person from taking any action which is required by or under, or done for the purpose of complying with – (a) an enactment, (b) a requirement or condition imposed under an enactment. This is a matter provided for in tax legislation or a requirement or condition imposed under tax legislation.</p>

7	Firms of under 10 employees should be exempt from age discrimination to reduce the administrative compliance burden placed on small and medium enterprises	Exceptions for small businesses were deliberately excluded from phase one of the development of the Prevention of Discrimination Ordinance. This is because proportionality is built into the Ordinance via the concepts of objective justification and disproportionate burden. The latter means that smaller businesses are required to do less than larger businesses with respect to some of the duties imposed by the legislation, such as the reasonable adjustment duty. This point was the subject of considerable debate when the Ordinance was approved by the States in 2022, and the Committee's position has not changed.
8	It should be permissible for people to be treated differently where that person is treated solely in the exercise of a clinical judgement in connection with a diagnosis of illness or in the delivery of medical treatment	There is a 'clinical judgement' exception in the Prevention of Discrimination Ordinance. This would also apply to the ground of age.
9	It should be permissible to award scholarships, prizes or other awards only to specific age groups	No separate exception is needed as: (a) the Committee is proposing that age discrimination complaints cannot be brought in the context of schools, pre-schools and nurseries; and (b) to the extent that a scholarship or prize is awarded based on age in a context other than employment the justification for the existence of the award should suffice, and/or in the employment context the positive action exception should suffice.
10	Age restrictions should be allowed in respect of driving licenses and permits to drive	<p>Age restrictions are in place in respect of driving licences and permits to drive public service vehicles. Minimum age requirements are defined under Section 12 of the Driving Licences (Guernsey) Ordinance, 1995⁴. The duration of a license is also determined by the age of the applicant as defined in Section 8 of that Ordinance.</p> <p>As these requirements are set out in legislation, this is already covered by the 'act done under legislative or judicial authority' exception in the Prevention of Discrimination Ordinance so no separate exception is needed.</p>

11	Age restrictions should be allowed for the employment of Police Officers (who must be aged 18 or over)	<p>The Committee is not proposing that a separate exception to cover Police Officers as there are clear reasons for the policy that can be objectively justified, such as needing to have a certain level of maturity and competence to undergo professional training and to represent the justice system with authority. There are also potential safeguarding issues if minors were to take on this role.</p> <p>Furthermore, there may be other job roles for which a minimum age of 18 is also required (such as roles with direct responsibilities towards children and young people) and it does not seem appropriate to include an exception for one role but not others.</p>
12	Age restrictions should be allowed for voting in General Elections	<p>The minimum age requirement for voting in the General Election is defined under Section 27(1)(a) of the Reform (Guernsey) Law, 1948⁵.</p> <p>As the minimum age is set out in legislation, this is already covered by the 'act done under legislative or judicial authority' exception so no separate exception is needed.</p>
	Age restrictions should be allowed for entertainment (e.g. in respect of attendance at films based on their age rating).	This can be objectively justified, so the Committee does not consider that it is necessary to include an exception in the legislation to allow age restrictions for entertainment.

Part B questions

In Part B of the consultation, the Committee invited respondents to comment on whether 'objective justification' should be a defence for direct discrimination on grounds of age, and whether young people should be excluded from bringing complaints of discrimination on the grounds of age in certain contexts.

1. Do you agree or disagree with the Committee's position that objective justification should be a permitted defence in relation to complaints concerning direct discrimination on the grounds of age?

There was a broad consensus amongst respondents that objective justification should be a permitted defence in relation to complaints concerning direct discrimination on the grounds of age. It was agreed that the process and criteria for objective justification needed to be clear, fair and consistently applied.

⁵ [Reform \(Guernsey\) Law, 1948](#)

Comments highlighted a need for clear guidance explaining the concept of objective justification and working examples so that the application of objective justification in practice could be better understood.

Legal representatives queried whether there must be a social policy aim, noting that in the UK and Ireland, employers can only objectively justify direct age discrimination if they can point to a social policy aim. However, this rule comes from EU law, which will not apply in Guernsey, and therefore the “normal” objective justification test is proposed.

Taking the feedback into account, the Committee is upholding the position on which it consulted and proposing that objective justification should be a permitted defence in relation to complaints concerning direct discrimination on the grounds of age.

2. The Committee’s agreed position is that the legislation would provide protection from age discrimination for individuals of all ages in the context of employment. Do you agree or disagree?

The majority of respondents agreed that the legislation should provide protection from age discrimination for individuals of all ages in the context of employment.

Some respondents had a different view that employers should be able to place reasonable age-related restrictions on employees under the age of 18 so that the level of responsibility corresponded with their level of maturity (an example given in the consultation responses was would a shop be able to say that a ten-year old was too young to work on a till), and also so that adequate measures of protection could be put in place for young people to avoid safeguarding issues.

Despite the general opinion being that it should be unlawful to discriminate against an individual of any age in the context of employment, the Committee considers the point made regarding safeguarding issues to be particularly important given that there is currently no legislation stipulating a minimum age when children can enter employment. The Committee has therefore decided to change its proposal and to set a lower minimum age below which protection from age discrimination in the context of employment would not apply. It is recommending that the lower minimum age limit is set at school leaving age in the context of employment. To clarify, this does not mean that an employer could not employ a person under this age; it just means that a person could not make an age discrimination complaint (in relation to employment) until they reached school leaving age.

3. The Committee’s agreed position is that the legislation would not provide protection from age discrimination for individuals in nursery, preschool, primary or secondary education. In these contexts, it is common for different ages to be educated

separately and for provision to be targeted at specific age groups. Do you agree or disagree with the position?

Most respondents agreed with the Committee's proposal. Further commentary on education proposals is provided in Section A under 'mature students' and 'education'. The Committee has agreed to maintain this position but also to propose an additional exception for admissions and funding for Further and Higher Education as the previously proposed exception for 'mature students' is not sufficient.

4. The Committee's agreed position is that the legislation would not provide protection from age discrimination for individuals under the age of 18 in the context of accommodation provision, the provision of goods and services, and membership of clubs and associations. Do you agree or disagree with this position?

Approximately 67% of respondents who answered this question supported the Committee's proposal overall, but the main area of objection was that for goods and services provision, in particular, this age should be lowered to 16.

Several respondents felt that the age at which individuals can be protected from age discrimination in the context of accommodation provision, goods and services provision, and membership of clubs and associations should, in at least some of these contexts, be lowered from 18 to 16 years of age.

A small number of respondents felt that protection from age discrimination should apply to individuals of all ages without the need for this specific provision.

Goods and services

In support of the Committee's proposal, CfHSC emphasised the need to clearly differentiate between children and adult's health services, noting that some medical treatments will be appropriate for adults but not children (and vice versa) and therefore it is also a matter of safeguarding. CfHSC stressed that it was important that the legislation permitted such differences in treatment to protect the welfare of young people.

However, some respondents argued strongly that there were many goods and services which young people were legally entitled to purchase and/or access and it seemed unreasonable for discrimination against them to be lawful in that context.

As a result of the feedback, the Committee has decided to change its position and is proposing that the legislation should provide protection from age discrimination for individuals aged 16 and above, and to propose an exception for services that provide services separately to adults and children, such as health services, where it will be permissible to provide separate services for children and adults.

Accommodation provision

The Committee, by a majority, is adhering to its initial proposal that individuals above the age of 18 should be protected from age discrimination in the context of accommodation on the basis that it seems reasonable to treat individuals under 18 differently as they would be considered minors and have limited legal capacity to enter into contracts, including tenancy agreements. This limits their ability to independently secure housing without parental consent or a guarantor. There are also potential safeguarding issues which may justify imposing age-related policies to protect younger individuals who might be vulnerable.

A couple of respondents asked whether housing options designed for over 55s would be covered by the exception regarding specialist accommodation. Legal advice is that it may not qualify as 'specialist' under the wording of the existing exception. In light of the feedback, the Committee is proposing to extend the specialist accommodation exception to explicitly cover housing developments for older people; however, it recommends that the new Committee *for* Housing consider defining the requirements that a property must meet in order to qualify as specialist housing for older people.

Legal representatives suggested that the Committee may wish to consider adopting a similar position to Jersey, where it is unlawful for a person to discriminate against someone who intends to live with a child under the age of 18. The Committee supports this policy objective and agreed that parents should be able to make a claim of age discrimination by association if they are denied access to accommodation because they intend to live with a child. It is noted that the Ordinance will need to recognise that not all properties are suitable for families (e.g. due to health and safety or space considerations).

Members of clubs and associations

Legal representatives did not consider this exclusion to be necessary in Guernsey as the general exception which permits clubs and associations to restrict membership to persons who share a particular protected ground is sufficient. This does not change the Committee's policy position, but it may be something to consider at the drafting stage.



Employment and Equal
Opportunities Service

APPENDIX 3

ANNUAL REPORT

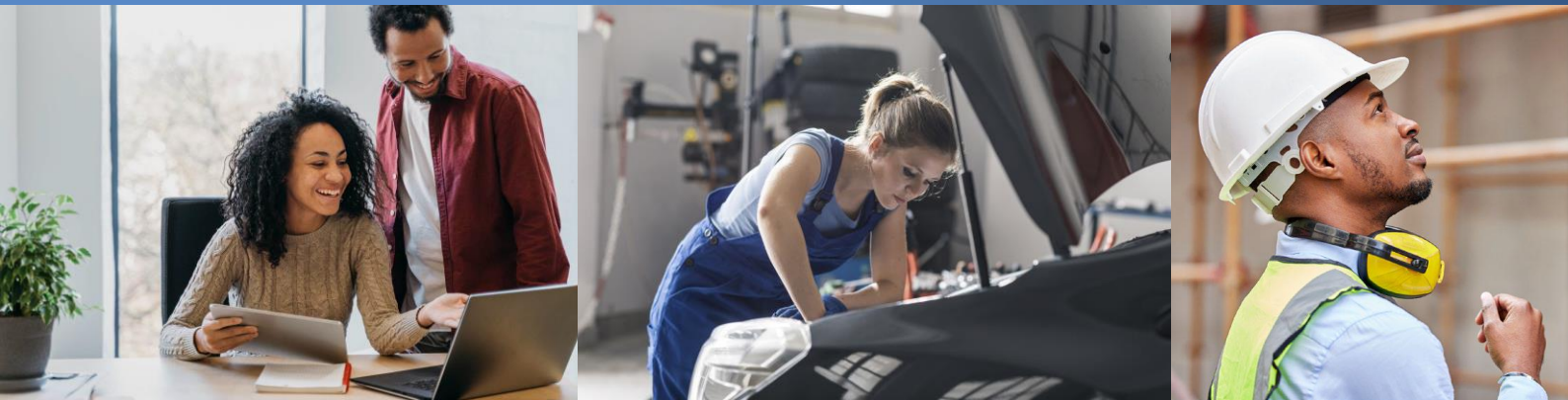
October 2023 – December 2024

"The equality legislation is not solely concerned with conferring rights on those within specific groups: it is a recognition of the fact that there is a public interest in ensuring that society is not deprived of the abilities of those who have much to contribute by prejudice about colour, gender, disability, sexual orientation, or religious belief."

UK Employment Tribunal Judge (Pugsley J) in *Craddock vs Cornwall County Council* (2005)

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EXECUTIVE SUMMARY

EEOS is Guernsey's independent authority for providing advice, guidance, and dispute resolution services in the fields of employment and discrimination.

Our vision is to promote an inclusive society where everyone has an opportunity to secure employment, is treated fairly at work, and can enjoy equal access to goods, services, and education.

We work towards this vision by:



promoting better employment practices



working towards the elimination of discrimination across our community

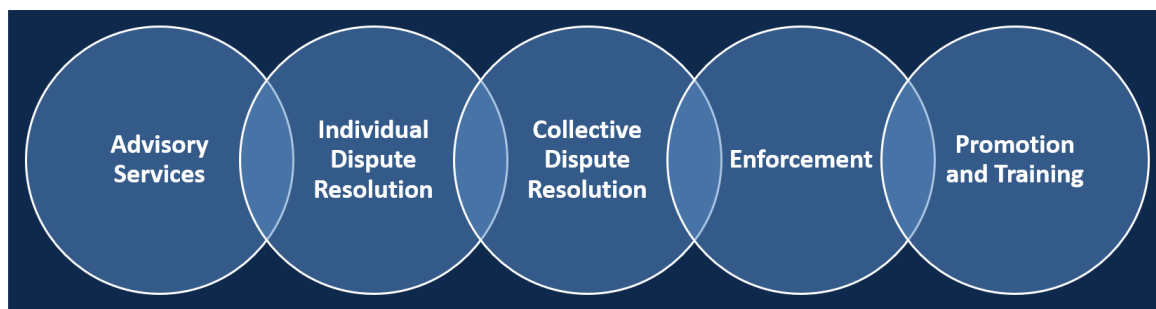


helping to prevent or resolve disputes through the provision of high-quality advisory and conciliation services








taking enforcement action where there has been significant non-compliance with the applicable legislation

To help achieve this we deliver 5 key services:



Summary of 2023/2024 Performance:

				
ADVISORY SERVICES	INDIVIDUAL DISPUTE RESOLUTION	COLLECTIVE DISPUTE RESOLUTION	ENFORCEMENT	PROMOTION AND TRAINING
811 New customer advisory cases 3,178 Total number of contacts with customers across all cases Contracts of Employment The leading topic that customers sought advice on	89 New notifications of intent to complain 49% Cases resolved during conciliation 37 Formal Tribunal complaints lodged Unfair Dismissal The leading reason for lodging a complaint	3 New collective disputes lodged 3 Disputes resolved through conciliation 0 Full hearings of the Industrial Disputes Tribunal	7 Investigations and enquiries opened 0 Cases which ended with a notice being issued or referred for prosecution	34,000+ Number of visits to EEOS website 100+ Number of people attending EEOS training courses 300+ Number of followers on our social media platforms

FOREWORD



Deputy Peter Roffey

President of the Committee *for* Employment and Social Security

The passing of Guernsey's anti-discrimination law was a significant achievement for the States of Guernsey which had been promised for many years. As President of the Committee *for* Employment and Social Security, I am proud to have been part of this important step forward. It has now been 15 months since the Prevention of Discrimination (Guernsey) Ordinance, 2022 came into force, and since the Employment and Equal Opportunities Service (EEOS) was established, so I was delighted to be asked to write this foreword to EEOS's inaugural annual report.

While EEOS operates independently, and my Committee does not directly influence its daily operations, we hold responsibility for ensuring the service meets its objectives. We always expected that EEOS's first year would be one of adjustment, with a new team, systems, and the challenge of implementing new legislation. Given these factors, we are pleased to see that EEOS has made notable progress, either meeting its goals or making significant strides toward achieving them.

Understandably, there was an increase in the number of people contacting EEOS about discrimination, and as expected a small number of these cases did progress to formal Tribunal complaints. This demonstrates that individuals in Guernsey are perceiving or experiencing what they believe to be discriminatory behaviour, so it is encouraging to see that they are seeking support to address these issues. It is also positive to note that businesses and employers are also accessing the service to seek advice on how to actively prevent risks of discrimination complaints. I hope this is an aspect of the service that will develop further.

When individuals and businesses contact EEOS at an early stage, it significantly increases the likelihood that the team can assist in resolving matters informally, often preventing the escalation of cases to formal Tribunal action. As this report will show, they have been experiencing considerable success in this area.

A key achievement has been the progress made in conciliation services, with nearly 50% of cases now being resolved through this method. The uptake of the new pre-complaint conciliation service has also exceeded expectations, with over 40% of cases agreeing to participate. Additionally, the concerns that the new legislation would lead to a surge in complaints have not materialised. Instead, it is clear that employers and businesses are taking their responsibilities seriously, and the legislation has contributed to positive cultural change rather than driving an increase in litigation.

On behalf of my Committee, I would like to thank the EEOS team for their hard work in establishing the service and for their ongoing commitment to building on these achievements in 2025.

Lastly, I would like to acknowledge Stephen Glencross, EEOS's first Director, who will be leaving his post in February 2025. His leadership over the past year has been instrumental in setting the service on the right path, and we wish him every success in his next senior role within the States of Guernsey.

A handwritten signature in dark ink, appearing to read 'P. Roffey'.

Deputy Peter Roffey

INTRODUCTION



Stephen Glencross

Director of the Employment and Equal Opportunities Service

As Guernsey's first Director of the Employment and Equal Opportunities Service, I am delighted to be presenting our first Annual Report. This report will show that the past 15 months have been highly successful in terms of establishing our operating model, achieving excellence in the advice and guidance we provide, and setting up an effective and efficient service. Our overall performance compared to previous years under our predecessor (the Employment Relations Service) has shown continual positive progress and I am immensely proud of the efforts of all our team here at EEOS.

I think it is fair to say that when the Prevention of Discrimination (Guernsey) Ordinance, 2022 was being debated, there was considerable concern being raised that it would 'open the flood gates' to many opportunistic employees and members of the public filing Tribunal complaints which may be frivolous or indeed malicious. There were also concerns that this legislation would expose businesses to considerably higher risks of litigation and cost associated to making reasonable adjustments.

Of course as the legislation is only 15 months old it is still early days, however what this report will show is that these metaphorical 'flood gates' have remained firmly shut. Whilst our workload has increased compared to previous years there was nothing remarkable about it and it has been entirely manageable.

The numbers of customers contacting us for advice and support on employment and discrimination matters continues to grow year on year which is recognition that our service is both necessary and valued on the island. It also demonstrates that individuals and businesses are becoming increasingly aware of their rights and obligations under the law. It is refreshing to see employers and businesses contacting us for advice before situations escalate. We can be far more effective as a service if we can provide early assistance that will prevent an issue becoming a contentious dispute later.

We have focussed our attention on improving our conciliation service to assist more parties to resolve their disputes without the need for litigation. We have put considerable effort into this through internal team training, coaching, shadowing, and revising our process and this has had a significant positive impact with more cases being resolved than in the previous 2 years.

We have built and launched a brand-new case management system which has provided us with a robust platform to ensure our services are delivered consistently and efficiently and provide us with access to real time performance data.

Whilst this is my first annual report, it is also my last as I am leaving this post in February 2025. A recruitment campaign for my successor was completed at the end of the last year and my replacement will be due to commence on 4th March 2025.

I would like to take this opportunity to thank all my team for their hard work and dedication during the last 15 months and to also wish them, and the next Director, the very best for the future as EEOS continues to develop and grow.



[Stephen Glencross](#)

GLOSSARY OF TERMS AND ABBREVIATIONS

Throughout this report reference will be made to several terms which for ease will have been shortened or abbreviated. There are also some terms which carry a specific meaning in the context of our work. This section provides a list of all such terms used and what they mean.

EEOS	The Employment and Equal Opportunities Service
ERS	The Employment Relations Service (predecessor to EEOS)
The Policy Letter	The Committee for Employment & Social Security Policy Letter: “Proposals for a New Discrimination Ordinance”, 2 nd March 2020
The Committee	The Committee <i>for</i> Employment & Social Security
PODO	The Prevention of Discrimination (Guernsey) Ordinance, 2022 as amended
ITC	Intent to Complain
PCC	Pre-Complaint Conciliation - as set out in Section 41 of PODO
FCC	Formal Complaint Conciliation – as set out in Section 20 of the Employment Protection (Guernsey) Law, 1998 as amended
E&DT	The Employment and Discrimination Tribunal
Tribunal	The Employment and Discrimination Tribunal
ACEOs	Advice, Conciliation and Enforcement Officers
Customer	Anyone living or working in Guernsey whether they are a member of the public, a business, employer, employee, contractor, landlord, tenant, member of a club or association or from any other walk of life. It can also include visitors to the island in relation to discrimination matters.
Applicant	The person(s) submitting either their intent to make a complaint or a formal Tribunal complaint.
Respondent	The business, employer or individual(s) about whom an Applicant is complaining
The Reporting Period	1 st October 2023 to 31 st December 2024

ABOUT THE EMPLOYMENT AND EQUAL OPPORTUNITIES SERVICE

The Employment and Equal Opportunities Service (the EEOS) was created by legislation¹ and was formally established on 1st October 2023. This legislation also created a statutory post of the Director of the Employment and Equal Opportunities Service to lead this new service.

EEOS replaced the former Employment Relations Service (“ERS”) which provided free and confidential advice to employers, businesses and anyone employed in Guernsey to help them to manage and resolve any query, issue or concern relating to employment and workplace disputes. EEOS is essentially Guernsey’s equivalent of the UK’s Advisory, Conciliation and Arbitration Service (“ACAS”) and the Jersey Advisory and Conciliation Service (“JACS”), however both of these organisations’ services are limited to the field of work and they do not have any statutory enforcement functions.

With the introduction of the Prevention of Discrimination (Guernsey) Ordinance, 2022 (“PODO”) protection from discrimination was expanded beyond the field of work to cover other aspects of Island life including access to goods and services, accommodation, and membership of clubs and associations. It also broadened the scope of statutory enforcement duties. Due to this expansion it was identified that the existing ERS and its structure needed to be reshaped and rebranded as EEOS under the leadership of a statutory official, the Director of the EEOS.

Although it is funded by the States of Guernsey (under the mandate of the Committee for Employment and Social Security), the Director of the EEOS is an entirely independent role and under their leadership and direction the service operates independently from the States of Guernsey.

Our functions

to promote equal opportunities and work towards the elimination of discrimination

to improve employment relations and work towards the elimination of unlawful employment practices

to assist in the resolution of employment disputes

to carry out the statutory functions of the Director set out in The Employment and Equal Opportunities Service (Guernsey) Law, 2023, including those under the Prevention of Discrimination (Guernsey) Ordinance 2022, Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (SDO)

to provide an Advisory and Dispute Resolution Service based around the Island’s framework of employment legislation

Our purpose





Promoting better employment practices, working towards the elimination of discrimination across our community, and helping to prevent or resolve disputes through the provision of high-quality advisory and conciliation services.

¹ see Section (1) of the Employment and Equal Opportunities Service (Guernsey) Law, 2023, as amended

Our customers

It is quite difficult to specifically define who our customers are because the scope of our services are so broad. We provide advice and support to a whole range of people including those in employment, job seekers, employers, businesses, members of the public, tenants, and landlords. As such when we refer to our customers in this report it simply means anyone who lives in, works in, or visits Guernsey.

Our services

	ADVISORY SERVICES	<ul style="list-style-type: none">• Providing advice and guidance to customers on any employment or discrimination query with a view to helping them to resolve issues informally.• Proactive approach to following up advice to see whether the customer's query has been resolved or if they require any further guidance
	DISPUTE RESOLUTION	<ul style="list-style-type: none">• Providing impartial conciliation services to parties involved in disputes to help them settle matters outside of Tribunals• Providing information and facts about the Tribunal process and law to the parties to help them to assess their cases• Assist the Industrial Dispute Officers to resolve collective disputes informally through conciliation
	ENFORCEMENT	<ul style="list-style-type: none">• Investigate complaints of statutory breaches of employment and discrimination legislation• Encourage businesses and employees/members of the public to resolve issues informally first• Support businesses to ensure they reduce their risks of committing any such breaches• Issue enforcement notices, including requirements for any corrections to be made where breaches have been found
	PROMOTION AND TRAINING	<ul style="list-style-type: none">• Promote EEOS services through publications, media releases, and social media• Provide training on employment and discrimination issues• Up to date publications and guidance on the EEOS website

How we deliver our services

All of our services are provided free of charge by a team of trained and experienced advice, conciliation, and enforcement officers (ACEOs). Most importantly our services are always delivered confidentially and in an impartial way.

Impartiality

Impartiality means we will never tell a customer that they are right or wrong, we never tell them what they should or should not do, and we do not provide any assessment on whether a tribunal complaint would succeed or fail. Instead we provide customers with enough information and factually based guidance in the context of their situation so they can decide for themselves what they feel is the best course of action.

Confidentiality

All of our services are provided with absolute confidentiality. We will never release information about a customer or their query/complaint to anyone else unless we have their express consent to do so.

Customers are asked to provide as much information as they wish to tell us but also reserve the right to remain anonymous.

The Director of EEOS is bound by confidentiality provisions set out in Section 15 of The Employment and Equal Opportunities Service (Guernsey) Law, 2023 and this states that it is a criminal offence for any breach of that provision. As such maintaining confidentiality is an essential element of our work.

We maintain records of customer queries and the advice provided for the purposes of data collection and quality assurance. These records are retained for a period of 2 years (including the current year) but all personal information is deleted after 12 months.

Legal Advice

None of our team are legally qualified, and we are not established as a law firm either. This means we cannot (and do not) provide legal advice and we make this clear to all of our customers. If we can see that a customer might benefit from legal advice we will highlight this to them. We never make recommendations in relation to law firms.

Our Team



Director of EEOS

Stephen Glencross



Advice, Conciliation and Enforcement Officer

Sarah Dicker



Advice, Conciliation and Enforcement Officer

Cecilia Willis *(Left in December 2024)*



Advice, Conciliation and Enforcement Officer

Anaëlle France

EEOS OPERATIONAL PERFORMANCE

During 2024 our key priority was to establish and maintain the highest possible level of service for our customers. Inevitably this has meant our focus has been on reviewing our operational delivery model, improving existing processes and systems and establishing new ones where required. We have gone back to basics, ensuring we are fulfilling our purpose and giving the best possible service to our customers.

In this section we will look at how we collect data for reporting, our key performance indicators, and a breakdown of our 2024 performance in each of the following areas:

- Advisory Services
- Conciliation Services
- Enforcement
- Marketing and Promotion
- Training Services
- Customer Confidence and Satisfaction

Performance data and collation

Over the past few years there have been various methods adopted to record data on customer enquiries, cases, and disputes and these approaches have changed and tweaked on multiple occasions. This has meant that prior to 2024 the available data is not reliable or consistent enough to form a robust benchmark. Additionally the introduction of new discrimination legislation in 2023 has resulted in some new processes being implemented so comparative data is not available for prior years.

Since October 2023 we have worked on building a bespoke case management system (built in house by ourselves using SharePoint) covering all aspects of EEOS' work. The features of this system include:

- all core information about every customer contact, case or project work is stored in a single, easy to find location;
- records all activity associated to each case
- tracks progress of work
- date stamps all major activity
- links case records to document files directly
- automation of many standard processes through mail merge documents and consistent templates
- consistency in data capture and reduced human error
- real time reporting on service usage, workloads, and capacity

The use of our SharePoint case management system has had significant benefits in terms of efficiency and effectiveness in terms of how we manage our workload. It is beginning to save a considerable amount of time that would otherwise be spent on manual administrative processes. More importantly we now have access to consistent, reliable and much richer levels of data which will allow for future year on year benchmarking.

For the purposes of this first Annual Report some comparative data will be provided from prior year's however this has required a certain level of analysis and manipulation on pre-2024 data in order to

ensure we are comparing like with like. Therefore any comparisons cannot be treated as definitive and instead are presented as indicative, unless otherwise stated.

Performance Targets

In its Policy Letter entitled “Proposals for a New Discrimination Ordinance” dated 2nd March 2020² (the “Policy Letter”, the Committee for Employment and Social Security proposed a number of indicators upon which to assess both the legislation’s and EEOS’ performance. The relevant indicators are set out in Table 1 below:

Indicator	Data Source	Outcome
1. Employment and Discrimination Tribunal wait time does not increase	Operational caseload statistics - average time between complaint being registered and hearing should not significantly exceed 6 months or have a long-term increasing trend	Page 26
2. Proportion of complaints being resolved informally is maintained or improved.	Operational caseload statistics recorded by the Employment and Discrimination Tribunal and Employment and Equal Opportunities Service - at least 70% of cases resolved at conciliation stage.	Page 27
3. Wait time for advice does not increase.	Response to enquiries at the Employment and Equal Opportunities Service is ordinarily within 3 working days.	Page 18
4. Adequate uptake of voluntary pre-complaint conciliation.	Operational caseload statistics recorded by Employment and Equal Opportunities Service (at least 20 per year on average).	Page 22
5. Customer satisfaction with, and confidence in, Employment and Equal Opportunities Service is high, with employers, service providers and individuals.	User feedback would need to be collected by Employment and Equal Opportunities Service (under development).	Page 34

Table 1 - Policy Letter Performance Indicators

EEOS’ performance against these targets will be covered in more detail in the following sections of this report alongside additional statistics and commentary on various aspects of our workload.

Over the course of 2024 we have been looking at developing our operational plan and service standards. This is still a work in progress, but we have been using the indicators in Table 1 as the basis to build a more comprehensive set of key performance indicators to help manage our workload and assess overall performance. For next year there are both service level and individual objectives set which will be assessed on a regular basis and will form part of our 2025 annual report. Our service level objectives can be found in Appendix 1.

² Source: Committee for Employment & Social Security Policy Letter: “Proposals for a New Discrimination Ordinance”, 2nd March 2020, para 3.5.4 (pg 15) – Link : [CHttpHandler.ashx](#)

ADVISORY SERVICES

As detailed above we changed the way we recorded customer enquiries in 2024. When a customer contacts us, we open a “case” for them on our case management system and, with the customer’s agreement, we record as much relevant data as possible including:

- details of the customer
- type of enquiry
- details of the enquiry
- details of the employer or business concerned (e.g. industry type)
- a note of the advice given
- amount of contact the case generates between the customer and EEOS

All advisory cases are created this way, and this allows us to anonymise and aggregate the data for the purposes of performance reporting. Cases are closed once EEOS is advised that a matter has been resolved or within 3 weeks since the date of last contact, whichever is sooner. Advisory cases do not include pre-complaint notifications, formal tribunal complaints or conciliation cases. Once an advisory case results in a such a complaint being lodged, that advisory case is closed.

Prior to 2024, enquiries were logged on a spreadsheet relating to every call, email, or meeting. In many instances these contacts might have been from the same customer and on the same matter and there was no obvious or easy way to aggregate all of them. We now group enquiries into unique cases so we get a clearer understanding of our actual caseload and avoids double counting. For the purposes of this report we have, as much as possible, been able to approximate the number of unique cases from the available 2023 data to allow us to benchmark our 2024 performance.

Number of advisory cases

Across the whole of 2023 EEOS (formerly the ERS) handled approximately 680 advisory cases. 215 of those cases were raised during the period 1st October 2023 to 31st December 2023 i.e. the period immediately after the implementation of the PODO. Prior to the new legislation being implemented, ERS had handled an average of 56 cases per month, but following the implementation the PODO this increased to an average of 71 per month (an increase of approximately 15%).

For 2024 EEOS handled 811 cases which is an increase of approximately 20% compared to 2023.

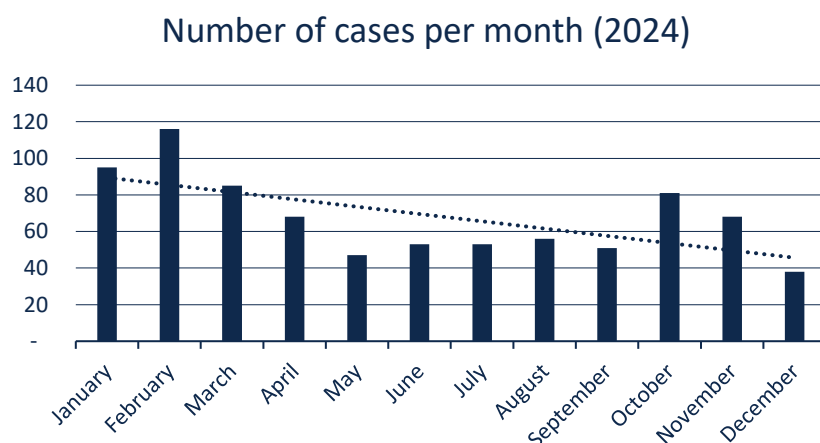


Figure 1: Number of cases per month during 2024

The average number of new cases each month has been gradually falling over the course of 2024 as shown in figure 1 above, but the average was still higher in 2024 with 68 cases per month compared to 57 cases per month in 2023.

An increase in the number of cases following the implementation of PODO was not unexpected and indeed was planned for as part of the Policy Letter³, as customers understandably would have wanted to check their rights and obligations under the new legislation. The Policy Letter estimated the growth in cases over a two year period to be between 7% and 50%. The actual increase of 20% in 2024 is therefore well within this estimate and indeed as shown by the dotted trend line in figure 1 above, it is starting to reduce. This falling average may indicate that we have already experienced our peak level of enquiries following the implementation of PODO.

Over the past few years the complexity of customer enquiries has been increasing and 2024 was no exception. The increase in complexity for 2024 can, in part, be explained by the introduction of new PODO, however as it will be shown later, discrimination is not the main reason for customers contacting us to seek advice. Customers will often provide us with documents and background information which need to be reviewed in order to ensure our advice is correct and relevant to their circumstances and this can lead to multiple and ongoing questions and requests for advice. On average there will be 4 contacts made between a customer and EEOS for each case. For the Reporting Period our team fielded 3,178 contacts (meetings, calls and emails) across all our cases. Additionally 25% of all cases relate to more than one issue and they can often have expectations that we can advise on other employment related issues such as work permits, breach of contract claims, income tax and social security. Clearly these all fall outside our remit, but they often add complexity to the cases we have to advise on.

Type of customer cases

Figure 2 below shows the type of issues that customers mostly commonly seek advice for. It should be noted that due to the differences in the way data was recorded these figures are based on percentages of the total cases (for 2024) compared to total enquiries (for 2023). Although it is not a like for like comparison, it does show that number of customer advisory cases for each topic has been relatively stable for the past year, with one notable (and obvious) exception.

Top reasons for advisory cases

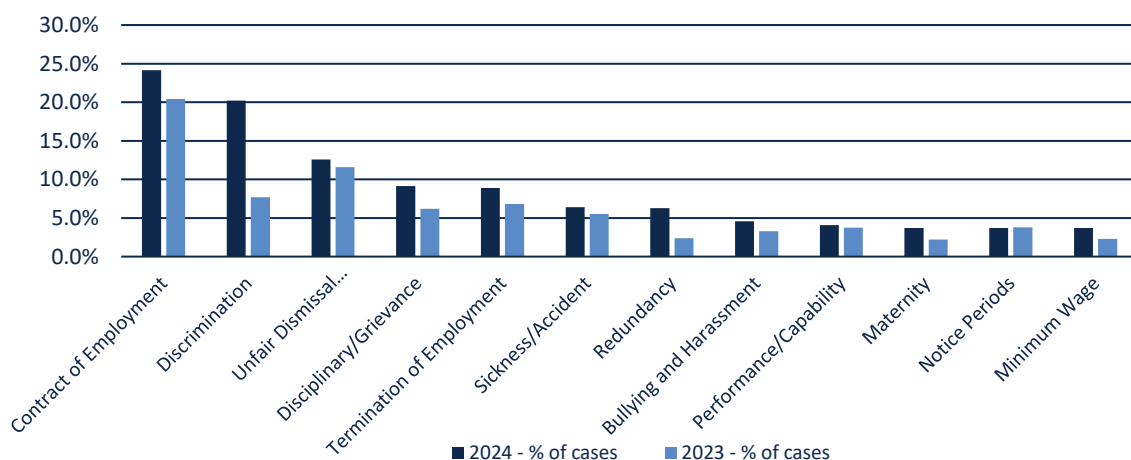


Figure 2 - Type of Cases 2024 v 2023

³ See Appendix 6 of the Committee for Employment & Social Security Policy Letter: "Proposals for a New Discrimination Ordinance", 2nd March 2020, para 3.5.4 (pg 15) – Link : [CHttpHandler.ashx](#)

Advisory Cases: Contracts of Employment

Advisory cases which include enquiries about contracts of employment has remained the main reason for customers seeking advice during 2024 accounting for just under 25% of all contacts. This is a broad topic area and will cover situations such as the non-payment of wages, changing contractual terms, failure of employers to apply contractual provisions, overpayments, and breaches of contract generally. It does not include the failure to provide written statements of employment terms as this is captured as separate topic (which amounted to less than 1% of all enquiries). EEOS will generally provide customers with advice relating to best practice and how they might be able to resolve any contractual disputes, however we have no statutory powers to assist with such disputes and any related legal claims need to be dealt with by either the Petty Debts court or the Royal Court (depending on value of the claim). Because of this, unlike most comparable jurisdictions, EEOS cannot offer conciliation services on contractual disputes and in many instances, we have to either signpost customers to seek legal advice or to take advice from the Citizens Advice Bureau.

We feel there would be significant advantages if the Tribunal could hear and determine breach of employment contract claims (subject to a maximum value cap). Bringing a claim to Petty Debts court can be costly and time consuming and there is no independent mediation or conciliation options to try and reach a settlement first. Often the low value of some claims will act as a disincentive to pursue them in the courts. If the Tribunal was able to hear such claims, then it will provide a mechanism for EEOS to be able to offer conciliation services to settle them.

We do recognise that implementing this will require legislation changes which will take time and will need to be thoroughly researched and consulted on, however EEOS hope to be able to initiate some early discussions to explore what might be possible on this matter during 2025.

Advisory Cases: Discrimination

Enquiries relating to discrimination issues (which includes all protected grounds and contexts) accounted for less than 10% of all enquiries during 2023. There was a total of 91 discrimination related enquiries, 66 of which were made between 1st October and 31st December. In 2024 there were a total of 164 enquiries relating to discrimination issues (just over 20% of all enquiries). This represents a year-on-year increase of approximately 80%. Whilst that might appear to be a significant increase, it was starting from a low base so it has not had a significant impact on our workload levels.

There was an initial spike in discrimination advisory cases in the first 3 months immediately after the implementation of PODO when it was the top reason for why customers contacted us during that period. However as Figure 3 below shows this settled down during 2024 with the overall average trend reducing each month.

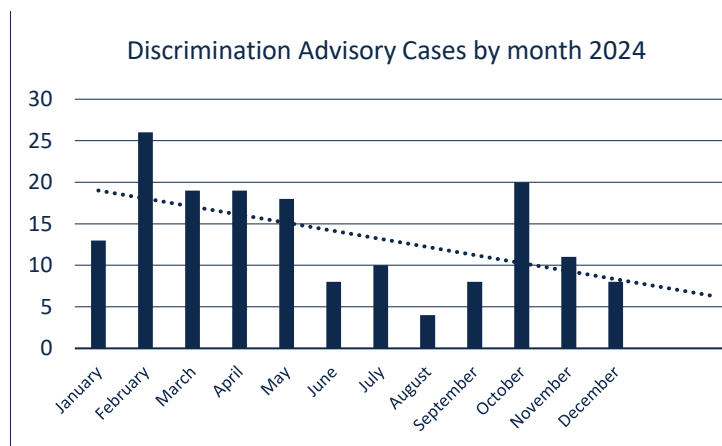


Figure 3 - Number of discrimination advisory cases by month 2024

Figure 4 below provides a breakdown of the number of discrimination cases we have handled (as a percentage of the total cases) relating to protected grounds under PODO. Disability discrimination was the leading protected ground during 2024 which was expected and is not out of step with comparable jurisdictions⁴ however it accounted for less than 10% of all our cases in 2024. This means disability discrimination did not even make it into the top 5 reasons why customers contact us during the whole reporting period.

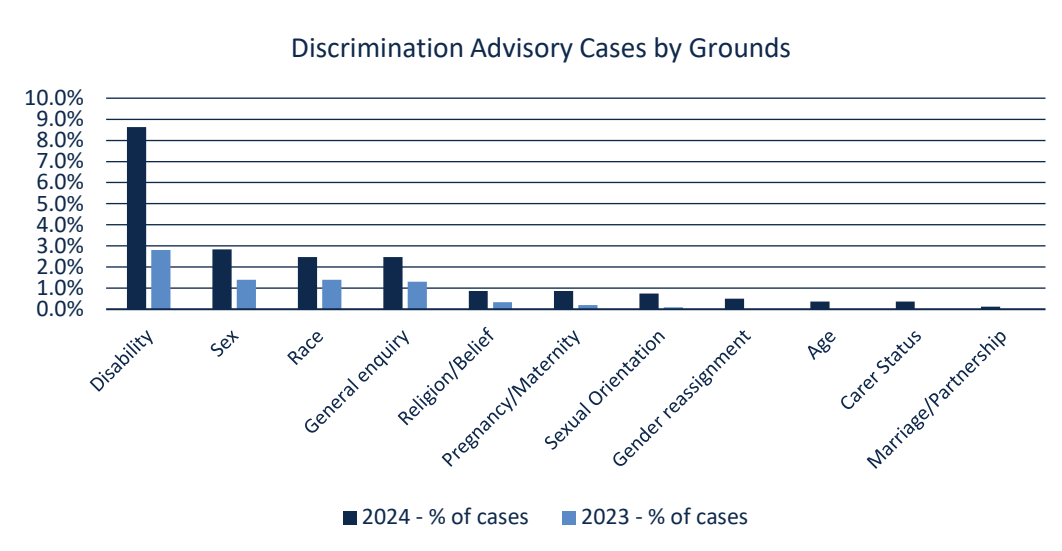


Figure 4 - Discrimination Advisory cases by Protected Ground

It is common for discrimination enquiries to be part of a wider and more complex picture often involving matters such as potential unfair dismissal, performance management or disciplinary issues. In more than 60% where customers are seeking advice on potential discrimination issues it is accompanied by needing advice on other matters too.

Overall the number of advisory cases relating to discrimination matters has not been overwhelming. This is significant because at the time of the States of Guernsey's debate on the implementation of PODO there had been significant concerns raised through the media and various interest groups that this legislation would open the floodgates to complaints and leave employers and businesses exposed to significant risks of many frivolous or vexatious litigation.

In particular there were concerns that opportunistic individuals might seek to take advantage of Guernsey's wide definition of disability at the considerable expense of both employers and businesses. It is perhaps too early to say definitively that these concerns have not been, or will not be, realised on the scale that was anticipated. However it would have been logical to expect that if it was to happen then we would have recorded considerably more advisory cases during the first 12 months of the legislation being in place, which as the data shows, has not materialised.

Types of Customers

Anecdotally through our work we know there is a perception that ERS, and now EEOS, is a service that exists to assist employees and members of the public. As Figure 5 below shows, it is true that 50% of our customers are employees which is perhaps unsurprising as many employers and businesses will have their own HR teams and/or legal representatives. However through our approach of following

⁴ See :ACAS Annual Report 2023/2024 - [Acas Annual report and accounts 2023-2024](#)
JACS (Jersey) Annual Report 2023 - [jacs-2023-annual-report.pdf](#)

up on advisory cases, and through our approach to conciliation, we are starting to see more employers approaching us for assistance.

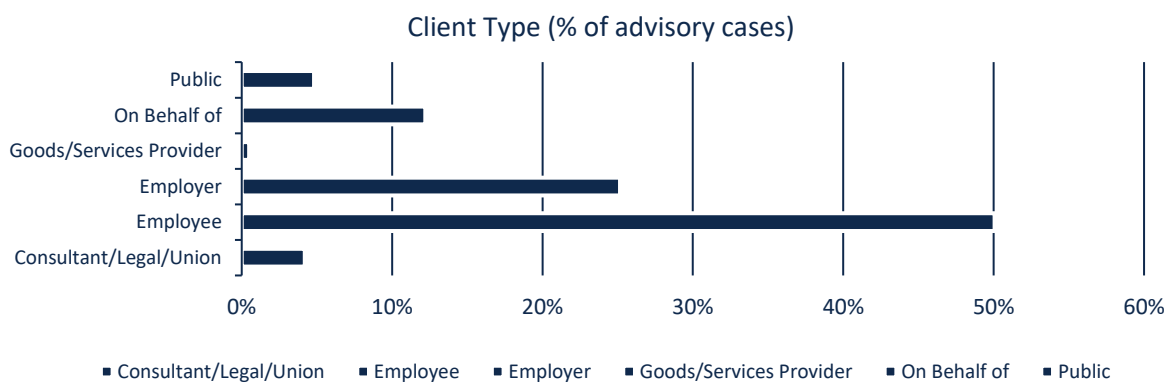


Figure 5- Customer Type

However we do not exist solely to support employees and members of the public. We know we can have a more positive impact on employment practices and the prevention of discrimination in Guernsey if we can work more closely with more employers and local businesses. As such we have set a strategic objective for 2025 to increase the number of employers contacting us for advice and guidance.

Number of advisory cases by industry

When a customer contacts us, we ask for details about their employer or the business to which their enquiry relates. We then apply an industry category so we can measure which industries are more likely to contact us or be the subject of an enquiry and over time we can use this information to help us to tailor and target our services to maximum effect.

Figure 6 below shows a breakdown of the top 10 industries related to advisory cases we have recorded in 2024 against 2023 (as a percentage of total cases). There were significant number of cases where no industry was recorded because it was either not captured at all, or the customer was unwilling to disclose it. During 2024 we have been more proactive in asking for this information (compared to previous years) from customers and gradually we are seeing a reduction in situations where customers are unwilling to share this.

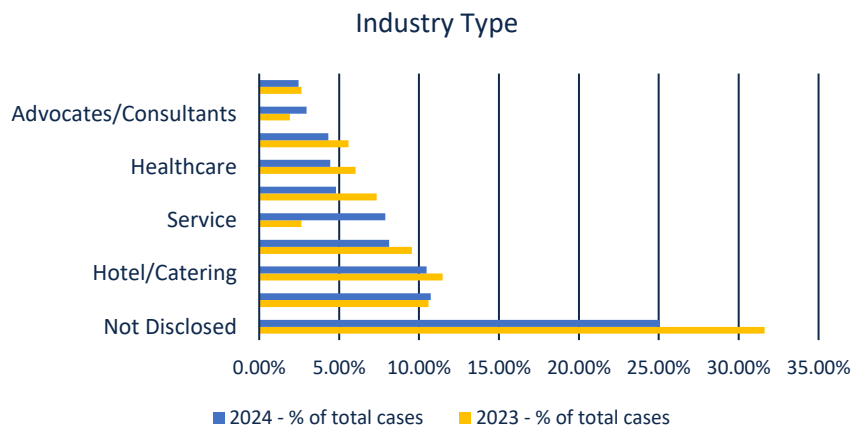


Figure 6 - Industry Type

Overall, as Figure 6 shows, there has been very little change over the last two years. Aside from the non-disclosed industries, finance, hospitality, and retail are the top three industries we recorded customer cases from. Given the relatively small year on year change, it would seem the introduction of PODO has had very little impact in terms of the industries customer's contact us about.

Response Times

As set out on page 12 EEOS has a target outlined in the Policy Letter relating to how quickly we respond to customer enquiries and requests for advice. Our actual performance against this target is shown in Table 2 below.

Given the often complex and detailed nature of our advisory cases, defining our response time is not straightforward. During 2024 we did not record the date of every response made to a customer, because during the lifecycle of a case there can be many interactions with that customer and to record all of them would need to be done manually and could be quite an onerous exercise. Additionally a target such this only measures how quickly we are working, it doesn't reflect the quality of our advice or our effectiveness in terms of helping customers to resolve their enquiries. During 2024 we were instead measuring how long a case was open for.

Indicator	Data Source	Actual Performance between 1 st October 2023 and 31 st December 2024
Wait time for advice does not increase.	Response to enquiries at the Employment and Equal Opportunities Service is ordinarily within 3 working days.	Not measured

Table 2- Response Time Target

We have also adopted a new process during 2024 to proactively follow up on a case if we have not heard from the customer within 10 working days of the date of last contact. The purpose of this follow up is to:

- Check whether our advice was received and understood;
- Enquire as to whether there have been any developments with their case that may require additional advice or guidance;
- See if our advice has been helpful in terms of assisting them to resolve their enquiry.

If we do not hear back from them within 5 working of our follow up, we will automatically close the case.

Together we refer to these 15 working days as the "follow-up period". During that period the case is considered "inactive", however it remains open during that time. This means all cases we record will be open for a minimum of 15 working days.

For the purposes of our performance we are obviously only really interested in seeing how long a case is 'active'. This is calculated by taking the total number of days a case is open and then subtracting the number of days the case is in the follow-up period.

On this basis for 2024 the average length of time a case was active was **7 days**. Given the average number of times we will be in contact with customers on their case (average of 4 times), this suggests that enquiries are likely to have been responded to within the 3 working day target.

Number of advisory cases that lead to ITCs

One of the main reasons EEOS offers customers free advice and support is to help all parties to avoid matters escalating into contentious legal disputes. Aside from customer feedback, one way we can assess our performance in this regard is to measure the ratio of requests for advice against the number of Tribunal complaints made.

This ratio cannot be entirely precise, because for example:

- we don't record how many advisory cases result in customers lodging complaints with the Tribunal,
- some complaints are lodged without the Applicant having sought any advice from us at all (although this is rare),
- in some cases the nature of Applicant's complaint may be different from the advice they originally sought from us.

Additionally not every customer advisory case has the potential to escalate into a Tribunal complaint.

For these reasons measuring this ratio is not intended to be definitive, but it does provide a reasonable benchmark.

If EEOS is providing an efficient and effective service, it could be reasonably expected that the ratio would be relatively small; i.e. through our advice and support issues rarely escalate to Tribunal complaint stage. There is no target set in this regard but measuring this on an annual basis will allow us to compare performance year on year in the future.

For 2024 the ratio of advisory cases compared to Tribunal complaints was **9.5%**. In other words just over 90% of our advisory cases never progress to Tribunal complaints.

INDIVIDUAL DISPUTE RESOLUTION AND CONCILIATION SERVICES

Conciliation is essentially the process for two (or more) parties in a dispute to talk to each other through EEOS to see if the matter can be settled without needing to go to Tribunal.

Under the law EEOS has a statutory duty to offer conciliation to the parties at two specific stages of the complaint process. Although offering conciliation is a statutory duty, the conciliation process itself is entirely voluntary and requires all parties to agree to participate.

Pre-complaint conciliation

One of the new requirements set out under PODO⁵ was that before an Applicant can lodge a formal Tribunal complaint, they must first notify EEOS of their intention to make a complaint. They do this by completing an Intent to Complain Form called the “ITC1”. On that form the Applicant will indicate whether they agree to enter pre-complaint conciliation (“PCC”). If they wish to engage in that process, we then write to the Respondent (sending a copy of the ITC1) asking them if they wish to engage in PCC. If both parties agree, we begin PCC discussions with a view to seeing the matter can be settled.

There is no statutory time limit on how long PCC should run. Our approach is to continue with PCC discussions as long as there is always positive progress being made. PCC will end if:

- settlement is reached;
- one or more parties refuse to engage in PCC at the outset;
- either party refuses to continue their engagement; or
- if in our view there is very little likelihood of a settlement being reached

When PCC closes, by law we must issue the Applicant with a certificate (known as an “ITC3”) confirming they complied with the legal requirements of notifying EEOS of their intended complaint. This certificate allows the Applicant (if they wish) to progress the issue to a formal Tribunal complaint.

Formal complaint conciliation

Once an Applicant has lodged their formal complaint with the Tribunal and the Respondent has submitted their response to it, by law the Tribunal Secretary must remit the matter back to EEOS for a further attempt at conciliation discussions. Unlike PCC, there is a statutory time limit to formal complaint conciliation (“FCC”) of 6 weeks. If the matter is not resolved within 6 weeks, the case is referred back to the Tribunal to be queued for a hearing. EEOS has the discretion to extend the FCC period if sufficient progress is being made towards a settlement.

Conciliation Process

At its core the process itself is a fairly simple one. A conciliation officer will speak to all parties (or their representatives) in order to:

- gain a basic understanding of their case;
- explain the Tribunal process;

⁵ See Prevention of Discrimination (Guernsey) Ordinance, 2022 (S40-41),

- indicate the types of issues and challenges they might face in presenting their case in order for them to consider how they can best address them; and
- talk through potential options in terms of how a case might progress or settlement could be reached.

What our conciliation officers will not do is:

- tell the parties how strong or weak their case is;
- advise the parties whether they should settle or not;
- take sides;
- make any type of judgements about whether the parties might win or lose at Tribunal;
- tell the parties what they would do if they were in their position; or
- help the parties to prepare their cases

The conciliation process itself is entirely confidential and ‘without prejudice’ to the Tribunal. We cannot share information from our discussion with one party to the other without consent.

Whilst the process is simple, managing these discussions positively, knowing the right questions to ask, how to ask them, and understanding the relevant legislative framework all requires a high level of skill, knowledge and expertise.

Historical Background and Context

EEOS, and in particular our predecessor ERS, acknowledges that in the recent past successfully conciliating cases was challenging. At times it may have appeared to parties that we saw our role as simply passing messages between them and therefore adding very little value to the process. Since 2018 our successful conciliation rate gradually reduced from being above 60% of cases down to approximately 30% by the end of 2023. At the mid-point of 2024 we had settled just over 10% of all active cases (including those brought forward from the previous year) with little sign of improvement.

Because of this decline we made it our top priority for the second half of 2024 to reverse this trend. Specifically we spent time reviewing our processes and approaches and immediately implemented a range of measures including:

- a team training session led by an experienced and qualified former ACAS conciliator;
- designing and launching a new conciliation case management system;
- revising our templates and guidance documents;
- regular supervision sessions between conciliation officers and the Director; and
- providing ongoing learning, coaching and shadowing opportunities

As the following sections will show, within a few weeks the results of this work became clearly apparent as more cases started to be resolved.

Pre- complaint conciliation performance

As it was stated earlier, the implementation of PODO changed the way Applicants needed to lodge complaints with the Tribunal, with the first step being to notify EEOS of their intention to make complaint using an ITC1 form.

During the Reporting Period we registered 89 ITC1 forms. 87 of these related to intended complaints in the field of employment. 2 ITC1s related to intended complaints in field of goods and services provision. No ITC1s were lodged in the fields of accommodation provisions or clubs and associations.

We have a target set out in the Policy Letter relating to the uptake of PCC which is outlined in Table 3 below together with our actual performance.

Indicator	Data Source	Actual Performance between 1 st October 2023 and 31 st December 2024
Adequate uptake of voluntary pre-complaint conciliation.	Operational caseload statistics recorded by Employment and Equal Opportunities Service (at least 20 per year on average).	37 (42%)

Table 3 - Up-take of pre-complaint conciliation

With an uptake of 37 cases this part of the new ordinance has clearly been a significant success. The concept of pre-complaint conciliation (“PCC”) started slowly with very little uptake in the early months. However this improved significantly as we implemented our new approaches to conciliation (as outlined earlier). Anecdotal feedback received from the parties and their legal representatives is that PCC is seen as a very useful way to resolve matters quickly and informally.

Number of ITC1s based on reason

An ITC1 form can be used to notify us of a single potential category of complaint, or it can be used to list multiple potential categories of complaints.

The categories of complaints which can be made to the Tribunal are as follows:

- Unfair dismissal (including constructive unfair dismissal)
- Failure to pay the minimum wage (and other minimum wage related complaints)
- Failure to provide written reasons for dismissal
- Sex Discrimination (employment only)
- Multi ground discrimination (race, sexual orientation, disability, carer status and religion or belief)
- Victimisation
- Harassment
- Detrimental treatment under the Employment Protection (Sunday Shop Workers) (Guernsey) Law

These categories are sometimes referred to as specific “heads of claim”.

Additionally a single Applicant may submit more than 1 ITC1 Form with each one covering a different head of claim. This occurs most often when a further dispute arises after the first ITC1 was submitted, most commonly in cases of alleged discrimination which later also become allegations of unfair dismissal.

This means when we start to look at the data for the heads of claims submitted on ITC1s that they will not add up to 89, and it does not mean there are 89 different Applicants.

Overall across all 89 ITC1s submitted, there were 155 different heads of claims which are shown in Figure 7 below.

Just under 80% of all heads of claims notified to EEOS were for unfair or constructive unfair dismissal. Out of the 71 unfair dismissal complaints, 33 included complaints for discrimination (on any of the protected grounds). This shows that despite the implementation of the new discrimination legislation, unfair dismissal was still the leading basis for Applicants considering lodging formal complaints with the Tribunal. Unsurprisingly, and comparable to our neighbouring jurisdictions, disability was the

most cited head of claim under PODO with 27 cases notified to EEOS. By comparison all the other heads of claim cited in ITC1 Forms lodged in the Reporting Period were at significantly lower levels.

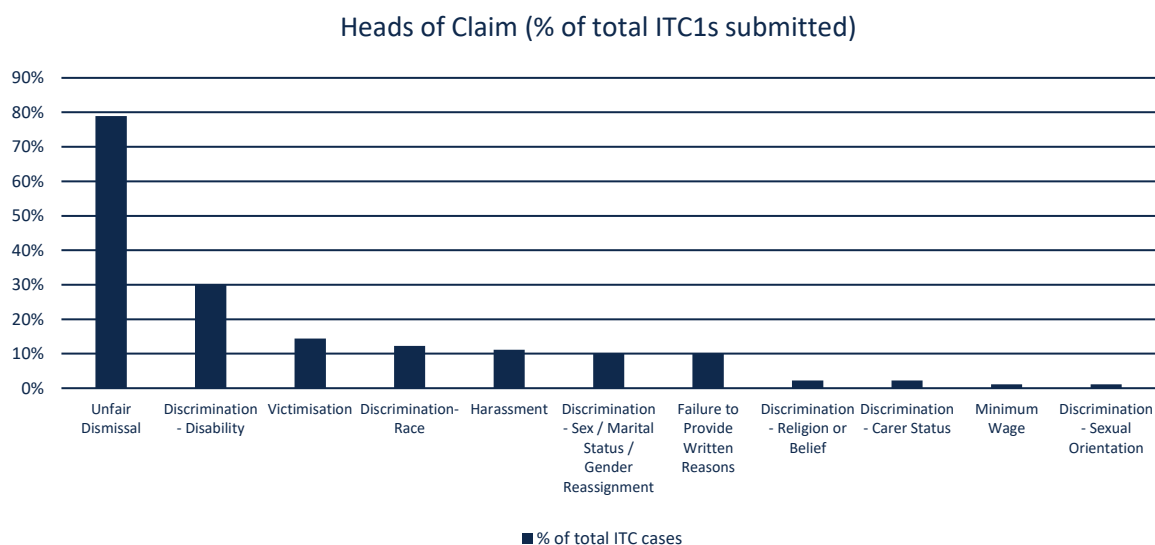


Figure 7 - Heads of Claim (% of ITC1s submitted)

If these numbers are considered alongside the number of advisory cases that related to the new protected grounds under PODO, this is strong evidence that the new legislation has not yet generated significantly increased workloads for either EEOS or the Tribunal and indeed the work it has created so far has been easily and effectively managed by our team.

Number of PCC case successfully resolved

Settling cases during PCC is often less straightforward than during the formal stages of a Tribunal complaint. This is mainly because the Respondent is not supplied with full particulars of the potential complaint (known as “pleadings”) and the Applicant does not have the benefit of seeing the Respondent’s pleadings in their defence. Pleadings are not asked for during this informal stage because they are a specific requirement of the formal complaint process, and often parties will want them to be prepared by legal advisors or similar professional consultants. If pleadings were to be requested at PCC stage, any informality is likely to be lost and the process would take much longer.

Therefore the only information available to the parties is that which the Applicant briefly outlines on their ITC1 form and any additional information they are prepared to supply to each other during PCC.

We consider a successful PCC outcome to be any of the following:

- the case is settled under an EEOS brokered settlement agreement (known as an ET4);
- where we have been involved in conciliation discussions with the parties that lead to them settling the case under a compromise agreement;
- where the Applicant withdraws their case following conciliation discussions;
- where following conciliation discussions an Applicant is issued with their ITC3 certificate but chooses not to pursue a formal complaint (referred to as ‘abandoned cases’)

During the reporting period we successfully resolved **37%** of all PCC cases. At the end of the year 22 cases remained in conciliation discussions with the remaining cases having had their ITC3 certificates issued. Just over 5% of cases were abandoned by the Applicant. We are never told why an Applicant chooses to abandon their case as this is their personal choice, however in many of these cases we will have spent time explaining the process, any potential issues they might need to consider with their

cases, and explaining the Respondent's position to them. It is likely in some cases that as a result of these discussions some Applicants may decide not to pursue matters further.

PCC Timescales

As mentioned earlier, there is no statutory timeframe as to when PCC needs to be concluded by. When an Applicant submits their ITC1 Form and indicate that they wish to enter into PCC, the clock stops in terms the legal time limit for when formal complaints must be submitted by. The clock does not restart until the Applicant is issued with their ITC3 certificate.

Technically this means PCC could continue indefinitely until the parties choose to end it. In reality the process tends to move much quicker. Of the cases that settled in PCC during the Reporting Period, it took on average **8 weeks** to conclude (from the date when the ITC1 Form was submitted to when settlement was agreed). Of those 8 weeks, approximately 2-3 weeks are given to the Respondent to consider the ITC1 form that has been submitted and whether or not they wish to engage in PCC at all. It is not until after they advise us that they wish to engage in PCC that we begin actively working on the case.

For cases which did not settle, Applicants were, on average, issued their ITC3 certificates just over **6 weeks** after they submitted their ITC1 Form.

We don't feel these average timescales were excessive, although of course we try to avoid delays as much as possible. In order to reduce this timescale we would need to apply more stringent deadlines on the parties during the PCC process however we believe this could significantly reduce the likelihood of settlements being reached as it would place unnecessary pressure on the parties.

Formal complaints to the Tribunal

During the Reporting Period there were 37 formal complaints lodged with the Tribunal. This means that only 41% of intended complaints lodged with EEOS had escalated to formal disputes by the end of 2024. These are complaints that were not able to be resolved at the pre-complaint notification stage and the Applicants decided to pursue matters formally.

Year	Number of Complaints (+/- compared to 2024)
2024	33
2023	30 (+3)
2022	31 (+2)
2021	38(-5)
2020	67 (-34)
2019	48 (-15)

Table 4 – Historical Tribunal complaint numbers

4 of these complaints were lodged between 1st October 2023 and 31st December 2023. The remaining 33 formal complaints were lodged in 2024. Table 4 above shows how this compares to the previous 5 years.

Although 2024 saw an overall increase in the number of the complaints from 2023, the table above shows that this was by no means significant or excessive when compared to the historical average (42 cases per year). The spike experienced in 2019 and 2020 will almost undoubtedly be a consequence of the pandemic but nonetheless this is very clear evidence that the introduction of PODO has not led to significantly increased levels of case work for the Tribunal.

As referred to earlier there were also a number of intended complaints that were lodged in 2024 which remained within the pre-complaint conciliation process by the end of the year and of course some of these may lead to further formal complaints however in that event they will be recorded as formal complaints lodged in 2025. There were no full Tribunal hearings held which related to complaints lodged during the Reporting Period. The first cases are listed for hearing the first quarter of 2025.

The breakdown of the 2024 formal complaints by type is shown in Table 5 below:

Head of Claim	Number of Complaints
Unfair dismissal	14
Unfair dismissal <i>plus</i> failure to provide written reasons	3
Unfair Dismissal <i>plus</i> discrimination (for any new protected ground)	13
Unfair Dismissal <i>plus</i> sex discrimination	3
Unfair Dismissal <i>plus</i> discrimination (for any new protected ground) <i>plus</i> sex discrimination	2
Discrimination only (for any new protected ground)	1
Min Wage	1

Table 5 - Formal complaints by head of claim

All of these cases relate to the field of employment, there were no formal complaints relating to any other context.

Of the 37 complaints lodged, 35 involved claims for unfair dismissal. 16 of these complaints also included discrimination based on one of the new protected grounds under PODO. We don't believe that 16 complaints brought under PODO is excessive or unmanageable.

Formal complaint conciliation ("FCC")

As mentioned earlier, once a formal complaint has been registered and the Respondent has submitted their formal response, it is a legal requirement for the matter to be remitted back to EEOS to make further attempts at settling the case under a process called FCC. Remitting a case back to EEOS will usually happen within 3 to 4 weeks of the complaint having been registered with the Tribunal.

By law EEOS then has 6 weeks to try and reach a settlement between the parties, unless we feel positive progress is being made in which case we have discretion to apply an extension. If the matter is resolved, we close FCC and the matter is referred back to the Tribunal to be queued for a hearing. Although FCC closes, conciliation remains open to the parties throughout proceedings and indeed some cases can be settled on the day of the Tribunal hearing itself.

Where it is clear cases are not likely be resolved through FCC, they were, on average, referred back to the Tribunal in 6 weeks, which is consistent with the statutory time limit. Where cases were resolved in FCC it took an average of 22 weeks to get there. This is considerably longer than PCC and is largely due to the fact that EEOS and the parties have to work much harder in order to reach a positive outcome.

During the Reporting Period EEOS had successfully resolved 13.5% of all formal complaints with a further 13.5% still in active FCC at the end of 2024. When we compare this to our performance on PCC case resolution, this suggests that FCC cases are much less likely to settle. This is not unexpected because attempts to resolve the matter through PCC had already failed previously and it will often require something significant (such as entirely new evidence) to make them wish to reconsider their position in relation to conciliation. The parties are also more invested in the Tribunal process in terms of time spent and costs and this can lead to already polarised positions becoming even more entrenched.

There are also challenges for us in terms of helping parties to reach an agreed resolution on discrimination related complaints simply due to the current lack of Guernsey-based case law. Some parties are very keen to ‘test’ PODO by getting their cases heard by Tribunal, but they cannot fully assess their prospects of success without having comparable cases to refer to. More established case law and a better understanding of how the Tribunal will deal with complaints under PODO may lead to a higher resolution rate during conciliation.

Tribunal Timescales

There were no full Tribunal hearings during the Reporting Period which related to complaints lodged before the end of 2024. The first cases from 2024 to reach full hearings are listed for 2025, but the number of such cases are so small (each with their own circumstances) it would not be appropriate to use the average timescale measure this for this Reporting Period as set out in the Policy Letter (see Table 6 below).

Indicator	Data Source	Actual Performance between 1 st October 2023 and 31 st December 2024
Employment and Discrimination Tribunal wait time does not increase	Operational caseload statistics - average time between complaint being registered and hearing should not significantly exceed 6 months or have a long-term increasing trend	No cases lodged in this period have reached full hearing. Expected to be approximately 9 months.

Table 6 – Tribunal Waiting Time

The timescales for Tribunal are not easily predictable or controllable. Whilst FCC can, from time to time, result in delays in cases being listed for a full hearing, there are many other factors including:

- overall complexity of the case;
- volumes of evidence being submitted;
- number of witnesses involved;
- preliminary or jurisdictional matters that need resolving;
- availability of the parties, witnesses and legal representatives;
- availability of Tribunal panel members

Anecdotally we know that the wait time for Tribunal Hearings has not increased since PODO was implemented, it has remained relatively stable at approximately **9 months**. Of those 9 months, just under 6 months of the waiting time was spent awaiting the appointment of a Tribunal Chair and setting up a case management meeting. During 2024 we had a maximum of 3 legally trained chairs available and they can generally only take one or two cases at a time.

A recruitment process for new Tribunal panel members was carried out at the end of 2024 and this resulted in the appointment of an additional 5 legally trained chairs commencing from 2025. Once they are trained, these appointments will contribute to reducing the overall waiting time.

Overall resolution rate

Whilst our FCC resolution rate is lower than we would like, it should be noted that our performance indicator for case resolution is based on our results in both PCC and FCC combined. There are clearly considerable benefits to resolving more complaints during PCC because this will prevent the issue ever becoming a formal complaint in the first place. Therefore it will always be our aim to have a higher resolution rate in PCC.

As set out on page 12, this overall target was set out in the Policy letter which is outlined in Table 7 below together with our actual performance for the Reporting Period.

Indicator	Data Source	Actual Performance between 1 st October 2023 and 31 st December 2024
Proportion of complaints being resolved informally is maintained or improved.	Operational caseload statistics recorded by the Employment and Discrimination Tribunal and Employment and Equal Opportunities Service - at least 70% of cases resolved at conciliation stage.	49%

Table 7 - Overall rate of resolved complaints

Although we missed this target for the Reporting Period, through training and launching new systems and approaches we have shown consistent improvement during the second half of 2024 in order to finish the year on nearly 50%. Given our resolution rate was less than 11% at the midpoint of 2024, we consider this to be significant improvement. We are confident that this improvement will continue during 2025 so our target of 70% can be met within the next year or two.

COLLECTIVE DISPUTE RESOLUTION

In Guernsey collective disputes are raised under the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993 (as amended). Such disputes are registered with the Industrial Disputes Officer (or their Deputy) who is a statutory official and is independent from the States of Guernsey and EEOS.

Our ACEOs will assist the Industrial Dispute Officers to provide conciliation services between the parties. Collective conciliation is largely the same as the individual conciliation process outlined above, however they can be considerably more complicated and time consuming as the basis for most disputes will be around pay, terms and conditions and collective bargaining.

On a positive note in the recent past there has been little activity in relation collective disputes, with only three full Industrial Dispute Tribunal hearings in the last 10 years.

During the reporting period there were 3 industrial disputes lodged, all of which were resolved during collective conciliation.

There are two highly complex disputes due to be heard by the Industrial Disputes Tribunal (the “IDT”) as a joint case in 2025. These disputes were lodged and referred to the IDT prior to the Reporting Period and as such there was no conciliation activity during this time.

ENFORCEMENT

Under the Employment and Equal Opportunities Service (Guernsey) Law, 2023 the Director of EEOS has a statutory duty to ensure compliance with various employment and discrimination enactments. We call this aspect of our work 'enforcement'.

Typically the types of issues where the Director of EEOS may exercise that duty can include:

- Failure to pay the minimum wage or similar breach of the Minimum Wage (Guernsey) Law, 2009
- An act of discrimination, harassment or victimisation prohibited under PODO
- An act of discrimination, harassment or victimisation prohibited under the Sex Discrimination (Employment)(Guernsey) Ordinance, 2005
- Breaches of the Conditions of Employment (Guernsey) Law, 1985

In carrying out this duty the Director of EEOS has a number of statutory powers⁶ including power:

- to request information, documents, and accounts;
- to require any person to explain any such document or information;
- to issue non-discrimination notices; and
- impose a discretionary penalty of up to £10,000 in the event a person has not complied with a lawful request made by the Director.

In addition the Director of EEOS has the responsibility to maintain a register of all non-discrimination notices issued which must be made available to the public on demand. Breaches of the Minimum Wage or Conditions of Employment legislation are liable for criminal prosecution rather than direct enforcement by the Director of EEOS. As such in these cases, once we have completed our investigation, we must refer the matter to the criminal courts (via reporting to Guernsey Police).

Enforcement approach

We recognise that requiring individuals and businesses to provide information, asking them to explain matters to us, and/or potentially issuing non-discrimination notices is not something that should be taken lightly. It is time consuming, can involve confidential or sensitive information, and can lead to challenging conversations.

To avoid the potential risk that any enforcement action could be viewed as disproportionate and/or an unjustified reaction to a malicious or vexatious complaint, we have adopted a robust approach to assessing whether or not such a complaint merits consideration.

This assessment involves considering the following core criteria:

- Whether any action is likely to have a positive impact in terms of resolving the issue (e.g. will action contribute to preventing or stopping a breach of legislation);
- Are there more effective ways to achieve this (e.g. through informal discussion and education);
- Would any action strengthen the application of the relevant law or will it risk setting an adverse precedent;

⁶ See Sections 10, 11 and 25 of the Employment and Equal Opportunities Service (Guernsey) Law, 2023

- Has any civil action through the Tribunal or another court already been brought based on the same facts and circumstances (as this may reduce the likelihood of EEOS acting, especially in matters involving unfair dismissal);
- How likely is it that a positive outcome could be achieved (based on the legal merits of the case); and
- Is it in the public interest to pursue any potential action.

This list forms our minimum assessment when deciding on whether or not we will consider taking any action. Our assessment is always documented and filed on the case record.

Where we do decide to investigate matters, our first step is to seek to engage with the employer or business on an informal basis to understand their position and initial response to the complaint. This step has in some cases led to early resolution without the need for issuing any notices. Once we have established the facts, we assess the matter again using the same criteria before deciding whether or not to progress the case any further.

Enforcement cases

During the Reporting Period⁷ there have been 7 complaints made to EEOS where potential enforcement action was being considered. The breakdown of these complaints based on reason is shown in Figure 8 below.

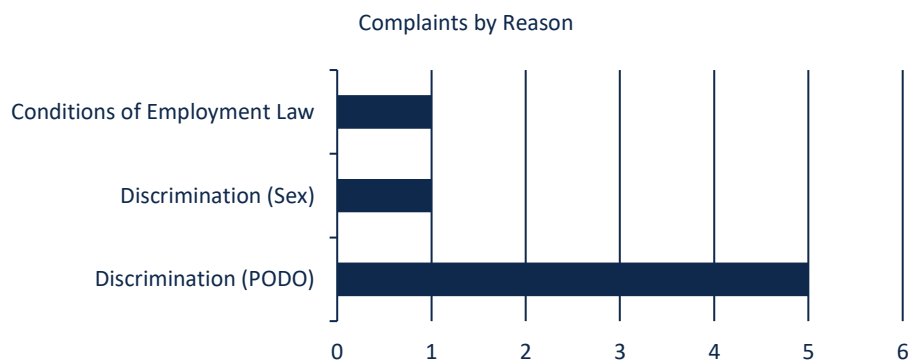


Figure 8 - Enforcement cases by reason

Nearly all of these complaints related to issues arising in the workplace, with only one case relating to access to goods or services.

All cases were resolved during the informal stage of the process and as such there were no non-discrimination notices issued and there were no cases referred for prosecution.

⁷ For reasons of confidentiality, we can only report on cases which have been concluded during the Reporting Period. We are unable to comment or make reference to any cases that may have remained active at the end of the Reporting Period.

MARKETING AND PROMOTION

During the Reporting Period our focus has been predominantly based on establishing the service and ensuring our operational delivery model is as effective and efficient as it can be. For this reason our work on marketing and promotion has been more limited but this will be a key priority for 2025.

Social Media

We have launched our social media platforms on Facebook, LinkedIn and X and we now have following across all platforms of over 300 people. Our approach to social media has been to rely on organic growth which takes considerable time and effort in terms of ensuring a continual flow of messaging and content. Again this has not been something we have been able to prioritise as much as we would have liked during the Reporting Period but this will be improved in 2025 and we have set service objectives relating to this.

Website

Our website (www.eeos.gg) was launched in September 2023 in readiness for PODO coming into force. Our website provides our customers with general advice and guidance as well as access to the legislation and statutory codes of practice. Google analytics has been used since 1st January 2024 to assess our website traffic. For the whole of 2024 there has been over 34,000 views of our website.

Pages relating to unfair dismissal and discrimination were the most commonly visited.

We have recognised that the bulk of our website contains quite lengthy documents and content which can be tricky for some customers to navigate. This in part reflects the complexity of employment and discrimination matters, but we also know there is work we can do to simplify this and to try and make the site more interactive and user friendly. We have an active workstream that is already underway to further develop our website during 2025 including the following:

- Short video clips and content to help easily explain tricky employment & discrimination issues;
- News and updates page to provide helpful information on latest developments and case law;
- Template letter and documents that can be used by customers to deal with a variety of common workplace and discrimination issues;
- Ability for customers to sign up to a newsletter; and
- Information about upcoming training events

TRAINING

There are already many providers of training in Guernsey on matters relating to employment law, workplace issues and discrimination. However much of this training is focused on employers, businesses, HR professionals, and the legal profession.

Whilst this is very important and is something EEOS supports, there is very little training focussed specifically on employees and members of the public in terms of providing education on what employment rights they have (or don't have), what discrimination really means, and what is involved in making complaints.

As such the training and awareness raising sessions we have run during the Reporting Period has been targeted on these groups. We have run sessions for schools and colleges, for groups representing different people of different nationalities, and Trade Union officers covering various topics including:

- Overview of employee rights under Guernsey legislation
- What is discrimination?
- Minimum wage
- Unfair dismissal
- Rights under a contract of employment
- How to make a complaint and what is involved

The overriding objective of our training is not just to ensure that attendees are aware of their rights, but to ensure they understand the core principles and requirements involved in terms of submitting any complaint in the event of a potential dispute.

Across all of our training events we have had more than 100 people attend and on average our training sessions have resulted in a positive feedback score of 4.9 out 5.

We have additional training sessions scheduled for 2025 and we are planning to continue to build this offering further, including plans to develop training options for businesses, employers and HR professionals.

CUSTOMER CONFIDENCE AND SATISFACTION

We do not currently have a formal approach to collating customer feedback and as such we rely on the unsolicited comments we receive from time to time. However we can also imply a positive confidence and satisfaction level based on the increase in the number of advisory cases we have registered compared to previous years, and the increase in the number of complaints which are being resolved through conciliation.

We are actively working on a mechanism for seeking and gathering customer feedback which we hope will be launched in early 2025 which will most likely involve sending customers an invitation to rate the service they have received (out of 5) using a net promoter score system. Before this can be launched, we need to finalise the process we need to update our data protection policies.

During the Reporting Period our team regularly received positive feedback from customers and the image below is a sample of this from employees, employers and businesses alike.



There were no formal complaints made during the Reporting Period from any customer. Where we have received criticism or negative feedback, we have always worked quickly to resolve any issues, however instances of this were generally rare during the Reporting Period.

Customers can become frustrated when we are not able to meet their expectations in respects to issues and matters that either fall outside the scope of our services or we simply do not have the statutory authority to take the action they want us to.

We often experience frustration from businesses and employers who feel that we should be doing more to stop complaints coming in or if we believe that a complaint has no merit, we should simply reject it because it must be malicious. However they won't always appreciate that in order to do that we would need to "judge" the case without any evidential basis for doing so which will undermine our statutory obligation to act impartially. Equally we will get frustrated employees and Applicants who may expect us to give them more specific legal advice than we are able to.

In our roles we are placed into the middle of two parties in dispute and it is often impossible to reach a conclusion without one side feeling more aggrieved than the other. It is therefore inevitable that there will be times when some customers will feel frustrated despite us having explained the boundaries of our services.

In the Policy Letter we had a target set relating to customer confidence levels which is shown in Table 8 below.

Indicator	Data Source	Actual Performance between 1 st October 2023 and 31 st December 2024
Customer satisfaction with, and confidence in, Employment and Equal Opportunities Service is high, with employers, service providers and individuals	User feedback would need to be collected by Employment and Equal Opportunities Service (under development).	Achieved

Table 8 – Customer confidence KPI

In the absence of significant complaints or negative feedback, together with the increase in the number of customer cases and the positive feedback we have received we believe its fair to say that our customer satisfaction levels are high. When we have collated sufficient data through our proposed customer feedback system we will be able to report on this target more reliably in the future.

FUTURE STRATEGY

During the Reporting Period we have been working on developing our longer-term strategic plan. This work will lead to setting a 5-year strategy which will include our strategic aims and operational objectives. It is intended that this work will be completed during 2025.

EEOS was created as part of a wider strategy under the mandate of the Committee of Employment and Social Security through the implementation of PODO. However we quickly identified that we needed a more detailed strategy for EEOS itself to ensure that the service we provide is relevant, proportionate, fit for purpose, and efficient.

Throughout the Reporting Period we have been focused on refining our operating model, concentrating on getting the basics in place, and monitoring our performance over a longer period of time. This has provided a strong sense of “where we are now”. In addition we have run some internal workshops to help develop our future strategic direction. By the end of the Reporting Period this remains a work in progress but we hope to be in a position to finalise the proposals for our strategy during 2025.

Our strategy will set out:

- Our purpose and vision
- Our service values which will underpin everything we do;
- Strategic aims for the next 5 years that will positively contribute towards realising our vision;
- Specific work required at an operational level to deliver the strategic aims; and
- Key performance indicators that will measure our success in achieving those aims.

Next Steps

Once we have finalised the proposals, we will seek to engage with key stakeholders to obtain their views to help further refine our overall strategy. The final draft of the strategy will be presented to the Committee for their endorsement and following this we will seek to launch and publish it on our website.

APPENDIX 1 – 2025 SERVICE OBJECTIVES

Key Performance Indicators				
Objective	Overall KPI	KPI Details	2025 Target	
1 Meet the demand for complaints handling in relation to the new discrimination ordinance	Average time between formal complaint registration and hearing <u>not to exceed 6 months</u>	Formal Complaint Conciliation (FCC) to be concluded within 6 weeks (in exceptional cases can be no longer than 8 weeks).	Average time to conclude FCC not to exceed 8 weeks	
2 Meet the demand for advice, guidance, and informal resolution on the new discrimination ordinance	70% of cases to be settled.	Settle 35% of all complaints at pre-complaint stage	35%	
		Settle 35% of all complaints at formal complaint stage	25%	
	Advice queries to be responded to within 3 working days	Clients receive a <u>initial</u> response or acknowledgement within 3 working days	Within 3 days	
3 Increase opportunity for early and informal resolution to disputes	On average advice queries to be fully dealt with, follow up completed, and matter concluded within 25 working days	Full advice provided, client given time to put advice into action and then followed up by EEOS	25 working days	
	Uptake of at least 20 voluntary early/pre-complaint conciliations (PCC) per year	All parties to a complaint agree to participate in PCC in at least 22 cases per year	50% of all complaints	
4 Ensure adequate confidence in services via fit for purpose governance arrangements	Develop a robust system for obtaining and measuring client feedback.	Launch routine customer feedback process based on net promoter score	Process in place, being monitored, and appropriate targets set of 2026	

Key Performance Indicators				
Objective	Overall KPI	KPI Details	2025 Target	
4	Ensure adequate confidence in services via fit for purpose governance arrangements	Obtain regular feedback from the Employment and Discrimination Tribunal Service	Launch a quarterly feedback survey	Process in place, being monitored, and appropriate targets set of 2026
		Obtain regular feedback from Guernsey's Employment Lawyer Forum	Attend forum meetings at least twice a year and launch annual feedback survey	Process in place, being monitored, and appropriate targets set of 2026
		Ensuring the ratio of total number of employment and discrimination queries to complaints (lodged at ITC stage) do not exceed 10%		<10%
5	To raise the profile of the service in Guernsey and to increase awareness of employment and discrimination legislation and best practice	Extend reach to more employers and businesses	35% of all requests for advice to come from Employers and businesses	30%
		Increase social media and digital presence	At least 3 social media posts per week designed to raise awareness	3 per week
			Increase social media followers by at least 50%	Increase followers by at least 50%

FURTHER READING

1. Committee for Employment & Social Security Policy Letter: “Proposals for a New Discrimination Ordinance”, 2nd March 2020,
Link: [CHttpHandler.ashx](#)
2. Employment and Equal Opportunities Service (Guernsey) Law, 2023, as amended.
Link: [Employment and Equal Opportunities Service \(Guernsey\) Law, 2023](#)
3. JACS Annual Report (2023)
Link: [jacs-2023-annual-report.pdf](#)
4. ACAS Annual Report (2023)
Link : [Acas Annual report and accounts 2023-2024](#)
5. EEOS Website (for more details on our services and guidance)
Link: [www.eeos.gg](#)
6. Guernsey Legal Resources Website (for all employment and discrimination laws and Tribunal judgements)
Link: [www.guernseylegalresources.gg/](#)



Employment and Equal
Opportunities Service

Employment | Discrimination | Conciliation



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**REVIEW OF PHASE 1 OF THE PREVENTION OF DISCRIMINATION (GUERNSEY)
ORDINANCE, 2022**

INTRODUCTION

1. This appendix sets out the review of Phase 1 of the Prevention of Discrimination (Guernsey) Ordinance, 2022³³. The inputs to the review have included consultation with a range of stakeholders, including the Director of the Employment and Equal Opportunities Service (and consideration of his first annual report) and the Convenor of the Employment and Discrimination Panel and consideration of the Access to Work Scheme. The recommendations arising from the review are set out in section 7 of the policy letter entitled “Prevention of Discrimination Ordinance: Proposals for the Ground of Age and other matters”.

TIMELINE

2. Phase 1 of the Prevention of Discrimination Ordinance came into force on 1st October 2023. This was eighteen months after the timeline originally set out in the 2020 Policy Letter. However, there were exceptional reasons for this delay. The debate on the Policy Letter was postponed by three months due to Covid-19. There was a further delay on the policy work relating to religious belief and sexual orientation because of the delay to the 2020 elections (also due to Covid-19). In addition, some stakeholders requested (and the Committee agreed) that the lead-in time between the approval of the Ordinance and its commencement date should be extended from six months to one year. As a result, some aspects of the timeline are eighteen months behind the timeline for the development and review of the Prevention of Discrimination Ordinance as originally envisaged, as set out in Appendix 6.
3. More recently, as communicated to the States in the President’s statement to the Assembly on 11th December 2024, the Committee has decided that the consultation and policy work on the incorporation of the grounds of sex, marriage and gender reassignment into the Prevention of Discrimination Ordinance, 2022 should be completed within the same States term. A draft consultation document was prepared in the second half of 2024 but too late to be able to complete this work before the last States meeting of the term. This will be included in the Committee’s handover report to the new Committee.

³³ [Prevention of Discrimination \(Guernsey\) Ordinance, 2022](https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84425)
<https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=84425>

STAKEHOLDER ENGAGEMENT

4. In early December 2024, the Committee wrote to 70 stakeholders requesting feedback on Phase 1 of the Prevention of Discrimination Ordinance by 20th January 2025. A general invitation for feedback was also issued through the media. The Committee asked recipients and members of the public to:
 - consider any changes they thought should be made to the Prevention of Discrimination Ordinance while remaining within the scope of the policy proposals agreed by the States to date;
 - provide feedback regarding the conciliation and complaints processes;
 - provided feedback in respect of any experience they had had of interacting with the Employment & Equal Opportunities Service ('EEOS'); and
 - advise whether, in their view, the Ordinance had resulted in a positive or negative cultural change (or no change) within a) their organisation and b) the community as a whole.
5. Fifteen consultation responses were received from a range of organisations including three States Committees, business groups, landlords, legal representatives and members of the public. It should be noted that some general feedback on the Prevention of Discrimination Ordinance had also been received in the summer of 2024 when the Committee commenced consultation on the proposals for Phase 2 of the Ordinance, and this has also been taken into consideration in the Committee's review.
6. In February 2025, the Committee received the first annual report of the Director of the EEOS, covering the period 1st October 2023 to 31st December 2024 (Appendix 3).
7. This section summarises the consultation responses received. Generally, the responses were positive, with one notable exception from an individual. Others were generally supportive, with some points suggested for improvement. The Director of the EEOS provided useful statistical information regarding relevant enquiries and complaints made under the Prevention of Discrimination Ordinance, as well as other employment enactments. These are referenced in the Director's report (see Appendix 3).
8. A number of key themes were raised in the consultation responses.

General comments and cultural change

9. Several respondents commented that it was too early for a full review of the Ordinance to be carried out as it had only been in force for approximately fifteen

months; at the time of responding no complaints made under the new Ordinance had been heard by the Employment & Discrimination ('E&D') Tribunal, although a number of cases were progressing through earlier stages of the process.

10. Initial feedback suggested signs of positive changes in the community, such as greater awareness of what discrimination is and of the need to make reasonable adjustments for disabled persons, particularly during recruitment processes.
11. However, there were reports of more guarded feedback being received by unsuccessful candidates following interviews and less work experience opportunities being available for disabled persons, suggesting that some employers may be nervous of potential discrimination complaints arising.
12. A States Committee raised the additional work associated with responding to queries and requests, although acknowledged that this will have resulted in a positive impact for some sections of the community.
13. Feedback from landlords was that they had perceived little change. This is not surprising because key duties for landlords with respect to reasonable adjustment requests are not yet in force.
14. Some respondents expressed a desire to see the education section of the legislation come into force as soon as possible.
15. There was also feedback about the lack of a requirement for reasonable adjustments for carers. A respondent noted that it could be difficult for carers to get time off from work, or the flexibility, that they needed to work alongside their informal caring responsibilities. There was a suggestion that the Committee should look to propose a local version of the Unpaid Carer's Leave Act³⁴ recently introduced in the UK with effect from 6th April 2024. This may be something that a future Committee *for* Employment & Social Security chooses to look into, but it is outside the scope of the original proposals for a new discrimination Ordinance, as reasonable adjustments in the UK and Jersey equivalent legislation are only with respect to the ground of disability.
16. It was also suggested that the requirement for applicants to notify the EEOS of their intended complaints, and the suspension of the time limit for submitting a formal complaint whilst undergoing pre-compliant conciliation, should extend to complaints made under the Minimum Wage (Guernsey) Law, 2009³⁵ and the Employment Protection (Sunday Shop Working) (Guernsey) Law, 2001³⁶. This would make those Laws consistent with other employment legislation. While no

³⁴ [Unpaid carer's leave - GOV.UK.](https://www.gov.uk/unpaid-carers-leave)

³⁵ [The Minimum Wage \(Guernsey\) Law, 2009.](#)

³⁶ [The Employment Protection \(Sunday Shop Working\) \(Guernsey\) Law, 2001.](#)

complaints have been made under the Sunday Shop Working legislation during the relevant period, it might, theoretically, be possible for someone to bring a complaint on the ground of religion or belief that would fall under both the Prevention of Discrimination Ordinance and the Sunday Shop Working (Guernsey) Law, 2001, so the States may wish to give the E&D Tribunal the power to join such complaints. If complaints are joined, then this could avoid duplication of hearings and compensation.

Suggested changes to the Ordinance

17. A drafting error has been identified in section 36(3) of the Prevention of Discrimination Ordinance (this section is not yet in force and cannot be brought into force before 1st October 2028). An amendment to section 36(3) is necessary to clarify that while commercial landlords have a duty to *allow* reasonable adjustments for both a tenant and a tenant's service users, the tenant is responsible for *paying* for the reasonable adjustment(s) that is (are) not a disproportionate burden for them to make. There is no financial liability on the tenant's employees or service users.
18. A verbal request was also made by a stakeholder for the Committee to consider proposing increasing the upper compensation limits for discrimination complaints, noting that the States of Jersey would soon be considering a proposal to increase the compensation limits for discrimination complaints. The Committee is of the view that it is too soon to consider increasing the compensation limits.

The conciliation and complaints processes

19. There were a number of comments on the pre-complaint conciliation process, not all of which were in agreement with one another.
20. Some respondents thought that the time limit for submitting further complaints related to an ongoing case was problematic. If a person wishes to make a complaint of discrimination, then the complaint must be made within three months of the alleged discrimination taking place. Under the current process, if a person submits an 'intent to complain' form, then, while pre-complaint conciliation is ongoing, the time limit for the applicant to make a formal complaint is suspended. However, this suspension is only for the current complaint as specified on the applicant's intent to complain form. This can mean that a person wishing to submit a related complaint may run out of time to do so by the time the pre-complaint conciliation process is concluded. If the person had not run out of time to make a related complaint, they would have to complete a separate intent to complain form for the related complaint and receive a separate certificate from the EEOS to proceed to the formal complaint stage (which is a legal requirement).

21. Some respondents suggested that it should be made easier for an applicant to add in additional related complaints to a pending case; others thought this should be narrower and tighter from the outset, with additional information specified on the intent to complain form, such as the amount of compensation being claimed.
22. At present, complainants are required to complete an intent to complain form. The parties are given the opportunity to participate in pre-complaint conciliation with a view to resolving complaints at any early stage. The parties are not obliged to enter into pre-complaint conciliation. In the event that pre-complaint conciliation is not entered into, or is unsuccessful, a certificate is issued by the EEOS to indicate that pre-complaint conciliation has not been successful and the application can proceed to the formal complaint stage. The complainant can then decide if they want to proceed. If so, the relevant data is automatically inserted into the formal complaint form. A consultee requested that complainants be required to complete the complaint form at the formal complaint stage. The Committee is of the view that the automatic completion of the complaint form is more user friendly for the complainant and the EEOS and E&D Tribunal administration; it is therefore not minded to recommend changing this process.
23. The Committee also received a request for preliminary issues to be considered before the response form is completed by the respondent (this form is the form that the respondent is required to complete after the applicant has lodged a formal complaint). However, in practice some issues may not come to light until after the form is completed, therefore the Committee is not minded to recommend changing this process.
24. As noted above, a complaint must be made within three months of the alleged discrimination taking place. A consultee suggested that in this event, the applicant should have to make a formal request for extension of time, rather than having to raise an objection to the complaint being out of time. This could be given further consideration.
25. There was also a request for all forms for applicants and respondents to be available online. The forms are already available online, so it is assumed this might relate to being able to submit them digitally. This would need specific software to allow individuals to sign in to an individual account, as it is sensitive and special category data that is being processed. This is something that could be looked into in the future, but is not a priority for the EEOS in 2025.

The Employment and Equal Opportunities Service

26. Feedback indicated general satisfaction with the EEOS, but a request was made for faster conciliation, especially where the complainant was remaining in employment. One consultee reported noticing an improvement in the conciliation process in recent times, with the conciliators engaging constructively and challenging parties on their respective positions in a helpful manner.
27. There were requests for more training and guidance, especially on disability-related sickness absence and accessibility. Further guidance on the latter is already being planned. There was a separate request for clarification of what is meant by 'substantial disadvantage' (in respect of the requirement to provide reasonable adjustments for disabled persons) and 'discrimination by association'. These terms are explained in published guidance documents. There was also a request for guidance on what is to be taken into consideration in determining compensatory awards where the award is 'up to' an amount. This is something that will evolve through case law.
28. A consultee requested that the EEOS carry out more awareness raising work to ensure there was a good level of understanding in the community regarding what constituted discrimination and what best practice in equality and inclusion looked like. This has been identified in the Director's report as a priority for 2025.

REPORT FROM THE DIRECTOR OF THE EEOS

29. The report from the Director of the EEOS covers the period between 1st October 2023, when the legislation came into force and 31st December 2024. It is attached at Appendix 3. There is a requirement for the Committee to submit reports from the Director to the States under rule 7(2) of the Employment and Equal Opportunities Service (Guernsey) Law, 2023.
30. Prior to the new legislation being implemented, the Employment Relations Service had handled an average of 56 advisory cases per month but, following the implementation the Prevention of Discrimination Ordinance, this increased to an average of 71 per month from October to December 2023 (an increase of approximately 15%). For 2024 EEOS handled 811 cases which is an increase of approximately 20% compared to 2023. The average number of new cases each month has been gradually falling over the course of 2024, but the average was still higher in 2024 with 68 cases per month. An increase in the number of cases following the implementation of the Prevention of Discrimination Ordinance was expected and was planned for as part of the 2020 Policy Letter.
31. Discrimination is not the main reason for customers contacting the EEOS to seek advice, although the number of advisory cases for discrimination increased from about 7% of caseload in 2023 to 20% in 2024. Advisory cases which include

enquiries about contracts of employment has remained the main reason for customers seeking advice during 2024 accounting for just under 25% of all contacts. This is a broad topic area and will cover situations such as the non-payment of wages, changing contractual terms, failure of employers to apply contractual provisions, overpayments, and breaches of contract generally.

32. A key recommendation from the Director's report is that unlike most comparable jurisdictions, EEOS cannot offer conciliation services on contractual disputes. There would be significant advantages if the E&D Tribunal could hear and determine breach of employment contract claims (subject to a maximum value cap). Bringing a claim to Petty Debts Court can be costly and time consuming and there is no independent mediation or conciliation options to try and reach a settlement first. Often the low value of some claims will act as a disincentive to pursue them in the courts. If the E&D Tribunal was able to hear such claims, then it would provide a mechanism for EEOS to be able to offer conciliation services to settle them. Implementing this would require legislation changes which will take time and will need to be thoroughly researched and consulted on. While recognising the merits of this proposal, the Committee is of the view that this is not something that is likely to be progressed in the short-term while the Committee's focus is on the implementation of the provisions of Phase 1 and Phase 2A of the Prevention of Discrimination Ordinance. The Committee feels it is also important to understand the capacity of the EEOS and the E&D Tribunal once Phases 1 and 2A of the Prevention of Discrimination Ordinance are in force, before seeking to increase their workload by taking on responsibility for assisting in the resolution of, and/or determining, contractual disputes.
33. Enquiries relating to discrimination issues (which includes all Protected Grounds and contexts) accounted for less than 10% of all enquiries during 2023. There was a total of 91 discrimination related enquiries, 66 of which were made between 1st October 2023 and 31st December 2024. In 2024 there were a total of 164 enquiries relating to discrimination issues (just over 20% of all enquiries). This represents a year-on-year increase of approximately 80%. Whilst that might appear to be a significant increase, it was starting from a low base so did not significantly impact on EEOS workload levels. There was an initial spike in discrimination advisory cases in the first three months immediately after the implementation of the Prevention of Discrimination Ordinance when it was the top reason for why customers contacted the service during that period. However, this settled down during 2024 with the overall average trend reducing each month. Disability discrimination was the leading Protected Ground during 2024 which was expected and is not out of step with comparable jurisdictions. However, it accounted for less than 10% of all cases in 2024. This means disability discrimination did not make it into the top five reasons why customers contact the EEOS during the reporting period.
34. It is common for discrimination enquiries to be part of a wider and more complex

picture often involving matters such as potential unfair dismissal, performance management or disciplinary issues. In more than 60% of cases where customers are seeking advice on potential discrimination issues, this is accompanied by needing advice on other matters too.

35. The Director observes:

“These statistics are significant because at the time of the States of Guernsey’s debate on the implementation of the Prevention of Discrimination Ordinance there had been significant concerns raised through the media and various interest groups that this legislation would open the floodgates to complaints and leave employers and businesses exposed to significant risks of many frivolous or vexatious litigation. In particular, there were concerns that opportunistic individuals might seek to take advantage of Guernsey’s wide definition of disability at the considerable expense of both employers and businesses. It is perhaps too early to say definitively that these concerns have not been, or will not be, realised on the scale that was anticipated. However, it would have been logical to expect that if it was to happen then we would have recorded considerably more advisory cases during the first 12 months of the legislation being in place, which as the data shows, has not materialised.”

36. Just under 80% of all heads of claims (on intent to complain forms³⁷) notified to EEOS were for unfair or constructive unfair dismissal. Out of the 71 unfair dismissal complaints, 33 included complaints for discrimination (on any of the Protected Grounds). This shows that despite the implementation of the new discrimination legislation, unfair dismissal was still the leading basis for Applicants considering lodging formal complaints with the Tribunal. Unsurprisingly, and comparable to neighbouring jurisdictions, disability was the most cited head of claim under the Ordinance with 27 cases notified to EEOS. Out of all types of cases, 49% were resolved by conciliation by the EEOS during the period 1st October 2023 to 31st December 2024. 16 formal discrimination complaints were lodged with the Tribunal. No complaints under the Prevention of Discrimination Ordinance have yet been heard by the Tribunal, with the first case due to be heard in April 2025.

37. Now that the EEOS has had 15 months to develop, the report acknowledges the need to raise the profile of the EEOS and greater awareness raising of the prevention of discrimination in general.

³⁷ One intent to complain form can list more than one head of claim, for example discrimination on the ground of x and unfair dismissal would be two heads of claim.

EMPLOYMENT AND DISCRIMINATION TRIBUNAL

38. The average waiting period for E&D Tribunal hearings has remained relatively stable at approximately nine months both prior to, and after, commencement of the Prevention of Discrimination Ordinance in October 2023. Of that nine-month average waiting period, just under six months has tended to be spent awaiting the appointment of a Tribunal Chair and setting up a case management meeting.
39. One of the recommendations in the 2020 Policy Letter proposing the new Prevention of Discrimination Ordinance was that Tribunal Chairs for discrimination complaints should be legally qualified. Since 2022, the E&D Tribunal, which hears discrimination complaints (which have not been resolved through conciliation), has been operating on the basis of only using legally qualified chairs (as opposed to lay chairs). During 2024, there was a shortage of available legally qualified chairs. This inevitably led to delays in the scheduling of hearings.
40. A recruitment process for new Employment and Discrimination Panel members was carried out at the end of 2024 and this resulted in the appointment, by the States, of an additional five legally qualified chairs with effect from 1st January 2025³⁸. Once these individuals have received appropriate training, it is anticipated that the average waiting period will reduce.
41. As more legally qualified chairs are now available, the Committee has made the Employment and Discrimination Tribunal (Guernsey) Order, 2024, which requires the E&D Tribunal to have a legally qualified chair when hearing a discrimination complaint, or a joined complaint involving discrimination. Efforts are currently being made to have a legally qualified Panel member chairing all cases, not just those involving a complaint of discrimination.

ACCESS TO WORK SCHEME

42. The Discrimination Ordinance places a positive legal obligation on employers (and other duty-bearers) to make 'reasonable adjustments', which involve providing modifications or adjustments that remove disadvantages or barriers that prevent disabled persons from participating in employment. The limit of the duty is set by the fact that employers do not have to make such an adjustment if it imposes a 'disproportionate burden' (financial or other) on them.
43. The Committee recognised in the 2020 Policy Letter that the test of

³⁸ Committee for Employment & Social Security – The Appointment of Employment & Discrimination Tribunal Panel Chairs and Members and Designation of Convenor and Deputy Convenor (Billet d'État XXII of 2024, Article 1). Available at: <https://gov.gg/article/202154/States-Meeting-on-11th-December-2024>.

disproportionate burden had the potential to skew the labour market for disabled people towards larger employers with potentially greater financial resources.

44. The Committee proposed to address this potential issue through the establishment of an 'Access to Work Scheme' to fund specific adjustments that would otherwise not be provided because they would be a disproportionate burden for an employer. Following consideration of the 2020 Policy Letter, the States noted that the Committee would bring proposals to the States for the establishment, operation and funding of an 'Access to Work Scheme' by the end of 2021.
45. In April 2023, the Committee brought proposals for such a Scheme to the States. The States agreed that the Social Insurance (Guernsey) Law, 1978, in particular section 39A, be amended in order to widen existing powers of the Committee to make arrangements to secure that insured persons take advantage of opportunities designed to facilitate a return to work and to make related grants. These powers now extend to making arrangements or grants, at the cost of the Guernsey Insurance Fund, in relation to the provision of aids, equipment, occupational health assessments, occupational therapy and other types of support to facilitate the retention or entrance into employment, or other gainful occupation, as well as the return to the same employment, of an insured person with a disability³⁹. The Social Insurance (Access to Work for Disabled Persons) Regulations, 2023 came into operation on 4th October 2023.
46. At the time of writing there have been fewer than five enquiries regarding making an application to the Access to Work Scheme since it was introduced in October 2023. Some applications have been rejected. One request has been funded under a different benefit and the remainder was submitted recently and is awaiting the provision of more information before being determined.
47. The very small number of applications for Access to Work grants may indicate one of three things. Firstly, it is possible that employers are providing reasonable adjustments as and when requested by employees. Secondly it is possible that the scheme is not well known, suggesting it should be further promoted by both the Committee and the EEOS. Thirdly, the scheme may not be providing grants for the types of adjustments most needed by individuals. Grants are currently available for aids, equipment and occupational health assessments costing up to £5,000 per annum in any twelve-month period, but are not provided for assistance with transport to and from work or more expensive items of equipment. Transport to and from work has been highlighted by stakeholders as a barrier for disabled persons returning to work.

³⁹ Committee for Social Security – Access to Work Scheme (Billet d'État VI of 2023, Article VI). Available at: <https://gov.gg/article/195430/Access-to-Work-Scheme>

GUERNSEY STATUTORY INSTRUMENT2025 No.**The Prevention of Discrimination (Education)
(Commencement) Regulations, 2025***Made**12th March, 2025**Coming into operation**2nd January, 2026**Approved by the States**, 2025*

THE COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY, in exercise of the powers conferred upon it by sections 75 and 79(5) of the Prevention of Discrimination (Guernsey) Ordinance, 2022^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Commencement of education provisions of Ordinance.

1. (1) Section 29 (education) of the Prevention of Discrimination (Guernsey) Ordinance, 2022 (the "**Ordinance**") shall come into force on 2nd January, 2026.

(2) Save as provided by paragraph (3), sections 32 and 33 of the Ordinance, insofar as those sections impose a duty on a school or education provider

^a Ordinance No. XVIII of 2022; this enactment has been amended.

when the school or education provider is acting in relation to students as described in section 29(1) and (2) of the Ordinance, shall come into force on 2nd January, 2026.

(3) In accordance with section 79(4), (5) and (6) of the Ordinance, the following sections are not brought into force-

(a) section 32(2)(b), and

(b) section 33 insofar as it imposes a proactive duty to make reasonable adjustments to physical features.

Citation.

2. These Regulations may be cited as the Prevention of Discrimination (Education) (Commencement) Regulations, 2025.

Commencement.

3. These Regulations shall come into force on 2nd January, 2026.

Dated this 12th day of March, 2025

A handwritten signature in black ink, appearing to read 'P. J. Roffey', with a stylized flourish at the end.

P. J. ROFFEY

President of the Committee for Employment and Social Security

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring section 29 of the Prevention of Discrimination (Guernsey) Ordinance, 2022 into force. That section prohibits discrimination or harassment on any of the protected grounds, as well as victimisation, by schools or education providers in relation to students or prospective students. They also bring into force parts of sections 32 and 33, insofar as those sections impose a duty on a school or education provider when the school or education provider is acting in relation to students as described in section 29(1) and (2), and as set out in the Regulations.

If approved by the States, these Regulations will come into force on 2nd January 2026.

DISCRIMINATION ORDINANCE TIMELINE

Resolution 19 on the 2021 Government Work Plan effectively superseded Resolution 3 of the July 2020 Policy Letter “Proposals for a New Discrimination Ordinance”, and replaced it with the following timeline for the delivery of a multi-ground Prevention of Discrimination Ordinance:

“To allow the Assembly to understand the impacts of Phase 1 before any further policy changes, the Policy & Resources Committee is recommending that this Resolution be amended as follows:

‘3. (i) To direct the Committee *for* Employment & Social Security to bring detailed policy proposals to expand the grounds covered in the Ordinance referred to in Proposition 1 to the States for consideration, in accordance with the following timeline:

Completion of Phase 1 in respect of Phase 1 as approved by the States.

2021 – Training Stage: Provision of training and information, etc, in respect of Phase 1 as approved by the States.

2022 – Implementation Stage:

Enactment of legislation in respect of Phase 1.

Delivery of Phase 2

2023 – Phase 2a Policy Letter:

Protection on the ground of age. Modernisation of the existing Sex Discrimination Ordinance, not including the statutory right to Equal Pay for Work of Equal Value on the ground of sex. Consideration of multiple and intersectional discrimination.

2024 – Training and implementation regarding Phase 2a: Ordinance including Phase 2a grounds brought to the States for approval and implemented (with six-month lead-in period as in Phase 1). Training on new grounds of protection rolled out.

2026 – Phase 2b - Equal Pay for Work of Equal Value on the ground of sex: Policy work undertaken including carrying out an economic impact assessment. Proposals to be brought to the States for consideration in 2027 or 2028, subject to the findings of the economic impact assessment.

2028 – Legislation for Phase 2b approval: Ordinance on Equal Pay for Work of Equal Value on the ground of sex is brought to the States for approval and implemented.

Specific Lead-In Periods

2026 – Discrimination in Education:

In accordance with Table 8.6.1 of the Policy Letter, provisions relating to discrimination in education come into effect no later than 2026.

2027 – Accessibility:

The provisions of the Ordinance relating to public sector accessibility action plans and complaints in respect of changes to physical features come into effect.

2031-32 – Equal Pay for Work of Equal Value on the ground of sex: Statutory right comes into force.

Evaluation

2024 – Phase 1 Post-Implementation Review:

To take place after Phase 1 provisions of the Ordinance are in force in order to understand its impact on the community. May take place sooner if required.

2026 – Phase 2a: Post Implementation Review:

To take place after Phase 2a provisions have been in force for two years. May take place sooner if required.

2033-34 – Commence Phase 2b Post Implementation Review:

To evaluate the impacts of the introduction of Equal Pay for Work of Equal Value on the ground of sex. May take place sooner if required.

(ii) To direct the Policy & Resources Committee to ensure that the Committee *for* Employment & Social Security is provided with sufficient resource, through its annual budgets and/or through the provision of shared States' resources, to deliver the remaining policy and drafting work within the timeframe set out in Proposition 3'.