

HM Greffier
Royal Court House
Rue du Manior
St Peter Port
GUERNSEY
GY1 2PB

12 October 2021

Dear Sir,

Letter of Comment – Committee *for* Employment & Social Security – *Discrimination Ordinance: Grounds of i) Religion or Belief and ii) Sexual Orientation (P.2021/104)*

On behalf of the Policy & Resources Committee I refer to the above Propositions and associated Policy Letter lodged by the Committee *for* Employment & Social Security.

The Policy & Resources Committee would like to focus on Propositions 2 and 3, relating to exceptions to the Discrimination Ordinance specifically in regard to the recruitment of senior leadership positions in voluntary schools. This is of interest to the Policy & Resources Committee due to its mandated responsibilities for:

- examining issues that do not explicitly fall within the mandates of other States Committees. These issues include those of religion and liaising with religious organisations;
- its role for the States of Guernsey as employer, including the employment of education staff; and
- matters relating to external relations where the Committee is required to consider how any new legislation may be perceived and impact on international commitments.

The Policy & Resources Committee notes that the Committee *for* Employment & Social Security is seeking a balance in approach. On this occasion the Policy & Resources Committee is of the view that a reasonable balance in terms of interference with human rights has not been achieved and there are numerous disadvantages to the proposals, some of which may have long-term and unintended negative consequences for the Island.

Human Rights conflicts

There are potential human rights issues which have been flagged up in legal advice from the Law Officers' Chambers suggesting that this matter is not clear cut, as is set out in section 5 of the Policy Letter. While the Committee *for* Employment & Social Security aims to prevent

discrimination on the grounds of religion or belief, this conflicts with the rights of parents to have their child educated in conformity with their own religion, as outlined in Article 2 of Protocol 1 of the European Convention on Human Rights (the 'Convention')¹. Article 2 of Protocol 1 states, "no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

The advice from the Law Officers' Chambers also notes Article 9 of the Convention which provides for freedom of thought, conscience and religion. This states that, "1. Everyone has the right to freedom of thought, conscience and religion...2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

The legal advice received has highlighted the rights of faith schools to autonomy and self-determination and the competing right of a job applicant not to be discriminated against based on their religion or beliefs. With all the competing human rights in mind and given that the case law on point is limited and based on the legislative position in individual jurisdictions, the Law Officers' Chambers has advised that it is not possible to give definitive legal advice on the compatibility with Convention rights of the proposals as they stand.

The proposed exception without limitation is included in UK legislation and similar is covered in Isle of Man legislation. Religion or belief is not a protected ground in Jersey where Catholic and faith schools operate in the same manner as Guernsey's Catholic schools currently.

This proposal, if agreed, presents a risk of legal challenge on human rights grounds.

Employment implications

The Law Officer's Chambers advised that if the proposal is successful, the Island's Catholic schools may argue they will not be able to continue operating. Guernsey is part of the Catholic Diocese of Portsmouth, and all matters to do with Catholicism are under the authority of the Bishop of Portsmouth. Catholic schools are obliged to follow the directives issued by the Bishops' Conference of England and Wales, one of which states that senior staff appointed in Catholic schools must be practising Catholics.

While the States of Guernsey do contribute financially towards the voluntary schools, it is only the operational costs. The buildings themselves were built, owned and are maintained by the Catholic Church. In addition, the building of St Mary and St Michael Primary School was partly funded through gifts to the local Catholic Church to build the school.

Should the Island's Catholic schools argue they are unable to continue to operate, the Education (Guernsey) Law, 1970 provides for the States to use the buildings at no cost for a two-year period. This is to enable the school to continue running while alternative arrangements for staff and pupils are made.

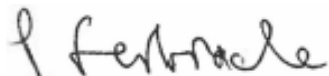
¹ [European Convention on Human Rights \(coe.int\)](https://www.coe.int/) Page 33

While the mandate for equality and inclusion lies with the Committee *for* Employment & Social Security, matters relating to education policies fall within the mandate for the Committee *for* Education, Sport & Culture. It is worth noting that both the previous and current Committee *for* Education, Sport & Culture want to retain the exception permitting candidates' religion or beliefs to be considered when recruiting for certain positions such as for the voluntary Catholic schools. The current Committee is understood to be laying an Amendment to this effect.

Notwithstanding those matters under the mandate of the Committee *for* Education, Sport & Culture, any school closures would result in capital cost and employment implications for the States of Guernsey that have not been forecasted.

In conclusion and having carefully considered the competing human rights, the legal advice presented, and the positions adopted in other jurisdictions which differ from that suggested by the proposal, the Committee strongly advises the Assembly to consider carefully the unintended consequences that may result should Proposition 3 be approved.

Yours faithfully,

A handwritten signature in black ink, appearing to read "P Ferbrache". The signature is written in a cursive, slightly slanted style.

Deputy Peter Ferbrache
President