



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Wednesday, 3rd November 2021

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A. Gabriel	H. J. R. Soulsby
J. A. B. Gollop	G. A. St Pier
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Representatives of the Island of Alderney

Alderney Representatives S. Roberts and E. A. J. Snowdon

The Clerk to the States of Deliberation

S. M. D. Ross, Esq. (States' Greffier)

Absent at the Evocation

Deputy A. H. Brouard (*relevé à 9h 52*); Deputy V. S. Oliver (*relevée à 10h 47*)

Business transacted

Evocation	2239
Billet d'État XX	2239
Items Adjourned or Deferred from Previous Meetings of the States	2239
14. Discrimination Ordinance: Grounds of i) Religion or Belief and ii) Sexual Orientation – Debate commenced	2239
<i>The Assembly adjourned at 12.43 p.m. and resumed its sitting at 2.30 p.m.</i>	<i>2279</i>
Discrimination Ordinance: Grounds of i) Religion or Belief and ii) Sexual Orientation – Debate continued – Propositions carried as amended	2279
<i>The Assembly adjourned at 5.30 p.m.</i>	<i>2315</i>

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States of Deliberation

The States met at 9.30 a.m.

[THE BAILIFF *in the Chair*]

PRAYERS

The States' Greffier

EVOCATION

Billet d'État XX

ITEMS ADJOURNED OR DEFERRED FROM PREVIOUS MEETINGS OF THE STATES

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

14. Discrimination Ordinance: Grounds of i) Religion or Belief and ii) Sexual Orientation – Debate commenced

Article 14.

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled "Discrimination Ordinance: Grounds of i) Religion or Belief and ii) Sexual Orientation" dated 13th September, 2021, they are of the opinion:

*1. To agree that the ground of 'religion or belief' should replace the ground of 'religious belief' in phase one of the new Discrimination Ordinance (the drafting of which was agreed by the States on 17th July 2020) and that the definition of this ground should be based on the UK definition of 'religion or belief' with the addition of the five tests from *Grainger plc v Nicholson* (2010), as set out in paragraph 4.1, and the exclusion of single issue or political beliefs.*

2. Subject to exception number 48, to agree the exceptions to the Discrimination Ordinance as explained in section 4 and set out in Appendix 2.

3. To agree that exception number 48 with respect to senior leadership positions in religious/faith schools should apply for a period of five years from the date of the Discrimination Ordinance coming into force.

The States' Greffier: Article 14, Committee for Employment & Social Security – Discrimination Ordinance: Grounds of i) Religion or Belief and ii) Sexual Orientation.

5 **The Bailiff:** I invite the President of the Committee, Deputy Roffey, to open debate.

Deputy Roffey: Thank you very much, sir.

This is really quite a straightforward set of proposals, they flow from an amendment from Deputy Parkinson which instructed the ESS to include the grounds of sexual orientation and religion in the first phase of the new Equalities Law. I have to say we opposed that at the time on the grounds that it would be better to focus initially on a more manageable set of grounds namely disability, carer status and race. But of course, as always, we were happy to comply with the States' decision. That means that in order to inform the legal drafting of the Ordinance, the States now needs to decide on any specific exceptions they wish to see under these two additional grounds added in under the Parkinson amendments.

Exceptions are specific circumstances where it will still be legal to discriminate on the basis of the grounds concerned – in this case, someone's religion or their sexual orientation. Let's deal with sexual orientation first because what we are proposing here is very straightforward indeed. We are not proposing any exemptions specific to this ground. We simply cannot see any justification for any. However, they will still be covered by the multi-ground exceptions already approved by this Assembly; for example, where another piece of legislation specifically permits differential treatment.

Moving on to religion, firstly we are proposing widening this ground from religion to 'religion or belief'. This ensures that secular belief systems are afforded equal respect and follows closely the situation in the UK. This does not mean that any crackpot concept is afforded equal protection. So, for example, you would not be protected on the grounds that you believe the members of P&R have been taken over by aliens. Maybe we should but we will not. Rather, what we are suggesting is incorporating within the law the well-established test used in the UK to decide what does and does not come within scope. These are clearly set out in the policy letter and unless requested I am not going to repeat them here.

When it comes to ground-specific exceptions we are proposing several in respect of religion or belief. These include allowing religious schools to discriminate when it comes to their admissions policy and to tailor their religious education curriculum to the ethos of the school. Both were strongly opposed by various secular groups but, on balance, the Committee believe that they should be permitted. Amongst other exceptions that we are proposing is the right of religious organisations to discriminate when it comes to recruitment to jobs like ministers, or celebrants, or any other type of religious leader. We are also proposing the new law should have no jurisdiction when it comes to determining the format of acts of worship, ceremonies or the use of religious texts. Then there are other proposed exceptions relating to the use of religious buildings and the membership of religious organisations.

I hope all of this is pretty uncontroversial. However, there is one issue where we could not see eye to eye with every religious group, and in particular the Catholic Church. That is in respect of the right or otherwise to discriminate in the area of the recruitment or promotion of teaching staff within schools. At the moment the faith schools can discriminate in relation to recruitment or promotion to certain posts and we are suggesting that this continues but only for a period of five years from the enactment of the Law, roughly six years from the date of speaking today. We are doing that because we think it is morally unjustifiable when two of the three schools concerned are States' schools.

Here, it is the States of Guernsey which is the employer, not the Church. They are *our* staff. It is the ESC which is the governing body, not the Church. It is the States' HR Department which oversees recruitment, not the Church. So it is very much the States ourselves doing the discrimination. Therefore, we felt that there needed to be a route map determined over the next five or six years to find a way – a good way – to end this clear discrimination by Guernsey's Government amongst its own employees on the basis of their religion and even how diligently they attend Church.

I know the counter argument is that this proposal will interfere with the human right to permit education of children according to the parents' religious beliefs. In my view that is a very doubtful argument. I should say at this stage of course that this proposal relates to *all* faith schools of whatever religion, so would impact on Islamic schools, Jewish schools or any other school that was set up in Guernsey. But the reality at the moment is we are talking principally about Catholic schools

and whether or not what we are proposing would therefore interfere with a parents' right to seek 'a Catholic education'. We do not really see that this argument stacks up.

60 It might make a bit more sense if most of the staff at Catholic schools were Catholics, if the argument was that the teaching staff needed to be Catholic, or mainly Catholic, in order to imbue such an ethos into those schools. But the reality is two thirds of the staff in the two Catholic primary schools which operate within the States' sector are non-Catholics. They are able to teach there for 5, 10, 15, 20 years, become a head of department, become a real mainstay of the school and its
65 leadership team, and really contribute to creating the special atmosphere and ethos inside those schools.

No one is currently suggesting that that threatens the Catholic nature of that education. But the moment that employee, that loyal employee, *our* employee, the States of Guernsey's employee applies to become a deputy head, then we – their employer, the Government of Guernsey – will
70 blatantly discriminate against them on the basis of their religion and even on the basis that they do not attend church often enough. Removing that requirement in due course will *not* – repeat, *not* – prevent the appointment of Catholic leaders in those schools. It will simply mean this: that other suitable candidates are not automatically debarred from putting their names forward.

To suggest that this will stop Catholic leaders being appointed is like saying that the current
75 situation prevents Ladies' College choosing a female principal. It does not. They are quite free to choose a female principal. All it means is that other suitable candidates who happen to be of a different sex or the opposite sex – we might get on to that argument later – are free to apply and the employer chooses the person taking into account every characteristic.

ESS could not in all conscience put forward a proposal to perpetuate the current system. We
80 were well aware that our view may not carry a majority support in this Assembly and that, if so, it would be amended. Well, so be it. So there was no surprise on our part over the ESC amendment which we know is to come. It was expected and we thought that such an amendment would probably garner fairly broad support. If it passes, in my view that would be rather sad but such is democracy. We are not going to lose any sleep over it but there was no way we could ever consider
85 proposing it ourselves and then still look ourselves in the mirror.

Remember, adding religion into the law at this stage was not the proposal of ESS. It was a strict instruction from the States. Remember, ESS had originally wanted to focus simply on disability, carer status and race in Phase 1. We warned – I warned – that religion could be a minefield which would slow that process down. The States ignored that warning and told us to include it in Phase 1 anyway.

90 Sir, the States may disagree with us but what the States simply cannot do is order a Committee to bring forward a suggested list of legal exceptions and then take exception themselves if that Committee fails to propose one that they genuinely think would be wrong. They can overrule it by all means but they cannot expect Committees to do that. This is the point of policy letters. It is for *this* Assembly to make the final decisions. It is not the role of Committees – of *any* Committee – to
95 propose things they do not believe in lest they be defeated. If we go down that route we really are on the road to meaningless and devalued debate. (**A Member:** Hear, hear.)

So ESS is not going to die with its boots on over the issue of leadership teams in faith schools. Indeed, it is not in the top 100 priorities that we have for this legislation. But neither can we propose things we do not believe in. I do not think there is an obvious conflict between our proposals and
100 your right to educate your child in a Catholic school. The idea that two thirds of staff can be non-Catholics and that does *not* compromise the ethos, but as soon as one becomes a deputy head that ethos will be destroyed, is clearly risible.

However, I do accept the Law Officers' advice – even though they are not here at the moment – that there could be a perceived balance of rights to be considered in this case. Between the right
105 not to be discriminated against and the right to be able to educate your child in your chosen religious ethos. I also fully accept that the Catholic Church or indeed anybody else, if they want to, can test that position in court. Indeed, I fully agreed with the representatives of the church when they made exactly that point at what I thought was a very amicable meeting a couple of weeks ago. I would have been wrong not to. I certainly was not inviting them to revert to law. Indeed, I said that

110 I hoped it could be avoided. But the fact is it would be their right to take a test case – and actually, personally, I think it would be a fascinating test case – but I really hope it does not come to that.

Maybe at this point I ought to make some further reference to that meeting because from some of the reporting in the lead up to this meeting it seems to me that ESS and representatives of the Catholic Church were at completely different meetings. At no time was the Committee of ESS in the
115 least bit hostile.

It is true that there was an unfortunate contribution from Deputy Gollop towards the end of the meeting, which in no way reflected the Committee's position and which I immediately closed down (**A Member:** You did.) Even that, I think, has been exaggerated. I do not think he ever suggested that he wanted to see the Catholic schools closed. But he did go off-piste and I am afraid it is Deputy
120 Gollop's nature to go off-piste. (*Laughter*) I am not attacking Deputy Gollop, and I hope that is not taken as personal, I think that his maverick nature is something we all recognise and, in the right context, admire. But in this case it was unfortunate because I had to come in and I had to talk over him for a number of seconds to get him to desist.

That really is not the kind of thing I want to have happen before guests and for that aspect of
125 the meeting I fully apologise. But I would say three things – well, two. Firstly, I would challenge any Committee President to have handled it any better, I closed it down as quickly as I possibly could. More importantly, it was *completely* unrepresentative of the tenet of the meeting as a whole where we listened carefully and respectfully to what our guests had to say and answered their points calmly and politely. Albeit without a meeting of minds.

It is true that I did correct or explain what were clear misunderstandings and it was my role to
130 do that and that did seem to have been poorly received. For instance, on consultation, we were strongly criticised for a lack of consultation and I did point out that the consultation document had been sent both by letter to the Catholic Dean of Guernsey and by email to the Diocese of Portsmouth, but with no response from either. When they objected strongly to the use of the term
135 'faith schools' in the policy letter rather than 'church schools' I pointed out that it *had* to be that because the legislation had to cover all religious schools of whatever faith, and 'church schools' simply would not do that.

It is true that they also took some exception to suggestions quoted in the policy letter of the possible deleterious impact of using religious criteria in school admission policies. So I pointed out
140 that these were clearly in section 3 of the policy letter which covers a flavour of that feedback from consultees, rather than section 4 which dealt with the Committee's conclusions and reasoning. Indeed if we go on to section 4 you will see that we actually agreed with the Church and not those representors because we are actually suggesting allowing that sort of admission policy to continue.

I know an issue has been made by some that we briefly asked the delegation to leave the room
145 so that we could discuss what they had said. That was my decision and it was done for a particular purpose. It was a genuine attempt to see if there was a compromise or common ground that we could propose having heard what they had said. For instance, as Members will confirm from my Committee, I personally was happy to consider a longer term exception covering both the Head Teacher and the Head of Religious Studies post but excluding Deputy Head. That was not something
150 I believed in, it is something I was not comfortable with, but I really wanted to find a good way forward that all parties could sign up to.

However, it had become clear that not only was this idea unacceptable to our guests but actually the ESC amendment did not go nearly far enough either. They made very clear to us that they would like to be able to discriminate on the basis of religion in the appointment of all teaching staff. As I
155 say, that is one thing in independent schools, it is quite another in States' schools.

Finally, I did explain that the fact that the Committee was suggesting a five-year exception was a genuine attempt to find a good way forward. This is *not* kicking the can down the road but a genuine acceptance that the time that would be required to resolve the competing imperatives is far too long to wait before bringing in the Anti-Discrimination Law which many – and in particular
160 our disabled community – have already waited for far too long; and which this Assembly, incidentally, has overwhelmingly endorsed as a top priority in our Government Work Plan.

So, what are the possible ways forward which could have been considered over those five years? There are many. For example, there could be specific reference to faith schools in the new Education Law and that would automatically override this legislation. I would not support that personally but if the States want to do that it is a far better way of doing things than embedding discrimination in a piece of legislation specifically designed to prevent it. There could also be a change of governance arrangements at the two voluntary schools to effectively take them out of the States' sector so that we are not the employers. That would not meet all of the objections but from the ESS point of view it would at least prevent our main issue which is us, ourselves, the States of Guernsey as employers, being the ones doing the discrimination.

By the way, I suspect even without any specific exemption in this respect, Blanchelande as a religious organisation could successfully make a required characteristic claim under the broad terms of the current law. By contrast, the States as a secular Government could not realistically do that for the two voluntary schools because these are States' schools, albeit in buildings kindly provided by the Church.

Finally, I know the Catholic authorities have threatened to close their schools if they are not free to continue discriminating on the basis of all three posts. If so, let me say right now, that will be incredibly sad. It is *not* our choice, it would be entirely their choice, there is no good reason for it. And let me make absolutely clear, at no point have ESS or any of its members in discussing this ever hinted at a desire to see the Catholic schools closed. Indeed, it is way outside of our mandate and nor does it chime with our actual personal beliefs. So please, unless you want to doubt the veracity of what I am saying to you sincerely this morning, I hope nobody will make that allegation during this debate.

I will save most of my arguments – perhaps I have not, on this – for the debate on the amendment which we know is about to be put. But I would just add, this is not an academic argument. This is not something that *could* arise but never will arise. It *has* arisen. This particular form of discrimination *has* been exercised by the States. There have been people wanting to apply for these posts who are eminently qualified from the educational point of view and have been prevented from doing so by the States, their employer, who have put in a glass ceiling on their behalf. It probably will be again in future if this exception is embedded as per the coming amendment. I, for one, will not be a party to that but of course it is entirely a matter for the Assembly as a whole.

I think we need to cut out the hyperbole here and realise what you are being asked to do. We are putting forward a menu that we think is correct. You are being asked to select. In order to actually finish the drafting on the Ordinance we need an approved list of exceptions by this Assembly, and it is this Assembly that will make that decision, and ESS will live with it.

However, talking about the overall Ordinance I think I ought to maybe go slightly beyond this policy letter, but I think it is almost certain to be a backdrop to this discussion. I think we need to say just something briefly about the overarching Ordinance because we know there are those in this Assembly who have an ideological objection to the whole Anti-Discrimination Law – even though no one had the gumption to propose an amendment to the Government Work Plan to remove it as a top priority.

So what I would say this morning is, if those who completely disagree with us over our proposals in relation to the two States' Catholic schools, if they want to give us a caning today on that issue then fill your boots, go ahead, give us a caning, we can take it. But if anyone tries to use this focused disagreement over a particular detail to try and derail or block the whole project they will be badly letting down – not the ESS, but thousands and thousands of Islanders and schools of civil society groups, in particular those representing Islanders with disabilities who have been kept waiting *far* too long by their Government. It would be truly shameful. And if you think there has been a big response to this specific current issue, it will be as nothing to the States seeking to go back on their clear promises of the Ordinance as a whole.

Sir, I look forward – or I think I do anyway – to the debate and we will live with whatever exceptions this Assembly ... It is this Assembly's role to decide what the exceptions should be for

the two new grounds that have been put in the legislation and then the Ordinance can come back before you and we will discuss it as a whole.

The Bailiff: Deputy Brouard, you have appeared since roll call. Is it your wish to be relevéd?

Deputy Brouard: Yes, please, sir.
Thank you.

The Bailiff: Deputy Murray. Of the two amendments that have been submitted I am minded to take Amendment 1 first. Are you ready to lay that amendment now?

Deputy Murray: I am, sir.

The Bailiff: Then I invite you to do so, please.

Amendment 1:

1. To delete Proposition 2 and substitute therefore: "2. To agree the exceptions to the Discrimination Ordinance as explained in section 4 of, and set out in Appendix 2 to, the Policy Letter except that in relation to exception no. 48 there shall not be a 5-year limitation on its application."

2. To delete Proposition 3.

Deputy Murray: Thank you.

I am actually wondering now, listening to Deputy Roffey, whether he has already given up the fight, to be perfectly honest. But I will proceed.

Sir, there are occasions when the business before this Assembly has been commented upon by those who seem to comment on just about everything. I confess I find myself contemplating these surroundings instead and wondering about those who sat here before us and the decisions that they made. I have to remind myself that we, each of us, represent a legislature. We make laws here. It is a serious business, and we hope and endeavour to make good laws.

I say this since I want to assure the Assembly that in bringing this amendment, I do not take the responsibility lightly to request a change of instruction to the Law Officers. We rely very heavily upon those Law Officers to advise us of the ramifications of what we propose, most specifically upon the impact on existing law, locally and beyond, and we depend upon them to craft the particulars of that legislation. The reason that we depend upon them so heavily is that Deputies are largely not experienced legal draftsmen and women. What we endeavour to achieve as Deputies is to discharge our remits honestly and with conviction across the various duties we undertake, and most particularly within Committees.

Occasionally that requires the bringing and proposing of legislation which is what we have before us today in the form of a policy letter. Like much of what we have been dealing with over the last year, it is inherited from a previous Assembly and many of those responsible for its inceptions are no longer here. But it happened to be quite advanced in its progress and consequently found itself automatically part of the Government Work Plan. Today, therefore, those of us who are entirely new to the current Assembly are given our first opportunity to debate what is proposed, while those who were in the previous Assembly have an understanding at least of the original intent underpinning what we have before us today.

Sir, no decent person, company or institution would oppose supporting any attempt to ensure that discrimination be prevented from impacting unfairly upon the rights of any citizen to be treated equally under the law, insofar as it can be enacted and enforced in a pragmatic, proportionate and fair manner. The difficulty always lies in the details of how to implement such a lofty ideal no matter how well meaning. It becomes even more challenging when, certainly to me at least, there appears to be little data supporting the impact of the moratorium proposed in exception 48. How far that is indicative of the rest of the policy letter's assumptions is for the Assembly to decide.

260 As is so often the case, however, we tend to look to other jurisdictions for guidance on how to
deal with an apparent problem that we seem reluctant to quantify to any significant extent locally,
but in respect of which we seek to follow best practice. Sir, I contend that in matters of law we invent
legislation at our peril since without adopting the entirety of legislation pertaining to another
jurisdiction, we risk compromising a body of historical case law that can be used to establish
265 precedent. Cherry-picking an individual or series of tenets from different jurisdictions and other
sources combined with the locally established Committee principles on page 24, we are confronted
today with hybrid proposals which the Employment and Social Security Committee by its own
admission on page 4 leads to competing rights. In respect of Propositions 2 and 3 that means the
rights of teachers, those of parents, children and young people and indeed the rights of the Diocese
270 of Portsmouth, who have particular responsibilities for the Catholic faith in Guernsey.

The difficulties of administering such a unique approach to discrimination locally are further
evidenced by the sheer number of other exceptions detailed in the policy letter which the Assembly
will no doubt consider in due course. However, when the admirable ideal of opposing discrimination
comes into contact with the actual realities of life, whether it be established custom in practice or
275 simply pragmatic circumstances, is when tangible difficulties emerge and when we find ourselves in
the grey area of interpretation, which is what exception 48 represents. That interpretation of course
risks being what is popularly described as a lawyer's charter, since its complexities become often
vexatious and certainly lucrative debate between legal opponents.

Should anyone doubt that, I would point them to the feedback from a number of different legal
280 practices on just the consultation beginning on page 7. Cats fighting in a sack comes to mind. Sir,
the Education, Sport and Culture Committee were aware of the forthcoming arrival of exception 48.
We had met and corresponded with Employment and Social Security specifically on the implications
for Notre Dame and St Mary & St Michael, and the attendant impact on Blanchelande. What we
cannot leave unchallenged, however, is the inclusion of a moratorium of five years from whenever
285 the legislation is enacted.

The reason for the five years, we are told in 4.29 on page 20, is to allow for discussions to take
place, and I am paraphrasing with the aim of discussing and attempting to resolve the issues of
discrimination on the grounds of religion or belief in senior leadership positions at religious schools.
Now, at first blush you might be forgiven for thinking that this sounds very reasonable. Surely over
290 five years a compromise can be found (**A Member:** Yes!) or you might wonder why on earth can a
compromise not be agreed upon right now. Why do we need five years? Or, and this is the view of
the Law Officers, reflected in 5.6 on page 23, this raises the question of what will happen when the
exception expires. This is where it gets very messy and very legal, and the reason I am brining this
amendment on behalf of Education, Sport and Culture.

295 This amendment proposes to amend Proposition 2 and remove 3 altogether. The ramifications
of introducing any moratorium, five years or otherwise, are extensive. It risks contravention of
human rights legislation; it risks the closure of three schools involved; it risks unknown but not
insignificant costs to the States, both in having to provide any alternative arrangements and in terms
of reputational damage to Guernsey, and could even put us at odds with established UK legislation.
300 Does anyone here today believe that legislation which puts all that on notice can be considered the
'good legislation' I referred to earlier? No, sir. I contend that this is deeply flawed legislation and I
am not alone in being extremely concerned at the risks we as an Island, and specific communities
within it, are being put at, or indeed the motivation behind these proposals.

Sir, I wonder just how widespread is the knowledge that the two Catholic voluntary schools –
305 and I will refer to them thus, as that is how I choose to label them and indeed how the Education
Law and the Committee for Education, Sport and Culture's admissions policy labels them, which is
on page 18 at 4.22 – are owned and maintained by the Catholic Church and not the States of
Guernsey. Furthermore Les Vauxbelets, which houses Blanchelande, is made available in perpetuity
by the owners only whilst the Catholic Dean of Guernsey classifies it as a school.

310 The States is entirely responsible for administering and employing those who work in the two
voluntary schools but unusually does not have the financial obligations of the buildings themselves.

This may well be viewed as an advantage which has benefited tax payers for a considerable period of time, since otherwise those students attending the two Catholic voluntary schools would need to be accommodated elsewhere, at whatever cost to the infrastructure of the settings involved. Bear in mind those schools have been in existence for some 150 years.

The advantage that this may have represented over this considerable period of time is put at risk by adopting the proposed time limit of exception 48, since a letter recently received from the Bishop of the Diocese of Portsmouth addressed to the Employment and Social Security Committee, copied into the presence of ESC and P&R, highlights that a strong likelihood exists that if a solution cannot be found to the competing rights I have referred to, then those two Catholic voluntary schools *could* subsequently close following a contracted period of two years. But in fact it is more serious than that.

The ESS Committee, in persisting with proposing a five-year time limit on permitting the status quo to exist, despite being advised by the Law Officers – page 22 to 23, 5.5 and 5.6 – and also being reminded of the same in a letter of comment from P&R, and further having it drawn to their attention in a recent meeting with representatives of the Catholic Church, that in doing so we may in fact contravene Article 9 and Article 2 of Protocol 1 of the Human Rights legislation. I ask again, is this good legislation?

It is abundantly clear that the ESS Committee recognises there is a risk in pursuing this time limitation. It is also clear that they do not have a proposed solution or they would not be suggesting that the period be used to find one. Or perhaps as is ascribed to Member Deputy Bury on page 24 5.12, they do not want one. Indeed, Member Deputy Gollop is reported in the letter from the Bishop to have claimed closing these schools might even be seen as a positive outcome. Nor can I ignore the recent personal remarks in this Assembly by President Roffey and Vice-President de Sausmarez exhorting ESC to focus upon the primary school review as a priority. Does all this indicate the true agenda behind the exception?

If it does not, then the logical conclusion is that ESS are intent on establishing this legislation based on ideological grounds. If no compromise solution can be found, since the stated position of their Committee is that that is already uncomfortable with the clearly identified competing rights involved, regardless of the risks outlined by the law officers.

Now, why this hiatus should be five years, five months or other period appears to be completely arbitrary, since it makes no mention of the obvious impact on Education, Sport and Culture. With current ESC work streams, such as the Education Law now under way, or indeed the primary review itself which is not scheduled until 2025, the exception 48 moratorium appears to be no more than a device to permit the trajectory of the legislation to continue unabated and potentially to push the problem into the lap of the next Assembly to deal with.

Sir, through you I say to my colleagues here today that kicking the can down the road hoping that it will bounce into a solution is no basis upon which to be drafting legislation. The real solution is obvious. Remove the proposed time limit on exception 48 altogether or risk a major reorganisation of primary schools outside of the timeline of the States' approved primary review workstream. Are we really going to unravel the sequencing of this Government's priorities so soon after we set them in July and, in doing so, bring upon ourselves real and significant resourcing implications for the work streams linked to the recovery actions we have given the highest priority?

Sir, if recent history has taught us anything it is this: reviewing any section or sector of our education system is a complicated business and it cannot be rushed. If the Catholic Church believe that there is no intent to accommodate their circumstances, we may not have five years to pick up the pieces. We may be forced suddenly into a worst-case scenario situation where we have two years to find and implement a solution to a problem entirely of the Assembly's making, which could see us need to accommodate over 800-plus pupils involved across all three schools, most likely separating cohorts and siblings and having to lay on transport where we have insufficient space in the right catchment schools.

In addition, incurring considerable cost and importantly denying the rights of a substantial proportion of parents as to the circumstances of their children's education. Some 15% of Islanders

are Catholic. This figure was confirmed by the Bishop in a recent TV interview. Many of these will be workers in key industries such as health and hospitality, choosing to contribute to Guernsey by working here rather than their countries of origin, many of which are predominantly Catholic locations. And for what purpose? Because the ESS Committee are uncomfortable with a requirement that a total of nine roles across three schools must be occupied by teachers who are Catholics. With a tiny minority of the Island's entire teachers able to fulfil those roles in the first place compared to the impact upon something that must be approaching at least 2,000 students, parents and carers.

How proportionate is that? I say again, is this good legislation?

Sir, I personally am not a Catholic but on behalf of these parents and students and the Diocese of Portsmouth and of course the Committee for Education, Sport and Culture, I ask the Assembly to support this amendment to remove the proposed time limit altogether.

Thank you, sir. (*Interjection*)

The Bailiff: Deputy Haskins, do you formally second the amendment?

Deputy Haskins: Yes, sir.

The Bailiff: Thank you very much.
Deputy Le Tocq.

Deputy Le Tocq: Thank you, sir. I was just about to write a note to you to ask if I could go early because I have a plane to catch and I want to be able to make some contribution to this debate, which I think is important.

Sir, going back to the time some nine years ago where anti-discrimination legislation was first mooted and I was then Chair of the then Social Policy Working Group, what we imagined was something to help those most in need in our community – disabled Islanders. Sir, we have made very little progress on that in recent years and I think we are in now in grave danger of getting into sledgehammers to crack nuts.

Sir, in brief – because I have to be brief – I will be supporting this amendment although I probably will not be able to vote on it. I will support it, sir, because in my mind this is now getting into an area where we are trying to resolve problems that really do not exist. (**A Member:** Hear, hear.) We have much more important things that we should be devoting our time to.

I, sir, going back to the time I was elected in the year 2000 found myself on the then Education Council and was put, probably because I was deemed to be the religious person on that Council, as a Member of the two Catholic voluntary schools. I think I was the first ordained protestant to be a member of their committees, but I found that to be a very rewarding experience. I am certainly aware that, were the then Education Council more willing to bend the rules somewhat, *many* more parents would have chosen, probably today, to send their children to those schools because of the ethos of those schools. For me, sir, and it might be different for others, I see education as an extension of parenting and therefore culturally that education is most important.

The fact that we have Catholic schools obviously dates back to a time when the parish schools were considered to be Protestant-Anglican institutions and it was deemed, in order to comply with the then similar legislation and situation in the UK, that we needed to provide for the small number of Catholics that were here. It is because there was an ethos there. Deputy Roffey is right that not all members of the schools are practising Catholics. In fact, certainly as far Blanchelande is concerned, they have had Heads that have not been practising Catholics. But at the same time I think the ethos of the school, much like the ethos of a family and parents in a family, certainly needs to be decided by those who determine ultimately how that school is governed and how that school is run.

So, from my point of view, I have no problem in allowing them to continue to do so. I am not coming at this from the point of view of threats of losing those schools. That would be a terrible loss, but I do not think that is necessary. In my understanding of the history of education, certainly

in the west, it was the Christian Church that established schools and educations first and foremost. So the States have sort of taken on that role from the Church and have improved things in some areas, but is in grave danger of becoming particularly a nanny in this regard and determining education and how it should be done on ideological grounds. I cannot stand for that and I will not stand for that.

Deputy Roffey said in his opening remarks that the Committee was not in favour of the amendment when it was brought and I would concur with that. I think, to be honest, bearing in mind what I said right at the beginning, sir, I would rather us focus our limited energies and time and resources on what we can do to help those most in need. (**A Member:** Hear, hear.) So, sir, because I think this policy letter, as a whole – now I am getting into general debate here, sir, because I will not be around for that – could lead us into a situation where we end up, and our successors end up, debating the sorts of nonsense that get debated elsewhere. I mean, let them continue to do that elsewhere if they want to, we have more important things to do and I think we need to focus our attention on that. I am minded not to support the whole thing because I think we need to get back to basics and have something that really works. We can improve on it in due course. But this is a step too far.

I am involved, sir, in some churches and indeed Christian schools in France and Members will be aware, sir, I am sure that France for a long time has had a secular state that has tried to distance itself from any support or involvement that could be deemed to be biased towards any particular religion. As a result, sir, churches that my denomination has started, in schools that we have started, have not been able to rent or utilise property that is state-owned in any form. But the French state has got into difficulties because they have a minority and a difficulty with the Muslim community. So they have made exceptions for the Muslims in an Islamic community in many cases on the basis that they are culturally different and they need assistance because they are in a minority and in some cases they are a threat. And it just is not fair.

So, the point is this. There *are* conflicting rights when you get down into detail such as this and it becomes only an exercise for people who want to spend their lives in ivory towers to try and work out how to resolve that.

Sir, I *urge* Members to seriously consider whether we want to go down that route because today, unfortunately, for me it seems like it is opening a door to that. I would encourage most to support this amendment and in due course, if I was here, I would probably vote against the whole Propositions.

Thank you, sir.

The Bailiff: Deputy Inder.

Deputy Inder: Thank you, sir.

We have had two very good speeches so far, one from Deputy Murray who is a man of practicality and pragmatism, and Deputy Le Tocq, a man of faith. Both of them actually, oddly enough, agree with each other. Deputy Murray made a reference – and I will not dine out on it more than that – to the potential politics involved in this. But what I will say is that I come from a very long line of pragmatists. I have heard of coincidences, I have just never seen one and I suspect there is a thread of politics running through this.

But, anyway, I think we have got some very bright people in this Assembly. I am not one of them. We have got a lot of people ... But this is what I am actually going to speak to. I am really speaking to the broad, middle Guernsey who I think I represent. I do not really represent those who sit and want to have ideological debates about things and argue over the colour of blue, and you know who would argue black was white even if it is green just for the sake of getting one over on someone else, based on their own ideologies. I am actually going to talk to the people out there – the Guernsey people that I represent – who cannot understand why a Catholic school should not have a Catholic Head. It is just as simple as that.

I am happy to give way to Deputy Gollop if he is going to mumble all the way through my speech. Would he like me to? (*Interjections*) Because that is always my job.

470 But this is the problem with this whole equality and inclusion strategy, there are so many exceptions peppered around this. It is not that equal. It is not that inclusive. It does not actually make any sense. If things were really equal and inclusive there would be no exceptions at all. We have just had a minor – those who will have been on the email exchanges, all the Members of this States – and I will make reference to it because Deputy Roffey made reference, I think, to the States' HR Department effectively ... I think what he said is he would not be happy that a States' HR
475 Department would be positively discriminating along the lines towards religion and belief.

Well, they already do that, because we already know, as you will have seen through the email exchanges, even though it is not written down anywhere, that the Civil Service have a custom – although not written down anywhere – where they positively discriminate towards existing
480 members of staff. We know that already happens. So what Deputies cannot do is say 'Look over there' when they really need to look over here. We know it already exists, so that argument, dismiss it immediately, because we already know that jobs in the Civil Service are advertised internally. So this Island already discriminates against people, and has been doing it for years. That is probably the one single piece of evidence we have got that shows proper discriminatory practices.

It has been happening for years and I understand via Deputy Mahoney, Deputy Helyar – who is
485 down in the corner there – and hearing from the Chief Officer at the moment, they are looking to rectify that in some way. But it has been happening.

Sir, and again this is talking to that broad centre Guernsey who understand that Catholic schools should have Catholic Heads, let's go through some of the exceptions. The Committee – and this is 1.6 from their page 3, and this is where none of this really makes much sense. You either include or
490 you do not include. It is as simple as that. You either exclude or you do not exclude. For me there is no in-between. It says here in 1.6:

The Committee recommends, by a majority, including an exception in the Discrimination Ordinance which would allow religious/faith schools and schools with a religious ethos (hereafter referred to as 'religious schools') to take religion into account in their admissions policies.

They can take that into account, but not the Head. That is utter nonsense.

The Committee is proposing an exception to allow religious schools ...

– this is 1.7 –

... primarily on their own religion and/or may provide only a chaplain of one religion, provided that religious schools actively teach students about the existence of, respect for and equality of people ...

Yada, yada ... But not the Head. So you can employ a Chaplain of Faith but you cannot employ
495 the Head.

Then it goes on to say – and this is just running through these nonsense exceptions –

The Committee is proposing an exception to allow organisations managing religious buildings, such as places of worship, to take their religious ethos into account in lettings policies ...

So does that mean then – because we are talking about the Catholic schools – basically, they can take into account in letting policies the religious colour of someone but they are not allowed to take the Head? None of this makes any sense whatsoever.

500 So, sir, Members of the Assembly, like Deputy le Tocq who has now gone, said, we are arguing over nothing here. No one in this Island with the exceptions of, I believe, the idealogues, and I think it is exactly that, and those who may have a long-term agenda on education. Well, Deputy Gollop has just said it – idealogues, long-term agenda.

Deputy Gollop, Member of ESS has just blurted out 'Me'. So there we are, there is a confirmation if you ever needed one. We know what is going on here, Deputy Gollop, we know exactly what is going on.

I will be supporting this amendment. I am likely to support the Burford and Ferbrache amendments – or is it the other way around? Sorry, it is the Deputy Burford and Ferbrache amendments and they will all get through. I will be voting against the whole policy letter. This is a total nonsense. Catholic schools need Catholic Heads. Let's dismiss this nonsense as quickly as possible and get on to public holidays because that is much more fun.

The Bailiff: Deputy Gollop.

Deputy Gollop: Thank you, sir.

I am, of course, always interested in inclusion and I know when I go to the Green Party conferences, they actually have an inclusion card you can put up to the convening officer whereby somebody could put up a yellow card and say somebody said something that is not inclusive. Also when you, sir, were proud to preside over the Youth States Parliament in June that Deputy Meerveld attended, inclusion was the number one issue that the younger generation chose.

I make no apology, really, in a way, I am a bit of a heretic, that I am in some ways ideologically driven. I am an ideologue. I do have a dogma on some of these issues. Yes, I do. And I have an agenda as well.

One of those agendas is to get for Guernsey, long overdue, the human rights, the equalities legislation and disability rights legislation that most other places have enjoyed since the 1960s or 1970s, and we are even running behind Jersey now. I also agree with probably 99% of what Deputy Roffey said and would concur that in no way did any of the Committee or its officers, with the exception of myself, have any consideration about the provision of education or faith-based education or how the school estate in any way would be altered. The only one caveat I give to that, because I think, was it Deputy Murray who pointed out that Deputy Roffey and Deputy de Sausmarez had put an amendment to the Government Work Plan? Actually, of course, I supported that amendment and Deputy Falla seconded it but it was not linked. Even that debate was not in any way about faith schools. But I will look at the issues.

First of all I will concur with what Deputy Roffey has said that we were not trying in any shape or form to prevent kinds of education taking place, or indeed to close or suspend any schools. Indeed, the whole point of a five-year cooling period, a period of consultation, was to get ideas on the table ... Now, the Guernsey Press, perhaps the Diocese of Portsmouth, now Deputy Roffey have all kind of hinted at what went on at a board meeting. Sometimes Deputy Roffey reminds me of my duties in the States that I must not talk about what happens in board meetings and of course we know that can be a code of conduct or another issue. But on this occasion the board meeting seems to have become public property mysteriously. But that is another issue.

I would agree that it was not a confrontational meeting but it was not, to be honest, a completely informal or friendly meeting either because we met, at short notice, five very important members all at the same time from the Roman Catholic Diocese of Portsmouth, a very high-powered team of people with significant ecclesiastical, parochial and legal knowledge and they put across their perspectives and perhaps did not quite see where we were coming from, or *vice versa*. I personally wish that we had met a lot earlier in the timetable and perhaps jointly with Education and it had been a different context. But the context was what it was.

I got rather hot under collar during the meeting, I must admit, because we did not really have time to explore every area and I felt that in no way when we agreed ... Well I was not particularly strong either way on this, we know that some Members of our Committee felt more strongly on it than others. With the benefit of hindsight, I think Deputy Inder has pointed out, as did somebody to me last night, that maybe in a way possibly Deputy Bury was right all along, and if you *are* going to take a different line from other jurisdictions on the conflict of rights between freedom of conscience and faith, and freedom from religious discrimination, you possibly should go along the

lines Deputy Inder suggested and question the admissibility of pupils to schools as well as the nature of the heads of religion and heads of. To have one and not the other is perhaps a curious combination.

That is what we collectively agreed on. But when we agreed for a five-year consultation period, we were just exploring perhaps options – at least in my mind, I cannot speak for other people – and I did not realise that there would be such controversy generated within the community and the Diocese of Portsmouth, and that there would be within the letter they sent us and the discussion that followed, a threat to close the schools, all three of them, the two voluntary primary schools and Blanchelande, and also the threat of litigation.

When I asked at the board meeting what that litigation might be, I was given an answer that that was not possible to say. So I got frustrated that perhaps there was not a complete meeting of minds and that my voice, which was probably different from everyone else around the table, was not being entirely articulated. I could not understand from a personal point of view why some representatives of the Church were saying there was a real possibility of closure of all of the three schools, which is an eventuality I certainly do not want in any possible circumstance. In fact, I want the opposite. I want more choice, I want more freedom, I want more diversity.

I did not realise that a narrowing of the criteria – or *broadening* of the criteria actually for the choice of Head, and perhaps the director of Religious Studies – would immediately result in the ecclesiastical authority feeling that perhaps they could not run them as Catholic schools any more. Because I would have thought the ethos of the school was determined as much by the character of the parents, the board of directors, the trustees, the history and the pupils, than just the religious perspective of the Head or the Deputy Head or indeed the director of Religious Studies, which I think even ESS would have admitted was perhaps a more borderline area.

My position on that would be – although I think we know broadly when we say somebody is of the Catholic faith – that does not necessarily identify it too closely because, for example, the Irish Catholic tradition is different from the Polish Catholic tradition. I would also point out that Deputy Le Tocq, in his learned way, spoke about the unhappy history of France in the last 200 years where there have been extremists on all sides, both secularists and religious politicians, and Guernsey has seen over the years emigrants in France who either were anti-Catholic Huguenots, or even Catholic people who came here to form various nunneries and communities, because they were being pushed out by rather harsh French governments of the late 19th and early 20th centuries.

We do not want to go down that route. France has a different history from us. But there is currently a sect in France that is causing some grief, apparently, to the Pope and the Cardinals because it is not accepting Vatican Two of the 1960s, 1970s. In other words, they want to return to more traditional pre-war values in the Latin mass. I mention that because it is not entirely easy to say there is one possible Catholic faith. The Anglo-Catholic tradition is not Catholic at all, of course, because it is part of the Church of England, for example.

There has been lots of confusion within elements of the public over the last week. One confusion was that people were saying it is time to separate church and state in Guernsey, 'Let's disestablish the church'. Well, I am saying maybe, but the church that is established in Guernsey is the Anglican Episcopal Church of England. They are the people who have representatives at the States of Election and who we fund at tonight's many parish meetings. The Anglican Churches will be in it, but not the Catholic Churches. The Catholic Churches are self-funding, perhaps to their credit. That is one confusion.

Another confusion is people say, what are you doing interfering with the rights of private schools? Well, Blanchelande perhaps is the strongest case of the three, as Deputy Roffey hinted, because Blanchelande is an independent school that has survived a few difficult years in the past and has thrived. I was pleased to go to the open day because I admire enormously what they are doing, without excessive fees, in terms of creating a sixth form of choice as well as an excellent school and there are teachers and pupils of all faiths there, I know.

So I am a fan of Blanchelande and indeed of all of the schools, and indeed if you look at my record in the States over 23 years, sort of Father of the Assembly, I have always voted to keep

schools open with perhaps the exception of the 11-plus debate, in that I did not want St Samson's infant school to close or St Andrews, and I have been against the rationalisation as well. But where I come from in this, and this is where I come into the difficulties of the issue, that I perhaps – Deputy Roffey described me as going off-piste in a maverick kind of way as a normative behaviour. I think I am a little bit like an antique dealer in politics for the sake of argument. An antique dealer can enter your house and instead of admiring the furniture or looking out the window, he or she will suddenly be able to size up what is there, what vintage it is and what it is probably worth in the auction rooms.

I cannot do that and I cannot do organisation, or all that sort of thing. But I think over the years I very quickly get the sense of a policy and what impact it will have both for the public and across the estate of the States. So when I go off on a tangent it is because in my mind that tangent is relevant. A parallel would be if you start to build new towns or new urbanisations in parts of this Island, you obviously intensify the traffic problem and you potentially rob the town of trade. Those things go hand in hand. One might be a planning matter, the other might be a development matter but they are united. As soon as we got into this kind of legislation, although the board and its advisers quite properly focused entirely on the law, on human rights, on the nature of employment law and human resources, I could instantly see it had a financial and educational repercussion in a practical sense.

We do not have Church of England schools – apart from Elizabeth College as a special case – and we do not have specialist Methodist schools and we do not have Muslim schools or Jewish schools. But we do have Roman Catholic schools and they are very unusual because another misapprehension of the public, as I was saying earlier, is people believe them all to be private schools. *One* is, Blanchelande, as I have said; and the other two – to use the technical phrase Deputy Murray ably used – are voluntary schools. It is a matter of debate whether if we had debated the Education Law that might have come before the last Assembly whether we would have allowed further faith schools or voluntary schools. I do not know. But we have historically two excellent voluntary schools, and they have the unusual position of the State providing the pensions and the salaries of the teachers and the Church providing the fabric of the building and other expenses. I would like to know more details about how it works.

But I remember a few years ago there was a conversation – and that was partly the conversation I was alluding to in the press article – that maybe the two primary schools would reconfigure into one. I was not sure about that personally, but it was being suggested. I do know anecdotally there is a problem of overcrowding in the normal State town schools potentially, because of population increases. Deputy Murray mentioned catchment area and how, if the children were not being educated excellently in the Catholic schools, they might be in those catchment areas and that would pose problems. I accept that entirely.

It is just, where I come from this – perhaps dogmatically and ideologically is too strong – it is not about being pro- or anti-faith schools. As many people know I go to a lot of religious activities. I am quite ecumenical, I attend many churches and tea parties afterwards, and so on. But it is more about *choice*. People were perhaps expressing that this measure at its worst – and it was not intended to be as such – was in some way discriminating against the Catholic Church and that suggestion was made by senior figures recently, I understand.

I would argue ironically enough – and this is the issue that we need to explore more fully – that we actually are discriminating in favour of the Catholic Church and Catholic believers, in some respect. What I mean by that is that we have a rather rigid and inflexible policy historically at Education, Sport and Culture – not necessarily the current Committee, but their predecessors – of being very strict on parents or grandparents or guardians who wish to see their children at primary level go to schools outside the catchment area. But if you are deemed to be a Roman Catholic, you have a choice between a Catholic primary school and the local primary school in the catchment area.

I think most people in Guernsey would argue that the two Catholic schools are *not* ideological in any way but they do provide a first-class, excellent education on *many* levels. So much so that I

think some parents whose children are *not* deemed to be Roman Catholic are envious. In the past – I do not know about today – some head teachers were willing to fill surplus places with children who were not necessarily Catholic, and I have sat through heart-rending tribunals when the Education Council has been defending a decision to not allow the pupil to go to one of the Catholic voluntary schools, and the voluntary school has been more than happy to take that child, and the bureaucrats in a past era have said no because they were holding the line on catchment areas.

We know there was an amendment, that did not make it, to look at the primary estate, that was partly linked to the La Mare de Carteret rebuilding issue, but I am always concerned like Deputy de Lisle is, that if you review the primary school estate you may come to the conclusion that bigger schools are better or that they save money or both, and you may end up closing one or more of the two or three country schools, which takes the heart and the living and the demography out of the area. The other option would be not rebuilding La Mare de Carteret School, but that was ruled out a few years ago as not socially advisable.

Another issue is, if we are rationalising primary places because we have a decline in population of children, why is it we still have the partnership between the State and the Church for two schools? I think, especially in the last few weeks, I want that to continue. I think partnerships with sectors are very interesting. But it would be very interesting if another faith came to Guernsey and wanted the same arrangement – Islam would obviously be one possibility, but another might be even humanists, humanitarians who might wish to see a school on those principles. So I think one of the issues that comes out of this debate is the willingness of our States – and Education, Sports and Culture in particular – to ensure there is a future for the schools and that they will not try to rationalise them on the grounds of money or ideology.

In a way, as Deputy Murray and Education, Sport and Culture are clearly very supportive of the schools, if the policy decision is to ensure they thrive and survive and maybe get enlarged because their sites are constrained, perhaps that is a really good outcome and this debate is not being wasted. I certainly would not like to see the baby go out with the bath water. I think we should support everything here, and if we have gone too far on one or two of these issues that only shows that the conversation is necessary as we approach the second quarter of the 21st century, and that what we have done is reasonable and proportionate and, if a little bit is less so, then that is how it is.

You will understand when I was trying to say, I was not wanting to close the primary schools, I was not wanting to alienate the church or people of faith, but I wanted consistency of policy in many areas. I wanted the Church not to be the victim of its own outrage because, of course, if we did see a reduction in the Church's excellent work in the community we would then have a problem with primary school provision, primary school funding and reorganisation in that area. We would also perhaps see a problem in a less-inclusive society.

My basic position is I would like to see the choice parents and community leaders have in the Roman Catholic area extended to other faiths and other kinds of people for different reasons across the community and a less rigid attitude to catchment areas and such things. So that is where I stand on that.

In terms of going back to the original law, I entirely agree with Deputy Roffey, I found it very difficult to understand, really, how we are not – some other countries, I know Northern Ireland has a different tradition. But I find it very hard to understand how the States of Guernsey in a tribunal or a court in a few years' time would be able to defend why they had not appointed an excellent teacher who maybe had had 10 or 20 years at Deputy Head level, or even working at one of the two voluntary schools, and who clearly had strong support or outstanding credentials and qualifications, and that person did not get the job, or even Director of Religious Studies, and it was given to somebody else who was deemed to be sufficiently Catholic.

That of course begs the question of what kind of Catholic, and if somebody who is appointed a Head, who is a diligent person of a particular faith, for some reason loses that faith or falls out of the faith. I think I would get excommunicated pretty quickly if I was in that situation, I do not know. What happens to them? I think the idea was difficult for a government to defend appointing a

government job on that basis. The Church perhaps could offer one or two suggestions there and maybe we are content to have that as an exception we will learn to live with.

715 So, where am I? I will support whatever the States decide with the final Propositions and I think in a spirit of compromise, given that I have had a lot of doubts and conscience on this, I will decline to vote. I will abstain on the Deputy Murray amendment.

Thank you.

The Bailiff: Deputy Falla.

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Deputy Falla: Thank you, sir.

Sir, as I am known as a person of faith, I have been challenged on my position here as a Member of ESS on what to some might seem a contradiction. So I would like to take the opportunity to try and explain myself.

725 As someone of faith I absolutely every sympathy with the Catholic community and their right to exercise and express their faith freely in Guernsey. On this matter I think that their viewpoint has been clearly expressed since the publication of the policy letter and I also recognise that Notre Dame du Rosaire, St Mary & St Michael and Blanchelande College are very good schools. The primary schools have long had a strong reputation for achieving great results.

730 For me, the issue in question today is not about faith it is about fairness and it is absolutely not about closing the Catholic schools nor interrupting a 150-year history of the proud tradition of these schools. I regret that there has been some interpretation of Propositions 2 and 3 by some of those who have made contact with Deputies, which really does not reflect my view. But if the Committee's intention was to see the schools to close, why then would we by majority propose
735 exceptions that religious ethos be taken into account in the schools' admissions policies and the alteration of the curriculum so that the schools could focus religious education primarily on their own religion?

The two primary schools are not private schools. It is surely right, therefore, for ESS to act even-handedly over the requirements of Education, Sport and Culture when hiring teachers for those
740 schools – as with all other States-funded standard schools. How could it have been right to do otherwise when considering discrimination? And that is why I have freely chosen to adopt the Committee's line on this matter and I am not conflicted by any sense of contradiction here. As for the meeting between ESS and the Catholic delegation, one's reflection on that meeting has to be subjective, and I wish in a sense that everyone here could have been a fly on the wall at the meeting,
745 but I cannot recognise the adjective 'hostile' as being a true reflection of the demeanour of that meeting.

Deputy Roffey has called it amicable. I would say it was civil at the very least. I do regret and dissociate myself with Deputy Gollop's remarks at the end of that meeting. But it was clear from the outset that there were points of disagreement and we knew that. That was the purpose of the
750 meeting called by the Church. My recollection is that the Catholic representatives were given every opportunity to express their views and they did not seek any compromise with ESS. We tried to explain that as they had not taken up the two invitations to consult last summer the five-year exception period would indeed provide an opportunity for further consultation and progress towards possibly some kind of resolution. The delegation was not stopped from expressing its views,
755 the meeting was not ended by ESS. To my recollection, the conversation naturally dried up. They stated that their prime objective was to model the Catholic faith to those pupils attending the school. But this is not part of the mandate of ESC, which hires the teachers.

Sir, this is clearly a matter that has caused a great deal of disquiet to a section of the Guernsey community and I am very sorry for that. ESS has acted in line with its mandated responsibility. As
760 Deputy Roffey has said, the purpose of policy letters is for the States to make decisions. It will be for Members to decide whether, in the context of the discrimination Ordinance, the Committee's position on hiring senior staff in the Catholic schools is the right way forward.

Thank you.

The Bailiff: Deputy Oliver, is it your wish to be relevéd?

Deputy Oliver: Yes, please, sir.

The Bailiff: Thank you very much.
Deputy de Lisle.

Deputy de Lisle: Thank you, sir.

I feel that the legislation is disproportionate to the problem in general and I am talking about the whole discrimination legislation. The scale of the issue in Guernsey context is not large enough to justify the sort of costs that we are looking toward in future with all of this. These are expensive proposals with direct and indirect costs to the States, with more hiring of States' employees at a time when we are supposed to be working in the other direction. Plus training and compliance costs which places a larger additional burden on the Guernsey taxpayer already under duress.

Then there are direct costs to the private sector and the third sector parties which could force some small businesses and third sector organisations to close. Then there is all this difficulty in defining a belief. Just why the Department is meddling in that area is another matter. The anti-discrimination legislation in itself brings in discrimination as seen in education proposals and the attack on the Catholic Church and education, structures with hundreds of years of historic connection with this Island. It is an embarrassment. I have long supported the Catholic schools on the Island and their teaching practice and the staff, and will continue to do so. I have served on the school committees of St Mary & St Michael Catholic Primary School and Notre Dame and I am well aware of the strong ethos of the schools and the tremendous efforts of the teachers, and the support given education by the Catholic Church.

Business organisations, of course, prefer more balance and prefer the Jersey Law which is a simplified version based on English Law but can be more easily and cheaply applied. But the public generally are incensed with what has been going on, as illustrated by the abundance of letters and emails sent to Deputies over the past few days and weeks, with strong opposition to any attempt to remove the requirement for Catholic schools to have a practising Catholic as head teacher. This is anti-discrimination within the legislation itself, so how can one have any confidence in this legislation going forward? Destabilisation of the Island's schools even further than what we have had recently with suggestions threatening the schools might close.

I talk about closure because we have gone through a series of that just recently, with the Bishop of Portsmouth dragged into what had been reported unprofessional and overtly hostile meetings earlier. This is a total embarrassment to Guernsey.

Also, while Education is bringing this amendment, we have to remember that there is a primary review of education in abeyance. But the rationalisation of the Catholic primaries is still on the table in extant legislation. I have to say very firmly that a stable and successful education system is key to building investment confidence and economic success in Guernsey. The fact that we have gone through this now, this destabilisation of Catholic schools that are doing such a good job for the Island community, and the fact that we have just gone through the closure of one very good school at La Mare de Carteret does not give me a lot of confidence in the Education Department, to be quite honest, at all; because of the drive also of the Education Department towards a policy of two- and three-form entry primary schools which puts the Forest and the Houquette schools in my area at risk of closure in the future, perhaps not this term but next term.

The Catholic schools of course are bound up in that same extant legislation towards rationalisation and closure of one of their schools. So we are into a far bigger area here than just this particular issue which is being discussed today. Deputy Gollop has every right to be talking of closure because we have gone through this, through a number of debates, and it is obviously on his mind, it is on my mind and it is on many other peoples' minds in this community.

Stop this rationalisation of schools. They are community schools, they are very important to the people in those areas.

So, sir, like Deputy Le Tocq, I will support the amendment here but then I will throw out the Ordinance as a whole because I think there are holes in it as exhibited in this particular area. But then what about the future? It will be one thing after another. It has to be thrown out.

Thank you, sir.

The Bailiff: Deputy Aldwell.

Deputy Aldwell: Thank you, sir.

I come to this with my Education, Sport and Culture hat on from a practical perspective, which I will explain later. But also the real appreciation of what it means for those students at a faith school – the feeling of belonging, a family with the same guiding principles. I am not a Catholic, I was from a family of Methodists and Salvation Army. My great-grandfather Sylvester Rabey in October 1884 was actually thrown out of France, it was reported in the newspaper of the time, preaching to the Catholics of the ways of the Salvation Army. Having been christened Church of England but attending Le Carr Methodist, I have fond memories of a family community-based chapel, so I wanted the same for my daughter – a sense of belonging and good guiding principles.

When it came to education after attending her parish school, she attended Blanchelande for five years. It was a family, the same sense of belonging. So I understand how important these schools are, their ethos on family and community allowing students to thrive. And with that is a head teacher to set that tone. What this has taught me through my life is to respect peoples' beliefs, those with faith and those without. The key word is 'respect'.

This is a threat to our schools closing in this proposal. There seems to be a myth that students from the three Catholic primary schools – St Mary & St Michael, Notre Dame de Rosaire and Blanchelande primary – of which there are 558 students, could all fit comfortably into the spare capacity of our States primary. At first glance that may be logical. But as we know with Notre Dame de Rosaire, having 254 students over seven year groups for mainly a St Peter Port area our town schools are, for the majority of the time, filled to capacity. As States' Members, we also know St Mary & St Michael serves the north of the Island having 152 students and again, in particular school years, they will be full. Fitting in students will not be easy.

Let's not forget there is a substantial building programme in the north which has been put forward and land purchased to build a substantial number of homes. Space will be needed for these children. Blanchelande primary has 152 students which are scattered from homes all over the Island and maybe we could scatter those students across the primary school estate. I am sure we could find them a seat but not necessarily in the right year group or right catchment.

So what happens? If we have not got a seat in the right catchment, well, the law requires us to transport those children to school, eight years and under, if they live one mile from the school. If they are eight years of age and have transport we have to transport them if they are 2.5 miles from school. We are legally bound to potentially transport hundreds of extra children around our Island to get them a seat in a class, splitting those children up and breaking those bonds.

The Catholic schools on this Island are very much needed. They are a well-loved and respected part of our education for 150 years. It is a fact of life that some roles require particular leadership and an example has been given as a conservative to head up and lead the Conservative Party. The same is true for a Catholic school, its leader needs to be Catholic. It is just common sense and we should respect this. So I very much hope that common sense prevails today.

Thank you, sir.

The Bailiff: Deputy Matthews.

Deputy Matthews: Thank you, sir.

I will support this amendment and the Catholic primary schools because it is one of the very few areas of choice that our education system supports, and choice in education is a very positive thing. The three Catholic schools in Guernsey are known to provide an excellent education and being

excellent local schools. We do not publish league tables in Guernsey but in the UK Church primary schools, which includes Church of England schools and Catholic schools, are also well-known to achieve very good results. The Times in 2019 reported that faith schools account for just over a third of UK primary schools and for almost half of the top 500 state primaries and 48 of the top 100.

But it is generally not results, but the school ethos, that parents choose between and the ethos is generally overseen by the head of the school. I briefly discussed this with another Deputy yesterday and about whether this amendment would essentially permit some degree of allowable discrimination, and that is just not the way that I see it. Of course parents should be able to choose the ethos of their school and of course the church should be able to choose how their school is led. I was reminded by one correspondent, Canon Gerard Hetherington, that churches have been providing education for a very long time, in many cases before the States got involved.

One of the issues that there seems to be is that the positions in question are States' employees, but that is just a peculiarity of the particular funding mechanism by which we have set the schools up. We could equally have a voucher system or a grant system or a type of voluntary aided or voluntary controlled status that the UK schools have. So I do not see that that should pose any particular issue.

So I am happy to support this amendment and I would go further and ask, sir, if Deputy Murray as Vice-President of Education, Sport and Culture could also go further and seek ways to expand the choice on offer in the States' education system to give all parents more options in the school and the type of ethos that that school might have. (**A Member:** Hear, hear.)

Thank you, sir.

The Bailiff: Deputy Queripel.

Deputy Queripel: Thank you, sir.

My favourite football manager of all time, Brian Clough, once said 'keep it simple' and in keeping simple when he was the manager of Nottingham Forest they won the European Cup, not once but twice. A leading figure of the Catholic Church kept it simple recently when he said, 'When you are looking for a new leader for the Tory Party, you want a Tory to be the leader of the party'. The same applies to the Catholic schools, we want leaders in our schools to be of the Catholic faith. That absolutely nails the whole issue for me because it makes perfect sense.

Contrary to that, what we are told in paragraph 1.13 on page 4 in relation to this amendment makes no sense whatsoever because we are told in that paragraph that the Committee has reservations regarding the inclusion of an exception that would allow religion or belief to be taken into account in recruitment for senior leadership positions in religious schools, and recommends that this exception should apply for a period of five years from the date of the Ordinance coming into force. During this period, discussions could take place between representatives of the Policy & Resources Committee, the Committee for Education, Sport and Culture, the grant-aided Catholic school and Catholic Church with the aim of discussing and attempting to resolve the issue of discrimination.

Two issues arise from that which concern me. Surely the word 'will' should be in the sentence. It reads:

During this period, discussions could take place ...

Instead of the word 'could', so it reads 'during this period discussions *will* take place' because using the word 'could' gives no one any confidence at all that those discussions will actually take place. So I am wondering why the word 'could' was used at all and not the word 'will' – because the reality is that nothing at all could happen in those five years. There is no guarantee whatsoever, that those discussions *will* take place. So we are being asked to take a gamble. What it should have said was given a direction in this policy letter to ensure that discussions *do* take place. So in my view that is a major fundamental flaw.

It really concerns me because communication again is the issue here. Communication within and from the States has never been as good as it should be or as good as it needs to be. The levels of communication really do need to be improved, and you do not improve them by saying discussions *could* take place. That is far too nebulous with no commitment at all. What is needed is a firm direction.

The second issue that concerns me is, why have those discussions not taken place already? It seems to me, sir, that this is another area where communication should have been improved. It has caused no end of stress and trauma out in our community and in our Catholic schools and in the Catholic Church itself, as we have all witnessed recently.

I appreciate that a certain level of consultation did take place. I have read the report from cover to cover. But that obviously was not comprehensive or satisfactory because, if it had been, then surely we would not be witnessing so much upset out in our community and receiving so many emails from the Catholic Church and disgruntled Islanders about this issue. There was even an email recently from someone who said they will not vote for any candidate in the next election who votes in favour of the Proposition.

So, sir, suffice to say I will be supporting the amendment and I ask for a recorded vote when we go to the vote, please.

The Bailiff: Deputy McKenna.

Deputy McKenna: Thank you, sir.

I have been left with the impression, through the letters that have come from the Diocese, that the delegation from the United Kingdom were left feeling that it was a disrespectful and dismissive meeting, that their questions were not answered and their concerns were not heard. Personally, sir, I think these are corrosive and discriminatory proposals against two very well-loved schools, Notre Dame and St Mary & St Michael. This proposal is undermining and jeopardising a partnership which has served our Island well for over 150 years.

The two schools in question – Notre Dame and St Mary & St Michael – are saving all the taxpayers of Guernsey a fortune because the schools in question pay for all internal and all external works in buildings that they own the land of, as well as the buildings themselves. Notre Dame needs a new roof at a cost of over £300,000 and our partners are paying for that, not the States of Guernsey. The rents they charge – I think it is just over £26,000 for St Mary & St Michael and £20,000 for Notre Dame, the equivalent for hundreds of our school children of a two-bedroomed flat or a three-bedroomed house.

There are hundreds of families who want to send their children to these schools. It is their choice; it is not mandatory. I believe these proposals rob the families of that choice where a lack of consultation with the Diocese and the parents and the students I think is unforgiveable. I think that this ideology against these schools – schools that are compliant with the Equality Act 2010 – we are discriminating against our partners – our partners with the States of Guernsey. This could contravene the European Convention of Human Rights Article 2 Protocol 1 and Article 9. The Law Officers have advised in this Chamber not to go down this route. It is my impression ESS are ignoring the Law Officers and they know better.

In my personal opinion, sir, I believe this proposal is Deputy Roffey's ideology where he is putting his own personal benefit before the welfare of the people of Guernsey – (*Interjections*)

The Bailiff: Deputy McKenna, I reminded Members in a previous meeting not to make direct challenges to an individual. This is a *Committee* Proposition as you can see from the policy letter, so to try and blame the President of that Committee for his personal views is unacceptable, I am afraid.

Deputy McKenna: My apologies, sir, I will stick to the Committee.

It is an emotional and emotive subject for me, sir, because I am from an Irish immigrant family who came here in 1971. I attended Coeur Maria School over 50 years ago and St Magloire Church. The reason it reminded me was because I saw – if I am allowed to say – Mr Major sitting in the gallery who I went to school at Coeur Marie with his family and a wonderful man he is. Also Jurat Tanguy who has been a big part of my life for over 50 years at St Mary & St Michael and St Josephs. I think that is why I feel there is an obligation today to speak for families like myself who came to Guernsey.

Guernsey embraced us and, over 50 years, we have become a wonderful multicultural, diverse and inclusive Island where I and my family were allowed to live in freedom and democracy, where we were not before. I think Guernsey is an amazing example to the world. So the threat of closure of St Mary & St Michael and Notre Dame and Blanchelande College, this would never have come before a States that I grew up in. I believe that the Committee for Employment and Social Security are discriminating against these schools. They are discriminating against the parents who voluntarily want to send their children to these schools and I believe the Committee is discriminating against all of us in Guernsey who support these schools.

If these three schools were to close because of this policy, there could be a dislocation of up to 800 schoolchildren that could possibly or potentially cost every taxpayer in Guernsey tens of millions of pounds to relocate the students in a new education setting. A corrosive argument has been created with our partners of over 150 years and our providers, and we are threatening a divorce of a harmonious relationship that benefits all of us in Guernsey. I think this is an abuse of the Discrimination Law and it is being manipulated to serve an ideology that I do not agree with and I do not think anyone in this Assembly will agree with today.

Sir, through you, last night I looked up in the Collins Dictionary 2021 the word 'discrimination': prejudice, bias, injustice, intolerance and bigotry. It appears, sir, it has the ESS name written all over it. (*Interjections*)

A Member: Hear, hear.

The Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Sir, Deputy Falla spoke very sincerely about being a man of faith and I fully accept that. I do not have a religious faith and I am very much in favour of the amendment. The reason for that is that I believe in the principles that the Guernsey Assembly in the late 1990s signed up to when it promulgated a statute called the Human Rights (Bailiwick of Guernsey) Law 2000, which came into force in September 2006.

We have heard about the convention, and the convention actually came about at the Council of Rome on 4th November 1950. That was just five and a half years after the end of the Second World War. The Germans were there and the Italians were there and the French were there, and they promulgated a convention the full title of which has been read before but I make no apology for reading it again, the Convention for the Protection of Human Rights and Fundamental Freedoms. So, for even longer than my life there has been that Convention. Fundamental freedoms. The fundamental freedom to choose your religion. The fundamental freedom to educate your children.

That Convention came about because just over five years before, a *terrible* war ended and, as part of the victims, many of the victims of that *terrible* war were Jewish people. Over six million people who held the Judaism faith were thrown into gas chambers or slaughtered by the Germans and their acolytes, whether they were aged as a one-day-old baby or an aged person. What this Convention did in 1950 was say, 'We are going to protect the right for people to have religious faith, we are going to allow them to have that ethos going forward'. Good on the Italians, good even on the Germans just five years after they were defeated.

We are seeking, if we uphold the proposals of the Committee, to go against that very strong principle. I cannot advocate that and I will be saying more about *my* view of the law in due course. When I say 'about my view of the law', what I did yesterday, the day before yesterday and again

1020 briefly this morning, was look at the consolidated version of the human rights legislation. Under it, it has got lots of cases of *Smith v Jones*, *Bloggs v Smith*. I note that some of those cases are cases that I advocated. I did not know that they were human rights cases, I just knew that they were wrong, the principles were wrong, it was an injustice that these people were being not able to live in the Island under the relevant housing law. It was an injustice. It struck me as being wrong.

1025 So I went before the courts – and I am not an administrative lawyer, there are many very able administrative lawyers – but I just know when something is wrong. I went before the courts and said, ‘These are wrong’ and on those occasions the court upheld my submissions.

I *fully* accept the integrity of Deputy Roffey when he says he has a different view of the law. I fully accept that but I radically disagree with him. I think, if we do go along with the proposals put forward by Deputy Roffey’s Committee, that we are putting ourselves – that is the community of Guernsey – into a potential legal minefield. Why would we do that? Why would we bother doing that?

1030 Where I do agree with Deputy Roffey is that I have been in many meetings where I come out and have had one view of the meeting and the other party has had a different view of the meeting. So when Deputy Roffey describes his view of the meeting being largely cordial, etc. I accept that he genuinely holds that view. (*Interjection*)

1035 I also accept – and I am going to be reading the letter in due course that I received dated 21st October from the Catholic authorities, in a moment – that they held a completely different view. But there seems to be a third view because Deputy Gollop in his speech said, it was not entirely friendly, it was not that acrimonious. So we have got three different views: one from a Member of the Committee, one from the other four Members of the Committee – because I am assuming Deputy Roffey is speaking on behalf of those – and one from the Catholic community.

1040 So let me read that letter which was addressed to me dated 21st October from the Catholic Diocese of Portsmouth and it reads materially: ‘The Catholic Diocese of Portsmouth representatives were Canon Smith, the Episcopal Vicar for Education; me – that is a lady by the name of Heather Hauschild who is the Chief Operating Officer for the Diocese; Paul Barber, Director of Catholic Education Service of the Bishops’ Conference of England and Wales; Christine Fisher, Legal Counsel also for the Catholic Education Service; and Reverend Father Christopher Rutledge, Catholic Dean of Guernsey’. I do not know them all but five, I would suggest, very eminent and reasonable and balanced people.

1050 She continues with the letter, ‘We were grateful that the Committee *for* Employment and Social Security agreed to meet with us at short notice following the Bishop’s letter to Deputy Roffey. We welcome the main principles behind the Discrimination Ordinance and the benefits such a policy will bring to those people who are often marginalised’.

1055 Now, just pause there because another thought from Deputy Roffey’s speech came into my mind and he said some people are against the whole issue of discrimination and the Discrimination Ordinance. There may be one or two, I do not know who they are in this Assembly, I would be surprised if there are any, but I am certainly not one of them. I never have been one of them, I do not need Deputy Roffey to raise that. I have never, *ever* spoken against any form of discrimination.

1060 My views in this Assembly going back through 1994 have always been very liberal and they will continue to be liberal because people should be allowed to live their lives with as little interference from the States as possible. (**A Member:** Hear, hear.) Where we have fallen down badly – and I remember a very sensible member of the public spoke to all of us States’ Members before I came back, or just about the time I came back to the States in 2016 about discrimination, and we all said yes, yes, yes we are against discrimination, we should do something about it.

1065 We have done very little about it over the last five and a half years. The States Assemblies before had done very little about it over many years before that. *That* is what we should get on with. Get rid of discrimination against people who are disabled. We must never, *ever* countenance discrimination against people because of the colour of their skin, because of their gender, because of their sexuality. All of those things are totally unacceptable. I would be surprised if not only
1070 anybody in this Assembly who is a voting Member, but anybody in this room, disagrees with that statement.

But I carry on with the letter: 'We had hoped for a constructive meeting where we, as a recognised partner with the States of Guernsey, could share our concerns that the policy as it stands discriminates against the faith communities and, in our particular case, calls into question the sustainability of our Catholic schools and look to a constructive solution. However, we were all' – i.e. all five of them – 'deeply disappointed at the tone of the meeting and what seemed to us overtly hostile at the outset. The meeting itself was no more than 45 minutes and included an adjournment where we sent out of the room while the Committee spoke amongst themselves.'

Deputy Roffey has explained that and I understand that.

'There was no attempt to engage in a constructive discussion to look to solutions despite our best attempts to see if we could find common ground. We were surprised when Deputy Roffey said that the Committee recognised they had drawn the line in a different place from other jurisdictions but essentially legal challenge was a valid route for testing this.'

Of course, he is right, because *if* the States decide to bring in the proposals of Employment and Social Security in this regard, I believe – and I may be wrong, because I am just a lawyer – that a successful challenge could be made to the Courts in relation to these proposals. Do we want that ugly litigation anyway, whatever the result of it, however the uncertainty of it? Do we want that when we have got three excellent schools providing education for 825 pupils ranging from little, tiny ones to 16-, 17- and 18-year-olds? Do we want to risk that? For what purpose? It is ideological.

If anything, I did not have any doubt in my mind in relation to that. If I did, if I had a scintilla of doubt – when I am staring at the ceiling in those five seconds before I go to sleep – about this, it was dispelled completely from the email that we all had from a Member of Employment and Social Security yesterday evening about the use – not by me, but of others – in the debate yesterday of a particular word, 'You should not use that word'. (*Interjection*) My goodness me –

Deputy Bury: Point of correction.

Deputy Ferbrache: I am not giving way. Is that a point of correction?

The Bailiff: Point of correction, Deputy Bury.

Deputy Bury: The email did not say, 'You should not use this word.'

A Member: Which word?

The Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Thank you. I think I have made my point.

I do not want a society whereby we are frightened to utter certain words. There are certain words that are beyond the pale. (**A Member:** Hear, hear.) Of course, we all accept that. But language is a moving continuum. We do not use the same words in the same context now that we would have used in different eras. I will come back to that in due course.

I continue with the letter. She writes: 'That did not seem to us to respect our position as a partner in the education of our children and we are surprised that Guernsey would wish to commit legal costs and time to test this which other jurisdictions accept.' Because we are being asked to go in a route – and we can do, we are an independent jurisdiction and, in appropriate circumstances, we should go our own route, we should not follow slavishly what the UK or Jersey or anywhere else does. But we are being asked to go in a completely different route on something where there is no need and other jurisdictions which are our neighbours and our friends have not taken that route.

'There appeared to be disagreement within the Committee at some of the points raised by Deputy Gollop, and concluded with Deputy Gollop's final statement that perhaps it would be preferable for our schools to close in order to solve the problem with primary school places on the Island.' I have heard Deputy Gollop speak today, and well, and I have seen the personal statement

1125 that he put out some days ago. I do not think, though, if I am right, that he actually dissents from the fact that he made those remarks at that meeting. That would cause consternation to the senior Catholic attendees, education people primarily, at that meeting.

1130 'Deputy Roffey immediately' – and Deputy Roffey said this, he over-talked Deputy Gollop for some seconds or whatever it was – 'said we should disregard this statement as it was not the view held by the Committee. He asked Deputy Gollop to refrain from saying anything further but the exchange continued with Deputy Gollop insisting that this was a discussion that was needed even as we left the room.'

1135 There we are. I do not know what happened when they left the room because they were not present, they then left the room. So we do not know what Deputy Gollop said or what the others said. But it was pretty unedifying for that kind of comment to be made in the presence of people – educationalists – from the Roman Catholic Church that had come across.

1140 'We feel that while this comment was clearly not one that the Committee wished to be aired, this could be an underlying motivation for policy having been set out with the exclusion only being in place for five years.' I accept what Deputy Roffey says in that regard but nevertheless that was the impression that was left with the Catholic representatives. 'The exchange between the Deputies in front of external parties and clearly under the circumstances was at least unprofessional'. Can any of us dispute that sentence?

1145 'On a personal note' – and it is almost heresy to say that you were born in Guernsey nowadays – 'I was born and brought up in Guernsey, my family still live in Guernsey and I still view the Island as my home. I was embarrassed by the reception we experienced and the meeting appeared to be simply a token listening exercise without a genuine concern to understand our position and work with us. This feeling was compounded by the disagreement between Members at the end of the meeting.' I think I then get a right to ... 'And I attach some facts and figures' – which she did in relation to the schools.

1150 The facts and figures, there are 825 children from, as I say, little ones to bigger ones at the three Catholic schools. They would have to be assimilated and I do not know whether the Catholic Church would carry out their – I do not know if it is a threat – concern about closing all or any of those schools. I would hope they would not, whatever the result of this vote today. But there are 825 children at those schools; 374 of them are not Catholic, so that is over 45% of them. But, in fact, most of the children who attend St Mary & St Michael and most of the children who attend Notre Dame are Catholic, overwhelmingly. There are only a few that are not Catholic.

Where that figure becomes nearly 45% – just 45.33% when I did my calculation the other day – was because the number of children that attend Blanchelande, the majority are not Catholic children. They are children from other faiths or perhaps no faith.

1160 So, those parents, the 374 who are not Catholic, send them to Blanchelande and the other schools because of its ethos and its values. Because they should send their children to – when I say States' schools I appreciate the point about the States employ the teachers at the two primary schools, etc. I accept that. But what I mean by the States' schools is the Amhersts, the Vauverts, the Hougettes, the other schools that have been mentioned in the course of this debate.

1165 So they make a specific choice because they want their children to go to the school where the ethos is Catholic. Not that it is rammed down their throats. I was talking to a friend of mine just at the weekend who went to St Josephs. They used to have long lessons and the nuns would teach them all about the Catholic Church and you would be cast into a purgatory and all that kind of stuff. That is not the way it works nowadays. My father went to Vauxbelets College many years ago – I do not think it did him a great deal of good – but the fact is that he went to Vauxbelets College when it was a Catholic school. In respect of all of that, it has changed.

1170 The way that the Catholics imbue their ethos has changed over the last 20, 30, 40 years. But it is still something. It is an intangible thing. I can touch this folder, I can touch this cup. I cannot touch an ethos, I can just feel it, I can understand it. It permeates through me and it permeates through these children. Of course, we were told by Deputy Le Tocq that 16% of people who live in the Island are Catholics. That is one in six of our population are Catholics – lots of people ... You can take your

own arithmetic, take 300-odd away from 825, and you are left with over 450 kids that are sent to Catholic schools by Catholic parents because they want their children to be educated in a particular way with a particular ethos.

Now, if the Catholic schools had abysmal results, we could say, 'Well, look, they're spending too much time on religion, they're not spending enough time on reading, writing and arithmetic' –those kinds of things. But their results are good. Their results are excellent. They are first-class educators. So they are doing all of the things that they should be doing and, in my view, they are doing more.

Ethos and value come from the top. Deputy Le Tocq said schooling is an extension of parenting. It is our job – and most of us here are parents, some of us are also grandparents – when you have a family, and we do make a mess of it sometimes because we are human beings, to hand down the values to our children and to our grandchildren that we want them to follow. But they are human beings in their own right. They will adopt such of our values and our teachings as they think appropriate and they will make the most of them, but they will also reject those that they think are inappropriate, because a child born today will have a different mindset from somebody like me who was born in 1951. We may have some current common values but they will be different because their lives are different. But it is your job as a parent, your job as a head teacher, your job as a grandparent to instil values into your children, you grandchildren and, if you are a teacher, the pupils that you teach. I can see it would be crazy – I do not think I can find another word to describe it – to say that Catholic schools should not be led by Catholic people, people with a Catholic faith, because that is it.

Now, Deputy Murray said, in his amendment, we are talking about nine jobs, I think, over three schools. Deputy Roffey said, 'Well, that means you can have a really good teacher at one of the Catholic schools, he or she cannot get a promotion.' But he or she knows that when they join those schools. They know that. I am not expecting them to convert to Catholicism. I am not going to convert to any religion in whatever few years I have got left in my life. But I would, if I *know* that I am going to teach at e.g. Notre Dame de Rosaire, and I am not a Catholic, that I can only go so far. But hopefully my experience that I will learn at that school will take me, perhaps if I want to teach at St Sampson's or I want to teach at La Mare de Carteret – you will not be able to teach there for much longer, I appreciate the point that Deputy de Lisle made – or one of the other schools, I will have gained value from it. So it really is, to use a phrase that is probably inappropriate in this regard, in my view, throwing out the baby with the bathwater, to go along with Deputy Roffey's Committee's proposals.

I am going to be a bit legalistic here, and I apologise for that, but referring back to the Human Rights Statute of 2000, it refers in section 1 to Convention rights. They are correctly described as 'rights and fundamental freedoms'. *Fundamental freedoms*. Freedoms that people got *slaughtered* for just six years before I was born. Millions of people got murdered, tortured, abused. So what they did in Rome in 1951 was say, 'We have got to get rid of that.' When you look at the Convention and its various Protocols, it is only a few sections, it is not that detailed. We signed up as a community in 2000, when the statute was brought in – it came into force a few years later, as I have said. We signed up to those fundamental freedoms.

We said we are going to respect those fundamental freedoms and yet these proposals, brought in my view on an ideological basis for dogma and creed, are not, not, not respecting those fundamental freedoms. Deputy Le Tocq said something that I had not heard before he said it, about the French Catholicism, if you remember, there were wars about Catholics, etc. and the French are a strong community – and I have referred to my French grandmother before, she was a Catholic lady. In relation to that, it has now gone the other way. Its government has gone completely secular, as Deputy Le Tocq said. But it has ignored its own Catholic religion and most people in France who have a religion are still Catholic. It has given way to pressure from Muslims, so they created certain rights and it reminded me, when he said it, of Animal Farm. Do you remember? Animal Farm, all the animals were going to be equal but in the end because the pigs had more intelligence than the horses, some animals were more equal than others. (*Interjection*)

When I heard him say that, it reminded me of this. Give way to pressure. Whereas, what we are going to do, if we accept the proposals put forward by Deputy Roffey and his Committee, is drive a coach and horses through a fundamental freedom. Section 1 also says, the Convention is described as the 1950 Convention in a couple of Protocols and we take sections from those various Conventions and Protocols. Section 3 of the 2000 Law says:

So far as it is possible to do so, primary legislation and subordinate legislation must –

– note the imperative word –

– be read and given effect in a way which is compatible with the Convention rights.

So, *must*. We can go against that, we could have a legal challenge. We can have us being thought of as an unreasonable community that does not respect fundamental freedoms.

Section 4 deals with Declarations of Incompatibility. I am not going to go into all the detail but courts can make declarations – that is the Royal Court, Privy Council, Court of Appeal, the Courts of Alderney and Sark – in certain circumstances, to say that a particular piece of legislation is incompatible. There is a procedure for doing that; it would be too detailed for the purpose of this debate.

What section 12 of the Law provides is that:

If a court's determination of any question arising under this Law might affect the exercise by a religious organisation ... of the Convention right to freedom of thought, conscience and religion, it must –

– again, the imperative word –

– have particular regard to the importance of that right.

And, as I say, section 17 defines the Convention as the 1950 Convention.

Deputy McKenna referred to Article 9, I think, in his speech. Article 9, rule 1 says:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching –

– note the word 'teaching' –

– practice and observance.

So Article 9.1 says those rights have to be respected. That is what the right is:

... to manifest your religion in worship, belief, teaching, practice and observance.

Sub-rule 2 goes on:

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 interests of public ... order, health or morals, or for the protection of the rights and freedoms of others

As are necessary.

We, Policy & Resources, published a letter of comment dated 12th October 2021. Members have received that and it refers to these particular proposals. It says this:

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.

Under the heading '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.

And indeed Deputy Roffey did set out in section 5 of the policy letter that part.

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 –

1255 And Deputy McKenna has referred to it, so I am not going to re-read it. I will just say what is said here:

... in Article 2 of Protocol 1 of the European Convention ... 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 –"

Again, mandatory language –

– "shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions".

1260 I do not know why the Law Officers equivocated in their advice. As I say, I am just one lawyer. I have only been a lawyer for nearly 50 years, I have only been a Member of the Guernsey Bar for over 40 years. I appreciate others may have greater experience. But, in relation to that, I do not have any doubt in my own mind – and I can be wrong, I have been wrong on a few occasions, not many but I have been wrong on a few occasions – in relation to legal matters, I do not have any doubt that this proposal, if the States decide to accept it today in its unamended form, will fall foul of the human rights legislation. I have read it to you. I do not think it could be in clearer terms.

1265 The advice of the Law Officers also notes Article 9, which I read out:

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.

And then religion or belief is not protected, etc.

Then there is the employment implications and I will start with the last paragraph on that page:

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 ... are made.

1270 Just in relation to that, why would you do that two-year period? Because the buildings – the Notre Dame building and the St Mary & St Michael building – are owned by the Catholic Church. They own it. They have spent millions over the years in building the fabric of those schools and they

have also spent many thousands of pounds – Deputy McKenna touched upon that, I think the figure is actually greater than he said – in maintaining those schools over a period of time. If they had been pure States' schools, the taxpayer of Guernsey would have had to pay that money. They would have had to come up with the millions of pounds and all the maintenance costs.

1275 I always cast my mind back to when I first became a Deputy in 1994, walking around with the late Conseiller Walters and various other Members to the States' schools in the Castel parish because I was a Deputy for the parish of the Castel from 1994 to 1997, and seeing how *badly* maintained those States' schools were. Windows were not painted. If a window was broken it was often left in its broken state. Roof tiles were off the roof. So it seemed to me, at least now, the
1280 Catholic schools were doing better job of maintaining their schools than the State was at maintaining States' schools. I do not think much has changed – or not enough has changed – in that regard, in my view; and it *should* change. I walked around ...

I was invited seven or eight weeks ago, I cannot remember precisely when, to speak to the 15- and 16-year-olds at Blanchelande about debating skills. Why bother with me? But, anyway, the
1285 youngsters were more interested in how many murderers I had represented and what other serious criminals I had acted for, but that school was magnificent. I walked around with the Principal. Every class I went in – and they did not know I was coming, it was just a casual walk around by the Principal – the children automatically stood up, eye contact was made, the fabric of the school was good. You just sensed it.

1290 As I walked around – I spent 30 or 40 minutes, perhaps a bit longer, walking around that school. I was invigorated, by the time I came to make my somewhat boring speech to the children. I was invigorated by my tour of the school at just what a *wonderful* educational establishment that school was because I did not really know much about Blanchelande. None of my children have gone there, etc.

1295 But I think also let's listen to experience. I have received – and I think others may too – a note from the former head teacher of Notre Dame School from 1995 to 2018, so over 20 years' experience. A gentlemen who I have met on one or two occasions, I do not know him but I know his reputation. (*Interjection*) One of the senior teachers, a very senior teacher, in a secular school said to me a few years ago that Notre Dame was the bastion of excellence. Now, the facilities at
1300 Notre Dame are not that great, frankly. Other schools have better buildings, better fabrics, etc. although it has been as well maintained as it can be by the school.

Mr McGovern has led his school for 20-odd years, and the current head teacher is leading the school extremely well. What Mr McGovern says in his note is, 'Throughout my period as head teacher of Notre Dame', and he says when it is, 'there have been issues surrounding the admissions
1305 policy. It saddens me that the Discrimination Ordinance document seriously misrepresents the situation and makes no attempt to resolve matters but rather makes them worse with inflammatory comments.'

He quotes from the policy letter, section 4.22 and he quotes an extract from the Committee *for* Education, Sport and Culture's schools admission policy. 'This policy or a similar version was in place
1310 throughout my headship. It was never agreed with our schools or the Diocese of Portsmouth and there has never been any meaningful consultation with it. I also made it clear that it does not comply with the mission of our schools which is to welcome anyone who wants a Christian faith-based education. There are many parents of other Christian denominations who would love to have sent their children to a Catholic school but were denied places even when the schools had a place
1315 because of the CfESC's policy.'

'Section 4.20 is confusing. It correctly states that the States' policy is discriminatory but goes on to', he quotes, "recommend the inclusion of an exception to the legislation which would continue to allow the Catholic schools to give priority to Catholic children." The policy does not allow Catholic schools to manage their own admissions so this statement is meaningless. For information, section
1320 4.21 is correct (as a person of Irish background I may find it discriminatory!). It states that Catholic primary schools were established to serve a predominantly Irish immigrant population. This is not true.'

That is what he says, and I know it is not true because I have always been interested in history. Nothing at all with the Irish ... I know Deputy McKenna came here in 1971 but I think the schools
1325 were set up a bit before him. Nothing to do with the Catholic ...

Guernsey was a French community. My grandmother came here in the 1890s as a young girl because she came from France. In town, in large areas of this Island, Guernsey French was the main language. It was only really – not so much in town but in other areas, the country areas if I can call it that – some of my friends who are of my age, close friends of mine, two I can think of in particular,
1330 they were brought up with Guernsey French. They went to the local infant school because they were parochial infant schools in those days and they had to be taught English because at home their parents and their grandparents spoke to them in Guernsey French. I know I am old, one of the older Members of the Assembly, but that was what happened. So he is right and those who say otherwise are wrong. Anyway, going back to where I went off. Sorry, I digressed.

He does say Notre Dame was established initially to serve French-speaking children in the area of St Peter Port. He quotes section 4.23 and he said, 'Where references to the Diocese of Portsmouth's admission policy is misleading as it quotes the policy out of context. All schools in England are required to abide by government legislation. The School Admissions Code 2020, section 15d) states:

If a school is undersubscribed, any parent that applies must be offered a place.'

'This is the open enrolment policy that has been in place for many years and it is designed to avoid discrimination. The C/ESC's admissions policy would be illegal in England as it is denying parents a choice of places even though the places they want are available. If a school in the Diocese is oversubscribed, it must have a fair and transparent admissions policy and this is where giving priority to Catholic children can be part of the criteria. This has been tested by the courts and been
1345 found to be reasonable'.

He then goes on to quote the human rights legislation. I do not think I am going to add in relation to that. He talks of poor guidance which has been issued in relation to the States' website last version update, etc.

So, you have got someone who has practised teaching in a Catholic school as a head teacher for proverbial donkey's years, for *many* years. He is not a lecturer from Warwick University or some intellectual people from Cork University who have read all of the textbooks but have never walked the walk. He has actually walked that walk and practised – no pun intended – what he preached.

Language, in relation to it, we have heard the word discrimination with a great definition – he looked up in his dictionary, last night, Deputy McKenna, 'discrimination'. Language just changes over the years. We do not speak in the same way as many people have spoken in relation to
1355 language. For example, Shakespeare, in terms, if you remember Macbeth 'Hubble, bubble toil and trouble'. In a modern context that means, 'Oh, my goodness, we are going to have a problem.' And perhaps when Enobarbus said about Cleopatra:

Age cannot wither her nor custom stale her infinite variety.

What he was really saying in the 21st century was, 'She looks pretty good for her age'. (*Laughter*)
1360 So language changes, its meaning changes. I used to say harassed, people say har-ass-ed now – a much uglier way of saying harass but never mind, that is the way that language works.

When you had female members of the acting profession and male members of the acting profession, they were called actors and actresses. I fully accept that that is a good change and most people now call themselves actors. I fully accept that. We have got the word 'gay'. I think it is used
1365 in such a wonderful concept in relation to people that have that sexual orientation. So that is the good change of language over a period of time. But discrimination, because you have got a different choice, because you have a different view, because you think differently, you are discriminating. No, you are not. You are exercising a choice.

We all exercise choices every single day in our lives. Some are big ones, some are little ones. Some are choices of *époque*-making results in our lives; and some of those we get wrong. But in relation to that, what the people who send their children to these Catholic schools do, are making a choice. They are not discriminating. It reminded me and I said in a different context, and it drew Deputy Bury to her feet with a point of correction, about thought-speak. Thought-speak. Do you remember how that was used in another one of Orwell's works, 1984, which is 1948 backwards.

Thought-speak: you had to think in a particular way. I do not want to people to think in a particular way. I want human beings, people making conscious decisions, people using their cerebellum. I want people to make decisions which are in the best interests of their family.

This is one of the worst pieces of potential legislation I have seen. I would ask Members to reject it soundly.

The Bailiff: Deputy Dudley-Owen.

Deputy Dudley-Owen: Thank you, sir.

There have been many good speeches today and I think that especially Deputies Murray and Le Tocq have articulated the case very well, looking at the specific issues in relation to the schools and also more broadly in terms of what it is we are actually trying to do with this law. Like many others, I value the faith schools that we have in Guernsey. I hold a convicted respect for the right to hold religious belief and to receive education that reflects the values of that religious belief. It is clear that secular values have sprung from, and are largely based on, religious ones and therefore we are starting to tread with this amendment down the route of a nonsense.

We place great importance and emphasis on the qualities and characteristics of a head teacher in being the leader of an education setting, not just in our Committee *for* Education, Sport and Culture and at the Education Centre, but also in our community. It is their promotion of their personal and professional attributes in the daily management and organisation of their school, leading the community, that plays a very large part in the success or otherwise of that school. Deputy Aldwell has referred to this today. So a leader who is knowledgeable and experienced, not just a professional educator, but also a practitioner of their faith, someone who is able to lead religious worship and ensure that the religious values are upheld through the daily discipline, actions and relationships of their school community. That is fundamental to the success of our voluntary schools and, in fact, any faith school.

Many negative consequences arising from this proposal have been articulated today in detail by Deputy Aldwell and very well by Deputy Ferbrache. It appears that not enough work, consideration or engagement went into dealing with the possible un- or intended consequences before the decision was taken by the Committee *for* Employment and Social Security. I do stand to be corrected, I am not even sure whether the work stream on discrimination has been presented to this Assembly. Certainly nothing that I have been invited to about in this particular policy letter. It has been a busy year and I have been focusing in large part on the work of my Committee. But if I am right and we have not had any presentations on this particular workstream or this policy letter, what a great shame. No informal discussion on this particular subject, a *complicated* piece of legislation with complex principles and policies behind it, we could have all benefited hugely from more information about this piece of work.

One point that has not been raised so far today is that the Catholic schools that we have in Guernsey add a quality that is attractive to, not only our guest workers from Madeira and Eastern Europe, but also it is of note that when I sat last term on the Economic Development Committee, interest in the Island via reports from Locate Guernsey often mentioned Blanchelande being a faith school as adding real attraction to the Island as a destination of choice for moving professional families.

Just finally, sir, it will have been noted that Deputy Murray, not I, has proposed the amendment today and this is because I have not taken part in Committee matters related to this discussion, as I have a personal and family interest in the Catholic schools, and Committee rules rightly take strict

view on this as discussions take place in private. However, having declared my interest now publicly, I also declare my support for the amendment that my Committee has today laid.

Thank you.

1425 **The Bailiff:** Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, sir.

1430 I am sorry, actually, that some – by no means all, but *some* – elements of this debate have slipped into the realm of what I think is more along the lines of personality politics. I think there has been an edge of that and I think it is *really* regrettable. So I hope that we can keep this debate on track in terms of the principles of what we are actually debating here with this amendment.

1435 I am also just going to add that I think Deputy Ferbrache, perhaps inadvertently, has slightly mischaracterised what Deputy Bury was saying. I know she is able to speak for herself but I would like to speak in her defence that actually I did not read it in that way *at all*. I think Deputy Bury was making a very sensible point about language in a way that relates to a health condition. So I think actually it would be better if that were taken out of the context of this particular debate. I do not think it is any way relevant.

1440 Deputy Murray started off with this amendment suggesting that there ... First of all, yes, he brought me into it. I will respond on the couple of points that he brought me into it for. But he started off by suggesting that there was no simple solution. Actually, if he was listening to Deputy Roffey's opening speech, there is a very simple solution that absolutely could be achieved within the timeline of the Committee's proposals. That is to make this part of the Education Law, which is something that I was personally very sorry to see that the Education, Sport and Culture Committee sort of deprioritised. But it is, of course, still in the Government Work Plan and the current timelines are for that piece of work to come into effect by 2025-26, I believe. So that is comfortably within the time limits that we are talking about here.

1450 That would, as Deputy Roffey explained, give the Committee and the States the opportunity, if they saw fit, to make it a requirement with these faith schools, if they thought it was a requirement that the head teacher or other key roles supported or lived by the tenets of a particular faith, to make that a requirement. I think that is a much better home for it than in any anti-discrimination legislation. That is the simple solution and I would take the opportunity to again say that I am very keen for that Education Law to come forward because there are *many* good reasons.

1455 The primary review, I was responsible again for bringing forward an amendment to the Government Work Plan to try to reprioritise that – again, it is another issue that had been deprioritised, and I was sorry to see that that particular ball had been dropped. But, of course, the imperative around the primary review, as we all know, and as actually Deputy de Lisle alluded to, is very much around the mismatch in some of the western primary schools. We know that. Obviously it is needed to inform the decision about the rebuild of Le Mare de Carteret primary school as to whether that should be rebuilt as a two-form entry school or a three-form entry school. Obviously there are also fiscal considerations that would be very pertinent to address and so those are the reasons I brought the amendment on the primary review.

1460 It absolutely categorically did not have anything ... I am *shocked* that Deputy Murray made some allusion to the fact that I might have an agenda against the Catholic schools. That is *categorically* not the case and I would like to put that on record.

1465 Deputy Le Tocq, when he spoke, talked about helping people in need and I would say that is not what this legislation broadly is about at all. That implies it is a charitable thing. It is absolutely not. This legislation is about enabling people to enact their right to not be discriminated against. That it is what it is about. It is *not* about charity, it is *not* about helping people in need. It is about fundamental rights not to be discriminated against because of certain characteristics. In this specific case, with this amendment, we are talking about the right of teachers to not be discriminated against when applying for certain positions in certain schools on account of their faith.

1470

I do think also that that draws us back to the main issue here, which is that these wonderful schools ... As I understand it – I absolutely agree that ethos is a big part of that – their primary function is as an educational establishment and I am just wary about anything that reduces the pool of candidates. Surely, as schools, we want them to be as successful as possible and continue to give all those benefits they do to their school community and the broader community as a whole. Surely we want to be able to attract the best possible candidates and really this is what it comes down to.

I think our parliament is working. The Committee has proposed a certain proposal and another Committee has come forward with a counter-proposal. We are debating it. I really do hope that the debate sticks to the principles of the matter and does not slip into aspersions and personality politics, which I think is deeply regrettable. So I hope that we can stick to the broad principles and make a democratic decision and, as Deputy Roffey has rightly said, whatever the decision of the States is what the Committee will deliver.

The Bailiff: I am going to turn next to the President of the Committee to reply on the amendment. Deputy Roffey. (*Interjection*)
Deputy Blin.

Deputy Blin: Thank you, sir, and I am sorry for the last second.

I had some separate notes I had prepared earlier and I left them, but I have been listening to all of these debates and it has kind of left me, especially with Deputy de Sausmarez's last comment about keeping it focused on the principles and the policies ... All of this Assembly, in my opinion, including myself, are strongly against any form of discrimination but there are levels of how discrimination, you can support it. I have been brought up and educated here and in other countries, in difficult situations as well. But it comes to the point that is almost like it is inbuilt into our ethos into the way we are brought up, our family, our values. We have done it that way.

Nowadays, we need to have more guiding principles and nowadays we need to have laws as well. I understand that. When it jumps on to this whole debacle which has been going on for hours now, and I am very glad there was no 26(1) called or anything. It was very interesting hearing everyone's points of view. But what I did notice from the very beginning when Deputy Roffey spoke, almost giving it a very dismissive analysis, that this was brought as added in by the States, but was not really what he wanted to do, and actually was very minor. But it does not feel very minor to me.

The reason I got particularly engaged with this whole topic was a discussion with Deputy Falla asking about, I had heard that there was a meeting with the Church, had come to have a talk with ESS and Deputy Falla had reassured me that it was fine, it went okay, it was not great, but it was fine. The next thing that you know it came on to my radar, I was not planning to attend, but there was a breakfast meeting with Bishop Egan and a number of other Deputies and actually heads of schools and assistant heads of the Catholic schools.

I attended that, and the reason I attended that was, actually, it was my way of saying if the Catholic groups and leadership groups are not being treated fairly and kindly by ESS, and this is on what I understood, it was my principle and belief that I needed to attend that meeting as well to share that actually I would like you to know – to his Excellency the Bishop of Portsmouth and to the teachers – that we are very much in support. And in support, I truly am. Notre Dame particularly, my mother taught there, I went there, my children have been there, my sisters have been there. I spoke with the head teacher of Notre Dame who talks about the statistics, the 48% of second-language-speaking children.

That is quite important when, as was correctly pointed out by our Chief Minister, that the majority of children attending those schools *are* Catholics. So when they have come from Portuguese or Madeiran backgrounds, and French, it has been an integral part getting them into life, integrated into our society and it has worked very well for *many* years.

So we know that the school is excellent. We know. I was there – I think it was alluded to that possibly when I was there, 30 or 40 years ago, or more than that, it was 50 years ago – it was not,

as you know, it was quite strict and there were different situations there, but it moved and it moved through with our families and children.

1525 So what I really cannot understand is, this is all about predominantly one thing, it is sticking to the *[inaudible]* Like Deputy Falla said, it has got be about a fairness, I believe he used the term; and a teacher, if they are a good teacher, they should have the right to teach and lead wherever they wish and I agree with him. I think the teachers should have the equal right. But the Catholic schools where myself as a parent and having been there myself as well, as a young child, actually you can
1530 choose to put your child there – I will call it a church school – because you *know*. I know lots of my friends have got their children there, who are not necessarily Catholics, but they want them to have that educational benefit.

So the fairness of having the teacher and principal of being not discriminated against, I agree. But there is a point when it comes to either the deputy head or the head where it has got a spiritual
1535 leadership. You do need ... It is like saying, yes, we do appreciate you as a professional teacher, you are not discriminated against but on top of that we want one more thing from you, this vocational belief that, as a Catholic, you will be able to spiritually lead the school through to the next level. And that is the part that, to me, is only a small element to break it down to make it that the school could potentially disappear; or the Diocese of Portsmouth could put us into a situation of human rights;
1540 or it could cost us tens of thousands of pounds for a transition from Notre Dame buildings to States' schools.

Is it worth it, given the fact that it is ... ? I am not saying it is an exception, it is an exemption on the basis of being the being head of the school.

All I would like to add ... I am not going to through the other aspects, but there is a small detail
1545 I think I feel I need to add. Straight after the illustrious breakfast at the OGH Hotel and the Bishop, there was an immediate move on social media, on Twitter and Facebook. (*Interjection*) This is something that really bothered me. It was questions of like, 'Well, why weren't we invited?' or 'Was it a very select group?' or 'They were not wearing masks' or all of this. I mean, there we were trying to show respect to the Church group to see what we could do and, instead, then I noticed very
1550 quickly an almost orchestrated – and I will carefully use the terms 'almost orchestrated' – suddenly appears the non-States' member of ESS with direct comments actually against the church.

It was no longer now about the discrimination and the education. (*Interjections*) I will, in case I was challenged, I will put it there. There were a few of the terms, I mean this was not from the ... I just noticed that the chain of conversation rapidly accelerated to comments which I do not think
1555 were right, like as if this proof was needed. This was not the non-States' member of the ESS, I would like to point out first of all, but it was just one that caught my attention ... 'As if it was needed that the motivation of the Roman Catholic Church lies in the indoctrination of children into the intolerant and discriminatory views, rather than to educate children for the good of the children themselves.'

A series of these comments appeared and this really concerns me because then it takes right on to a doctrine, to an ideology, and I know that no one in this Assembly will be standing by one of those comments. But, suddenly, it was referrals to what the Church has done ... I think the non-States' member did make the term 'an Egan' referring to Bishop Egan and referring to 'Should you
1560 make contact to the Church if you have been accused of any molestation' or something. In other words, it brought it right down to a level which I did not see as part of what this whole process was.

1565 I have added this at the end, because it was a very hurtful part. I do not stand or tolerate any discrimination, but I do believe that the Churches, the Catholic schools that we are currently arguing and talking about, have done a *phenomenal* job and will continue to do so. This is the sort of situation that could unravel all of that instead of keeping everything on a tolerable, managed, balanced basis. That is how we should be looking after our community.

1570 Thank you, sir.

A Member: Hear, hear.

The Bailiff: Deputy Taylor.

1575 **Deputy Taylor:** Thank you, sir.

I just rise to pick up a point that I think Deputy Roffey raised in his opening speech of the general debate, and that Deputy de Sausmarez raised. So I will start by saying that I am broadly supportive of the ethos behind the amendment here and I think it is perfectly logical that Catholic schools could have a Catholic Head, or choose. I think that is a very logical step.

1580 But a point was raised about, could this be done through the new Education Law instead? And apologies if Deputy Dudley-Owen had covered this, just now. But if that was done it would trump this legislation.

I just wonder if, in summing up or in response to this debate, if Deputy Roffey would be able to give a bit of a broader explanation of how that might work. Also, if he would be so kind as to whether he would be supportive of that as a provision within the Education Law. Or if he is completely against that proposal?

Thank you, sir.

The Bailiff: Deputy Dyke.

1590 **Deputy Dyke:** Thank you, sir. I will speak very briefly, others have spoken very well. Deputy Ferbrache has said pretty much everything I have planned to say and rather better than I would say it. But just one point that we must not forget, that perhaps I could make, is the question of freedom, which we should bear in mind before we pass anything. Freedom, basically, to get to the bones of it, is the freedom to live your life in accordance with your principles and your faith, if you have one, whilst at the same time bearing in mind that everyone else should have that right and the right to exercise it.

1595 We pass legislation, we pass more and more legislation, which of itself begins to cut down on our freedom because people cannot cope with so much of it. Then you get to specific points such as this one where, advertently or inadvertently, we are passing legislation which is ironically called anti-discrimination legislation, but which at the same time cuts down on a very basic freedom which is the right of the parents to look after their children and determine how they should be schooled. If you cut right through all this, through all the detail, that is what this is about.

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1605 So it is so important that we do not leave this Assembly having not voted for this amendment. Can you imagine the horror for the parents and children at these three schools to be told that this States, effectively, is going to close them down? We cannot possibly do this, we absolutely must vote for this amendment.

Thank you.

1610 **The Bailiff:** Deputy Mahoney.

Deputy Mahoney: Thank you, sir.

Just a couple of points that I would like to make and I am sure Deputy Roffey can cover them in his closing or summing up.

1615 Any debate surrounding religion is always going to be fairly passionate with deep-rooted positions being held. I am not a religious man and I do not have any of those deeply held positions, but I like to think I have some sensible positions.

Deputy Roffey, in his opening statement, said that no one in ESS had suggested the closure of any schools but also that he had to shut down Deputy Gollop. I apologise if I have got the phrase wrong, but that was certainly the gist of it. Even challenging that no other President could have shut him down quicker. 'Off-piste' was the phrase I think that was used. I just worry, and I wonder whether I am the only one in this Assembly that believes this smacks of a Committee not wishing to have its dirty laundry aired in public.

1620 I believe, but I stand to be corrected, that Deputy Gollop now tells us in his speech statement that he has not suggested the closure of Catholic schools which, for the external viewer, begs the question of why the need for the presidential slap down.

Deputy Falla noted that Deputy Gollop's comments at the close of the meeting did *not* reflect the Committee's views and all of this begs the question of whether a recent history is trying to be rewritten this morning. I am certainly willing to give way to Deputy Gollop if he wishes to set that record straight, because it is confusing.

Deputy Gollop: Yes, I think I do wish to say a bit more and also in response to what Deputy Ferbrache earlier said. (**A Member:** Hear, hear.) The point was that we had a Committee meeting with approximately 45 minutes allocated, with the distinguished delegation. We had papers beforehand and, on the day, the papers very much suggested that the Diocese of Portsmouth had seen more serious consequences emerging from the proposed legislation than any of us had envisaged.

My argument, actually, where I would say was slightly misconstrued in the letter that was read out and later published, was that it was suggested that I expressed a view that maybe closing the schools would be a beneficial outcome, when I actually said – more as an ironical, neutral remark – was that it would solve one problem. The problem I was referring to was nothing to do with the legislation, it was the fiscal and other challenges that other Members have alluded to and what Deputy de Lisle had mentioned, about the unresolved primary school programme and whether there would be one school or two schools, or how that would go.

So I was bringing in an educational topic into a social security context. As it has turned out, as the Education, Sport and Culture Members have clearly pointed out, it *does* have a significant educational and maybe property and other issues. But it was not pertinent to the social security context at all, so I concur with Deputy Falla in that respect. It was purely my remark and I think perhaps the group who heard the remark, not knowing me or what I was talking about, concluded that in fact that I was somehow opening up a secret that everyone else wanted to shut down. Nothing could be further from the truth.

I would also add that the conversation that we wish to have is much more along the lines of what Deputy Matthews and other Members have spoken about, about the freeing up of catchment areas and the future freedoms and consciences and direction of the primary estate looking forward to the 2020s and the 2030s.

Deputy Mahoney: I will give way to Deputy Oliver.

Deputy Oliver: Sorry for jumping in. It was just something Deputy Gollop said.

Are we not a joined-up government and ESS should be taking on board ESC matters as well, and not just their own?

Several Members: Hear, hear.

Deputy Mahoney: Thank you, Deputy Gollop and Deputy Oliver, for their comments.

I listened with interest to what Deputy Gollop says and I certainly would imagine that the Catholic delegation took the view that, if it walks like a duck and it walks like a duck, then it probably was. Anyway, to my mind all of this is just trying to solve a problem that is not even there.

Sir, others have noted the legal advice in relation to this matter and, in any summing up, I am sure the Assembly will wish to get comment from Deputy Roffey as to why his Committee decided to disregard the legal advice that has been provided by the Law Officers.

Just to finish, sir, a mentioned reference made by Deputy Blin, there. There has been some chatter on social media amongst some in the Assembly, mostly outside, questioning that perhaps certain Deputies who attended that breakfast meeting over the weekend should be considering whether to declare hospitality before voting on the Murray-Haskins amendment. For my part, I am happy to do so. I had bacon, eggs and toast. And, in the interest of full disclosure, I had a croissant as well. I thank the *Deputies* who picked up the tab for that.

Like others, I will be supporting the amendment. Thank you, sir.

The Bailiff: Deputy Helyar.

Deputy Helyar: Sir, yes, just a very brief point. Another lawyerly one I am afraid. Following on from what Deputy Ferbrache said very eloquently but perhaps with a slightly different angle. I had only been practising half as long as Deputy Ferbrache, but in the commercial sector. If you had to rank the professions as football teams I think the lawyers would probably be Millwall. (*Laughter*) Our theme song would be 'No one likes us, we do not care.' (*Laughter*)

It is important to speak the truth to these things, and the thing that really concerned me about it was the feedback that I had from the finance sector, which is one of the things I look after and obviously it is my responsibility to keep an eye on Treasury matters and report on them. We must be mindful in this Assembly of the external impact of things we say and things that we propose. Deputy Roffey in his opening speech said we must stand up for what we believe in and do what we believe.

But there is an important thing and this goes back, sir, to your speech at Chief Pleas – in fact, at the opening of the legal year this year – which was about the Rule of Law. This is a jurisdiction which operates on the basis of the Rule of Law and Deputy Ferbrache has very ably given an example of the supremacy of human rights and freedoms. That legislation is supreme, that means unless this Assembly withdraws it, it tops everything else, it ranks before it. The feedback, unfortunately, from relatively senior members of industry is, what on earth is one of this Island's most senior Committees with tax-raising powers equivalent to those of Treasury doing proposing legislation which is clearly going to be in breach of our international obligations? That is quite wrong, it sends out completely the wrong message to those who would look to base their businesses in this Island, to those who would look to move here, for those who would look to build businesses here. It is quite wrong, in my view, for a Committee to suggest such a thing.

I fully understand why there are difficulties but these things must be proportionate, and this a *fantastic* example of disproportion. We are going to see a lot more later, I am sure. I will be giving a discourse. Deputy Roffey said the Grainger test does not lead to oddball outcomes, I will be giving you a fantastic example of one.

I would urge all Members to *soundly* vote in favour of the amendment and to put this to bed. Thank you.

The Bailiff: Deputy Haskins.

Deputy Haskins: Thank you, sir.

I think I will start by saying that I went to a convent school here in Guernsey, Cordier Hill, and it was a fantastic school. I absolutely hope and, dare I say, pray that the amendment succeeds. I believe that in order to maintain a Catholic school ethos, culture, philosophy and choice for parents it is reasonable to expect the senior leaders of the school to be practising Catholics.

In response to some of the speakers, and Deputy Taylor picked up on this point, and I am interested in hearing the summing up, is Deputy Roffey and Deputy de Sausmarez suggested that, with specific provision in the Education Law, it would overturn and trump the Ordinance. But I do not quite understand. Why would we write into the Ordinance something that we see or predict is going to be in direct contradiction to the Law even before the Education Law is written?

Deputy de Sausmarez I think supports that approach, but I am afraid to say I think that is bad governance. Deputy Roffey has said that he would *not* support this. Interestingly, the draft legislation produced by the previous Education Committee, of which Deputy Roffey was a Member, actively directed the intention behind this amendment. Yet this policy letter goes against it now. An extract to that is, 'Appointment to key leadership posts in voluntary schools, applicants may be prioritised by reference to faith-based criteria ...' So I do not quite understand the apparent change of stance.

The Catholic schools are not *forced* to have a practising Catholic head teacher, for example, but rather that 'preference may be given'. Deputy Gollop said he wanted to bring in the Ordinance

regardless and, if we find that we go too far, then we can have conversations afterwards. That does not make sense to me. Afterwards is too late.

I put the utmost respect and faith in our Catholic schools. They do their utmost to be inclusive and share their values, whilst maintaining absolutely excellent education that is a huge benefit to the entire Island. But, with the feel for the room and support for this amendment, I will not go on. But I will urge Members to vote for this amendment and support our excellent Catholic schools.

Two Members: Hear, hear.

The Bailiff: Deputy Moakes.

Deputy Moakes: Thank you, sir.

I want to keep this very quick because I do not want to repeat everything that everyone else has already said. But I do feel that the Committee for Employment and Social Security has really clutched defeat from the jaws of victory here. This could have been so easy. As Deputy, after Deputy has said, we all want anti-discrimination legislation. Not one person will disagree with that. But it must be legal and it must be proportionate and the legislation that has been proposed is a copy-and-paste from all over the place, and is neither.

Thank you.

The Bailiff: Now, this time I will turn to the President, Deputy Roffey, to speak on the amendment.

Deputy Roffey: Thank you, sir. I may go on slightly past half past, but I will try not to go on too long past there.

I think the first thing to say is, I know when I am on a sticky wicket and I think I probably am on a fairly sticky wicket now. I think I am actually fairly convinced which direction I am heading when I shuffle off this mortal coil in a few years' time as well. (*Laughter*) So should I just shut up and accept the inevitable? No, I think I do have to answer or comment on some of the things that have been said during the course of this debate.

I think one of the things that did upset me and I absolutely ... I am a democrat and I completely accept the right of Members not only to disagree with us but to disagree with us robustly, to castigate us and to criticise us. But when I had said at the beginning that I gave Members an *absolute* guarantee that we, both I and my Committee generally, had not ever sought the closure of the Catholic schools, we never discussed it, it had never been part of any motivation. The fact that, as undercurrent, that suggestion being implied by a number of speakers throughout the debate was basically saying that I was lying. I have to say, I have never lied to this Assembly and I never intend to. I will say again, that was not a part of my motivation, not mine, not my Committee's, and never was, and I regret the fact that that was not accepted the first time I said it. (**A Member:** Hear, hear.)

Having said that ... The other things is ideology. I mean, starting off with the proposer of the amendment saying 'Is ideology involved?' Well, you know, other people can look up definitions as well as Deputy McKenna. Ideology means rooted in ideas or idealism. I hope most of my politics, and I hope most of everybody else's politics, has a degree of ideology in it. Certainly, I would like to see some ideas and hopefully a bit of idealism as well. When you are talking about discrimination legislation, obviously ideology is going to come into it and obviously people are going to have different perceptions and different ideologies, and that is really what has generated this debate today.

I wish Deputy Le Tocq was here. If he is sorting out fish then I am glad he is not here, but I wish Deputy Le Tocq was here because I think I fully accept his support for this amendment. I think that he was arguing against his own aims by saying that if he had been here he might have voted against this policy letter as a whole. Because what he was saying is, he wanted the thing that it started off with, the whole thing about disability and whatever, to go forward and be implemented as soon as

possible. If somebody brought an amendment to take the religion ground out of Phase 1 today, that might have been a logical argument. Nobody is doing that. It is still in Phase 1. The States have put it in Phase 1 – and also sexual orientation.

So I do not think anybody is against bringing Phase 1, which would disappear if people voted against this policy letter. But basically all that will happen if people vote against this policy letter is that we will still be no clearer what exceptions to include when the Ordinance comes forward in relation to these two grounds. The States have approved them in relation to disability, carer and race. They need to improve them for this, for any of this to go forward. So voting against this policy letter today will just stop us being able to bring in anything to do with the disability ground. We will have to come back to this Assembly.

I am sorry, I heard somebody saying it is a load of rubbish. I really wish that there were Officers here who could take advice because I am absolutely sure that I am right on this point. Indeed I think one of my Members emailed the Law Officers for confirmation and it came back saying absolutely, that is the case. There is a States' Resolution saying that religion – it was not my choice that it would be in the first phase – and sexual orientation will be in that first phase. The Ordinance cannot come forward until the States decide what exceptions should be included in that. So that will hold back the introduction on disability as much as anything else.

You can decide if we have got the wrong exceptions and change them. But just to say, 'We don't want to make a decision about exceptions so we are going to vote it out,' would absolutely hold back the core thing which, I think with one or two exceptions, does what everybody in this Assembly wants to see. I think that Deputy Le Tocq actually is wise enough that, if he was here, he could see the logic of what I was saying.

Deputy Inder said, why can't Catholic schools have a Catholic Head? Well of course they can and nobody is suggesting otherwise. He referred sort of tangentially to discrimination by recruiting only internally rather than advertising externally. I tend to agree with him on that. I constantly fought against that policy when I did my tour of duty, my punishment duty on the old Civil Service Board. But what do two wrongs make? A very short ladder. But apart from that, what do two wrongs make? *(Laughter)* They do not make a right and that seemed to be what he was arguing.

Deputy de Lisle was talking about, again it went beyond this amendment, to where the cost of the whole Law and that it was far too over the top and there is not really much discrimination in Guernsey. I think that we will have a more general debate in a few months' time when the legislation comes back. But this is, by far, the most cost-effective approach. We have stripped out so much cost from this approach it is unbelievable. We are doing this in a way that is, not bargain basement, because it has got to work really well, but basically stripped down to the absolute essentials.

Deputy Queripel was one of a number that says that when the Tory party needs a leader they choose a Tory. Actually, I think they chose Boris Johnson so I am not really sure that that is true. *(Laughter)* I think the difference in this point is that actually they are choosing amongst 100% of Tories who to be the leader of the Tories. When you are choosing a Deputy Head of a school where two thirds of the staff are not Catholic, it is not quite the same thing as choosing a leader of a group, all of which are the same.

Deputy McKenna and others have asked why we went against Law Officers' advice. *We did not. We absolutely did not.* If the Law Officers had said that what we were proposing was contrary to the European Convention of Human Rights, I, for one, would have absolutely accepted that and not brought this forward. I can tell you how passionate I am about the European Convention of Human Rights, I argued constantly in its defence in this Assembly over 40 years, including embodying it. It was actually, we have been signed up to it for much longer than 2000. What happened there was we brought it inside domestic legislation.

Deputy Ferbrache was talking – I will come on to him later, but this is appropriate now – about the six million Jews that were gassed and that was the motivation. I lived in a small community in the north of Israel for an extended period of time with survivors of the Holocaust. I talked to them day by day. I know what they went through. I am a *total* supporter for the European Convention of Human Rights and if the Law Officers had said that what we were proposing was in contravention

of that then I would not have thought of bringing this forward, even if the rest of my Members wanted to.

That was *not* their advice to us. They said it was unclear, it was a balance of rights, there was a right of somebody not to be discriminated in their employment, there was also a right to educate your child according to the ethos and it was not clear – without actually a test case, it would not be clear exactly which side ... There was not the case law to decide where this actually fell. That actually brings me on to Deputy Ferbrache.

Deputy Ferbrache said let's get on with the Discrimination Law and I agree with that. He made clear – because I had hinted in my opening that actually I thought some people were using this particular focused disagreement as a way to try and undermine that legislation – he guaranteed that he was not one. I was delighted to hear that. I have an invitation to him here because actually, although we are very different, I think when the two Peters work together we can be quite a powerful force.

Please join with me, because the disabled community and others have waited *far* too long for this sort of law to come in. Let's help drive it through, it will be proportionate. It is absolute nonsense to say that it cannibalised from all around the world. People are going *back* to an earlier version, they are parroting a pressure group in the form of GPEG who keeps putting out this misinformation. The reality is it is incredibly close to both the Jersey and UK legislation in what is being proposed. What was originally proposed, we raised concerns with the employer groups. They have now got behind us and said they wanted This law to go through. So let's join together and push that through. I was delighted to hear that, even though it goes slightly beyond the narrow point of the Catholic schools dealt with his amendment.

Again it is slightly tangential, but I disagree with him over his chiding of Deputy Bury. When Deputy Bury sent out her amendment last night, which I think was just a polite request to consider not using a word, I went back to her because I think I might have been one of the people who used it. I do not know if I was, but I have done in the past. And, actually, I am not going to be censored, I am not going to be stopped from saying what I want. But *if* people with a medical condition can find something offensive I will try and find a different way of saying it.

When I was first in the States in the 1980s, people used to say, 'Oh, my Committee had been working like ... And then a word that none of us would use now. They did not think there was anything wrong with that but times changed and people found different ways of saying that. The n-word, by the way, that was. If it is causing offence – and I do not know if it does – for people with that medical condition, I will try. It is hard to change your language sometimes when you reach a certain age but I will certainly give it a shot.

Deputy Ferbrache read out a letter from the Catholic community. As I say, I think there was a genuine different interpretation. I cannot drag them into this but I would be quite interested for people to ask the several senior dispassionate civil servants of that office. I think they would tell me if they felt I had been hostile afterwards and certainly no such suggestion came forward. Actually, in my long time in politics, I have always been passionate about issues. I have never given any quarter in Committees but I have never raised my voice, I do not think. I have had *lots* of people on the other side of the table that have done that to me. I have always tried to keep things calm and civilised, and always will. That does not mean that I will not reject, out of hand, peoples' arguments if I do not see merit in them. Sometimes people find that hostile. It is not. It is just me saying what I think.

He quoted Peter McGovern. I wrote back to former headmaster McGovern, nothing in this policy letter prevents non-Catholics being able to be admitted into the Catholic schools. That is ESC policy rather than anything in this Law. This Law will *allow* them to discriminate in admissions but it will not insist upon it. They will be able to allow anybody of any faith, or none, to actually come into their schools if ESC are willing to comply with that. He is quite right about the French and I did actually go back to Mr McGovern, and I think copied into all people at the time, apologising for that omission in the policy letter.

Deputy Dudley-Owen asked about presentations. No, we did not do a town hall presentation but what we did we invited all Members to come in for small sessions to actually go through the whole of this, not just on these grounds but also the other three grounds that are coming forward in the law shortly. Unfortunately we had very low take-up in that, but I am grateful for those who did take advantage.

Deputy Blin, I have not orchestrated, I do not think anyone at ESC has orchestrated a non-States' member. In fact the particular non-States' member he was talking about is about as unable to be orchestrated as Deputy Gollop is, and I will never orchestrate him! But, at the same time, I am not going to stop and muzzle people from actually putting their views so long as it is done in a way that is legal, decent and honest. That is absolutely a freedom and I think that this control-freakery that some people think Committees should exercise is unfortunate.

Deputy Taylor: how would the Education Law trump this legislation? Actually just about any other legislation can trump this legislation because there is a *general* exemption in this legislation that says 'Except when other law specifically requires.' So it is not just the Education Law that does that, there are quite a few examples where because other laws require something, that overcomes the normal remits of this Law.

Would I vote in support of it? No, actually, I would not. All I am saying is it is clear that the vast majority of my colleagues in this Assembly want to allow the selection of purely Catholic leadership. I think, personally, that a more comfortable and better way of doing that is through the Education Law rather than through an anti-discrimination law which is really facing in the other direction. But it is an argument I am losing, I can tell that. But that would have been a preferable route as far as I was concerned.

Deputy Dyke, I agree with him over freedom. I am basically a libertarian. Sometimes, unfortunately though, some peoples' liberties actually cut against the liberties of others and therefore Government does have to come into it and we do have to make decisions about competing rights.

Deputy Mahoney, dirty laundry. There is *no* dirty laundry. Once again, this is somebody that was hinting that we had some kind of nefarious discussions about a wish to close Catholic schools. Not only did we not, we do not, we never have, we would actually be quite devastated if it happened.

Deputy Gollop, towards the end, came out with something which could have been interpreted that way. He did not say he wanted the Catholic schools closed. He has assured me that he does not, but he was ... Well, you heard his ramble. He started off one of his rambles that could be interpreted in that way. I found it unfortunate and I closed it down. Was that embarrassing? Yes, it was embarrassing. Would it happen on any other Committee where he was a Member? I think occasionally it might. I think he brings a lot of strengths to this Assembly. He brings a lot of strengths to my Committees, but it is not without problems. I apologise to our guests publicly if they found that a slightly awkward moment.

I do not think there is any point in going on any further – it is nearly lunchtime – unless we want to continue and have the resolution of the amendment when Deputy Murray sums up. I accept that we are going to lose, and lose heavily on this amendment. I am not going to lose sleep over it tonight. It is not, to me, one of the core issues but my Committee, the membership of my Committee, felt they could not propose something which they personally felt was wrong and absolutely unacceptable. If this Assembly wants to overrule us, fine, overrule us. We will then crack on with actually bringing up the Law as many thousands of people in this Island are waiting for.

The Bailiff: Well, Madam Procureur, is it a convenient time before we break for lunch to hear any views that you wish to offer about the issues that have been raised about the consequences of supporting the Proposition, or not supporting the Proposition, as and when they get voted on at the end?

The Procureur: Yes, thank you, sir. I have received some queries from Members exactly on this point.

Sir, in a nutshell, the substantive Propositions from 2020 stand. If these Propositions are voted against, they will continue to stand as agreed by the States by Resolution in 2020, which means that the drafting will proceed on the basis of religious belief, as agreed in 2020; and, unless a further policy is brought back to the States – the timing is very tight, but that is always possible – there will be no agreed exceptions.

I hope that assists Members, sir.

A Member: That is just ludicrous.

The Bailiff: Well, Members of the States, because it has gone 12.30 p.m. I am minded to break for the lunch and adjournment now (**A Member:** Hear, hear.) until 2.30 p.m., when we will hear from Deputy Murray, the proposer of this amendment, replying to the debate.

So we will adjourn until 2.30 p.m.

*The Assembly adjourned at 12.43 p.m.
and resumed its sitting at 2.30 p.m.*

**Discrimination Ordinance: Grounds of
i) Religion or Belief and ii) Sexual Orientation –
Debate continued –
Propositions carried as amended**

The Bailiff: Deputy Murray, the proposer of the amendment, to reply to the debate, please.

Deputy Murray: Thank you, sir.

Before I begin, let me say I want to close the chapter on who said what at that particular meeting; I think we have explored that far enough. I would, however, wish to say one thing, and that is in support of Deputy Gollop. I have only known him about a year. He has very many fine qualities, and the one thing I admire most is that he does not lie; (**Several Members:** Hear, hear.) he tells the truth, and I think he is to be applauded for that.

This has been a very emotional debate. There have been some very emotive words used. Deputy Le Tocq started off and spoke of a sledgehammer to crack a nut and trying to resolve a problem that does not exist. He was the third person to mention ideology, following me and Deputy Roffey, but he was not the last.

Indeed, Deputy Gollop seemed pleased to admit he was something of an ideologue. He also said that neither he nor the Committee were seeking or expected schools to close. I believe him, but I do wonder just how much homework the Committee therefore did into the relationship of these schools and the States. Were they even aware of the two-year contractual situation?

Deputy Inder spoke of nonsense.

Deputy de Lisle, as always, raised the implications financially and queried the size of the problem we are trying to address. He also mentioned the public being incensed.

Deputy Matthews was concerned about the denial of choice, and had another, broader, enquiry on our approach to catchment in our feeder system. Let me assure you, Deputy Matthews, in the Education Law we will bring this into our consideration.

Deputy Queripel spoke of his lack of confidence that the suggested talks during the moratorium would actually take place, and he had concerns more generally about the lack of consultation.

Deputy Ferbrache made an impassioned speech and gave us a taste of the legal wrangling that would accompany this. He ably demonstrated, if I may say, what I illustrated in my own speech, which was cats fighting in a sack, but he too used the word 'ideology'. And he used other words too, like 'fundamental freedoms' and 'exercising choice'.

Deputy Dudley-Owen expressed her concern than not enough thought has been given to this matter.

Deputy de Sausmarez rightly felt that we must focus on the facts. She seemed aggrieved that I would suspect her motives. I can only say that for the best part of a year the ESC has been under a constant barrage from Deputy de Sausmarez and she will forgive us for being a little bit sensitive.

Speaking of faith, Deputy Falla made no secret of his own feelings and belief, and he said this was a matter of faith versus fairness. The problem, I think, is fair on whom, which goes to my own point about good law being proportionate.

Deputy Aldwell gave us an indication of the practical difficulties involved should we need to relocate students.

Deputy Blin bemoaned the direction that social media took in relation to the Catholic Church visit, and I would agree with that. I have said before, and I will say it again: social media can be a cesspit.

Deputy Helyar warned us of the potential damage to the Island's reputation, which is a bit scary when you think about it.

Deputy Dyke felt there was a certain irony that we were discussing anti-discrimination when, in fact, we appear to be being very discriminatory.

Deputy Mahoney ... Well, I think we all know by now he says it as he sees it.

I hope I have not forgotten anybody. I must mention my colleague Deputy Haskins and thank him for seconding the amendment – indeed the whole Committee. Deputy Haskins made a very valid point about the Education Law apparently being able to trump anti-discrimination legislation as proposed, so I have to come on to Deputy Roffey's points on that particular point. It does not seem to me to be logical or sensible, or even rational, to introduce a Law which you know will be challenged or superseded by another Law. That does not seem to make a great deal of sense to me, as a layman.

I will also say that it concerns me greatly that Deputy Roffey feels – and I have a great deal of sympathy for this; he feels very strongly and expresses his views with conviction, and I very much believe that that is the case. However, he said that he did not believe that the human rights legislation would actually be challenged and successful. I am probably paraphrasing. That is, of course, his opinion and his right. I would also say that I do not believe he has a legal degree. Secondly, I would like to say if you are going to do that, do it on your own time and not the taxpayers', because it could be very expensive. (**A Member:** Hear, hear.)

Sir, I want to return to my main premise. I am not going to hold us up for very much longer because I think we all feel the mood of the Assembly. Is this pragmatic, proportionate and fair, what is proposed? Is it a good Law? Members must make their own minds up on that, but I hope they will support the amendment.

Thank you, sir.

The Bailiff: Members of the States, we come to the vote on Amendment 1, proposed by Deputy Murray and seconded by Deputy Haskins. There has been a request for a recorded vote, Greffier, please.

There was a recorded vote.

Carried – Pour 27, Contre 3, Ne vote pas 5, Absent 4

POUR

Deputy Cameron
Deputy de Lisle
Deputy Dudley-Owen
Deputy Dyke
Deputy Fairclough
Deputy Ferbrache
Deputy Gabriel

CONTRE

Deputy de Sausmarez
Deputy Roffey
Deputy Bury

NE VOTE PAS

Deputy Falla
Deputy Gollop
Deputy Kazantseva-Miller
Deputy Soulsby
Deputy Burford

ABSENT

Deputy Le Tocq
Deputy Oliver
Deputy St Pier
Deputy Trott

Deputy Haskins
Deputy Helyar
Deputy Inder
Deputy Leadbeater
Deputy Mahoney
Deputy Matthews
Deputy McKenna
Deputy Meerveld
Deputy Moakes
Deputy Murray
Deputy Parkinson
Deputy Prow
Deputy Queripel
Alderney Rep. Roberts
Alderney Rep. Snowdon
Deputy Taylor
Deputy Vermeulen
Deputy Aldwell
Deputy Blin
Deputy Brouard

2020 **The Bailiff:** Members, the voting on Amendment 1, proposed by Deputy Murray and seconded by Deputy Haskins, is as follows: there voted Pour, 27 Members; Contre, 3 Members; 5 abstentions; 4 Members were absent. Therefore, I declare Amendment 1 duly carried.

There is one other amendment that has been submitted. Deputy Burford, is it your wish to lay that amendment now?

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Deputy Burford: Yes, sir, it is.

The Bailiff: Do you wish it to be read?

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Deputy Burford: Yes, please.

The Bailiff: By the Greffier?

Deputy Burford: Yes, please. Thank you.

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The Greffier: Amendment 2, proposed by Deputy Burford and seconded by Deputy Ferbrache.

[Amendment 2](#)

Insert the following Proposition immediately after Proposition 3:-

'4. To agree and direct that any changes (including any additions and deletions) to the descriptions and definitions of the protected grounds and the exceptions thereto, as provided for in the new Discrimination Ordinance, shall require a resolution of the States.'

The Bailiff: Deputy Burford, please.

Deputy Burford: Thank you, sir.

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This is a short speech on a short amendment. I am grateful to the Committee for agreeing not to oppose this amendment.

In this policy letter the Committee reiterates the resolution of the last States in Proposition 15A of the 2020 policy letter on the Discrimination Ordinance that it should have the power to amend or provide exceptions to protected grounds by means of regulation. In other words, it could bring changes into effect without a States' debate or Resolution, although of course there would be an opportunity for the Assembly to subsequently annul such changes.

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Given how contentious some of the exceptions could be to the various grounds – the one of Catholic school senior recruitment being a case in point – I do not think it is appropriate that such changes, either to the exceptions or indeed to the descriptions and definitions of the grounds themselves, should be made except by a States' Resolution following an explanatory policy letter and, where appropriate, a public consultation.

I am grateful to the Committee and the officers for engaging in several exchanges with me on this matter, and also to the Committee for not opposing this amendment. However, the reason advanced by the Committee for wanting the power to amend by regulation was that if UK case law changes, Guernsey can quickly look at whether to follow those changes or not. Given how many years, possibly decades, we have taken to arrive at this legislation, I do not think that is an entirely justified argument.

Sir, in summary, the effect of this amendment is to require that this Committee and its successors seek a debate by and Resolution of the Assembly for any future changes they may wish to make to the definition or description of protected grounds and their exceptions, and it is unlikely that those occasions will be either numerous or pressing.

I ask Members to support this amendment. Thank you.

The Bailiff: Deputy Ferbrache, do you formally second?

Deputy Ferbrache: I do, sir.

The Bailiff: Thank you very much.
Deputy Soulsby.

Deputy Soulsby: Thank you, sir.

I think the Proposition in the Amendment goes beyond ... Rule 24(6)

The Bailiff: So, you wish to move a motion that the amendment be not debated and no vote be taken thereon?

Members of the States, I am satisfied that Amendment 2 does engage Rule 24(6), because it does go further than the three original Propositions that the Committee put forward, and therefore the motion from Deputy Soulsby is that there be no debate on Amendment 2 and no vote thereon. It is a simple majority, so I will put that motion to you. If you do not want to debate it, you obviously vote Pour. Those in favour; those against.

Members voted Contre.

The Bailiff: I declare that lost.
Deputy Roffey.

Deputy Roffey: Sir, I do not have much to say; I just thought it might be helpful ... I know some people are keen that this debate does not go on for days and days. I cannot guarantee it will not, but on this particular amendment I can just confirm what Deputy Burford has said, that we have decided not to oppose it, and therefore, unless people independently feel very passionately against it, I suggest that we move quite quickly to the vote.

The Bailiff: Deputy Soulsby.

Deputy Soulsby: Thank you, sir.

I do not know if I feel passionately about it, but I am trying to understand the motives behind it. I do not understand the need for it. It is the explanatory note that really confused me. I was a bit worried about it talking about how there will be protected grounds etc. and so likely to be of

particular interest and importance to members of the community, including Members of the States. I thought everything that the States does should be of particular interest to the States, but that does not warrant everything that we do coming to this Assembly.

2100 Deputy Burford has not actually explained which particular areas of interest. Clearly by laying this amendment, there must be areas of particular interest that she wants to debate in the States, and I would like to know what they are. I just find it a really strange amendment for it to be needed, given that regulations made by the Committee would go through the States anyway for approval and that is the time to have a debate. I do not see why we need to have a debate before that. It seems to be taking up an unnecessary amount of time within the States.

2105 Finally, the comment 'bearing in mind the power of the Policy & Resources Committee to enact Ordinances if any urgent amendment is necessary' – I really am struggling to understand why anything within the Discrimination Ordinance would be of such an urgent nature that Policy & Resources Committee would ever do that. It is only going to be used in exceptional circumstances. It has only been used one or two times in the last two years, which is through very reasonable requirements under the restrictions, so I would just like to understand greater the motives behind an amendment which I do not think is necessary.

The Bailiff: Deputy Taylor.

2115 **Deputy Taylor:** Thank you, sir.

I suppose I just want to follow on from Deputy Soulsby there, because when I first looked at this I thought it seemed so perfectly simple and logical and it was absolutely fine, but I am just passing comment, joking, to suggest that 26(1) and Deputy Burford saying she would support that pricks up my ears a little bit. It just seems to go against absolutely everything I have ever thought about 26(1), and I am not really sure why this would need to be done.

2120 I am seeking clarity that this needs to come back to the States to change the Ordinance. Would it only be relating to change on the grounds of sexual orientation and religious belief, or would it be applying to the whole discrimination legislation? It would just be interesting to know if there is, as Deputy St Pier said, something that might be at the back of Deputy Burford's mind that she might be thinking may come in, or may not want to come in, that she may be able to expand on. Otherwise, it just feels like it is ... As Deputy Soulsby said, there would be an opportunity to review this later, so I am not quite sure why it is necessary.

The Bailiff: Deputy Inder.

2130 **Deputy Inder:** Sir, it is not for me to put words into Deputy Burford's or Deputy Ferbrache's mouths, but it is just interesting ... I had to refresh my memory on the original policy letter and, interestingly enough, for some reason – I am not entirely sure why – I did actually settle on the idea that the Committee can make changes by regulation.

2135 I think to answer Deputy Taylor's question – which, actually, Deputy Burford, does affect me in my vote – we do not know what tomorrow will bring. Given the subjective nature of this whole area – and there is subjectivity; what I think is right and what you think is right are two different things ... I genuinely think, because this is going to affect so many people – I have seen good and bad come out of equality and inclusion strategies and types of legislation around the world – and 2140 of course we are obviously, I think as Deputy Ferbrache said, likely to adopt it, there is an element of this that ... We might not know what is coming down the line in years to come, but I think we are obliged, given the conversation we have had today, to at least put greater safeguards in where the whole of the Assembly can have the final main discussion on the subject.

2145 So, in that regard, not answering for Deputy Burford, I do not know what is coming, but I would rather see a future Assembly discussing it, so I am very comfortable with it.

The Bailiff: Deputy Dyke.

Deputy Dyke: Thank you, sir.

I would just like to say that I agree with this amendment and what Deputy Inder has said. I think whatever does come down the pipeline, it is better that this should be in it and that any changes to these vital definitions should be a matter for this full Assembly to debate.

Thank you.

The Bailiff: Deputy Dudley-Owen.

Deputy Dudley-Owen: Thank you.

I am concerned about this amendment, sir, because I am supportive of it and I understand why it has been brought, but it concerns me that it has to be brought. I think it is indicative of the concern around the whole of this legislation and the lack of understanding, the lack of awareness of some of the nuances that are behind the legislation, the principles that lie behind it, the original thinking behind it and where it came from. Given that other legislatures, other jurisdictions, have discrimination legislation that has been in place for many years that is easily understood, has been tried and tested and has templates that we could have copied and pasted over into Guernsey, where we know the cost implication and the risk of that legislation, it rings real alarm bells for me that this Assembly looks like it is going to be approving this particular amendment – I am just judging from the temperature of the room at the moment.

I do not like having to ask a Committee to come back to the States because we are so unsure of what they are doing in the future. We should be able to appoint a Committee and ask them to use their best judgement, using their best advisers, going out to consultation with stakeholders and engaging with those stakeholders and be confident with the decisions they are making. This amendment seeks to cradle this Committee to such an extent that it just says, 'We are not entirely confident with what you are doing going forward, or any successor Committee in regard to this particular legislation.'

So, this has my support but it is heavily caveated because I do not like it. I think that we are holding this Committee too tightly. We should be giving this Committee free rein and confidence to be able to go ahead with this discrimination legislation ... that we are happy with the risk that we are taking, and I do not think that this Assembly is confident about the risk in this instance, the impact and the consequence of that impact, how negatively it could impact Guernsey in the future. I am not happy to be supporting this particular amendment, but I will do.

I just want to leave Assembly Members to mull over that, as to what our reason is for supporting this today, and I would be grateful to hear from Deputy Burford in this regard as to what her motivation behind this particular amendment is, if that rings true.

Thank you.

The Bailiff: Deputy Matthews.

Deputy Matthews: Thank you, sir.

I would just like to say I will be supporting this amendment. Just to speak on the question of what this could be about, I think the point is that we do not know what it might be about in the future. There are all sorts of things that could be included as protected characteristics and we should be wanting to have that debate here in this Assembly. I am in favour of us having greater scrutiny over these sorts of things.

I remember an internet meme from a while ago that went round and encouraged people to fill in their religion box with the option of 'Jedi', from the Star Wars franchise, on the basis that it would then become a protected characteristic. All these sorts of things that you could not possibly predict can happen, and so including fictional religions and things is ... It is always a good idea to have scrutiny of these types of issues, which are very important to people, to happen in this Assembly, and for that reason, I will be supporting this amendment.

2200 **The Bailiff:** Deputy Bury.

Deputy Bury: Thank you, sir. I will be brief.

As Deputy Roffey has stated, there is not a huge resistance from the Committee on this amendment, although I would just like to pick up on a point made by Deputy Dudley-Owen. I think it is similar to one she made earlier and I think it is pertinent in terms of engagement and understanding from the Committee around the legislation. Sessions were offered to the Assembly quite some time ago by officers and I think all of around three Members took those up, and, as has been widely reported, the diversity training that has been put on by our supporting parliamentary officers was also very badly attended by Members. So, I think it is important to counter the point that the facility needs to be there but people also engage with it.

Thank you, sir.

The Bailiff: Deputy Oliver.

2215 **Deputy Oliver:** Thank you.

Just really quickly, regarding the diversity training, many of us did it last term. I signed up for it this term and got an email back saying, 'You are more than welcome to come, but you have already done it.' So, maybe it was not as well attended this time round, but people had done it last term.

2220 **The Bailiff:** If nobody else is rising, I will turn back to the proposer of this amendment, Deputy Burford, to reply to the debate.

Deputy Burford: Thank you, sir.

Starting off with Deputy Soulsby's comments. The remark in the explanatory note of the amendment, that P&R have those powers to bring an Ordinance, was purely on the advice of the Law Officers that it was written in there. I can see that it is fairly superfluous because it is highly unlikely to happen, so I certainly agree with Deputy Soulsby on that.

Deputy Taylor, I suppose I just did not feel there was anything contentious about that, and I am absolutely still of the view that this is not a contentious amendment, in my opinion.

2230 You ask if it applies to all of the legislation. It applies to all of the protected grounds and the exceptions to the protected grounds. It does not necessarily apply to all of the legislation, because there is a great deal more in the Discrimination Ordinance that covers all sorts of things like consultations, training and everything else. This is purely the grounds and the exceptions thereto. Hopefully, that answers your question.

2235 You asked what particular thing I had on my mind. I had nothing on my mind, but my mind probably was crystallised slightly with the debate we have just had on the Catholic schools. If that was just brought by a Committee, it would actually be put into law and then we could have annulled it in this Assembly, but I am not sure that that is a particularly good way of going about it. I think it is important to note that in this Discrimination Ordinance ... And I will absolutely say at this point I am hugely supportive of discrimination legislation – I think we need it and I think we are way behind in having it – but every single protected ground and every single exception to those protected grounds, i.e. times when it is permissible and acceptable to discriminate – will have passed through this Assembly. I do not see that there are going to be many changes to those in the future, because hopefully, with the length of time this has taken, all of them will have been considered exceedingly carefully, so I certainly do not think that the Committee is going to be bound to coming back every other week with changes to it, but I think any new protected grounds and any new exceptions to any of the existing or new protected grounds should come back for consideration by this Assembly. They may be fairly minor, in which case they will just be nodded through, or they may be considerable, like the example we had earlier today. I think that probably covers Deputy Inder's point as well.

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I think I am probably not on the same page ... well, I am sure I am not on the same page as Deputy Dudley-Owen on this particular point. For me, this is not about not trusting the Committee or anything else; I simply think that these are matters of sufficient importance that they need a Resolution rather than just change by regulation.

2255 Thank you to Deputy Matthews for his support. I agree with him, we do not know what is coming; that is the whole point.

I think those are all the comments I have, thank you, sir, so I ask people to support the amendment.

2260 **The Bailiff:** Members of the States, Amendment 2 is proposed by Deputy Burford and seconded by Deputy Ferbrache. Those in favour; and those against.

Members voted Pour.

The Bailiff: I will declare that amendment duly carried.

Back to general debate now on the Propositions as amended. Deputy Queripel.

Deputy Queripel: Sir, thank you.

I want to start by focusing on the issue that if Proposition 1 fails it will result in delay in progressing everything else that is encapsulated in this whole discrimination legislation. Surely there is a way around that. Can't we just separate certain issues out and progress them? That might sound rather ridiculous to some of my colleagues, sir, but where there is a will there is a way. If we adopt a can-do approach instead of a mustn't-do or won't-do approach, then surely it could be done, because, oh, what a tangled web we weave.

One of the biggest mistakes the States made back in 2012 – or was it 2013? – was not to continue with the disability legislation in isolation, because lumping it in with everything else we wanted to legislate against regarding discrimination was a big mistake. I hold my hands up to that because I voted in favour of that motion, along with others who are still in this Assembly. I am wondering if that would take an amendment to these Propositions, because I think it is the responsibility of those of us who put us in this mess to try and get us out of it. On that point, I was going to ask for guidance from HM Procureur or HM Comptroller, but they are not in the Chamber at the moment –

The Bailiff: Deputy Queripel, if you pose the question, then the Procureur will, at some point, be able to answer it.

Deputy Queripel: Thank you, sir, the question being: would it take an amendment, or even a requête, to separate the issues out, so we can progress them in isolation, and is there any reason why we cannot do that? That is the question I need answered at some stage, sir. Without that information I will have to carry on with the speech that I have prepared, but against Proposition 1.

Abba had a worldwide hit several years ago with a song entitled 'I Believe in Angels'. Well, I also believe in angels, but I am not talking about angels up in heaven with wings, sitting on clouds, playing heavenly music on harps. I do not believe in those. The angels I believe in are on Earth in human form, the sort of people who are always giving and doing good for others, helping people in times of crisis. Those are the sort of angels I believe in. I actually wrote a poem once, called *Earth Angels*, but I am not going to recite it, I am sure my colleagues will be delighted to hear. By saying I do not believe in angels up in heaven, sitting on clouds, playing heavenly music on harps, am I venturing into the realms of discrimination? I guess some people would say I am, but I do not believe I am. What I do believe I am doing is exercising my right to express my belief, as laid out in the Human Rights Law.

On that point, Proposition 1 is asking us to agree to the ground of religion or belief replacing the ground of religious belief. I do not believe that is going to be to the benefit of anyone. In fact, I truly believe it will be to the detriment of everyone at some stage. I also truly believe if we do

change it to religion or belief we will be walking into a minefield – the same minefield Deputy Ferbrache referred to when he spoke earlier on today. We all know what happens in minefields, so why on earth would we want to put ourselves in that position? Somebody might say my saying we would be walking into a minefield is an opinion and not a belief, but I would argue that it is a belief because that is what I believe.

So, where do we go from there? We could try and browbeat one another into submission, with the person who could shout the loudest winning the argument, or we could just carry on arguing and the situation never gets resolved, or one of us could just walk away, or we could agree to disagree. I believe the last option is the best option, but the person who is arguing with me might not agree with that, so they carry on trying to browbeat me into submission – and that is when I walk away, because I do not believe there is any point in us continuing with our argument. I have not actually admitted defeat at that stage. I am simply walking away; I do not see any point in carrying on. But the other person does not like that, because the situation still exists between the two of us and nothing has been solved, so they take me to court in an attempt to settle the dispute. What criteria would be used to determine who is right and who is wrong? And what does the Law say about the issue?

I give way to Deputy Parkinson, sir.

Deputy Parkinson: Sir, I believe this debate is about discrimination legislation; it is not about differences of opinion on matters of personal faith or anything else.

Deputy Queripel: Sir, the whole policy letter is based on belief – philosophical belief – which is why I am talking about whether they are...

What does the Law say about the issue? If we look at paragraph 5.4 on page 21, we see we are told:

The Law Officers have advised that, in human rights terms, there are competing rights at issue. In basic terms [...] it is not sufficient for the Committee's proposals to look solely to prevent discrimination on the grounds of religion or belief

If we look at paragraph 5.8 on page 23, we are told:

there is [...] a risk of a successful legal challenge on human rights grounds, but the Committee understands that it is hard to quantify the likelihood of this.

The paragraph goes on to tell us that, in terms of this Ordinance:

the Human Rights Law means that it will be read and given effect to, so far as it is possible, in a way that gives effect to all of the Convention rights. If that is not possible, the Royal Court may, on application being made to it, declare a provision of it incompatible with the Convention rights.

In other words, if this Proposition succeeds, we will be walking into that minefield –

2265 **Deputy Roffey:** Point of correction.

Deputy Queripel: – because this is an extremely grey area.

2270 **The Bailiff:** Deputy Roffey, point of correction.

Deputy Roffey: The legal advice that Deputy Lester Queripel has just read out related specifically to the proposal that has just been dealt with by the Murray amendment and therefore no longer stands, as I understand it.

2275 **The Bailiff:** Yes, I think that is right, Deputy Queripel, so what you have just referred to has been addressed.

Deputy Queripel: In that case I will dispatch to the next page of my speech, sir.

2280 The Committee obviously truly believe they are right in pursuing Proposition 1 on the grounds that it would benefit the community. I disagree with them. I do not believe it will benefit the community. They have their beliefs, I have mine. I respect their beliefs, and in turn I ask them to respect mine. There is no need whatsoever to resort to below-the-belt, baseline personality politics, as we often witness in this Chamber, that seek to discredit or ridicule another person because they have another view.

2285 I want to focus for a moment – and take a leaf out of Deputy McKenna’s book – on the dictionary definition of the word ‘philosophical’, because it appears in this policy letter. In the policy letter it refers to protecting people from discrimination on the basis of philosophical belief, or even the lack of philosophical belief. As I said, this is a really grey area. So, what does the dictionary tell us in relation to the word ‘philosophical’? It starts by saying ‘to be calm in the face of trouble’. That is
2290 much easier said than done, but that is what it says, so we have to accept that. The definition goes on to say that philosophy is based on the study of the nature of knowledge and also the existence and the principles of moral and aesthetic value, as well as the beliefs and attitudes of an individual or a group. I am going to repeat the last part, because it is key to what I am about to add: and to the beliefs and attitudes of an individual or a group. So, the whole focus of this policy letter is
2295 fundamentally flawed because it fails to recognise the complete definition of the word ‘philosophical’ as laid out in the dictionary. It does not recognise the fact that attitudes are actually included in that definition. And yet we are told on several occasions in this policy letter that for a philosophical belief to fall within the Equality Act it has to be a belief and not an opinion or a view. The word ‘attitude’ does not even appear anywhere in that statement, even though the dictionary
2300 definition of the word tells us that the beliefs and attitudes of an individual or group are paramount in defining philosophy.

Sir, I am sure every one of my colleagues will have forensically analysed this document in front of them, just like I have. Of that I have no doubt, but there will be some members of our community listening on the radio who have not had the opportunity to do that, so for their benefit I am going
2305 to read out what we are told in this document. It says:

for a philosophical belief to fall within the Equality Act 2010 it must:

- be genuinely held;
- be a belief and not an opinion or viewpoint [...];
- be a belief as to a weighty and substantial aspect of human life and behaviour;
- attain a certain level of [...] seriousness, cohesion and importance;
- be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.

Every single one of those five ‘tests’, as they are referred to in this policy letter, is open to interpretation, which will, of course, be misinterpretation to someone else who has the opposite belief, which is why I say this is a really grey area. A belief being genuinely held is subjective. The distinction between a view, an opinion and a belief is subjective. For a belief to be a weighty and
2310 substantial aspect of human life and behaviour is subjective. For a philosophical belief to have attained a certain level of seriousness and importance is subjective. And anyway, what is this certain level? Who decides what the level is, and what criteria do they employ to actually come to that conclusion? To be worthy of respect in a democratic society and not conflict with the fundamental rights of others is subjective and therefore open to misinterpretation and challenge. That is actually
2315 written into this report. My colleagues will know that, sir, because they have all read it from cover to cover, but the people listening on the radio may not know that. That is written in this report; it is not me saying all that.

We are told on more than one occasion that whether a belief constitutes a philosophical belief is open to interpretation. I have sat alongside a lot of them over the years in a court of law or a
2320 tribunal as a McKenzie friend to a client to have seen for myself instances where interpretation has been challenged and referred to as misinterpretation. So, there is no doubt this is my field and an

extremely grey area. And it is not a belief, it is a fact; it says so in the letter itself. Why would we want to put ourselves in a position where we are forced to negotiate a minefield? Surely that would make no sense at all.

2325 I am focusing so much on this belief and philosophical belief because the whole policy letter is based on that. When I was a practising complementary therapist, some years ago now, I used to not only treat people with dementia but I also used to treat people who I believed were displaying the onset of dementia. The first thing a therapist does before they start treating a client is take a case history, so you find out what their medical history is. As a result of all of that, I believe that
2330 decades of repetition is one reason why people end up with dementia. Is that just a belief or a philosophical belief? It might not matter to a lot of people, but it could be a major issue in a court of law because, as a complementary therapist you risk the person you are treating saying, 'I feel worse after you have treated me – I am taking you to court,' which is why, of course, we have to be insured and we have to be fully qualified. But anyway, it could be a major issue in a court of law.

2335 Today, I am wearing a black suit, a black shirt, black shoes and a black and white tie, so my predominant colour is black. Am I discriminating against white people because I choose to be predominantly black? I do not believe I am, but I do believe there are those out in the community who will say I am. Why do I say that? Some colleagues are shaking their heads – they need to listen to what I am going to say next. I believe it for several reasons, one of those reasons being that
2340 several years ago, when I laid an amendment to equalise the Supported Living and Ageing Well work streams, I wore a black suit, black shirt and red tie, and after the debate, during which the amendment did not get the support it needed to succeed, a colleague came up to me and said, 'I think the amendment would have stood more chance of succeeding if you had not been wearing so much black.' That is how ludicrous this whole issue will become if we open it up to any belief, as
2345 Proposition 1 is asking us to do.

Moving to a close, I very much appreciate that my colleagues on ESS did not actually collate and compile the five tests I referred to earlier, but they obviously resonate with them by going on what we are told in this policy letter. They say, in paragraph 4.2 on page 13, that they believe that just to protect people from discrimination on the ground of religious belief, or lack of religious belief, is
2350 too limiting. I realise that the Committee believe they have come to that conclusion with the best of intentions; I get that, but I believe they are wrong. I say that because we all know where we are when we talk about religion and religious beliefs, but if we broaden that out to religion or belief, then no one will have a clue where we are because it is such a grey area and such a minefield.

Focusing on unnecessary duplication, surely religion or belief is already covered in Article 9 of the Human Rights Law. Deputy Ferbrache touched on this, this morning; I just want to elaborate on it in speaking against Proposition 1. The first sentence of Article 9.1 tells us:

Everyone has the right to freedom of thought, conscience and religion;

Article 9.2 tells us:

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 interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

That should be enough, but just in case it is not enough, the first sentence of Article 10.1 tells us:

Everyone has the right to freedom of expression.

2360 And Article 14, under the heading 'Prohibition of discrimination', tells us:

the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground ...

It is already covered – 'on any ground' – so why do we need to duplicate it?

And finally, Article 17, under the heading 'Prohibition of abuse of rights', tells us:

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein ...

Everything is already covered in those rights, surely. Why do we need to duplicate them? So, my question to Deputy Roffey is: why isn't all of that enough? What is the problem? Why do you want to try and broaden it out to religion or any belief when it is already covered in the Human Rights Law?

I would like a recorded vote when we go to the vote, please. Thank you.

The Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Sir, I commend most of what Deputy Queripel has just said in relation to the points he has raised. He did remind me of two other songs, which he did not cite when he was talking about his apparel – *Paint it Black*, but also, I think, on a more serious point, it reminded me of the Bachelors' song which says, in part, 'I believe for every drop of rain that falls a flower grows', and I think in relation that we are talking about this particular Proposition, Proposition 1 ...

Deputy Queripel has already read the Grainger test, the five precepts. He has read information on that, but what I want to say in connection with that is Deputy Roffey, quite properly, threw down a challenge to me just before lunch and I accept that challenge. What I do not want to do is vote against something that means that the general thrust of the Ordinances etc. cannot go through, but I do not think that is a problem if I vote against Proposition 1 because we have an amended Proposition 2 which was accepted by the States by a significant number in relation to the Deputies Murray and Haskins amendment, so that will still stand. I believe the position is that if Proposition 1 and Proposition 2 as amended were both rejected, because Proposition 3 has already fallen to the ground as a result of the vote that we took just before, then we would be in a real pickle in relation to how we could go forward with the Ordinance etc. and the legislation that we delay. But I believe if we just vote against Proposition 1 but then vote for the amended Proposition 2, which is now Proposition 2, it would not hold anything up. If I am wrong ... I appreciate the Procureur has already sent a note earlier saying she has a cold and will come if she has to give advice, but I do not need her to come in and say that, unless I have misunderstood it. So, if we vote at the conclusion of this debate for Proposition 2 but we vote against Proposition 1, we would still be able to move forward.

What concerns me – my quotation from the Bachelors' song – is when we look at paragraph 4.2 of the Billet it talks about how they reached the decision to expand religious belief to religion or belief. It says:

In reaching this decision, the Committee has taken into consideration the strong arguments from equality stakeholders and humanist groups that people should also be protected from discrimination on the basis of non-religious beliefs, provided that they meet certain tests.

I understand that, and if we were talking about somebody being sacked or discriminated against because they were atheist, agnostic or humanist, in my view that would be objectionable. But it goes beyond that. It says:

The Committee's view was that just to protect people from discrimination on the ground of religious belief (or lack of religious belief) was too limited. The Committee accepted concerns expressed by business groups and some legal professionals that if the ground was to be reframed as 'religion or belief' then it would be sensible and pragmatic to adopt the tests from *Grainger plc v Nicholson*. The Committee accepted the argument made by some legal professionals that it would not be desirable to limit the protection from discrimination on the basis of philosophical beliefs to those beliefs that were 'analogous to religion' as it was not clear what this meant and could lead to protracted debate within the Tribunal setting, but to instead exclude single issue or political beliefs (e.g. opposition to fox-hunting, taxation issues, educational model, etc.). The Committee agreed that it supported the policy intent that the belief should not conflict with the fundamental rights of other living persons, but the precise wording of that test

– and this is going to be a difficulty for any draftsman, I would respectfully suggest –

would be a matter for the legal drafting team.

The point is that I see the intent: it is to protect humanists, agnostics, etc. I understand that, but the trouble is it would be much wider than that because you would not be able to limit it to that, and then we would get into all kinds of arguments and concerns about what that meant. Therefore, I cannot vote for it because it is just too wide and it is going to cause too many difficulties. I know they have it in England and in the Isle of Man – well done England, well done the Isle of Man – but I have my concerns about Guernsey and us being able to adapt and do this, so therefore I will not vote for it.

I say now – so I do not make another speech; I do not think I can anyway – that I will be voting for the amended Proposition 2 because I want this discrimination legislation to proceed.

The Bailiff: Deputy Gollop.

Deputy Gollop: I think I understood much of what Deputy Queripel was saying; hopefully we are not just minded by the colours or styles and smartness of our clothes in listening to arguments. I do remember the esteemed President Michelle Le Clerc used to often wear bright colours when she wanted to get things through, and she had a very good average of getting difficult policy letters through in the Chamber.

I recall the song – funnily enough, it was revived as a hit by Westlife, I think, for the millennium – ‘I Believe in Angels’, but actually it was *I Have a Dream*, like the famous Martin Luther King. That was the title of the Abba song. They are still going with *I Still Have Faith in You* and *Just a Notion*. I have just a notion that – hopefully – all of this will be successful today with the amendment.

You cannot have it both ways. When we embarked on this work we widened the scope because that was the message coming to us from professional people, to a degree, from lobbyists, from much of the community – not all of the community but much of the community. We have had great success in recent years in Guernsey, not only, I think, the ecumenical atmosphere but, significantly, Pride, Liberate and all of that. In fact, Guernsey has been, to a degree, leading the field now with same-sex marriage and so on, although we know that certain people and certain religions and denominations might not support that. Nevertheless, we have even seen the Town Church have ‘Liberate’ balloons outside. So, it is a broad church, in a way.

We have been criticised in some quarters for trawling the world for best practice examples, because at some different points various people have come – an Irish perspective, Australia, New Zealand, England, Scotland, wherever, and Jersey. But we have been trying to make the best and most appropriate modern legislation for Guernsey. Certain people say, ‘Well, actually you should replicate legislation from elsewhere,’ because (a) that is easier for the lawyers, (b) it provides more certainty and (c) it is perhaps stronger from a personnel point of view, and of course there is case law. Well, here we are actually importing religion or belief along with religious belief precisely along the lines of the UK definition, with the addition of the five tests from the case that is now 11 years old, *Grainger plc v Nicholson*. So, we know where we are going.

I know in a census thousands of students apparently said their religion was Jedi, more than conventional faiths and so on, and I do not think Jedi would be regarded perhaps as an established religion – although ‘May the Force be with you’ might work for me; I do not know – but I think we really know what we mean by religion or belief. And yes, you could come across people, really strong humanists ... humanitarian beliefs ... Buddhism you could argue is a faith, a lifestyle or a religion. But the point I am making – despite what Deputy Ferbrache, a very senior lawyer and President of Policy & Resources, has said – is, to a degree, the case law in other countries, other jurisdictions, clearly in England, is sound enough and although there is a degree of subjectivity here, that is precisely the reason why we wish to employ professional advisers and a tribunal system, just as we do with planning and taxation and many other areas, and financial regulation, so there would not be the man on the bus’s view or the person who is arguing on Facebook – or Karen on Facebook, as, recently, Deputy ... He was not talking about a specific Karen, certainly not anyone connected with disability. It is a phrase unfortunately used in America to describe somebody; perhaps not a very good phrase.

2450 The point I am making is that it is a pretty robust process and this is not the end of the story. The Ordinance will come back, the work is being done, everybody in the Chamber and outside will be able to lobby and lobby again if there are things they are not happy with. I think the important thing is to get on with the job that we have set upon for many years with the passing of human rights legislation. Deputy Ferbrache has rightly spoken of its importance and its power, but I am not
2455 sure the States' Members of that era were all in favour of it; they saw it as a lawyers' charter. I do not think it has generally proved to be, and if it has been, it has brought good, such as reform of the housing and population laws.

But I think, too, there have been some lobbies to say Guernsey will not do itself any favours if it has additional legislation, and I would argue that the opposite is also true. We have been putting
2460 out a strong case, especially since COVID, that Guernsey is a wonderful place to settle for young digital nomads, entrepreneurs, people who perhaps have left the Island but wish to return. I think many of those people bring ideas back from places outside of the Bailiwick, and increasingly I find in the under-50s – especially more female people than male people, but it is not entirely a gender issue – they actually want progressive legislation. They want to feel we have diversity, inclusivity,
2465 equality and freedom from discrimination.

We had an excellent speech this morning from Deputy de Sausmarez, who said the whole point of this is not picking out individual groups that require paternalistic help; it is about equality for all under the law against a recognised standard, and not only in black and white in Guernsey but based upon best practice in other jurisdictions. We have already heard the Isle of Man has religion and
2470 belief in this way, so maybe the Isle of Women as well should, or the Isle of Guernsey.

The Bailiff: Before I turn to the next speaker in general debate, Members will be aware that a third amendment has now been submitted to the Greffier. I just wonder if the opportunity should be taken now, if Deputy Burford, as the proposer of the amendment, wishes the amendment to be
2475 circulated, so that we can at least see what the Propositions being debated are.

Deputy Burford: Yes, please, sir. Thank you.

The Bailiff: Can we circulate paper copies of Amendment 3, then, please?
2480 Does every Member now have a copy of Amendment 3? I am going to suggest, given that this has only just been circulated, Deputy Burford, that we might invite the Greffier to read it first and then I will invite you to open on it.

Deputy Burford: Yes, please, sir. Thank you.

2485 **The Bailiff:** Greffier.

[Amendment 3](#)

Insert the following Proposition immediately after Proposition 3: -

'4. To agree that the protected ground of sexual orientation shall be as follows:

(1) Sexual orientation means a person's sexual orientation towards—

(a) persons of the same sex,

(b) persons of the opposite sex, or

(c) persons of either sex.

(2) In relation to the protected ground of sexual orientation—

(a) a reference to a person who has a particular protected ground is a reference to a person who is of a particular sexual orientation;

(b) a reference to persons who share a protected ground is a reference to persons who are of the same sexual orientation.

The Bailiff: Deputy Burford, then, please, to move the amendment.

Deputy Burford: Thank you, sir.

2490 Let me start by laying my cards firmly on the table: I support legal protections to prevent unreasonable discrimination and I think that they are long overdue.

2495 In July last year, Deputy Parkinson and former Deputy Tooley brought an amendment to the policy letter entitled 'Proposals for a new Discrimination Ordinance'. The purpose of that amendment was to bring the grounds of sexual orientation and religion – or, as it is now rightly proposed, religion and belief – forward to phase 1. Hence this policy letter on the exceptions to those grounds. I listened to the debate on the amendment at the time, and a few days ago I reread the *Hansard*. What was clear was that the Committee were very uncomfortable with the amendment, with two Members voting against it out of only three Members in the whole Assembly who opposed it – the other one being Deputy de Sausmarez – and the President abstaining. The Committee were rightly concerned that the grounds and the exceptions to them could prove highly controversial, but the States were swayed by the proposer and a succession of speakers who said that it was all
2500 totally straightforward. Deputy Parkinson was wrong about the lack of controversy on the religion and belief ground. Let's hope he was right about the straightforwardness of the sexual orientation ground.

So, to the purpose of this amendment. It is to substitute the wording from the UK Equality Act 2010 relating to the ground of sexual orientation in place of the wording in the draft legislation which, in turn, was lifted from a mixture of UK and Australian legislation. At that point I will just point out that the explanatory note refers to the 1984 Australian legislation, but in fact there were also parts from the Australia Sex Discrimination (Amendment) Act 2013.

For complete clarity, I am proposing the UK definition with the minor exception that it will read 'protected ground' instead of 'protected characteristic' because the word 'ground' runs through all the existing draft legislation. However, the fundamental difference between the wording that this amendment proposes and the draft legislation wording is that the UK wording uses the phrase 'opposite sex' whilst the Australian hybrid draft legislation wording says 'different sex'. The reason I believe we should adopt the established UK version is that the wording in the existing draft legislation could be seen as implying that there are more than two sexes.

Before drafting this amendment I asked the officers why they had chosen their wording, and the response was, and I quote: 'I believe the reference to "different sex" rather than "opposite sex" may be to include protection for intersex people.' I have to say it did not seem like a particularly competent reply, but in any case I will address it. However, in addressing it, rather than just using the word 'intersex', which is rejected as outdated by some people with what are more accurately termed differences, disorders or variations of sexual development who feel it inaccurately suggests they are somehow between male and female, I will use the generally preferred medical term 'DSD', which stands for differences of sex development and which describes differences which occur in the developing embryo. The first and most important thing to say is that in biological terms people with a DSD are still either male or female; they are not a third sex. There are only ova and sperm; there is no third gamete and therefore there is no third or even fourth or fifth sex. Sex is demonstrably binary and it does not exist on a spectrum.

To expand on the above point and to ensure that the voices of those with DSDs are heard, I will now quote at some length from a submission to the Census (Amendment) (Scotland) Bill in 2018 by the national charity DSD Families, which exists to promote the rights and well-being of children with a difference of sex development:

DSD (or intersex) is an umbrella name for some 40 different conditions that affect the development of the reproductive organs and of the genitals.

These biological conditions become apparent due either to genital appearance

– at birth –

or different development at the time of puberty.

DSD conditions are understood in terms of specific health diagnoses involving chromosomes, hormones, the development of the reproductive organs and puberty,

They go on to say:

Some reporting has referred to a statistic of 1.7% (1/60) of the total population being 'intersex' or 'as common as red hair'. This tally includes a wide range of sex developmental endocrine/gynaecological/urological conditions where there is no ambiguity regarding the person's sex [...] People with such development are recorded straightforwardly as male or female at birth. [...]

[A very small number] of DSD presentations to health professionals require specialist DSD input to understand why a baby is born with genitals that look different. These represent ca 0.02% of the total population [...] This statistic includes a small number of adolescent girls who are diagnosed in puberty [...]

The report continues:

DSD/ intersex is not a 'third' biological sex, it is a series of different biological pathways which produce different anatomical characteristics among people who are female or male.

2505 The paper also goes on to stress in detail that DSD conditions are not a gender identity issue. A person cannot identify into having a DSD or being intersex; they either physically have such a condition or they do not. It is a biological, developmental, diagnosable condition. Therefore, and in opposition to the officer's somewhat unsure explanation, the existence of DSD conditions in no way disproves the widely understood and accepted fact that there are only two sexes.

2510 When I consulted the Law Officers on this amendment I received a response from the Procureur and, via her, the officer who is involved in drafting the Law for the Committee. I was advised that the Australian wording was used because the previous Committee potentially wished to cover those who identify as a different gender identity. I checked with two Members of the previous Committee, who said that that was not their personal intention and, further, that the Committee intention had not actually been finalised, as it was expected that this ground would not be debated until phase 2, but the amendment then put it in phase 1. I am also advised that the current Committee have not discussed this in detail, largely, I expect, as they were only required by the Parkinson amendment to consider exceptions. But to take up the idea of this ground potentially covering myriad different gender identities, we need to be clear: this is a Law on sexual orientation. Sexual orientation is based on sex, not on gender identity. Everyone has a sex, including those who subscribe to also having a gender identity, so everyone is covered on the basis of their sex without the need to complicate it further.

2525 It is probably appropriate at this point, for clarity, to set out the difference in meaning between the words 'sex' and 'gender'. It is true that these two words have, in some contexts, been used interchangeably, perhaps largely due to squeamishness or embarrassment about using the same word – 'sex' – to refer to the biological fact of being male or female as is used to refer to the act of sexual intercourse. However, they have distinct meanings and these meanings are agreed upon by organisations as diverse as Stonewall and the UN. Sex is a biological fact of being male or female, purely and simple. 'Gender' refers to the cultural ideas of masculinity and femininity, including stereotypes associated with each sex, which vary between cultures and change over time. Issues relating to gender in the form of gender identity will not be ignored, and neither should they be. They will form part of the Discrimination Ordinance in phase 2, and that is yet another reason why this ground should have been left where the previous Committee carefully, sensibly and rationally placed it, in phase 2 with the other grounds that relate to sex and to genders, so that the debate could be had in the round. In that way, these difficult and, in some circles at least, contentious issues on sex versus gender could have been considered together, but that was not to be, and we have to deal with it today.

2535 The debate on the Parkinson amendment also centred around some Members' concerns that the sexual orientation ground would require a definition of sex, in which case it should not be brought forward but rather debated alongside the sex ground in phase 2. The Assembly was assured by Deputy Parkinson that there would be no need for a definition of sex, and indeed there is not one given in the policy letter or the draft legislation so far, but irrespective, there is a need for clear wording and clear meanings and we do not have that in the proposed definition that was in the

2545 Parkinson amendment which is therefore a resolution. In trying to get to the bottom of all this, all I have been able to uncover are erroneous suppositions about people with a DSD, including confused and incorrect claims that they are neither male nor female, and supposition about the previous Committee's intention behind the use of the Australian hybrid wording, which while it may have been the intention of some of the Members was clearly not the stated intention of all of them.

2550 One further point – and I am grateful to HM Comptroller for having advised me on this – is that by using a definition that is taken directly from UK law and not a hybrid or predominantly Australian definition, then UK case law is more easily used to inform any claim.

2555 In summary, the purpose of this amendment is one of accuracy, reality and clarity. One should not write into law something that is ambiguous or misleading, or simply plain wrong. Crucially, this amendment does not in any way dilute the important protection that the Law will afford to everyone, nor does it exclude anyone from that protection, and I ask Members to support it whether or not they intend to ultimately support the Committee's proposals.

Thank you.

The Bailiff: Deputy Dudley-Owen, do you formally second the amendment?

2560 **Deputy Dudley-Owen:** I do, sir, thank you.

Deputy Haskins: Sir, I would like to –

2565 **Deputy Kazantseva-Miller:** Rule 24(6), please.

Deputy Haskins: I would like to bring a motion pursuant to 24(6), please.

2570 **The Bailiff:** Can I say that I think Deputy Kazantseva-Miller possibly just trumps that. That was 24(6), wasn't it, Deputy Kazantseva-Miller?

Deputy Kazantseva-Miller: Yes, sir.

2575 **The Bailiff:** Once again, Members of the States, I am satisfied that Amendment 3 does go further than the original Propositions because none of the original Propositions deal with the definition that arises from the 2020 Resolution – I think it is 1A – that deals with sexual orientation as a ground, and therefore Rule 24(6) is engaged. So, once again, there will be a vote as to whether or not ... I take it that is the motion, that the amendment be not debated and no vote taken thereon. Those in favour; those against.

Members voted Pour.

2580 **The Bailiff:** I declare that carried.

Deputy Queripel: Sir, can I have clarification, please?

The Bailiff: No, you can have a request for a recorded vote, if you want it, Deputy Queripel.

2585 **Deputy Queripel:** It is simply, sir, that we are in general debate and an amendment has been laid during general debate. I wondered if we are missing a fundamental point somewhere along the line.

2590 **The Bailiff:** We can always interrupt general debate when a new amendment comes forward, Deputy Queripel.

Deputy Burford: I request a recorded vote, please, sir.

2595 **The Bailiff:** That is fine, we will have a recorded vote in a moment.

I have taken Amendment 3 at this stage because I thought it was better to deal with Amendment 3, Deputy Queripel, so that those people who wanted to speak in general debate, depending on what happened on this amendment, would know what the Propositions were to which they were speaking.

2600 We are now going to have a recorded vote on the motion pursuant to Rule 24(6), which has been proposed by Deputy Kazantseva-Miller.

There was a recorded vote.

Lost – Pour 15, Contre 16, Ne vote pas 3, Absent 5

POUR

Deputy Cameron
Deputy de Lisle
Deputy Dyke
Deputy Fairclough
Deputy Gabriel
Deputy Haskins
Deputy Kazantseva-Miller
Deputy Meerveld
Deputy Oliver
Deputy Parkinson
Deputy Queripel
Deputy Roffey
Deputy Soulsby
Deputy Vermeulen
Deputy Bury

CONTRE

Deputy Dudley-Owen
Deputy Gollop
Deputy Helyar
Deputy Leadbeater
Deputy Mahoney
Deputy McKenna
Deputy Murray
Deputy Prow
Alderney Rep. Roberts
Alderney Rep. Snowden
Deputy Taylor
Deputy Trott
Deputy Aldwell
Deputy Blin
Deputy Brouard
Deputy Burford

NE VOTE PAS

Deputy de Sausmarez
Deputy Falla
Deputy Ferbrache

ABSENT

Deputy Inder
Deputy Le Tocq
Deputy Matthews
Deputy Moakes
Deputy St Pier

The Bailiff: Members of the States, on the motion pursuant to Rule 24(6) there voted Pour, 15 Members; Contre, 16 Members; 3 abstentions; and 5 Members were absent. Therefore, this time I will declare it lost and debate on the amendment will now continue.

2605 I am going to call Deputy Roffey because he is the President of the Committee.

Deputy Roffey: I think it would probably be useful if I gave my stance now, and by doing so I will also explain why I voted in favour of the motion.

2610 I do not believe this is the time to be trying to define sex. This Assembly decided that the sex grounds should come later. It is going to be a painfully difficult ... I am looking forward to it like I am looking forward to jumping into the icy sea, with the views that I know are going to come from the different sides. It needs to be considered.

2615 We were criticised this morning, maybe rightly, for not engaging properly over the grounds of religion. Well, this needs proper community engagement. One view has been put forward – and I am not saying I disagree with it – that sex is absolutely binary and there is no option other than to allocate everybody as male or female. I am not an expert in biology; I am going to need an awful lot of advice and handholding, to be honest. I would like to say I am not an expert in sex – and I am not in any way, shape or form! *(Laughter)* But the point is that this will be ... We do not need to do it today. What we are talking about today is sexual orientation. We are not talking about who people are, we are talking about who they are attracted to and whether they should be discriminated against on the basis of who they are attracted to. There is nothing in the current definition in the policy letter, which says 'or different sex', which excludes, down the road when we come to considering the sex option, deciding that it is a binary thing, that everybody is either male or female, full stop. 'Different sex' will not cut across that in any way whatsoever, but if we change it to

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2625 'opposite sex', if the decision is different to that down the road, when we come to give public consideration to this really difficult issue of definition of sex, we will have, I think, prejudiced that.

This is not something we have just taken from Australia. I cannot remember how many times people have asked me, 'Why don't you lean heavily on the Jersey legislation?' We have leaned heavily on the Jersey legislation and this is exactly the definition that Jersey use in their own legislation.

I do understand that Deputy Burford feels very strongly about that, and she is quoting learned sources that suggest that her view is the only one, but there are lots of learned sources that suggest the opposite. Here is a quote from plannedparenthood.org:

It's hard to know exactly how many people are intersex, but estimates suggest that about 1-2 in 100 people born in the US

– this is a US study –

are intersex.

There are many different ways someone can be intersex. Some intersex people have genitals or internal sex organs that fall outside the male/female categories — such as a person with both ovarian and testicular tissues. Other intersex people have combinations of chromosomes that are different than XY (usually associated with male) and XX (usually associated with female), like XXY. And some people are born with external genitals that fall into the typical

2635 – excuse me going into this detail –

male/female categories, but their internal organs or hormones don't.

I will quote another article, from *Scientific American*, which is actually taking an article that I think first appeared in *Nature*:

When genetics is taken into consideration, the boundary between the sexes becomes even blurrier. Scientists have identified many of the genes involved in the main forms of DSD,

– disorders of sexual development –

and have uncovered variations in these genes that have subtle effects on a person's anatomical or physiological sex. [...] These discoveries do not sit well in a world in which sex is still defined in binary terms.

I do not know which side of the argument I am convinced of. I have got a certain attraction to what ... Because I am an old-fashioned bloke, it seems very black and white to me and simple, and that is a certain attraction to the argument that Deputy Burford is putting forward, but I also want to be open minded and listen to the arguments of the other side.

We have put aside, frankly, a couple of months of consultation and proper work in taking soundings from informed groups before actually addressing this issue, and we know whatever final answer we come up with will be attacked from one side or another. That is something we need to do when we deal with the sex ground, which is in a later phase of this Law. We are not dealing with the sex ground today, which is why this really does fall outside the remit of what we are talking about here. We are talking about stopping people being discriminated against on the basis of who they are attracted to, and I think that is really quite straightforward.

Please, if you vote against this amendment you are not removing your right, later on down the road when we consider the sex ground, to say it is completely binary and that is how it should be. But if you go with the amendment you are more or less removing the possibility of going to the opposite conclusion. This is not something that should be decided today. It is something that needs real consultation, real in-depth consideration, and I urge Members to vote against this amendment.

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The Bailiff: Deputy Ferbrache.

Deputy Ferbrache: Sir, I agree with much of what Deputy Roffey said. I abstained in relation to the motion because I thought ... but I am going to vote against the amendment. When I read it, it reminded me – and I have looked it up since, so my memory is reasonably okay... Because I am an older bloke, like Deputy Roffey – in fact, an even older bloke than Deputy Roffey – I perhaps, in this regard, may be – and I do not mean it disrespectfully – a bit more liberal than him.

When I studied matrimonial family law in the very early 1970s there was a case that was hot off the press called *Corbett v Corbett (Otherwise Ashley)* decided by Mr Justice Ormrod in February 1970. I have looked it up again, just to make sure, because the memory plays tricks. It was a case under the Nullity of Marriage Act. It had been a purported marriage in 1963 between a man, a male, and a female transsexual. What Mr Justice Ormrod held was that – and I thought it was out of date then, in 1970, but we are in 2021 now:

Because marriage is essentially a union between a man and a woman, the relationship depended on sex, and not on gender. The law should adopt the chromosomal, gonadal and genital tests. If all three are congruent,

– goodness me –

that should determine a person's sex for the purpose of marriage. Any operative intervention should be ignored. The biological sexual constitution of an individual is fixed at birth, at the latest, and cannot be changed either by the natural development of organs of the opposite sex or by medical or surgical means. The marriage was void *ab initio*.

What gave Mr Justice Ormrod comfort in his judgment in 1970 was that he applied a case from 1886, *Hyde v Hyde and Woodmansee*. Lord Penzance defined marriage:

I conceive that marriage, as understood in Christendom,

– my goodness me –

may for this purpose be defined as the voluntary union for life of one man and one woman, to the exclusion of all others.

Well, we have moved on from that, haven't we? We have moved on from that considerably. I do not think sex is gender. I appreciate Deputy Roffey's point – he is absolutely right, it is for another day, a proper consideration – but I can nail my colours to the mast now. I think that the world has moved on. It is not just binary, it is much wider than that – and why should we, in the 21st century, seek to restrict people's feelings, people's orientations? Why on earth should we be doing that? Let people live their lives; let them enjoy their lives in the fullest sense that they particularly can.

The Bailiff: Deputy Meerveld.

Deputy Meerveld: Thank you, sir.

I agree with Deputy Roffey 100%. I voted in favour of not debating this – the eminently sensible Proposition from Deputy Kazantseva-Miller – and I will be voting against the amendment itself, but I am coming from a slightly different direction.

It is something I have spoken about before in this Assembly and it is something that has been reported recently in the media, relating to conversations in the SAC Committee, and this is to do with governance. I have a question for Deputy Burford, the proposer of this amendment – not why has this amendment been laid, but why has it been laid now? We are at four o'clock, in the middle of general debate, and we have an amendment that has come to the Assembly with far-reaching consequences – with no consultation with stakeholders, leaving us, as Members, with no time to consider the implications – and with potentially far-reaching implications. This policy letter was published over two months ago. It was supposed to be debated and finalised at the debate on 13th October, yet we are in November and we are in the middle of general debate and an amendment comes out of the blue. This, to me, is the height of poor governance. It does not give Members of this Assembly time to consider the proper implications. It obviously does not involve

any chance to consult with the people who are actually affected by it. As Deputy Roffey said, this is something that will come back to the States for consideration.

2700 I voted for this not to be debated. I do not think that in the future we want to see amendments like this, and SACC definitely will be taking this as another example of potentially damaging amendments – not because of their content but the way they are presented – when we consider changing the Rules regarding the submission of Propositions, both primary and secondary, to the Assembly, and bringing it back to the Assembly to talk about how we can improve the governance going forward.

2705 Thank you, sir.

The Bailiff: Deputy Gollop.

2710 **Deputy Gollop:** I missed the chance earlier perhaps to consult with colleagues on ESS on this matter, but I do agree, I think, with the thrust of Deputy Roffey's argument.

Deputy Oliver, earlier, talked about equality training, diversity training, and in fact one of the good things about SACC this term and the leadership of Deputy Meerveld and Deputy Queripel is that we have had a lot of induction and we have had a lot of opportunity to go on these courses. Ironically, the presentation that we had on the Equalities Law, I recall, was partly a hybrid, was partly
2715 online, and some of us were at another presentation at the time – I remember that myself and Deputy Dudley-Owen were at another meeting – but these things happen in the calendar.

Where I am interested is I probably, at this moment, lean towards the Deputy Dudley-Owen/Deputy Burford amendment as maybe the right legal way to go. I do not know how it conforms with legislation in, say, Scotland, or what J K Rowling has been praised or criticised for,
2720 the really complicated debates involving sport and access to private and public facilities, but it is a very complicated area.

I would say that I remember one or two Members of the last Committee said that of all the things they had come across in politics, this was about the most sophisticated and complicated area of political work you could undertake. It is specialist. One or two Deputies have said, 'What do ESS do
2725 all day?' Well, we have already had three policy letters in the last two days. We have a lot, and this work has been jaw-dropping and it has been for many years. It is not just numerous – we have excellent staff advisers – but it is sophisticated and complicated and, in some cases, unknown. I have sometimes got annoyed when critics of the legislation have said this will undoubtedly happen in Guernsey, or society, because actually you are still seeing cases in England – where they have had
2730 laws for some time – that go to the Supreme Court or other bodies. There is no final-final answer.

I think the wisdom of Deputy Meerveld's approach, and Deputy Roffey and Deputy Ferbrache possibly all singing from the same hymn sheet, is that despite the merits of this amendment, the correct path for social security in the States as a whole and society is to put this out to sensible consultation with all stakeholders, and therefore I do not think it is appropriate for us to vote this
2735 definition today, but that does not mean to say I do not think the amendment is without merit.

The Bailiff: Deputy Parkinson.

Deputy Parkinson: Thank you, sir.

2740 As the proposer of the amendment that brought us to this debate, I feel I have to comment on this, but fortunately I do not need to speak for very long because Deputy Roffey has said pretty much everything I would want to say, so I will end up simply underlining some of the things he has said.

2745 When we moved the original amendment that brought religion and sexual orientation into the first stage of the protected characteristics brought within the anti-discrimination laws, we were very clear that we were talking about sexual orientation and not gender identity. Gender identity will be a matter for discussion when the States, hopefully, gets to phase 2 of that programme. The provision we are discussing here is the sexual orientation provision. It basically says that people cannot be

discriminated against on the basis of who they are attracted to. It really does not matter who they are attracted to, whether that is a male or a female, or someone, somehow, in between; the point is that the legislation would say that they cannot be discriminated against because of the person they are attracted to.

Deputy Burford clearly wants to make some point about ... She is very firmly of the view that there are only two sexes and therefore it is a binary choice, although, of course, some people are attracted to both, but she would say if you have said 'men, women or either' you have covered all possibilities. As Deputy Roffey says, that is not quite so clear cut in biological terms. There are a reasonably large number of people who have either XXY chromosomes or XYY chromosomes instead of the normal XX or XY. That is simply a biological fact. They have some form of intersex condition which is biological. It is not a social construct. It may manifest itself in various physical ways in terms of their appearance and so on. But the point is we do not need to go into all those definitions here and now. We are not here discussing who the person is, the person who is experiencing the attraction to someone else, and we do not really need to define who it is they are attracted to. All we need to say is that people should not be discriminated against on the basis of who they are attracted to.

I also agree with Deputy Meerveld that this has been sprung on the Assembly at the 11th hour in the middle of a debate. There are very complex technical issues here which should be consulted on widely and which will, no doubt, be debated extensively when we get on to discussing gender identity, but they are simply not in point here. It does not matter whether the person identifies as male or female, it does not matter what their physical characteristics are, and it really does not matter who they fancy. It is simply that the Law would say you cannot be discriminated against on the basis of who you are attracted to.

I voted against debating this at all. I do not think this is an appropriate process. There will come a time when, no doubt, all of these issues will be debated. They are simply not relevant today, and in the meantime there are a number of people on this Island out there who are attracted to people either of the same sex or both sexes, or whatever, and even, of course, of the opposite sex, and there should simply be no discrimination against them on that account.

I would urge Members to throw out this amendment, to get on with debating the main policy letter and move the anti-discrimination legislation forward. There will be plenty of opportunity to discuss gender identity when we get to discussing that issue in phase 2.

The Bailiff: Deputy Bury.

Deputy Bury: Thank you, sir.

I will be brief. The points I would like to make have been made very clearly by Deputy Roffey and Deputy Parkinson, among others, but I think the inimitable phrase that I have not yet used this term, which I cannot quite get word for word but is the one that 'it is never about what it seems to be about', and this is exactly one of those times. The black and white copy looks very innocuous in terms of defining sexual orientation, but within this amendment that is not what you are being asked to decide. As you will have noted from Deputy Burford's speech, which focused heavily on the definition of sex, not sexual orientation, that is what this amendment is surreptitiously asking you to do without any of the information or consultation that you need on this – sorry, sir, not you, that Members need on this – very, very complex subject that was purposely put into phase 2 of the legislation for that very reason.

Thank you, sir.

The Bailiff: Deputy Kazantseva-Miller.

Deputy Kazantseva-Miller: Thank you, sir.

I do get astounded when these kinds of amendment are rolled on the floor of the Assembly in highly complex matters basically with no notice, no consultation, nothing. I am also astounded

because ... It was, I think, Deputy Dudley-Owen in her previous speech on the first Burford-Ferbrache amendment, who said she would support the amendment but with a strong caveat that effectively this is clearly showing how complicated and nuanced the field of discrimination is. And what do we have a few minutes down the line? Deputy Dudley-Owen is seconding an amendment which is highly complex. As a number of speakers have said, in black and white it seems quite easy, but actually it is much more nuanced. We have not had any opportunity for proper information to be provided and proper consultation taken with the community, and anyone voting for this amendment would do a huge disservice to the way the process in which this discrimination legislation in the second phase is supposed to be conducted.

I really urge Members to, please, avoid this kind of amendment. I do agree very much with what Deputy Meerveld said. We really need to stop this kind of practice, this really does not do justice to quality decision making, so please throw away this amendment.

The Bailiff: Before I call anyone else to speak in debate on this amendment, is there anyone who wanted to speak in support of it? Deputy Dudley-Owen, then, I will call you next, if you wish to speak now.

Deputy Dudley-Owen: Thank you, sir.

It is a shame that the amendment was laid quite so late, and I acknowledge the issues around governance. It could have been done better, I do agree with that. However, I support this amendment and I stand by that support. At the time I voted for the amended Proposition that was laid by Deputy Parkinson and former Deputy Tooley, I had grave reservations about it because I asked for clarification around the definition of the word 'sex' at that time and what ensued was a debate around the definition of sexual orientation, not the definition of sex. It was clear at that time that there was an awful lot of confusion from Members of the Assembly, including Members of the then Committee of Employment & Social Security. In actual fact, I recall quite a heated discussion between the then Deputy Fallaize and Deputy Parkinson around this particular issue, where Deputy Fallaize was cautioning the Assembly at the time around supporting the amended Proposition. I think that we all agreed with the principle at the time in the Assembly, otherwise it would not have been amended and the Proposition would not have been successful, but there were a lot of people who were very confused – as I think people are in the Assembly today, and it is right; it is a complex issue.

This is not just about intersex. This is about transgender and it is about ... Deputy Roffey is shaking his head, but I believe it is because it does step on the toes about complicated issues that have arisen through social media etc., and at the time this was touched upon, but I do think that we need some clarity. If this debate has done anything today ... this amendment may not succeed through the Assembly, but at least it has touched on that and we have started to open up this debate.

Again, it goes to show that this is a complex issue, and I do believe that the Committee could and should have done more. I understand that small workshops ... people were invited to those, but clearly, looking around the Chamber, for a lot of people it did not register, certainly in diversity. The induction sessions for diversity ... I cannot quite see the link between that and a complicated piece of legislation, such as the discrimination legislation. So, I think more needs to be done by the Committee in helping to educate this particular Assembly around the discrimination legislation and some of the thorny issues within it.

I do welcome the opportunity to try and clarify this matter and I do not think it is as simple and clear cut as Deputy Parkinson still maintains that it is. We do need some form of definition around this particular issue, and that is why I continue to support this amendment. I am pleased that Deputy Burford has laid the amendment, albeit rather later than I would have wanted.

Thank you.

The Bailiff: Deputy Inder.

Deputy Inder: Sir, there are very few times when you come into a debate ... for me, anyway, and I am always absolutely sure how I am going to vote for something ... First of all, when I got this on the desk I just got irritated that it was at three o'clock in the afternoon. Then Deputy Burford got to her feet and I was nodding away in agreement, but nodding away in disagreement with Deputy Ferbrache purely because I think ... Well, he is right inasmuch as society has moved on. But when Deputy Burford spoke about science, the fact that there is an egg and a sperm and people are born of a certain ... not orientation ... they are either born male or female, and within that – which is new information to me; she spoke very well about this ... I am going to use the word 'condition', so excuse me if I have not got the right word, called DSD and it is biological, it is diagnosable and it is effectively something that can be identified, because we have indeed moved away from God's monsters and we do something called science.

Of course, Deputy Roffey – I was actually listening to him, I just happened to be in the Members' room – got up and said there is another view, and the other view, from the reference that Deputy Burford made to the Scottish example, was XXX and [inaudible] other views but I do remember ... This is the problem we have with this, and this is why I am going to move on to what Deputy Bury said previously. It may be too complicated. I do not think it is complicated, but I think we are probably under some kind of obligation to have a greater open discussion about this.

The problem is that we all have our own biases. Whether we like it or not, we absolutely have our own biases. An example was that, yesterday, both Deputy de Sausmarez and Deputy Roffey went to *The Guardian*, I think it was, or Google, and found something about three Nobel Prize winners and absolutely that is why we should move the Minimum Wage up, and there was no conversation about it. Deputy Burford gets up, she finds some information and then Deputy Roffey gets up and says, 'I have found another five reasons not to.' None of us is incapable of having our own biases, be they conscious or unconscious biases. We are what we are, we are human, and anyone who thinks they are neutral – you are kidding yourselves, so please do not try and kid me.

Sir, in closing I am going to reference Deputy Bury, and possibly Deputy Parkinson as well. I think in the end I will go with the science. Eventually, I will go with the science because I think the real truth is it is the fear of the conversation. I can almost guarantee now that, the way social media is, as we leave this Assembly Deputy Burford is going to get torn apart on social media for even daring to bring this conversation up. Two times I have seen some braveness – if that is even a word. Once was five or six years ago, standing in front of ... I would not say a baying mob, but a largely unhappy mob, with a previous Deputy tearing the Transport Strategy up, and I made reference to it in my proposing her as President of Scrutiny. And the second time I think she has been brave is today. Normally I would stand by her side just to make a point, but I do not think I am going to, because I am actually going to listen to probably Deputy Parkinson – through you, sir – Deputy Bury and, to a degree, Deputy Roffey. I think I know where this should go, but I think we are under some obligation to have that conversation. That conversation eventually may end up with us falling towards a bias which we do not actually believe in, because I am absolutely certain, with all the science, that we are born male or female and everything else in between is either DSD or orientation.

I absolutely agree with Deputy Parkinson inasmuch as I do not care who you live with nowadays, I really do not, but I am absolutely certain that man is born man, woman is born woman and the DSD bit in between is likely the biological condition of ... Having said that, it is controversial. I have probably jumped into the fire by Mrs Burford because I am white, I am male, I am pale and I am stale, and it is easier to have a go at Deputy Inder than it is to have a go at Deputy Burford. I think she has been rather brave, but in this instance I will not support it and I will go with the Committee and let that consultation happen.

Thank you, sir.

The Bailiff: Deputy Soulsby.

Deputy Soulsby: Thank you, sir.

2905 I think Deputy Gollop's comments really summed up why we cannot support this amendment. He said, 'I want to support this amendment but I do not really know what it means.' We cannot be doing that at the 11th hour in what is such an important debate and in such a difficult area.

2910 Deputy Dudley-Owen said it is a shame that it has been brought so late. I do not think it is a shame; I think it shows absolute disrespect for this Assembly. Just at the last meeting Deputy Burford was castigating P&R for bringing an amendment quite late, but that amendment was after listening to States' Members and was actually watering down the original Propositions to reach consensus amongst the Assembly, whereas this Proposition is on the back of no Members having any background information on this whatsoever.

2915 I totally agree with Deputy Meerveld, this is poor governance. That does not mean I do not think we need to have that debate, and that debate will happen, but all we have heard is Deputy Burford's views, because Deputy Burford is the only one who has had the time and preparation for this debate. I think that is wrong. I have my views, but I do not think that now is the time to be discussing it. We need to see that information, look at it and have a proper debate where we have the evidence in front of us and can make a decision based on what we feel from the evidence we have.

2920 Whether it is brave or not, I think it is the wrong time. That debate will eventually happen, but now is not the time to have it, so I do ask Members to reject this amendment.

The Bailiff: I will turn back to the proposer of Amendment 3, Deputy Burford, to reply to the debate, please.

2925 **Deputy Burford:** Thank you, sir, and thank you to all Members for their contributions.

Deputy Roffey, to start with. I am not trying to define sex because that will come forward in phase 3 and that was made clear at the time the amendment was made, but the issue is that I feel that the wording that was in the amendment, on the ground of sexual orientation, by the way it was worded, leads towards a definition of sex.

2930 You mentioned the Jersey legislation. I am not necessarily a supporter of the Jersey legislation. My preference is for the UK Equality Act 2010 and I would be prepared to virtually adopt that wholesale, but that is by the by. But I think the fact is that it is already in the Resolution, and if this debate has served a positive purpose for me, it is the fact that a marker has now been put down to say that that Resolution that arose from the Parkinson amendment will not be deemed to be sacrosanct in that sense when you come to debating the other characteristics. I think it was such a wrong decision to pull these two characteristics forward. As keen as I am for people to have protection, it should have been done years ago, and don't get me started too much on what I think has been an utter disservice to the disabled community of this Island – I said don't get me started! – by bringing together all of these other characteristics. I can see the reason why it was done, but really – I am going way off script here – 2013 was the Disability and Inclusion Strategy, passed unanimously by the last Assembly that I was in. Nothing much more was done by that Assembly, to their shame – to our shame – and then in 2016 the baton was picked up, but then the ESS Committee brought an amendment to their own policy letter to widen it out into other grounds, and at that point you could see that it just was not going to be as simple as everyone wanted it to be. They realised that, to an extent, themselves, because they said, 'Don't worry, if it looks as though we cannot get this all through and disability' –

Deputy Taylor: Point of order, sir.

2950 **The Bailiff:** Point of order, Deputy Taylor.

Deputy Taylor: Forgive me, I cannot remember the number – it is late in the day. Deputy Burford is meant to be replying to the debate, but she seems to be bringing up new points.

2955 **The Bailiff:** It is Rule 17(4). In the circumstances of this particular debate, I am prepared to give Deputy Burford a bit of latitude to reply to the debate where other Members have moved away a little bit from some of what has been said – but you may also be trespassing into speaking in general debate because general debate will resume and there will be an opportunity to deal with some of these matters then.

2960 **Deputy Burford:** Thank you, sir. I shall try not to stray into general debate because I have another speech for that.

Just to finish off very quickly on that point, there was a promise to revert to just the disability legislation if the other characteristics which we are talking about seemed likely to scupper it, but the truth was you would never know it was too late until it turned out to be too late, and we are where we are.

Coming back, Deputy Roffey mentioned the 1% to 2% of people who have a difference of sexual development, which chimes with the 1.7% I said, but nevertheless they are still identifiable and registered as male or female.

2970 I am familiar with the *Scientific American/Nature* piece. It is not a scientific paper; it was an opinion piece at the front of the magazine and it has been widely debunked by various developmental biologists etc., but that is obviously a debate for another day now.

2975 I am also familiar, to a degree, with the *Corbett v Corbett* that Deputy Ferbrache said ... I might get this in the wrong order, but as I understand it, it was a situation that led to a claim then in the European Court and I think that the main problem was that the UK did not have same-sex marriage – regrettably, because then it would not have been an issue. Had it done, it would have been straightforward. What it then led to, I think, was the formation of the Gender Recognition Act in order to allow this to take place, but that was under pressure, I believe, from Europe rather than from the UK, who were not very keen at the time. But that was a transsexual issue. This is not what we are talking about today. I think there is a muddying of sex and gender going on in some of the things that Deputy Ferbrache said.

2980 I also want to say – and I really want to put this on record – I am totally pro equalities legislation, including on the ground of sexual orientation. I am not seeking to restrict the protection in any way; I am just seeking to make sure that definitions are clear and understood.

2985 Deputy Meerveld – a question many people have asked, and rightly so: why did I place this amendment at the 11th hour? I think there were two reasons, the first one perhaps slightly more substantial, in some ways, than the second. The first one was that up until 2.30 this afternoon I was having discussions with principally the Vice-President of the ESS Committee, also, to a degree, the President, back and forth emails with which they were also liaising between the Committee and the officers, in a way to try and find a way forward where I did not need to lay this amendment. I felt that at the end of those discussions I was not satisfied with the outcome of those discussions, hence why I laid it. That is the explanation, but I do take on board that last-minute amendments, as a rule, are not a great thing. I also understand that this is highly complex and that is perhaps why people will wish to vote conservatively, by voting against it.

2995 Deputy Gollop and several others also mentioned public consultation. I do have to point out that the previous Committee – in 2018, at a guess – put out a wide-ranging public consultation on all of the grounds, not just the phase 1 grounds. I think the consultation was live for ... I do not know, four months at least. It was a very long consultation. There were numerous replies, there were road shows, workshops, things at the Princess Royal Theatre that I went along to. So, to say that there has not been a public consultation on all of these grounds is not correct.

3000 I agreed with virtually everything Deputy Parkinson said. I agree people should not be discriminated against on the basis of who they are attracted to, whoever they are – I completely agree – but the person who is drafting the legislation for the Committee ... As Members will know, this legislation is being drafted alongside this policy letter coming to the States. It is not the usual process, where a policy letter comes, directs legislation and you go back and start on the legislation.

3005

So, the legislation is being drafted. I was very kindly supplied with sections of that legislation – I give way to Deputy Roffey.

Deputy Roffey: I thank Deputy Burford for giving way. She said this was not the usual procedure of a policy letter first and then the legislation being drafted. The policy letter came last summer and has been drafted on the basis of the decisions taken then. The final tweaking that needs to be done is to add in the exceptions on the two grounds that were added, so it is not as if we have taken a flyer and asked for an exclusion to be drafted without direction from this Assembly, I think it is important to make that clear.

Deputy Burford: Yes, I accept the correction from Deputy Roffey. The point I think I was trying to make – clearly, quite badly – was that it was agreed that, because of the Parkinson amendment, although they would bring a policy on the exceptions to those two grounds, legislation would still continue to be drafted at the same time. I have kindly been supplied with excerpts from that legislation, which show the ground as in the Parkinson amendment, because clearly that was a Resolution.

Deputy Parkinson did mention things about chromosomal variations, XXY etc. These are, nevertheless, all people who are male or female.

Deputy Bury – I thank her for her comment saying this is about sex because my speech was largely about it. Well, yes, it is, insofar as that was my motivation because I think that the definition, which is a Resolution of this Assembly from the Parkinson amendment, engages a definition of sex in itself by using the word ‘different’. Whether the Committee finally comes to propose that ‘different’ only actually means two, that is possible, but it is not clear and so this is why I brought this amendment at this stage. It should all have been debated together in phase 2 – that is what it comes back to every time. I was told for a while, in between this amendment and bringing a sursis, to put these two grounds back where they should have been, and that is still extremely attractive, quite frankly.

Deputy Kazantseva-Miller ... I am now losing the plot on my writing here, but I think it is just important to stress that the wording I was suggesting is not some untried thing that I have made up myself. It is the definition from the UK Equality Act 2010, which has been in operation for a decade and has been subject to challenge and case law etc.

I do not want to disagree with my seconder, but for me this is not about a transgender issue; this is about whether there are two sexes or not and whether ... It is about gender identity insofar as the advice that I received from the legal drafting person was that she believed that it was drafted as ‘different sex’ so as it could incorporate gender identity and gender fluidity. That is what I was told, and in fact being told that was the thing that made me want to bring this amendment at this stage, because it is at odds with what the Committee are saying.

Deputy Inder, despite the fact you are not going to vote for this, I thank you for your support, particularly because of what you said about being brave. Actually, it should not be brave to bring this policy letter, but my second reason for hesitating was how much pushback, how much social media negativity am I going to receive for doing this? I do not know – I guess I am about to find out – but it should not be brave to debate this, and if me standing up here and debating it means the next person does not have to be as brave, then I have achieved something in that.

Deputy Soulsby, I have covered your point on why I was late bringing it to the Assembly, but I would also like to take it on the chin about your comments about my comments on the criticism of the P&R amendment.

With that, I ask Members to support this amendment. Thank you.

The Bailiff: Just a gentle reminder not to address Members directly, please.

This is the vote on Amendment 3, proposed by Deputy Burford and seconded by Deputy Dudley-Owen. Those in favour –

Deputy Bury: Could I request a recorded vote, please, sir?

3060 **The Bailiff:** You can indeed, and therefore, Greffier, we will have a recorded vote, please, on Amendment 3.

Deputy de Sausmarez: Sir, can I ask for a point of clarification from HM Comptroller? I appreciate we are just about to go to the vote, but –

3065 **The Bailiff:** I very much doubt it, (**Deputy de Sausmarez:** Okay.) Deputy de Sausmarez, because the Procureur is here, rather than the Comptroller.

Deputy de Sausmarez: Sorry, of course, the Procureur. Am I able to ask for a point of clarification from HM Procureur?

The Bailiff: Yes.

Deputy de Sausmarez: Thank you, sir.
3075 Deputy Burford, in her closing speech, alluded to the fact that this did hinge on whether or not the definition engaged in the amendment does, in fact, itself engage definition of sex, and I am just wondering if HM Procureur might be able to advise whether there is any perceived conflict in legal terms as to whether there might be a conflict, whether it is engaged or whether it could in future create any kind of legal issue. I think her advice would be very much appreciated.
3080 Thank you.

The Bailiff: Madame Procureur, are you able to assist?

HM Procureur: Sir, I will try to do so, if I have understood correctly.
3085 Just to correct perhaps a misnomer in relation to the drafting lawyer, in speaking to me her understanding was that potentially the Committee had wished to cover those who identified as a different gender and that this definition being used was able to fit more with perceived gender fluidity thinking, which is more the terminology used rather than just 'opposite sex' with the sense of male and female, but I did stress – and I was grateful to Deputy Burford – that that may be something she wanted to explore further with the Committee directly and I was grateful that she did do so. I would not want it to be thought that the drafting lawyer had come up with this herself. She obviously takes instructions from the Committee and that was her understanding, that the Committee wished to follow that particular definition. So, I am grateful that Deputy Burford did go back directly to the Committee on that.

3095 In relation to which term is used, whether it is 'different sex' or 'opposite sex', which is the one put forward, obviously 'opposite sex' has been tried and tested in other jurisdictions. If we simply had the term 'different sex' I would be concerned that this could lead to potential unforeseen consequences precisely because of the conflation of views around gender identity and biological sex. The term 'intersex' has been used. That is something that I have understood to describe potentially a variety of conditions in which a person might be born with reproductive or sexual anatomy that does not fit the typical definitions. So, there are ... not necessarily difficulties – difficulties can be overcome, but when you are starting to use or potentially conflate issues of gender identity with biological sex, there could be knock-on consequences with that.
3100 I hope that assists, but ... if it is answered directly.

3105 **The Bailiff:** Members of the States, we will now have a recorded vote on Amendment 3. Greffier, please.

There was a recorded vote.

Lost – Pour 10, Contre 23, Ne vote pas 4, Absent 2

POUR	CONTRE	NE VOTE PAS	ABSENT
Deputy Dudley-Owen	Deputy Cameron	Deputy de Sausmarez	Deputy Le Tocq
Deputy Helyar	Deputy de Lisle	Deputy Gollop	Deputy St Pier
Deputy Inder	Deputy Dyke	Deputy Haskins	
Deputy Mahoney	Deputy Fairclough	Deputy Matthews	
Deputy McKenna	Deputy Falla		
Deputy Murray	Deputy Ferbrache		
Deputy Prow	Deputy Gabriel		
Deputy Vermeulen	Deputy Kazantseva-Miller		
Deputy Aldwell	Deputy Leadbeater		
Deputy Burford	Deputy Meerveld		
	Deputy Moakes		
	Deputy Oliver		
	Deputy Parkinson		
	Deputy Queripel		
	Alderney Rep. Roberts		
	Deputy Roffey		
	Alderney Rep. Snowden		
	Deputy Soulsby		
	Deputy Taylor		
	Deputy Trott		
	Deputy Blin		
	Deputy Brouard		
	Deputy Bury		

3110 **The Bailiff:** Members of the States, the voting on Amendment 3, proposed by Deputy Burford and seconded by Deputy Dudley-Owen, is as follows: there voted 10 Members Pour, 23 Contre, 4 abstentions, and 2 Members absent. Therefore, I declare Amendment 3 lost.

We resume the general debate that started earlier this afternoon. If there are no Members who wish to speak in general debate, then I will ... Deputy Helyar.

3115 **Deputy Helyar:** Thank you, sir.

I am not going to vote for Proposition 1. I have not really made my mind up about the others at this stage. I was just wanting to say, before I start, that all Members of the Assembly, I think, have been in agreement today, despite some very difficult subjects to deal with, and are in support of legislation which will prevent discrimination.

3120 My main concern about these proposals has always been that they came so close to the election last year that I think a lot of Members felt under pressure to support them no matter what. I think that some Members who were Members of the Assembly during the last term and before that have reflected on that and have represented it today as they have spoken.

3125 I wanted to address two specific points – and again I am sorry they are lawyerly, but this is a very complex issue, it does involve a lot of lawyering and definitions are important, which is why I just voted in support of Deputy Burford's amendment. The first one was the ... Well, it is a trope, really, isn't it? I go back to the lawyers being the Millwall FC of the professions. One of the promises which was made to the public in connection with this legislation was that it would not involve any lawyers – 'It is going to be a wonderful thing. We are going to have this tribunal that will be able to make all sorts of decisions. Don't worry about it, we won't need any lawyers.' The other one is that the Grainger test will prevent oddball findings – I think that is the word that Deputy Roffey used in his opening – for want of another explanation, findings which are extremely unusual, shall we say, in the normal scheme of things.

3135 For Deputy Queripel's benefit, the beginning line of a song by the Eagles called *Get Over It* starts with 'Kill all the lawyers'. It is an oft' misquoted reference to Shakespeare, to *Henry VI*, which is a terrible play, in my view. It is only ever quoted for that line, where Dick the Butcher says, 'The first

thing we do, let's kill all the lawyers', and then Cade, his accomplice in their quasi-communist social revolution, says all lawyers do is 'shuffle parchments back and forth in a systematic attempt to ruin the common people'. But of course Shakespeare was very clever. That was ironic because what exactly you need in a non-democratic system is to get rid of the lawyers because that means then there is no challenge to government, there is no challenge to the power of the state or indeed the courts.

So, the first comment I had in connection with the Grainger test, which is suggested to be embedded – codified, effectively – within the legislation, is it is not the right approach, in my view, to put a test embedded within the legislation itself, because that test is developed from jurisprudence. It is developed from a case itself. The Grainger case was a case where somebody claimed that they had the right, as a philosophical belief, not to be discriminated against on the grounds of their belief in climate change. I am going to give you a little bit of a tour, because obviously not all Members will be familiar with some of the decisions on philosophical belief that have occurred, so I thought I would go through them.

One of the first places I would like to start is that of course not everybody who gets to court wins, so lots and lots of spurious claims about people's beliefs happen before philosophical beliefs are established. I am going to feel a little bit like Jasper Carrot, perhaps, reading out the motor claim insurance forms, but the first one I would like to refer to ... It was defeated, but nonetheless it is a very good example of the type of thing where, when you open the door a little bit, a little crack, it gets pushed wide open by those who like to create litigation – and that is not a reference to Deputy Ferbrache. The first one is a June 2016 case, *Harron v Dorset Police*. The Employment Appeal Tribunal confirmed in this case that a belief that public service is improperly wasteful of money can potentially be protected as a philosophical belief. Who would have thought? The claimant worked for Dorset Police. He claimed a detriment arising from his profound belief in the proper and efficient use of public money in the public sector as discrimination on the basis of philosophical belief. The tribunal found against it, but it said it is possible in a wider sense for that to become a protected item.

The reason I mention it is because the advice which follows it – and I have picked this one up, funnily enough, from a lawyers' website – says employers should always be careful when workers say they are asserting some sort of belief, no matter how strange that belief may seem. Then, it goes on to recommend taking legal advice, and of course that legal advice is not free. It costs the economy and the businesses that have to take that advice money. That is my other concern with this legislation more generally – not just this aspect of it, but all of it: there has been no economic impact assessment of it. I do not know why that was the case – I do not know whether it was timing – but we have not worked out and we have not asked the business community what they want. Everybody I have spoken to says, 'What we want is a level playing field with other jurisdictions and we want our lawyers in Guernsey, all of whom are qualified in the UK first, who are therefore familiar with precedent and have easy access to it, to be able to argue our cases and give us advice about it.' So, it is quite straightforward what business wants. We have not tested it.

Let's go back to the Grainger criteria. I think we have already been through it and Deputy Queripel went through it in some detail, but the particular belief in that case that was being tested as to where that test came from was that 'mankind is heading towards catastrophic climate change and therefore we are all under a moral duty to lead our lives in a manner which mitigates or avoids this catastrophe for the benefit of future generations, and to persuade others to do the same'. I do not necessarily disagree with that, but what are you going to do if you own a business here, for example, that delivers fuel and you have an employee who holds that belief and he therefore refuses to go to a garage and assist with cars being filled up with fuel? That is where this is going. That is the kind of thing which this sort of legislation will allow people to bring claims against, and it will do it because it is hurting their feelings. I do not think we should be legislating for hurting people's feelings, whether it be in the language we use or otherwise.

So, how much further is this going? I will go through a few more cases. The first one is animal rights. An employment tribunal held, in *Hashman v Milton Park*, that a fervent belief in foxhunting

is an Equality Act protection. It stressed that not all opponents of foxhunting would be protected but accepted the employee's animal rights beliefs affected every aspects of his daily life.

The next one, Scottish independence: *McEleny v Ministry of Defence*. An employment tribunal held that a belief that Scotland has a right to govern itself is sufficiently cogent and important to amount to a philosophical belief.

Vegetarianism – this one was not successful. It is not a protected belief. The judge held that being a vegetarian is merely a lifestyle choice and not a substantial aspect of human life and behaviour. However, if we go on to veganism, in *Casamitjana v The League Against Cruel Sports* the tribunal found that ethical veganism is a philosophical belief capable of protection under the Equality Act. So, woe betide you at your Christmas dinner if you do not provide something for your employees from the vegan menu, because you could be sued. That is what this legislation will do. It will create grounds for litigation for people's hurt feelings, for things which are really of no consequence to the public.

Gender identity was the next one, *Forstater* – and we have just been talking about gender identity, obviously. Initially, a tribunal found that Mrs Forstater's belief that trans women are not women was not worthy of respect in a democratic society, but that view was subsequently overturned at appeal. Mrs Forstater's view – Miss Forstater, rather – was supported by the tribunal and it said that that was a belief which was worthy of respect.

So, where does this take us? I wanted to give you a really interesting one, because this is how bad it can get. The case is *Samuel Jackson v Lidl* – I do not think it is *the* Samuel Jackson, sir, the Hollywood actor – Croydon Employment Tribunal in 2020. Mr Jackson was a communications worker at Lidl. The supermarket dismissed him after he allegedly said, 'Asians are greasy.' They are not my words, sir, I am quoting from the judgment. He then refused to apologise, or apologise sufficiently. He claimed that he had a core belief in stoicism and, in effect, this made it important for him to say what he believed to be true, even if this offended people. He also claimed that this failure to apologise was due to his dyslexia, which caused him to mix up his words. He brought various claims of discrimination on the basis of his belief in stoicism and his disability. This case did not involve lawyers at the outset because he was a litigant in person. He explained to the tribunal he was not a consequentialist. By this, he meant that the likely outcome of saying or doing something would not prevent him saying or doing that thing. As he told the judge, 'The realisation that the consequence of what I say would cause offence would not stop me from saying it.'

To decide whether Mr Jackson's philosophical belief could proceed, the tribunal first had to consider whether stoicism qualifies as a philosophical belief within section 10 of the Equality Act 2010, and the court – well, it was not a court, it was a judge sitting alone – took those present through the Grainger test, the first one being, in applying the five-star Grainger test, Judge Cheetham QC identified that there could be no dispute that stoicism as a philosophical belief system has been with us for about 2,300 years. I think you can see that to the lawyers this is an absolute gift, isn't it? It is a get-out-of-jail clause. If somebody phones you up and says, 'I've been rude at work,' what do you do? Pick up the stoic book – absolutely, go for it.

Judge Cheetham QC found there was no question that Mr Jackson had a philosophical belief in stoicism and deemed this was protected under the Equality Act. The judge accepted that the evidence demonstrated stoicism was the only moral belief system Mr Jackson practised; it was a belief and not a viewpoint; it was a weighty ... stoicism aims to answer the most profound questions that we ask and is one of the many philosophical beliefs which are parallel to religious beliefs. The tribunal found Mr Jackson's belief was a core and consistent part of his life as he was striving to achieve a state of equanimity, because that suggests a guiding purpose which gives cohesion.

This belief in stoicism allowed this individual to claim that it was okay to say things like, 'Asians are greasy' at work. This is a classic example of well-meaning but overly complicated and devolved legislation which seeks to protect people's feelings rather than rights and which ends up eating itself. I think it is way beyond disproportionate to include belief in the proposed legislation (**A Member:** Hear, hear.) and I think it is an absolute gift ... I was in two minds when I looked at this, because it is a win-win for me. I am a lawyer. It is an absolute win-win. If we refuse it, the economy

does well, everybody can get on with it. If we accept it, then there is a little goldmine waiting there. I am going to start off with the stoicism on Google this evening, maybe do some CPD courses, and I could offer training for everyone in various industries on how to wheedle themselves out of the philosophical belief provisions of the legislation.

3245 This is a nonsense. We are legislating for something which is totally unnecessary. (**A Member:** Hear, hear.) I am the chairman of a substantial local charity. We advise 11,000 individuals in Guernsey every year. There is no evidence that I am aware of, and none has been presented of any sort, that any of this is a problem for our society. I wholly commend Members to absolutely refuse particularly section 1. I probably will vote against all of it, but section 1 in particular is totally unnecessary. Please,
3250 vote it down. Please, let's get on with the proper part of it, which is protecting the disabled and those who need protection in our society.

Thank you. (*Applause*)

The Bailiff: Now, Madam Procureur, would it be helpful to, at this stage, attempt to answer the
3255 question posed earlier by Deputy Queripel?

HM Procureur: Sir, yes, it may assist Members.

Again, if I have understood the question correctly – and, if not, I am sure Deputy Queripel will correct me – my understanding is that Deputy Queripel is unsure whether, if Proposition 1 is voted
3260 against, that will mean delays in the drafting of the disability parts of the legislation which the States voted on last year, in 2020.

Sir, to remind Members, in case it assists, last year, in July, following the debate on the new Discrimination Ordinance, the States agreed; firstly to prepare an Ordinance in relation to prevention of discrimination on the grounds of disability, carer status and race; secondly to agree
3265 that prevention of discrimination on the ground of sexual orientation would be included within that Ordinance; and further that prevention of discrimination on the ground of religious belief, as it then was, would also be included within the Ordinance prepared with disability, carer status and race. In other words, the States resolved last year that an Ordinance would be prepared dealing with disability, carer status, race, sexual orientation and religious belief.

This policy letter seeks, in Proposition 1, to change religious belief to grounds of religion or belief. If that is voted against but the amended Proposition which remains allows the exceptions to remain in place, then from a legal drafting perspective I am not aware and I have not been told that there would be delays to the disability part of the Ordinance that is already being drafted up at this stage. It may be that there are policy reasons which I am unaware of that could cause delays, but
3270 from a legal drafting perspective, having spoken to the drafting lawyer, my understanding is that if the States today decided to stick with the ground of religious belief that was decided last year, that should not impact, in legal drafting terms, on the preparation of the Ordinance already dealing with disability, carer status and race, but there may be policy issues of which I am unaware, and so I speak purely from the legal drafting perspective in that regard.

3280 Thank you, sir.

The Bailiff: Thank you very much.
Deputy Prow.

3285 **Deputy Prow:** Thank you, Mr Bailiff.

I am only going to speak very briefly. It has been a long and thorough debate and I have listened to all sides of the argument. I am just going to pick out, for me, two speeches that I thought were fundamental.

The first was the speech of Deputy Murray. Whilst he was speaking to the amendment – and I
3290 take on board what Deputy Roffey has said around noting that that amendment was successful, so I am not regurgitating that debate – he did, I think, tease out a very fundamental point. I am not going to quote him word for word, but I believe he very crucially reminded us right at the outset of

3295 this debate that it is an important responsibility of this Assembly to scrutinise and improve
legislation, and this is what we are all here doing. In the Propositions we are talking about the
Discrimination Ordinance and it sets out quite clearly what it contains. I think Deputy Murray, right
at the outset, did remind us that that is what we are here to do and it is a duty to scrutinise and
actually approve this legislation. I think there is a test here. We must, as an Assembly, be certain
3300 that the resultant legislation that we decide on is basically fit for purpose. 'Fit for purpose' is an
often overused expression. It describes what we need to be sure – is it fit for purpose? This is a
highly complex and technical issue. I think I should also say that I realise, Deputy Roffey and his
Committee, how difficult this has been, and in no way, in anything I am going to say, am I going to
stray from that point.

The other key speech for me, in considering this, was Deputy Ferbrache's speech, where he took
us back to fundamentals – massively important in deciding legislation – and he took it back to the
3305 1950 Convention. As a very experienced lawyer, as is Deputy Helyar, he went through, in some
detail, the human rights aspects of it and the actual parts of the 1950 Convention, and I think he
was right – he expressed his disappointment that this has taken so long to surface in this Assembly
and to be discussed, when everybody, I think, in this Assembly completely and utterly supports the
bottom-line principles around avoiding discrimination.

3310 I think those two speeches have crystallised me, and it is a great disappointment to me that
perhaps, from the debate and from the public reaction, we must ask ourselves is this piece of
legislation we are asking them to sign off fit for purpose? Sadly, I believe that this debate has really
brought that into question. I think fundamentally this Assembly supports the need of society to
respect each other and to outlaw discrimination, but does this legislation fit the Bill to do that? So,
3315 enshrining this legislation is a challenge, but in my view the ESS have not achieved this in the
presentation of this Ordinance.

I am not going to repeat the points made by others in the debate; they have articulated the
points far better than I could have. I will briefly say that I cannot support a legislative instruction to
draft a law which has not adequately dealt with competing human rights points and considerations.
3320 I have noted those that appear in the policy letter at 5.4. For me, it does not properly mitigate the
risk of open-ended proliferation of legal challenges – and Deputy Helyar has given us examples of
that – and becoming a litigation tool to settle disputes which are not primarily about discrimination.
Again, I would draw the attention of the Assembly to section 5, and in particular section 5.8 of the
letter in regard to the legal advice that the Assembly has received through that letter. I believe that
3325 all the controversy discussed in this Assembly and outside this Assembly evidences my concerns.

Sir, that is the background around how I shall be voting on the Propositions when we come to
do so. Thank you, sir.

The Bailiff: Deputy Dudley-Owen.

3330 **Deputy Dudley-Owen:** Thank you, sir.

Like Deputy Prow, I am not going to be repeating a lot of the very well-made points that have
been made during general debate today more articulately than I could ever have put them forward.

3335 I was less bothered about the splitting out of Proposition 1 and the religion and belief some
time ago than I have become more latterly, and now I really do not support that Proposition
whatsoever. Initially, I had been quite ambivalent about it, and on further reflection and further
thought I cannot, for many of the reasons that Deputy Helyar articulated, support that. I think it
opens up a lawyers' charter and makes a mockery of the whole Law.

3340 I wanted to very much support Proposition 2 as amended, but there are, unfortunately, further
exceptions within the appendix that I find difficult to support and I reserve my vote on that, just in
case, in the summing up, Deputy Roffey is able to persuade me. One of my real concerns is on
page 16, around the use of religious buildings. The Committee have proposed an exception to allow
organisations managing religious buildings, such as places of worship, to take their religious ethos
into account in letting policies if to not do so would run counter to the purpose or doctrine of the

3345 religion. But then they go on to say that the Committee is of the opinion that this exception should only cover church halls and other buildings which are predominantly used for religious purposes, such as locations that are intrinsically sacred or used as places of worship, which essentially goes back to only churches or places of worship, so this cannot extend to a hall or a fellowship room. I feel that really does not pay attention to the fact that these places, the church halls, are an extension of the church community and that the halls exist as places to strengthen the church community and their fellowship and network. To say that organisations including schools and churches are not able to exercise a right over saying no to certain hirers for certain groups that may be wanting to undertake activities that run contrary to that organisation's beliefs I think is wrong.

3355 That said, I do stand to be persuaded in Deputy Roffey's closing remarks, but I want to state now, for the record, as many others have said – because I know that this is a *highly* emotive subject, the anti-discrimination legislation – that I absolutely support the need for anti-discrimination legislation. We need it. However, it must be proportionate and relevant to our Island and I am very concerned because we had been led to believe initially that the legislation would be drafted uniquely for the Island based on two other jurisdictions that we have no relation to – Ireland and 3360 Australia. I recently read in a newspaper report from the Equality Consortium that actually that was not the case and that it was much more watered down and was being drafted more on the basis of the Jersey legislation. I do not know where we are with this at all and I would really welcome some comments as to exactly where we are – maybe more presentations, more engagement with the Assembly – because at the moment I am just feeling that there is not the support or understanding for this legislation that there needs to be in order to push it through at the speed at which the 3365 Committee want to.

Perish the thought that we let down the community that this legislation was meant to assist in the first place. Those persons with disabilities in the Island have been left waiting for so long for a piece of legislation that they have been promised term after term after term. We must deliver it this 3370 term, and if we cannot deliver it through this legislation we must do a copy and paste of another jurisdiction and put it into law much quicker than it seems to be going at the moment. I look forward to Deputy Roffey's closing remarks.

Thank you.

3375 **The Bailiff:** Deputy Meerveld.

Deputy Meerveld: Thank you, sir.

I will make it short, as it is getting late in the day. I reiterate what Deputy Dudley-Owen has said. I have good friends who suffer from disabilities and I absolutely support bringing disability 3380 legislation in and voted for it in the last term. But I am a practical and pragmatic person and I look for proportionality in everything we do. I also, as I have expressed previously in this States, am concerned about woke, nanny-state approaches creeping into Guernsey because I think it is just not necessary. I think it hinders society, divides more than it brings us together, increases costs to businesses and loses efficiencies, and impacts right across society.

3385 Unfortunately, in these proposals today, all of which I will be voting against, I see that almost 'Well, they've got it somewhere else; we can do it better, with bells on. Let's try and bring it to Guernsey and make it even stronger or more forceful than it is elsewhere.' But what is the local problem in Guernsey we are trying to address? Where are the examples of discrimination that is in place, that has to be legislated against in Guernsey today? Unless there is a real problem in 3390 Guernsey, why are we introducing more legislation interfering in our society to a greater extent, trying to control the way people think and act at every level and trying to influence it? I do not want that. I want a hands-off Government that lets Guernsey be the well-mannered, conservative, polite Island it always has been and lets us continue as we were. Unless there is proof, hard evidence of a problem that cannot be solved by a Committee going and having a chat with somebody and saying, 3395 'That attitude is wrong; let's see if we can improve it,' or some other kind of intervention ... If it

actually escalates to the point where legislation is required, *then* let's legislate, but until that day, until that evidence is in front of me, I am going to vote against this.

Thank you.

3400 **The Bailiff:** Deputy Dyke.

Deputy Dyke: Thank you, sir.

First, as an aside, I come from a generation that believes in angels and believes in Abba. (Laughter) Could I please ask you, sir, to reprimand Deputy Queripel and insist that he withdraws his entire speech and pays me £10,000 in compensation? I am very upset. (Laughter and interjection) You can buy me lunch, then.

I would like, very briefly, to pick up on and agree with the points made by Deputy Helyar, Deputy Dudley-Owen and, just now, by Deputy Meerveld. Clearly the belief ground on its own would create a complete legal swamp and we cannot possibly vote for that, unless we want to create a complete nightmare for all of our businesses. It is mostly going to apply to businesses. Many of them are very small, with five or six employees. They cannot afford the lawyers they are going to have to get to deal with this sort of thing, so we have to make everything proportionate and easy to work in Guernsey. I think that is most interesting.

I should point out that ESS have constantly stated that this is not a legalistic matter, there will not be lawyers and we do not have to worry about them, but I heard on the radio, I think yesterday or today, a nice lady – I guess she is from ESS, and it is an ESS ad – telling us how many lawyers we are going to need to deal with the new disability and discrimination legislation. So, which is it?

I am definitely voting against Proposition 1. I think I am going to vote against Proposition 2 as well. I think the problem with this legislation is, as has been pointed out by other Deputies, it was rushed through at the end of the last States without a whole lot of thought. I am not a constitutional lawyer, I am a commercial lawyer, but if you are going to draft documentation for a deal, you pick up a precedent that is pretty close and then work it up to what you want. Then you do not waste a lot of time on things that do not need to be redrafted, you just work on the bits that need drafting. In this case, we should have started with the Jersey Law. We probably could have taken it almost as it is, changing Jersey to Guernsey; there may have been some points that needed further review. If we had done it that way, we would have got to the point now where we would have discrimination legislation, we would have dealt with the disability bit and the carers' bit and the racial bit, and we would have done it. My suggestion would be that that is the appropriate approach.

I am looking at correspondence here that is signed by the Guernsey branches of the Institute of Directors, the Chamber of Commerce, the Confederation of Guernsey Industry and the Guernsey International Business Association, and something else called CPID. All of these organisations were recommending that they were in favour of discrimination legislation – as we all are, we would like to get it done – but their suggestion was what they could most easily work with would be something based on the Jersey model, and what we seem to have done is trawled the world for bits and pieces from everywhere and cobbled it together, which I think is not the way to draft this. I think we should go for the Jersey model and then get this done. That is the only way we are going to get it done.

Thank you. That is all I have to say.

3440 **The Bailiff:** Deputy Inder.

Deputy Inder: Only briefly, sir.

I think we are, hopefully, coming to the end of this now, but I agree, in the main, with Deputies Prow and Dudley-Owen, and the standout speech, I think, that got us to this golden thread is from Deputy Murray and his initial amendment ... show the nonsense of the already replaced Proposition.

3445 On to Deputy Queripel: usually when Deputy Queripel gets up I just ... I would not be so unkind as to say ... I can predict what he is likely to say, but actually I listened this time intently, and I think he is absolutely right. There are lots of things I have agreed with him on in certain areas and certainly

to the point ... and I have real concerns about what we see permeating through society. I mentioned it before, something called unconscious or subconscious bias. We really are into trial by fire, trial by water. If you do not believe what I say, then you accuse me of a bias. What comes next? Do you duck me in the pond and if I survive I am still guilty and I am only ever innocent if I drown? There are elements of this where we are really in that territory. I have heard politicians say this in the House in Committee, accusing people of a certain kind of bias, and I have been in the same room when that happened – and one of those Members is actually sitting on ESS, but I will not go into the embarrassment of going through that. It is actually quite scary territory. And do not tell me anyone in this Assembly is neutral, because, as I have said before, you are effectively misleading the Assembly. There are no Solomons here, I can tell you that.

Anyway, on the subject of history, the next speaker Deputy Helyar, great stuff and it looks like ... I always thought I was an Earth angel, Deputy Queripel, but quite clearly I was an angel looking for religion, and stoicism is quite clearly where I am going because it excuses all my behaviour for the rest of my life (*Laughter*) – it is fantastic, I will be your first client – so I am actually tempted to vote for it, but I am not going to at all; I am going to defeat the lot of it, or try and defeat the lot of it.

The advice from HM Procurer said without there being any policy issues – as far as I understood the advice from the Procurer – the defeat of this should not really change a thing, and if Deputy Roffey does get up and make some longwinded excuse why it is going to destroy absolutely everything, I simply do not believe him.

The Bailiff: Deputy Inder, that is tantamount to saying that whatever Deputy Roffey is going to say you are going to disbelieve. That is not really the right approach.

Deputy Inder: You are absolutely right, sir. I apologise for that. My stoicism will start outside of this Assembly. (*Laughter*) Thank you.

The Bailiff: Deputy Kazantseva-Miller.

Deputy Kazantseva-Miller: Thank you, sir. I will try not to be too long.

Everyone has stated how they are supportive of the legislation and it seems to be that everyone has also stated how this is disproportionate. I just want to bring Members' attention back to what the core of this policy letter is. It is about the exemptions and if we do not specifically approve Proposition 2 as amended it means none of the exemptions in this policy letter will be included in the upcoming legislation. So, I just wanted to read through some of the exemptions that are being proposed here.

Wills and gifts (no. 2)

It is proposed that any person making a will or giving a gift can choose who benefits with regards to land, goods and property – this would not be subject to discrimination complaints. Any challenges to a will would be governed by existing legislation on wills and probate.

If you do not include this legislation, if you would like to leave an inheritance to your children it will not be exempt. You would be found to be discriminating.

Preferential charging (no. 3)

It is proposed that people will be allowed to introduce or maintain preferential fees, charges or rates

Deputy Mahoney: Point of correction, please, sir?

The Bailiff: Point of correction, Deputy Mahoney.

Deputy Mahoney: I simply do not believe that statement is correct. I am free to will my property to anybody I like, whether this Discrimination Ordinance is there or not. I always have been and I will continue to be, whether this Ordinance is passed or not.

The Bailiff: That is not entirely true, but the current legislation does give freedom of testamentary disposition and, as Deputy Roffey has said before, extant legislation will trump whatever goes on the face of the discrimination legislation.

Deputy Kazantseva-Miller: Thank you, sir.

Preferential charging (no. 3)

It is proposed that people will be allowed to introduce or maintain preferential fees, charges or rates for anything offered or provided to carers or people with disabilities.

This is exactly the kind of product and service that can potentially be offered to people with disabilities. Pretty much every single Member said we need to advance legislation to protect our Islanders with disabilities.

National security (no.6)

– probably quite relevant to Deputy Prow, who does not want to vote for any of this legislation –

It is proposed that acts done for the purposes of safeguarding national security are exempt, but only where this is justified by the purpose.

Crown Employment (no.7)

– again, relevant to people in this Assembly, in this parliamentary team –

It would not be discrimination to place requirements of residence, nationality, birth or descent for employment in the service of the Crown; employment by a public body (whether corporate or unincorporated) exercising public functions, or holding a public office.

Immigration (no. 8)

– again, Deputy Prow, who wants to vote against all of the exemptions here –

It is proposed that Immigration Officers and Police Officers would not be discriminating where they are acting in a way required to give effect to relevant UK immigration law or policy as extended to and in force in the Bailiwick of Guernsey.

I can continue reading through the list of exemptions. These exemptions are basically where discrimination law meets the reality of real life, and if there are any specific exemptions here that you, Members, disagree with, please bring an amendment. There have been no amendments, except for the successful amendment of Deputies Murray and Haskins today.

So, please, can we just be specific about the matter that is exactly in front of us, because if you choose to vote against specifically Proposition 2, which is all about the exemptions, you will be voting against having all these exemptions in place in terms of the Ordinance that comes in to play. So, Members, I urge you to please read the policy paper, read the specifics of the exemptions and actually understand the implications of you voting against Proposition 2 as amended today.

The Bailiff: Members of the States, we will now adjourn until 9.30 tomorrow morning.

The Assembly adjourned at 5.30 p.m.