



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Thursday, 29th September 2022

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Present:

J E Roland, Deputy Bailiff and Deputy Presiding Officer

Law Officers

M. M. E. Pullum, Q.C. (H.M. Procureur);
R. M. Titterington, Q.C. (H.M. Comptroller)

People's Deputies

S. E. Aldwell	J. P. Le Tocq
C. P. A. Blin	M. P. Leadbeater
Y. Burford	D. J. Mahoney
T. L. Bury	A. D. S. Matthews
A. Cameron	L. J. McKenna
D. de G. de Lisle	C. P. Meerveld
H. L. de Sausmarez	N. G. Moakes
A. C. Dudley-Owen	R. C. Murray
J. F. Dyke	C. N. K. Parkinson
S. P. Fairclough	R. G. Prow
S. J. Falla	L. C. Queripel
P. T. R. Ferbrache	P. J. Roffey
A. Gabriel	H. J. R. Soulsby
J. A. B. Gollop	A. W. Taylor
S. P. Haskins	L. S. Trott
M. A. J. Helyar	S. P. J. Vermeulen
N. R. Inder	
A. Kazantseva-Miller	
C. J. Le Tissier	

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 32*); Deputy V. S. Oliver (*absente de l'Île*);
Deputy G. A. St Pier (*relevé à 9h 37*);

Business transacted

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Billet d'État XVII	1827
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States of Deliberation

The States met at 9.30 a.m.

[THE DEPUTY BAILIFF *in the Chair*]

PRAYERS

The Greffier

EVOCATION

Billet d'État XVII

5. The Prevention of Discrimination (Guernsey) Ordinance, 2022 – Debate continued

The States' Greffier: Billet d'État XVII, Article 5 – the continuation of the debate.

The Deputy Bailiff: Before we start, Deputy Brouard, do you wish to be relevéd?

Deputy Brouard: Yes please, madam.

The Deputy Bailiff: Can I just remind Members about Rule 8(2)?:

While the States are in session Members shall not have any communication with a person in the public gallery.

And if I could just say to the members of the public who are sitting in the Public Gallery, I would ask them to respect the spirit of that provision? That while the States are in session, Members shall not have any communication with a person in the Public Gallery.

Yes, Deputy Queripel.

Deputy Queripel: Madam, I just rise for clarification please. Is that also email? Exchanging emails, as well?

The Deputy Bailiff: It is any communication. (**Deputy Queripel:** Thank you, madam.) It does not specify which. But, to be fair, it says, 'Members shall not have any communication'. It does not specifically say that members of the public cannot send it. But what I am saying is that there is a need to acknowledge the spirit of that rule, which is that during the States' sessions, that Members cannot have communication with members of the public, and those in the Public Gallery. So I am simply reminding everybody that provision.

Deputy Queripel: Thank you for clarifying, madam.

The Deputy Bailiff: Thank you, Deputy Queripel.

And I am now going to ask His Majesty's Comptroller to clarify what he said yesterday in relation to regulations.

30 **The Comptroller:** Madam, thank you, and I hope Members will bear with me for a few minutes, so that I can just perhaps expand upon the advice that I gave yesterday, and clarify it in response to Deputy Roffey's request as to the effect of the amendment 3, the successful amendment proposed by Deputy Murray and seconded by Deputy Haskins, which affects 9:33:48??? by substitutions so it is a requirement, 'That regulations made by the Committee shall not have effect, 35 unless and until approved by a Resolution of the States'

Now, in giving this expanded advice, I should say that I have spoken about the matter with His Majesty's Procureur, and also a number of Members of our Chambers, yesterday evening. I am very grateful to them for their comments.

Upon reflection, I think the position is quite clear, actually. What the amendment will do is require 40 regulations made by the Committee to come to the States for approval. But the only decisions the States will have is to vote *Pour ou Contre* to the regulations. The States will not – I repeat, *will not* – have power to amend the regulations, because the power to make the regulations will be vested in the Committee, and it will be vested in the Committee alone.

So, I hope that that clarifies the position insofar for the purposes of future debate.

45 **The Deputy Bailiff:** Yes, I am very grateful.

The Comptroller: Thank you.

50 **The Deputy Bailiff:** Thank you.

So, with that in mind, Deputy Roffey, I believe you want to bring forward amendment 17.

[Amendment 17](#)

At the end of the Proposition add: ", subject to the amendments indicated below".

1. In section 67 –

(a) in subsection (1), delete "or guidance",

(b) insert the following subsection (2) and renumber subsections (2) and (3) accordingly—

"(2) The Committee may issue guidance in respect of people's rights and duties under this Ordinance, and such guidance may, without limitation, provide information about what is required in an accessibility action plan as required by section 37, or otherwise specify established standards of accessibility which would fulfil the duty imposed by that section."

Deputy Roffey: I do, Madam Deputy Bailiff.

Amendment 17 will come as no surprise to any Member, because we communicated with all 55 Members several days ago, making clear that this is an Amendment we would lay if amendment 3 was successful. Amendment 3 was successful and we fully respect that. We are very happy – maybe that is too strong a word – we are very willing to comply with the instructions of the States in bringing all of those regulations, and indeed, the Code of Practice, to the States for confirmation.

However, we just really want to confirm, because we cannot believe the States really mean this, 60 that they want to include the guidance notes in that as well. Guidance notes, as I heard you explain yesterday, are basically laymen's guides; they do not change the legislation in any way, they are simply putting it in simple form so that people can understand it. So, if this is inside the envelope, or what has to come to that stage for approval, not only will the original guidance notes have to come, but if employers or other stakeholders say, 'Actually, on page three, that is not entirely clear. 65 Can you rewrite it?' and we do that in the course of events.

Every time we make any tweak, any change, we have to come to the States for approval. We will no doubt do an easy-read guide, because one of the stakeholders is people with learning disabilities, so we will want to do a version for them. There will be all sorts of different guidance

70 notes; we will be occasionally putting things on our website, just for the *[inaudible]* of the Law, and explaining what it is. Nothing in that will have mission creep, nothing in that will change the Law that I hope will be approved by the States, probably sometime tomorrow.

It is just explanation. And we will live with that. If the States really want us to bring every iteration of those explanations here for approval by the States, we would do it, but we do not really believe that is what they meant. And therefore, we are seeking to remove that out of the general requirement, while leaving in all of the regulations and the Code of Conduct, as decided by the States yesterday.

The Deputy Bailiff: Deputy de Sausmarez, do you formally second that?

80 **Deputy de Sausmarez:** I do, madam.

The Deputy Bailiff: Nobody is rising to debate this? Greffier, can you open the vote, please?

The States' Greffier: Yes, madam. There are some Members who are not yet logged on.

85 **Deputy St Pier:** Madam, may I be relevéd, please?

The Deputy Bailiff: Yes, sorry, Deputy St Pier, you may indeed be relevéd.
States' Greffier, how many people are still not logged in?

90 **The States' Greffier:** The people not logged in are Deputy Brouard, Deputy Meerveld and Deputy Trott.

The Deputy Bailiff: States' Greffier, have you opened the voting yet?

95 **The States' Greffier:** Not yet, madam.

The Deputy Bailiff: No. Thank you for confirming. Right, so has everybody logged in now, States' Greffier?

100 **The States' Greffier:** I think so.

The Deputy Bailiff: Greffier, would you kindly start the voting for what is amendment 17? Again, Members, you may need to toggle down a little bit to find your voting buttons.

105 Greffier, would you close the voting, please?

There was a recorded vote.

Amendment 17

Carried – Pour 38, Contre 1, Ne vote pas 0, Absent 1, Did Not Vote 0

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Aldwell	Deputy Mahoney	None	Deputy Oliver	None
Deputy Blin				
Deputy Brouard				
Deputy Bury				
Deputy Cameron				
Deputy de Lisle				
Deputy de Sausmarez				
Deputy Dudley-Owen				
Deputy Dyke				
Deputy Fairclough				

Deputy Falla
Deputy Ferbrache
Deputy Gabriel
Deputy Gollop
Deputy Haskins
Deputy Helyar
Deputy Inder
Deputy Kazantseva-Miller
Deputy Le Tissier
Deputy Le Tocq
Deputy Leadbeater
Deputy Matthews
Deputy McKenna
Deputy Meerveld
Deputy Moakes
Deputy Murray
Deputy Parkinson
Deputy Prow
Deputy Queripel
Alderney Rep. Roberts
Deputy Roffey
Alderney Rep. Snowdon
Deputy Soulsby
Deputy St Pier
Deputy Taylor
Deputy Trott
Deputy Vermeulen

110

The Deputy Bailiff: There voted Pour, 38. There was 1 vote Contre. There was 1 person absent. And therefore, I declare the amendment passed.

115

Members, in relation to amendment 4, Deputy Dyke has agreed – and I hope that you will have copies – to break up that amendment into, effectively, two amendments. So we now have amendment 4(a) and amendment 4(b).

I also understand that Deputy Dyke has indicated that if Deputy Roffey's proposed amendment, amendment 14, is successful, he will not lay amendment 4(a). Deputy Dyke, would you just confirm that, so we all know?

120

Deputy Dyke: Yes, madam.

That is confirmed. The definition that I have drafted in 4(a), is materially the same as the definition that Deputy Roffey has drafted in 14, if that is the correct number. **(The Deputy Bailiff: Yes.)** So, I am content with either of them, and I am content for amendment 14 to come first, if that is your plan?

125

The Deputy Bailiff: Thank you. Yes, that is my plan, thank you. **(Deputy Dyke: Thank you.)** Thank you very much, Deputy Dyke.

So, let us now turn to amendment 14, and I will ask Deputy Roffey, as the proposer, to lay that amendment.

130

[Amendment 14](#)

At the end of the Proposition add: "subject to the amendments indicated below".

1. For section 14(6)(a), substitute – "

(a) "contract of employment" means a contract of service or apprenticeship, whether express or implied and whether written or oral,".

Deputy Roffey: Thank you.

This is really a belt, braces and box cord amendment, really, because the committee have been absolutely clear all the way through, and it is set out in policy letter after policy letter, that the

intention of the definition of a contract of employment or service was never ever meant to include if you get a plumber into your house to fix your boiler, or if you get a window cleaner in to clean your windows. And indeed, the definition in the unamended ordinance, or draft ordinance, that is before you, is exactly the same as in the Sex Discrimination Ordinance that has been in operation now for nearly 20 years, I think, and absolutely nobody, to my knowledge, has remotely claimed that such personages should be dragged into the orbit of that. And I do not think that a tribunal would even countenance such a claim.

However, Deputy Dyke has raised the fact that he believes that the definition of the Ordinance could, theoretically, cover such situations. And I think when we looked at it, we had to accept that there is a fairly tortured, selfless argument that, yes, it could, so this is to put it absolutely beyond doubt. And we believe that the reason we did not just go with 4(a) is that we actually think there are some difficulties in the definition, that Deputy Dyke was putting forward under 4(a), so we brought a counter-amendment to satisfy his concerns, in a way that actually ties it in with another piece of Guernsey legislation, the definition of contract of employment or service, so it is well tried and tested, and I hope this will prove entirely uncontroversial.

The Deputy Bailiff: Thank you. Is that formally seconded by you, Deputy de Sausmarez?

Deputy de Sausmarez: Yes, madam.

The Deputy Bailiff: Deputy Dyke.

Deputy Dyke: Thank you, madam.

Just for the sake of completeness, I brought what would have been amendment 4(a), on the basis that the original definition in the draft ordinance, I think, was not in accordance with house standard. It may have matched the Sex Discrimination Law, but in the normal course of events, a definition of a contract of employment would clearly not include a contract for services. So that was why I brought my amendment.

Deputy Roffey's amendment is fine, that is the one we are talking about now. It is, effectively, Law Officer standard, and it appears in numerous Laws in the way that Deputy Roffey has drafted it in his Proposition. So I am most happy to support this amendment, and will be voting Pour, and then I will not lay 4(a).

Thank you, madam.

The Deputy Bailiff: Thank you, Deputy Dyke.
Deputy Roffey, do you wish to say anything in response?

Deputy Roffey: I do not think so.

The Deputy Bailiff: States' Greffier, would you start voting on amendment 14?
States' Greffier, would you close the voting, please?

There was a recorded vote.

Amendment 14

Carried – Pour 38, Contre 1, Ne vote pas 0, Absent 1, Did Not Vote 0

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Aldwell	Deputy Haskins	None	Deputy Oliver	None
Deputy Blin				
Deputy Brouard				
Deputy Bury				
Deputy Cameron				

Deputy de Lisle
Deputy de Sausmarez
Deputy Dudley-Owen
Deputy Dyke
Deputy Fairclough
Deputy Falla
Deputy Ferbrache
Deputy Gabriel
Deputy Gollop
Deputy Helyar
Deputy Inder
Deputy Kazantseva-Miller
Deputy Le Tissier
Deputy Le Tocq
Deputy Leadbeater
Deputy Mahoney
Deputy Matthews
Deputy McKenna
Deputy Meerveld
Deputy Moakes
Deputy Murray
Deputy Parkinson
Deputy Prow
Deputy Queripel
Alderney Rep. Roberts
Deputy Roffey
Alderney Rep. Snowdon
Deputy Soulsby
Deputy St Pier
Deputy Taylor
Deputy Trott
Deputy Vermeulen

180 **The Deputy Bailiff:** There voted Pour, 38; there voted Contre, 1. We have 1 absence, and therefore I declare the amendment as passed.

We will now turn back to amendment 4(b), and I will ask Deputy Dyke, as the proposer, to lay his amendment.

[Amendment 4\(b\)](#)

At the end of the Proposition add: "subject to the amendments indicated below". 2. Delete sections 16, 17, 18 and 19 and renumber remaining provisions and amend relevant cross-references accordingly. 3. In section 50(1), delete ", 17" and insert "in respect of a claim not based on discriminatory pay" after "20". 4. In section 53:- a) for the header, substitute: "Amount of compensation – discriminatory pay." b) for subsections (1) and (2) substitute:- "(1) Subject to section 54 and subsection (2), the award of compensation under section 49 for a contravention of section 14 in respect of a complaint based on discriminatory pay, is a sum equal to arrears of pay, calculated as the sum which would have the effect of putting the complainant in all respects in the position in which the complainant would have been had there been no such contravention. (2) The maximum time period during which a sum equal to arrears of pay can be calculated under subsection (1) is three years; but (for the avoidance of doubt) compensation shall not be granted in respect of any period prior to the commencement of section 14."

Deputy Dyke: Thank you, madam.

185 I would like to propose amendment 4(b). Do you want it read out?

The Deputy Bailiff: It is up to you whether you want it read out. *(Laughter)*

Deputy Dyke: Well, I will not read it out, then. I think you can all read it. It is quite technical.

I am hopeful that this amendment will be fairly uncontroversial. In the context of the Discrimination Ordinance, it raises a number of fairly technical issues, which, to my mind, do not go to the heart of the Ordinance, or affect the thrust of the Ordinance in any way, but are vital in terms of the international competitiveness of our vital finance sector. You should not need to be reminded that we are in constant competition with jurisdictions across the world. (A Member: Hear, hear.) Finance businesses can move anywhere, decisions as to location and rationalisation will be made regularly by all international firms based on costs, recruitment, accessibility, housing, tax and regulation.

What is most cost-effective overall for us, they ask themselves, continually, and have to. We are more vulnerable to this than ever before. Many of our local finance businesses that were owned locally have sold out to international conglomerates, with no particular local loyalty, and we have to face that fact. In this context, I am going to take up a little of your time, in reading a section from a letter from the GFSC – I am going to read two sections, overall, but the first section is from the GFSC – to Deputy Roffey, from February of this year. So, bear with me, I do not usually take up too much of your time, but I am going to take a little more time than I usually do, on this one, because it is so important. So, this is the GFSC writing to Deputy Roffey in February:

We ... [the GFSC] work in conjunction with Guernsey finance, law enforcement, and the economically-focused parts of the States of Guernsey. We try to ensure that Guernsey is a good place in which to do reputable business. The Bailiwick, as I am sure your committee is aware ...

– that committee being ESS –

... is a jurisdiction of choice. We are in competition with Jersey, Bermuda, the Isle of Man and Singapore, not to mention the often-lower cost onshore financial services centres such as London. Virtually no one has to do business here. Ninety percent plus of the actors we regulate could redomicile fast to competitor jurisdictions if needed. Financial services comprises at least 40% to 50% of Bailiwick GDP, without allowing for the network effects of the spending of those employed in the sector. Global tax and regulatory developments increasingly make it imperative for us to be regarded as a jurisdiction of substance, with mind and management, resident and employed within the Bailiwick. We are working with industry to encourage it not to outsource all of its activity to alternative international finance centres, or low-cost processing hubs, thus retaining employment and substance on the Islands, creating tax revenue. Faced with the high level of living costs here, the lack of housing stock at affordable prices, and the superior connectivity of Jersey to the mainland, this is not a particularly easy challenge. Ever more scrutiny is applied to international financial sectors in the wake of Covid, as large jurisdictions seek to increase tax revenue to deal with the vast cost of their Covid-related measures. Our collective task will become ever more difficult. At present, one of Guernsey's advantages is that it is relatively inexpensive to hire and un-hire staff. This makes the cost of taking someone on in the Bailiwick low, in terms of employment law-related risk – encouraging employers to take on people who they might otherwise consider quite risky hires. This is one of our competitive advantages, and happily seems to have led to a large portion of the population being in higher wage employment than their skills and experience would be likely to command in the UK. To some degree, this compensates for the higher cost of living, which those in Guernsey experience, relative to those living in the UK.

So, I think the GFSC put it very well – better than I could have – in terms of the background to the challenges we face going forward.

So, turning to the amendment 4(b), sections 16 to 19 of the draft ordinance, they go far beyond what is required in Jersey, in terms of equal pay. To put that into context, our draft section 14 provides for non-discrimination in various areas, including pay and conditions. This amendment does not change that basic principle. That basic principle mirrors precisely what the law in Jersey provides.

I am not proposing any change to that basic principle. But the ESS draft goes far beyond this, into very dangerous territory indeed. It effectively gold-plates what they have in Jersey, in respect of equal pay provisions. Section 16 provides, effectively, for equal pay for persons who do equal work employed within three years of each other, by the same employer, or an associate employer within the same group, via the deemed insertion of an equal pay clause into all contracts.

So, if you think about it, how do you start working that out at all, and particularly in the context of separate companies within an international group? There are particular difficulties in the fund management area, where remuneration deals are structured and tailored on a case-by-case basis.

For example, carried interest in private equity, share options. These are issues that have been pointed out to me by the industry.

Deputy Roffey will say it is not a problem, that I am scaremongering, and it is all proportionate. I am not scaremongering, I have talked to a lot of people in this area. This is a huge potential problem. International employers will look at this, and simply not wish to engage in these arguments, in particular for their senior staff in tribunals or courts in Guernsey, which is clearly where these arguments can end up.

It is no good saying, 'Oh, it will all be dealt with by conciliation, and will only cost £250, and ... blah, blah, blah'. This is not how these people operate. They will look at these provisions, and hate them. It makes it, effectively, impossible to operate fund businesses with senior staff here if you impose these additional restrictions. Now, I am going to make another quote from the GFSC letter that I referred to earlier:

At the minimum ...

– well, they are asking for a medically-robust definition of disability; that issue has passed.

... we also believe that all parts of the legislation, which would appear to inhibit hiring, managing and promoting people on the basis of their hard work and achievement, need to be struck out. We, and the industry we regulate, operate in a competitive market for talent. The financial services industry needs the freedom to continue to pay people of the same notional grade quite different salaries, depending on market conditions and employee performance. To force an employer to pay everyone else at the same notional grade exactly the same pay, it is agreed, with the latest hire, is unviable and would do huge damage to our economy, driving work out of the jurisdiction, while damaging those employers who try to stay here.

There is a section 18; part of this group of provisions is section 18, which tries to mitigate that. But the fund industry is not going to wish to get into arguments in court, as to whether (a) should be paid more than (b), fund manager (a), who is doing private equity or whatever; it is just not going to happen. Section 17 adds to section 16, in pretty much the same way in respect of pay; it adds equal treatment, mirroring the equal pay clause – the deemed equal pay clause – which adds to the complexity. So, you have got two clauses, 16 and 17.

As I say, section 18 gives some mitigation in terms of material factors. But it simply does not deal with the point, because these fund manager types will not get into those arguments, as to whether (a) is paid more than (b), and it is for material reasons. These are highly-paid people, and they do individual deals with their companies, and there is no way this can operate and be challenged in court. International groups will simply not buy into this; they are not interested in fighting this sort of thing out in the tribunals and court, with vast expense, disruption, and publicity that they do not want.

That is the point; with Jersey next door, they do not have to, and not only Jersey of course, there are jurisdictions all over the world. And I think that Deputy Vermeulen was just mentioning to me some cases where business has recently moved from here to Jersey. And I am aware of a case a couple of years ago, a major fund manager here – they can move at the drop of a hat – who moved to Jersey because of a dispute with either one of the tax or regulatory authorities here. So it does happen, it is a very real problem.

As they say, 'never buy into a lawsuit'. If we do not fix this, international fund managers would see themselves buying into a lawsuit if they do business here. And there is another problem. Section 19 adds a provision to the effect that pay non-disclosure clauses are unenforceable. I have spoken, in the last couple of weeks, to a lot of people in the finance sector, and they have all confirmed that these clauses are extremely common. So, another problem ... looking at this Law, and if this passes they will be looking at it over the weekend. So another major disincentive, if we do not deal with this problem. Where was I?

Yes, one leading manager on the Island I spoke to – I will not name him but everyone will know his name – said to me that this will cause 'chaos'. So that is one leading fund manager; they will all

take this view. Do they want chaos in their business? So, we simply cannot risk this loss of competitiveness, our finance industry is pretty much all we have got.

We do not need to gold-plate our Law. As I have said before, section 14 stands: no discrimination in pay and conditions, and that matches Jersey. If the clauses that I am suggesting come out, we do not change that, we leave the basic principle in place, we leave ourselves competitive with Jersey. And we will not have gold-plated what they have over there.

So, we have to ask ourselves, 'Are we that ...?'

Yes, I will give way.

The Deputy Bailiff: Give way to Deputy Trott.

Deputy Trott: Thank you.

I am very grateful to my friend, because I think this is a very important amendment indeed. But I just want some clarity from him, in his capacity as a lawyer, almost. There is a real distinction between the managers who are based on-Island, and the overwhelming majority of investment advisers/managers who will be based outside of this jurisdiction. So there are private equity businesses that are here, where the managers are resident, but the overwhelming majority will not be domiciled here.

Is he saying that those that would be domiciled elsewhere would also be caught? Because the reason I make this point is, the overwhelming majority of carried interest will be paid to managers who are non-resident. Is he saying that they too could be caught as a consequence of this legislation? Because if he is, this is a very serious issue indeed. If he is not, then it is still serious, but nowhere near as serious.

Deputy Dyke: Well, there are a couple of issues there. There are a number of senior managers who choose to live and be domiciled on the Island, who are very important to our business. This provision also does some sort of international comparison; it is difficult to know where it goes, to be honest, it is actually quite difficult to work out how it works in practice, because it requires a comparison for equal pay purposes, not just within the subsidiary that may be here, but with other subsidiaries in the same group. Does that mean other subsidiaries abroad or not? It does not say.

But what the whole thing raises is a massive issue, which does not have an answer in each case but it does mean that if you have domiciled your company here, and are employing people here, and those are absolutely vital to us, and not just in terms of their own business, but in terms of the business they bring to the Island, and the reputation they give us, and the speaking they do on international circuits in favour of Guernsey. If we lose three of those people, and I have got a few in mind – if we lose three of those people – we have massively undercut our business competitiveness going forward.

So do we want to create these uncertainties? Are we that irresponsible, that we would put at risk the golden goose that underpins our economy and the taxes that pay for the medical, education and other services that our community has come to expect? I think, ask yourselves that question.

We simply cannot risk these clauses (**A Member:** Hear, hear.)

So that is sections 16, 17, 18, 19. The amendment, I may have put too much together here, but it is the way the Law is drafted. The amendments of sections 50 and 53 are consequential amendments to those amendments I have just described, the removal of sections 16 to 19, with one further material change to section 63, which is to reduce the period for discriminatory pay from six years to three years. In my view, three years is an ample period, if you have a discrimination case based on equal pay, how many years do you go back to put it right?

I think three years is fine; the finance sector might be able to cope with longer. But the point of the ordinance is not to be penal; it is to deter discrimination, it is not to deter business. So, that aspect, I think, should be reduced to three years. But here, we are not just talking about the finance sector.

Bear in mind that the States of Guernsey is a massive employer. Slightly too massive, in my mind, but that is another debate. We have huge numbers of employees. If we start getting into arguments in our Human Resources department, where every disgruntled employee starts wanting to look at everyone else's pay, and say, 'My position is equal, pay should be the same, and there is an equal pay clause deemed into my contract,' we will have chaos in the States' Human Resources Department, with potentially massive costs to the States.

But I think Deputy Ferbrache has some concerns about our expenditure and our tax position. He mentioned them yesterday, and I think we are all well aware that we have some issues to deal with. Again, that is another point, but we do not wish to add to them. So, I would heartily recommend, you just have to vote for this amendment, honestly.

It is so important, and it does not affect ... I have not even have many emails on it. I have had a couple of emails, which I have answered politely. They were polite emails; not like some of them we have had. It is not a controversial provision; it does not go to the heart of the discrimination Law. I believe this is a technical clarification, to avoid potential massive downside; it does not go to undermine the basic principles of the Law. Section 14 remains intact, section 14 matches what they do in Guernsey, and that is good legislation and it protects our vulnerable people as we would want to do.

So I strongly recommend that you vote for this amendment 4(b). Thank you.

The Deputy Bailiff: Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, madam.

If the amendment did what Deputy Dyke has explained that he thinks it is going to do, and if indeed, more importantly, the problem that Deputy Dyke's amendment seeks to address were indeed the problem, then I too would be urging people to support it. But I am afraid Deputy Dyke is perhaps a little bit confused or possibly in some respects ... I will go to explain what the provisions that he seeks to remove, through this amendment, actually do. I think there is some confusion and I will start with that.

Deputy Dyke, towards the latter part of his speech, talked about any disgruntled employee in the States wanting to check whether they are being paid as much as the next person. I think that Deputy Dyke is perhaps, and maybe other people are as well, confusing equal pay for the concept of equal pay for work of equal value, which is altogether a different kettle of fish that is not included in this phase of the legislation. He is quite right that that will be a big issue to resolve, as Deputy Roffey referred to yesterday when he opened, as and when that phase of the legislation comes in, but that is not what we are talking about here. This is equal pay, it is a much, much narrower issue.

Deputy Dyke said that this amendment does not change the basic principle, which of course is to deter discrimination on the protected grounds, and I will bring people back to focus on that. It might not change the basic principle, but it absolutely does make it very, very difficult, in practice, to enforce. So, the other thing that I think that Deputy Dyke is getting a little bit confused about, and I think this is something I need to draw out right at the beginning as well, is that these sections, that this amendment seeks to remove, do not in any way override the ability for people to include pay disclosure provisions within their contracts. That right remains. Businesses will absolutely be able to continue to use those provisions; that is a very important point.

So the proposed legislation, as it is currently drafted, does not in any way affect the right of businesses to include pay disclosure provisions in contracts. That is fundamentally important.

Deputy Dyke: Point of correction.

The Deputy Bailiff: Yes, Deputy Dyke.

Deputy Dyke: I am reading section 19.1:

A term of a person's contract of employment that purports to prevent or restrict the person (P) from disclosing or seeking to disclose information about the terms of P's work is unenforceable, against P, insofar as P makes or seeks to make a relevant pay disclosure.

It renders them unenforceable. It renders a standard clause, in high-level contracts, unenforceable. That is what it says.

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

Deputy de Sausmarez: Thank you, and it was the second bit, that Deputy Dyke read out, that is absolutely fundamentally important to this. This whole ordinance is only relevant to the disclosure of pay if someone believes that they are being paid less than someone else for the same work, if
375 they are being discriminated against, on the protected grounds. So the only situation in which someone can disclose pay, if they have got such a contract in place, is if they have reason to believe that they have been discriminated against, on a protected ground. So that brings me back to the whole point of why this is in this draft legislation at all.

380 **Deputy Dyke:** Sorry, another point of correction.

The Deputy Bailiff: Sorry, Deputy Dyke. You have to wait until I allow you to speak before you start speaking.

385 **Deputy Dyke:** Sorry, madam.

The Deputy Bailiff: Deputy Dyke, what is your point of correction?

Deputy Dyke: Thank you, madam.
390 I just read the provision. Deputy de Sausmarez is reading some other provision. It makes these clauses unenforceable, full stop. Well, not full stop, but they are basically unenforceable.

The Deputy Bailiff: Thank you, Deputy Dyke. Deputy de Sausmarez.

395 **Deputy de Sausmarez:** Thank you.
For the purposes, this is reading out a bit that would explain to Deputy Dyke and hopefully other Members:

400 For the purposes of this Ordinance, a disclosure is a relevant pay disclosure if made for the purpose of enabling the person who makes it, or the person to whom it is made, to find out whether, or to what extent, there is, in relation to the work in question, a connection between pay and having, or not having, a particular protected ground.

405 So that explains that this is a very narrow, you can only override such a pay disclosure provision in a contract if it is for that very specific purpose. And the reason that provision is in there, is because without it, it would be, to all practical purposes, entirely possible for businesses to discriminate against people on those protected grounds, and the people who are being discriminated against would not be able to prove it.

410 So the effect of this amendment is to make that entirely redundant. It would make it pretty much unenforceable. So, if we go back to the purpose of this Prevention of Discrimination Ordinance, the clue is in the name. As Deputy Dyke quite rightly said, its purpose is to deter discrimination. Now, if there is no effective mechanism by which people can prove that they are being paid less because they are being discriminated against on a protected ground, then it is pointless having it; it is rendered practically useless.

415 So that is the purpose. And that is why I was explaining – I think, the exchange between myself and Deputy Dyke has shown – that, I think, there has been a degree of misunderstanding at the heart of this amendment, and that is something that I hope will be recognised through the debate on it. So, Deputy Dyke said he makes no apology for explaining, in some length, in opening the amendment, and I am going to make no apology for running through the key points that were
420 included in the committee’s briefing note, because I think they are important, and I suspect not all Members will have had the opportunity to read, or potentially to think about, what was included in that.

So, for clarity, Section 16, which is about employers and equal pay, sets out the provisions in respect of equal pay, which is about who can compare themselves to whom. This is about it being
425 a much, much narrower definition than the much broader concept that I know people are worried about, which is equal pay for work of equal value, which is something we need to set aside.

The comparator must be a real person, the ability to read it in an equal pay clause, if not included in a person’s term of employment, and what is considered ‘equal work’. So, without that, we do not have those important parameters that actually help make it clearly defined and enforceable. The
430 purpose of Section 17, which would also be removed by this amendment, is to prevent a person from contracting out of their right, or being asked to contract out of their right, to non-discrimination. I think that is quite important.

Section 18 is the defence of material factors. This is an absolutely crucial one. Deputy Dyke spent some time reading out from a letter from the GFSC, which I think he said was sent in February, which
435 was in response to the technical consultation. Now, this was an issue that was raised by employer groups in particular, through the technical consultation, so the GFSC was not the only respondent to that technical consultation to raise this issue. Section 18 is a direct response to the concerns in this area.

Section 18 is exactly what the employment groups, the business groups, asked for to go in to make this workable for them. And they have subsequently confirmed that they are happy with Section 18, which is about the defence of material factors. So just to be clear, the inclusion of Section 18 was specifically included, because of the concerns raised through the technical consultations, so what Deputy Dyke read out in his letter did not refer to Section 18, because that was the remedy to the problem, and that is something that the business groups have specifically asked for, and we
440 thought that is a fair point, and we included it. Taking that out is deeply problematic; that is what they asked to go in.

One of the things in the explanatory note, and indeed expanded upon in Deputy Dyke’s opening speech on this, was that this is somehow very novel, I think the exact wording was, which could not be further from the truth. This is absolutely standard: it is standard in the UK, it is standard in Ireland,
450 it is standard in the EU; it is absolutely not novel. This is a very regular bit of law, really; there is nothing novel about it. It is tried and tested. I think the Jersey law is silent on it, but I think we need to ask ourselves, if that is the case, do we want to knowingly make discrimination, make this equal pay, effectively unenforceable if someone is being discriminated against? If we support this amendment, that is what we will be doing; we will know that it will be very difficult in practice, for
455 anyone to prove that they are being paid less because they are being discriminated against on one of the protected grounds; for example, if they have a disability, and they are doing the same work, but they are being paid less because of it.

If we support this amendment, we are endorsing that. We are effectively saying, ‘Okay, well, we will pay lip service to it, but we know that there is no real mechanism to enforce it.’ Are businesses
460 really crying out for the right to discriminate against people in this way? I do not think so. I do not think that we should do our business community that disservice, by assuming that they are.

So it is absolutely not about equal pay for work of equal value, which I have mentioned a few times. And I think I have explained about how Section 19 absolutely does not outlaw pay disclosure provisions; that is a key point. Really, the last remaining issue about this amendment is the time
465 period, whether it should be three or six years. Six years was actually a recommendation, I think

from the LRP; I cannot remember. But it is the standard period of time in contract law. Maybe again, it was the employment groups; it did come back as a recommendation.

The reason it is six years in the proposed legislation, is that that is the standard period of time in contract law. And it is also worth noting that as pay arrears can only be backdated to the date of this ordinance coming into force, this part of the amendment would have no practical effect, until 1st October 2026. Hopefully I have explained the ways in which this amendment actually causes many more problems than it seeks to solve. I think the problem that the amendment seeks to address is not the problem that has been articulated in the explanatory note, and indeed, in the opening speech.

I do not think that problem is in any way how it is being described; this is absolutely not novel, and it is a very important aspect of making this legislation workable in the real world. There were concerns raised through the technical consultation. Because this is a complex piece of legislation, and because it has very practical effects on a lot of very important stakeholders, that is why the committee decided to go out to a technical consultation, and I am really glad we did. It was quite an unusual step, but this demonstrates the value of that technical consultation. An issue around this was raised, and we have put in the remedy to the problem that was flagged.

That remedy is already in the proposed draft legislation, and that is why we need to reject this amendment, and stick with the legislation as drafted.

Thank you.

The Deputy Bailiff: Deputy Le Tissier, do you formally second this amendment? I apologise, I should have asked you that before.

Deputy Le Tissier: I do, madam.

The Deputy Bailiff: Thank you. Deputy Meerveld.

Deputy Meerveld: Thank you, madam.

One of the books in my business library is entitled, 'In business as in life, you don't get what you deserve, you get what you negotiate'. And that is described as, 'The Bible of negotiation'. I spent most of my adult career working in Hong Kong and Singapore, being discriminated against and observing blatant discrimination on the basis of race. I worked in the finance industry, and the majority of my career in senior positions, I had a non-disclosure clause in my contract, regarding pay.

The reason that was there was because you could have people sitting next to each other in a financial institution, with the same job title effectively doing the same job, but getting essentially huge differences in pay and remuneration. Not based on anything other than the fact – I am sorry, I am not giving way – they have negotiated that higher pay, possibly based on their connections in the community in the Asian world, their track record in bringing business in. Hell, I think sometimes their ability on the golf course, but there can be huge disparities, and that is common in that industry.

Now, the risk with this provision, as Deputy Dyke has tried to illustrate, is that somebody can make a complaint on a protected ground, because they find out the person sitting in the next nest with them, same job title, is getting significantly more pay. Now, that complaint could be because I am Caucasian and not Chinese. It could be because I am Catholic, I am not Buddhist. Or the fact that I personally suffer from dyslexia and prosopagnosia. All of which are protected grounds, under this legislation. Now, we are in the situation that the non-disclosure clause is no longer enforceable. In a dispute, I officially get to know exactly what my neighbour is earning, and then bring a complaint to have equalisation of pay. That runs roughshod through the way the finance industry works, not just in Guernsey, but worldwide.

Therefore, Deputy Dyke's assertion that this legislation potentially could damage our industry here, make us less competitive, and create issues for people who choose to be domiciled and

employed in Guernsey, companies that choose to domicile and have employees and set up business and operate out of Guernsey, and possibly are making a competitive decision between here and Jersey, is absolutely correct in my opinion.

Therefore, I strongly advise Members to support this amendment. I would go as far to say I might have to vote against the entire legislation, the ordinance, if this is allowed to go through because this jeopardises our core industry in Guernsey, and I cannot put it any more forcefully than that.

Thank you.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: Madam Deputy President, I of course do not want to jeopardise any industry, especially the core and most important industry in terms of the revenue it brings to the Island. Indeed, as Deputy Trott and many others have pointed out, much of our social services and public services is reliant on money from that. But I think I need to make some points very much against adopting this amendment.

The first is, partly in jest, Deputy Murray almost accused me of the pot calling the kettle black, when I was going on about additional debates, when I speak fairly frequently. Well, in the same vein, one could suggest that Deputy Dyke's quotation from the GFSC, about their disdain for this kind of regulation, is coming from one of the toughest regulators in the world, that certainly puts the finance sector through many paces, perhaps more onerously than some other jurisdictions. Now, we know that many offshore jurisdictions – Gibraltar has a special kind of relationship, certainly Cypress, certainly Malta, certainly Luxembourg – are well inside the bosom of the European Union. We also are aware, Deputy Dyke mentioned London, as a competitor to Guernsey, which indeed it is in some areas, and of course, the United Kingdom has legislation and extensive court procedures and litigation on such measures. So, of course, does Ireland.

Deputy de Sausmarez put very well the point, this will only apply to protected grounds; it will not apply to somebody who just feels that they should be paid more. And it would be disability and other protected grounds-related. In a way, if Deputy Dyke's main argument is – and I think it is, and the same is true of Deputy Meerveld – that this affects certain specialist branches of our finance sector.

Perhaps the amendment we should have had was an opt-out for those particular areas of industry, rather than something that potentially affects every single employee of Guernsey, whether they are working in light industry or in hospitality or in caring or carpentry or building or anything else. Because this is effectively a hammer that knocks everybody out. So I would say that it is actually even the wrong amendment for the purpose it is trying to do.

We were aware, during the many, many years of consultation, from senior lawyers, specialists particularly in employment and human resources, and corporate law, that there are a very large number of compromise agreements, made in Guernsey – perhaps too many. And we are aware, therefore, from time to time, a degree of dissatisfaction between employees and employers, maybe Deputy Dyke's analysis of the reasons that people in Guernsey get jobs they might not get elsewhere, is part of it, although I would not like to think that is the case, given the very high standards Guernsey has in so many areas. But I think we are trying with this legislation to overcome the need for much of those compromise agreements, and put a modern, fair, progressive reconstruction of that, to make everything much more open and transparent. Our focus is not on micromanaging the finance sector, we do not want to get into areas of share bonuses, or extra benefits, it is simply to legislate against discrimination on disability or sexual orientation or race or religion or whatever; that is the issue.

Deputy Meerveld's own example implied that maybe it helped one or two employees to be from Asia rather than from European descent. Well, in a way, he has argued for this, because we do not want to see anybody be awarded more pay, or to have a position –

Deputy Meerveld: Point of correction.

570 **The Deputy Bailiff:** Yes, Deputy Meerveld.

Deputy Meerveld: The point I was trying to make was our companies in Guernsey employ people of all nationalities, with disabilities and without, and that, you can have a situation whereby one member of staff finds out there is somebody else in the office with the same job title who is
575 getting paid considerably more for whatever reason, possibly just because they negotiated a better pay package, and then use a protected ground to bring a claim, and try and get their pay elevated to that level. That goes against the way that the finance industry works, in the higher paid positions. Thank you.

580 **The Deputy Bailiff:** Deputy Gollop.

Deputy Gollop: Maybe given the fact that we are trying to regularise pay in the Civil Service, and we States' Members have the, some would say, misfortune of having our pay levels very well known, actually, published on an itemised basis, it may be in the medium term future, finance will
585 seek to restructure the way it pays. We live in very different times, we live in difficult times, we are seeing financial uncertainty in America, in Europe, especially in the United Kingdom at the moment, and therefore the customs of the past will have to evolve into new standards. The GFSC themselves were participants in an excellent series of conferences and seminars last week, to do with green finance, and we were very much made aware of the importance, now, of ESG, and evolving standards and ethics.

590 Perhaps some of what was passed will change, and I would argue that not only has Deputy de Sausmarez reminded us, we have consulted extensively with representatives from the industries – Deputy Falla is very aware of that as well – and they have not raised the strength of concern and feeling that Deputy Dyke has today. But one would also say there is a counter-voice, perhaps more female, perhaps more younger, perhaps more diverse, of people who are moving through the system in their 20s, 30s and 40s, plus digital nomads, who want a society and framework that is perhaps more reflective of 21st century diversity and different ways of looking at things, and maybe different kinds of employment contract, and maybe even moving away from employment contracts to self-employed people.

600 I would say put away this amendment and let the Law do what it can, and support the legislation as written.

The Deputy Bailiff: Deputy Kazantseva-Miller.

605 **Deputy Kazantseva-Miller:** Thank you, madam.

I feel compelled to speak, and I continuing in the vein of Deputy de Sausmarez, because I do still think there is a fundamental confusion about this Law and this ordinance, and how it works. I will speak first to Deputy Meerveld, because he said that anyone can go and claim they have been discriminated against because they might be Catholic or whatever. If you feel you have one of those
610 protected grounds, if you have a disability, if you are a carer, or you are a foreigner, and you feel or you have evidence that discrimination has taken place, for example in your employment or in the provision of goods and services, the burden of proof is first on you. You have to gather the evidence to evidence the fact that discrimination has taken place; you cannot just go and say 'Oh, I feel I am being paid less, so it is a claim ...' You have to provide evidential proof that you specifically have
615 been discriminated against on the grounds of your protected status.

I think this goes to the core of the concerns that are currently being raised, which I really think are not substantiated, because that is not what this ordinance is trying to do. First of all, the burden and proof is on you to show the evidence that discrimination has taken place, and only on the protected grounds. As Deputy de Sausmarez has also explained, the provision number 19, which is
620 about material defence, allows employers to showcase, in cases where they have material defence for their position, they have tools to show that actually discrimination has not taken place.

First of all, you have to provide the evidence that discrimination has taken place, so it is not a simple, 'Here is a quick letter to the tribunal, and I am going to get £30,000 of compensation'. It just does not work like that.

Second, I want to address what Deputy Dyke was saying in his opening speech, which he opened as this amendment being uncontroversial and of no consequences. I mean, this really could not be further from the truth, because I think this would really render the core of this ordinance toothless. I think Deputy Gollop potentially called some of these amendments as, 'leaving this ordinance as a toothless tiger'.

First of all, Deputy Dyke has mentioned that we are leaving Section 14, and that is enough. Section 14 is only in relation to the recruitment process so if you are looking for a job, that is just part of the recruitment process. All the people who are currently in employment, for example, which is the vast majority of people, basically will not be protected by this ordinance. By only limiting it to Section 14, which is what this amendment is trying to do, you are again completely taking the reason for this ordinance to come along.

But really, the point I would like to make, and I do respect –

Deputy Dyke: Point of correction.

The Deputy Bailiff: Yes, Deputy Dyke.

Deputy Dyke: Thank you, madam.

Section 14 does not apply only to the recruitment process. It applies right through; it is not limited to the recruitment process.

The Deputy Bailiff: Thank you, Deputy Dyke. Deputy Kazantseva-Miller.

Deputy Kazantseva-Miller: So, the point I would like to address in Deputy Dyke's speech, which I do really respect him as a lawyer with significant international experience, and as a lawyer, he would be bringing forth evidence that can be evidenced, that perhaps has been submitted in a written or other format, as part of consultations, but Deputy Dyke has only referenced one piece of evidence, which is from the GFSC consultation, which has been included as part of the technical consultation process, part of the ordinance. He has used the platform of this Assembly to reference hearsay, and conversations he has had, off the cuff, with fund managers and others that we do not know about. Deputy Dyke has been using this platform to claim evidence that this ordinance and its current provisions will basically bring an end to the finance industry. So, I wanted to bring the Assembly's attention to the combined statement that has been released by three business bodies, in light of the debate coming up.

This combined statement is from the Guernsey Institute of Directors (IOD); the Guernsey International Business Association (GIBA); and the Guernsey Chamber of Commerce. The combined statement says that they are supportive of the news that this ordinance is coming next year, and that there is basically a year for businesses to prepare. But, just to illustrate, I want to narrow down on the Guernsey International Business Association, because the GIBA is a membership organisation, which consists of other membership organisations, all of which represent the financial services industry. The membership consists of the Association of Guernsey Banks (AGB); the Guernsey Association of Trustees (GAT); the, Guernsey Commercial Bar Association (GCBA); the Guernsey International Insurance Association (GIIA); the Guernsey International Funds Association (GIFA); and the Guernsey Society of Chartered and Certified Accountants (GSCCA).

These bodies represent the financial services profession that Deputy Dyke claims that this legislation will render ... will exit. These other bodies who have spoken and are supportive of the Association. And I think we have to take responsibly the platform we have here, to speak of evidence, to bring evidence to this Assembly, and I am bring here the evidence of the combined statements of the bodies that represent the vast majority of employers, that represent all of the

675 financial services associations who are supportive of the current draft of the ordinance we have, and
which have gone through cycles of consultation over many years. I think this is the kind of evidence
we have to take as –

Deputy Blin: Point of correction.

680 **The Deputy Bailiff:** Yes, Deputy Blin.

Deputy Blin: I, and I imagine maybe other Members are, members of some of these
organisations mentioned by Deputy Kazantseva-Miller – the Chamber of Commerce, IOD. I do not
remember, and I will stand corrected if so, but I do not remember being consulted on all these
685 aspects. They are giving executive decisions about this, but I have never been consulted by the
Chamber, nor by IOD, and if I am incorrect, I would appreciate an upstanding to say I am, and make
their point.

The Deputy Bailiff: Thank you.

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Deputy Kazantseva-Miller: I give way to Deputy de Sausmarez.

The Deputy Bailiff: Deputy de Sausmarez.

695 **Deputy de Sausmarez:** Thank you.

I thank Deputy Kazantseva-Miller for giving way. I think, in response, to Deputy Blin's point, there
was a very significant involvement from those organisations, but very specifically as well, from
people such as employment lawyers within those organisations. They understand the needs, they
are representative associations, it is not about doing a straw poll of members, these are people who
700 understand their members' needs, in the very specific respect of issues such as HR and employment
law, and those people in particular, from those organisations, were very heavily involved in the
technical consultations. It is actually a really specific set of expertise that was drawn on, we drew on,
through that technical consultation, and that is why the issue that resulted in Section 18 was put in.

705 **The Deputy Bailiff:** Deputy Kazantseva-Miller.

Deputy Kazantseva-Miller: Thank you, madam.

I think it is really important that Deputies here look at the sources of information, look at the
source of evidence, and really look at where is the evidence to claim that this ordinance is going to
710 be the end of all ends, basically. And so, I will not be supporting this amendment, I think it really
cuts to the core of what this discrimination ordinance actually is to do, and actually – and I will
probably reference that in general debate, but – we have a population policy coming along, which
is basically recommending that we bring more and more people. Those people are not going to be
of British nationality, potentially. So our workforce is increasingly under stress, and we need more
715 workers here.

The workforce is increasingly of international calibre, and this is what we need to continue
remaining protected. Removing protected grounds, such as we talked about disability and care, but
also race and nationality, will actually make us less competitive, in light of all of these people who
may want to come, or not want to come, to work in Guernsey. I think we have to look at the
720 challenges we face, as a government, in its whole: the population challenges, the housing
challenges, discrimination, human capital; they are all trying to actually reinforce each other and not
having this ... What I think I do take slight umbrage with is just the lack of evidence, and the
confusion presented by some of the arguments we have heard today, which is extremely dangerous,
because they are unsubstantiated.

725 Thank you.

The Deputy Bailiff: Deputy de Lisle.

Deputy de Lisle: Madam, I feel quite shaken by what we have been listening to in terms of the debate on this particular amendment. This debate will lead to major concern, I believe, in the public realm! We are dealing with the finance industry here, we are dealing with 40% of our GDP. I mean, that can be struck out, it seems, in a whim, with respect to this particular issue.

The other point I want to make is that this is a very complex area, which will require legal help in any challenge in this area over pay. So what are we getting into here? We are getting into something so complex that the ordinary person cannot manage it and will have to seek legal advice at very expensive rates. My point being that this goes well beyond the understanding of the general public, which, to me, means that the whole legislation, the whole Law, is well beyond most people in this Island.

I believe things should be simple, they should be readily understood. But this is not going to be very simple, it is not going to be very readily understood, and the public must have real concerns about what this Assembly is trying to push through. As I say, I am quite shaken by this, and I would like to ask, does the GFSC agree that this has overcome the problem that they portray would affect the finance industry? Do we have a retort, do we have a reply from them, that they were satisfied with the actual reasoning that was given them within that particular section 18?

I leave the committee to answer that particular issue for me.

Thank you.

The Deputy Bailiff: Deputy Falla.

Deputy Falla: Thank you, madam.

Unfortunately, life is not always simple. I, for one, am ready to admit that I have found it very, very complicated and difficult to get my head around this whole business, and I am a member of the committee. I have spent, since I was elected, many hours grappling with this, around the committee table. And of course, I have another role: I am Vice-President of Economic Development, so I also see life from a corporate, business-type lens.

I hope that has been helpful and valuable, in terms of my membership of ESS. And I speak regularly with the business groups, very regularly. I want to reiterate that if we vote for this amendment, it will not be possible for people to prove that they are being discriminated against, by being paid less because of one of the protected grounds. And that is the point.

Deputy Dyke has painted a doomsday scenario. Yes, it is frightening, but it has not been raised by the employment lawyers, who we have spent hours around the table, discussing the minutiae – and I make no apology for using that word again – of this legislation, and they have gone over it with a fine-toothed comb, and trust me, it was headache-inducing, trying to understand some of the points being made. This has never ever been raised along that journey. Nor has it been raised by any of the business groups with whom I have spoken regularly, until very recently.

There are statements that certain groups have made, and individuals who are very senior in those groups have made, in the last few days, which broadly support the legislation and do not see issues with it being accepted, as drafted. We did, in fact, introduce Section 18 as a result of feedback from the business groups. If we vote for this amendment, we are going to be taking it out again, and that does not make sense. I think this is highlighting a problem which, as far as I am aware, from the many people I have spoken to, including members of GIFA, who are the investment fund representative body, has never been raised.

Are we finding a problem that does not exist? I feel that were it to be a serious issue, it would have been raised with me, given that my membership of the two committees is known and understood. I would have been one of the right people to have raised it with, and I would have taken it very seriously. I really would urge Members not to withdraw Section 18, which has been put in as part of consultation to actually stay in tune with the business community.

Thank you.

The Deputy Bailiff: Deputy St Pier.

780 **Deputy St Pier:** Thank you, madam.

Just really building on Deputy Falla's comments around Section 18. I guess I have a question for Deputy Roffey, potentially for ... well, really for Deputy Dyke I guess, but actually Deputy Roffey may be able to respond as well, and indeed, His Majesty's Procureur may have a comment as well, because this is in relation to Sections 18 and 19 of the draft legislation. Deputy Roffey's committee's
785 draft – I am not sure if we have seen a final version but the draft – commentary does not draw attention to the fact that, as far I can see, Section 18 of the legislation, which Deputy Falla has just referred to, is identical to Section 77 of the Equality Act in the UK – word for word identical. And indeed, Section 19 is very, very similar to Jersey's provision, and Deputy Dyke has made a great deal of the need for maintaining comparability with Jersey. As I say, the committee's commentary does
790 not refer to that, and I just want to make sure that I am indeed correct and have understood it correctly, and if that is the case, then I would welcome Deputy Dyke's response in responding to the debate, as to why he feels Section 18, being a mirror of Section 77 in the UK's Equality Act, and Section 19 being very close to Section 11 of Jersey's provision, is indeed not appropriate, given our circumstances.

795 Particularly, as Deputy Falla has said, Section 18 has gone in as a direct result of, I think we can say, lobbying from the industry, and indeed the employment lawyers as well. As I say, if His Majesty's Procureur has any comment in relation to those points of comparability between the jurisdictional laws, I would welcome that input as well, madam.

800 **The Deputy Bailiff:** Madam Procureur, are you able to comment now, or do you want some moments to gather your thoughts?

The Procureur: I will just have a moment, madam, thank you.

805 **The Deputy Bailiff:** Yes. I will turn then to Deputy Trott, who sprang to his feet.

Deputy Trott: Thank you.

I have already sought some guidance from Madam Procureur, which I was grateful to receive, and will mention in a moment. I would like to start by dispelling any kind of concerns that the
810 Assembly may have, that this legislation, and the amendment in particular that we are debating, places the financial services industry in Guernsey in jeopardy. It does not, but Deputy Dyke may have a point that it impacts on a specific subsection. I gave him the opportunity to deal with that earlier, which he only dealt with partially.

I asked the Procureur about the issues of territoriality, and she made it quite clear to me; she
815 confirmed what I already knew, that this ordinance only has effect in Guernsey and for it to impact then there would need to be a case made, that it affected ... that there was a relationship in such a way, that brought that relationship into scope. That is why I asked Deputy Dyke the question, and I applaud him for bringing this amendment.

Because, the area he is talking about, the particular area of the investment sector, there are a
820 number of managers who choose to reside here, and he chose not to mention them, so I shall not, either. They are an important part of the investment sector, but they are a small part, relatively speaking. By that, I mean the overwhelming majority of the investment sector, as we know it, are closed-ended private equity funds, and they are formed and maintained under a structure that sees a general partner. The general partner is based here, and very often, there will be a board of three
825 or five local residents who provide the substance to those boards. But the investment advice, the investment managers, will be based elsewhere, and they will be outside of this reach, so the overwhelming majority of our investment sector will not be caught.

But there is a component that will, potentially, and it is that area that we are talking about. If the concern was widespread – though I think both Deputy Kazantseva-Miller and Deputy Falla have

made this point – we would have heard from the Guernsey Investment Funds Association, and we would have heard from the Guernsey International Business Association, in particular. These are exactly the sorts of things that their lawyers would advise on. So I am relaxed.

I was not aware of the letter from the GFSC until my friend, Deputy Dyke, read it out. To my knowledge, he has not sent that to Guernsey Finance, and if he had, then both, of course, Deputies Falla and I would have seen it. So I repeat –

I give way.

Deputy Dyke: Just a point there, thank you.

When the letter came out, it was copied to me – by what means, I cannot remember – and I did contact the GFSC, and they said I could circulate it to all Deputies with one redaction, which I did do. But in all the emails obviously it is easy to miss something.

The Deputy Bailiff: Deputy Trott.

Deputy Trott: Thank you.

I hope that is helpful. My view is that this could impact on that small subsection – well, not a small subsection: relatively speaking, it is small, it is still material – and that needs to be borne in mind. I want to absolutely refute any suggestion that this, in any way, shape or form, places our major industry in jeopardy. It most certainly will not. But it could – and I repeat *could* – have an impact and again, I think Deputy Dyke is right for raising it.

Thank you.

The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: The speeches so far, madam, have been really good. There were two I commend, in particular, which is that of Deputy Dyke and that of Deputy de Sausmarez. (**Several Members:** Hear, hear.) And they put the matters, respectfully and respectively, very well. But, who would buy a lawsuit? Who would buy an unintended consequence?

Deputy Trott, the last speaker, has made the point that he has now cleared his mind, I think, in relation to the territorial aspect. And that is true, because if one looks at Section 16.1(c) of the Law, both (a) and (b) have to be employed in Guernsey, (**Deputy Soulsby:** Exactly.) but they do not have to be employed by a Guernsey company. They could be employed by somebody, an entity in Singapore, Gibraltar or wherever it may be, or via a company that is in the group; there might be a Guernsey group, that is part of another process.

Now, in relation to that, and with considerable – *considerable*, and I emphasise that word because I have said it twice – respect to Guernsey lawyers, they are not businesspeople. They are not people that are running multinational corporations; they do not have that expertise. And I know from my own experience in the finance sector, that it does not matter what Guernsey says, if the people that make the decisions – and Deputy Trott has referred to that investment, but it applies to many fiduciary institutions – if they do not like what Guernsey does, they are not going to rationalise and say, ‘It should be a balance of reasonableness’, they are just going to take a decision in the best interests of what they see as their group. They will do that unequivocally and unreservedly. So, when Deputy Gollop effectively says ‘Well, they will have to change, and they will have to evolve’, no, they do not, they do not, because they are not nationally bound by reasonableness.

Now, clearly, nobody should be discriminated against, and get less pay if they are doing exactly the same job and have exactly the same experience and exactly the same ability, because, for example, they are partially sighted, because you can adjust that, and the Law provides that you must adjust that. It would be wrong that you get £10,000 less a year because you are partially sighted or whatever it may be. That is wrong. But what concerns me, and I have got exactly the same experience as Deputy Meerveld in relation to the financial institutions, there are people who are not disabled in any way, who are sitting next to each other, or working in the same office, who get paid, doing

the same job but get paid disproportionately less or more, because, they think 'A is better than B, and we want to incentivise her and we don't really to particularly incentivise him; we need him, because we are short of people in Guernsey who can do the job. But we don't want him knowing what she gets paid.'

Now, that is the concern, and I do not mind if anybody who has spoken before wants to get up and interpose. I will give way in relation to this, because this is an important issue. What concerns me, when I looked at the statute – I reread it when Deputy Dyke was saying it, I reread when Deputy – Oh sorry, were you wanting to get up? (**Deputy de Sausmarez:** Yes.) I will sit down.

The Deputy Bailiff: Deputy de Sausmarez.

Deputy de Sausmarez: I thank Deputy Ferbrache, who did invite someone to get up. I just thought I might be a little bit premature, actually, maybe I should have probably waited until he said what he was going to say. But I was just going to clarify that this Law, in no way, prevents employers from paying people different sums for any other reason. The only thing it is concerned with is whether people are being paid less for the same work on a protected ground, that is the only way. If an employer thinks that employee A is just better at their job, or whatever, than employee B, it is absolutely in their discretion to do that, and there is nothing that this legislation would prevent, or inhibit in that respect. It is absolutely fine.

The only thing that this legislation is concerned with is if – and it is, as Deputy Kazantseva-Miller alluded to, it is a high bar to prove – that pay discrepancy is a factor of discrimination on a protected ground, and that would have to be proven, and I do take this opportunity to remind Members, that there is a professional tribunal with specific expertise to determine whether or not that discrepancy in pay is related, or is not related, to that protected ground. In other words, whether or not it is a function of discrimination.

I hope that helps to clarify and hopefully calms nerves around this. It is absolutely fine for employers to pay different employees different amounts as long as it is not a factor of discrimination on a protected ground.

Deputy Ferbrache: Thank you. I am very grateful, and I mean that, very grateful for that interjection.

What concerns me, though, is Section 19. Section 19, headed Discretions About Pay, subsection 1:

A term of a person's contract of employment that purports to prevent or restrict the person from disclosing ...

– disclosing, that is fair enough, they can do what they like –

... or seeking to disclose information about the term of P's work is unenforceable against P insofar as P makes, [and my emphasis] or seeks to make a relevant pay disclosure".

I could see, in a tribunal, somebody saying, 'I want to know what he gets paid, I do not know what she gets paid. I want to know that,' and then you get into the argument about, 'Well, I do not really want to tell them what they are going to get paid, because I am paying him or her £20,000 a year more than the other person, because I think he or she is better and I do not really want the other one to know that, because it is going to disincentivise the other employee.'

One thing I found in a lifetime's experience in the law is I never know what a tribunal or report is going to do, from one moment to the next. And if anybody tells me that they do then they are better than me. And there were not that many better than me in relation to the litigation matters in Guernsey over the last 40 years. But I give way to Deputy Roffey.

The Deputy Bailiff: Deputy Roffey.

Deputy Roffey: Madam, I know I will have a chance to reply later on, but I just wanted to make clear that nothing in Section 19 would give somebody that is making a case automatic right, or any right, to know what somebody else is being paid. It would simply, in those circumstances, allow the person to disclose their own pay in order to assist that going on. We are talking about orders against people disclosing their own pay being overridden by this provision.

Deputy Ferbrache: In subsection 19(2), which I have not read at the moment, but I will now:

A term of a person's contract of employment that purports to pay, prevent or restrict the person P from seeking disclosure of information from a colleague about the terms of the colleague's work is unenforceable against P insofar as P seeks a relevant pay disclosure from the colleague. For these purposes, 'colleague' includes a former colleague.

It opens that particular concern, because they can ask for that information.

I have already said, and I was not being facetious, I would not know – and I accept Deputy St Pier's point that this section, there are similar sections in other legislations, so there will be some learning in relation that; I fully accept that. But, in connection with this, there is still that concern. What I do not want to happen is that we reject the amendment and we end up with people – he referred to three key people without naming them, but it could be wider than that. It is the action of unintended consequences, as I said before, and we all feel a lot better because we have brought in this legislation, but actually, we have done people down because there are fewer employment opportunities, and it is the perception out there. It is the perception sometimes which is worse than the actuality, and that is what concerns me.

One of the speakers said, 'Oh well, what if people, they would be put off from coming...' My family own a business, which has got nothing to do with the finance sector, but when I was talking to the senior manager at that business on Monday, it employs 108 people, and those people come from Kenya, they come from the Philippines, they come from Latvia, they come from Poland. They come from all over – well, not all over the world because there are more than 108 countries, but they come from lots of different places. Discrimination is not their issue; they come here because they get better paid, because they get better terms of employment, because they are treated better in this jurisdiction than they are treated in their home countries (**A Member:** Hear, hear.)

So this thing they are not going to come because they are discriminated against ... although I am going to vote on the single Proposition as clearly outlined by the Deputy Bailiff at the beginning of this debate, as amended, because there has already been one amendment passed, we may or may not have some more substantial amendments passed, I don't know. I am going to vote for it, because we should not have discrimination. We are all equal, we are all born and we are all going to die, and we have got to live as happy a life and ensure that everybody can live as happy and as productive a life, whether they live till they are 99 or 59 or 79 or 123. That is what we have got to do.

But what we must not do is just have the theory that destroys the reality and the actuality, and that is what concerns me. That is why, unless ... and I am going to listen to the other speakers, and I am going to anticipate that Deputy Roffey will speak when he replies, I accept all that, but at the moment I am convinced by what Deputy Dyke has said. I fully accept Deputy de Sausmarez's point that the letter was written in February and as a result of that – I am not sure if it was a direct result of that letter, I do not know, but Section 18 was then put in, she has explained that and other concerns. But I have not heard, and Deputy Dyke can deal with it in his reply if he is able, whether the GFSC are saying, 'Well, okay, we are content with all of this now.'

Deputy Gollop made a point that they are one of the toughest regulators in the world; well, I do not know whether they are or not, but they are certainly a tough regulator. And if they have concerns, as a regulator – a tough regulator and a proper and a balanced regulator, I hasten to add – that this is still a concern then their knowledge of it is far wider than mine, and I accept their judgement. But I would be grateful if Deputy Roffey and Deputy Dyke could address those concerns.

975 **The Deputy Bailiff:** Before turning to Deputy Murray, I will just ask His Majesty's Procureur to deal with the issue that is outstanding.

980 **The Procureur:** Thank you, madam, and just to confirm, the wordings of Sections 18 and 19, they are not word for word the same as either the UK or the Jersey provisions. But Deputy St Pier is absolutely correct that they are based on extant provisions already in use in the UK; in fact, in the UK Equality Act, and there is a lot of case law surrounding the interpretation of those provisions.

Thank you, madam.

985 **The Deputy Bailiff:** Thank you. Deputy Murray.

990 **Deputy Murray:** Thank you, madam.

I have been listening intently to what is being said at the moment, and there seems to be a lot of concern and legal points, or potentially interpretations of legal points sort of bouncing around. Some from legal individuals, some from people who obviously have researched some of the information to some degree. Where I am coming to the conclusion, really, is that, well first of all, yesterday, I admitted to being a pragmatist, and sometimes one tries to get to the root of the problem as quickly as possible, and find the most efficient way of dealing with it. I have a growing concern, having listened to everything that is being said today, that we are creating a legal quagmire.

995 Whether it is right, whether it is wrong, will potentially be argued by legal entities, lawyers, to the end of time, because it seems to me that they are, and I mean no disrespect, cats fighting in a sack, because even I, during the course of this particular debate, have had conflicting advice from the Law Officers. So I am concerned really that whatever lawyer you approach will have a view. That is probably the nature of the game; I understand that. The difficulty is that the finance sector is one which has a myriad of lawyers, trained in all kinds of disciplines, but this also affects ordinary business, who do not have, at this stage.

1000 They have to try and navigate their way through this legislation, and it is complex; I think we are finding out just how complex it potentially could be. And that is a concern for me, because then I get to an issue of idealism and the best possible solution to solve one problem, which is discrimination, against the impact of actually running a business successfully, not intentionally necessarily trying to discriminate against anybody, but trying to run a business, and it makes it more difficult. What we are going to do today is balance, between making the ideal of not discriminating real, and on the other hand, trying to actually practically introduce a Law that is very complex to interpret, and more complex the further away you come from the legal profession altogether. And

1005 I think I will pick up on the point that Deputy Ferbrache made: it is the perception here.

1010 I do not think what we are doing today is actually necessarily going to dissuade, if we decide not to do it, people to come and work in Guernsey, because Guernsey has so much to offer. I do not see that as a problem. I am concerned, however, that we make running business in Guernsey so complex that people either do not do it, or opt out of it, or make mistakes without actually appreciating that they are making mistakes. And we are doing this in pursuit of not making discrimination possible, but I think we are finding out how complicated that is at this point.

1015 So at some point, pragmatically, we have to draw a line, we have to decide that is just a stage too far, it does not achieve the ultimate ideal goal of preventing any type of discrimination, but actually, it is workable, it is practical, and in the end, in Guernsey, we are a small, very small jurisdiction. Yes, we punch above our weight on the international stage in finance, but otherwise, we are pretty self-contained, small jurisdiction of some 63-odd thousand individuals, trying to get by in a climate, an international climate, that is having a huge adverse effect on us. And I am not really comfortable about introducing layer upon layer of bureaucracy on small business in particular, let alone the impact on the reputational issue that it might have of trying to resolve two people's

1020 point of view about whether they have been discriminated against or not.

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That takes me to my second point, because what I am understanding today – and I think it is a miscommunication, a misunderstanding – is all of this only comes into play if there is actually a protected ground that has been offended, somebody has felt under the protected grounds, they qualify, and that is the rationale for being what they feel is discrimination. I understand that probably clearer now than I did before. However, what worries me is that the broad grounds that we have in here, for what can be described as disablement, or impairment, is huge.

That worries me, because (a) you cannot employ somebody and actually ask them if they are disabled, because if they have a hidden disability, and many have – in fact I think Deputy Queripel refers quite often to having a hidden disability – you have employed someone you did not know had a problem, then we get into some kind of dispute when they tell you they have got a problem, and it may very well be a real problem, but then that is leveraged to start a process, a complex process. In some instances, even beginning that process, or trying to pursue that process, is going to potentially lead to reputational issues, apart from the complexity of actually trying to pursue it.

I understand why we want to do that; we want to try to protect an individual. But I have understood now that even in the 13,500 people who are disabled potentially in Guernsey, many of them would not admit to it, many of them do not actually know they have got a disabled issue under this impairment. I just see us in a quagmire of counter-claim about what constitutes disablement, and therefore what entitles me to what. Are we sensible in a jurisdiction of this size, in imposing legislation that goes to this extent, that takes an army of lawyers to tell you whether you are right or you are wrong? That is the question I put, and it worries me, and it worries me that it is a disproportionate burden on an Island that has got enough difficulties at this point in time, an increasing burden of difficulties in trying to compete internationally and locally, and to make ends meet.

From a pragmatic perspective, I have got enough concern now, and I do not know whether it is the correct legal understanding of it or not, to say that this is going to be too burdensome for us as a jurisdiction. It is a personal opinion, but I am very, very worried.

Thank you, madam.

The Deputy Bailiff: Deputy Vermeulen.

Deputy Vermeulen: Thank you, madam.

It is vital that Guernsey maintains its competitiveness, as a jurisdiction in which to do business. Now, the world is changing, it is a difficult place at the moment, madam; the economy is in a very, very difficult place: inflation is going up, we have a war in Europe starting, we have a Moneyval inspection due. We are introducing more and more legislation all the time: consumer legislation, credit legislation; and now we are moving on to discrimination legislation.

As somebody that owned and ran a business, I know what it is like. I know how difficult it is. And I was involved in that business for 43 years. When we started, we did not have any employment Laws, and this little thing midway through those 43 years came in for unfair dismissal, and there was no briefing, it was not really explained to any of the businesses what it meant.

Bit by bit, you saw in the paper these cases for local companies appearing time after time. I would say almost every business in Guernsey had a case for unfair dismissal brought against them. Employment Laws changed as time went on, but every business, big, medium and small, had a case brought against them. Our business had a case brought against them. The largest contractor at the time, construction, had a case brought against them.

And recently, a point was made at a Chamber of Commerce luncheon, by John Molton, who does have local business interests, about the cost of bringing in discrimination legislation. He said something along the lines of, 'We all want to live in an inclusive society,' but he then went on to talk about the cost of dealing with things such as the legislation and the discrimination and defending it as a company, and he cited if anybody has been through an unfair dismissal case recently, he said, 'You are looking at a minimum of £100,000, probably closer to 200,000.' We did not spend that when we went through our case 20 odd years ago, but we did not have as huge a

reputation to defend; we lost our case, and we had a fine by a tribunal made against us. We learned our lesson the hard way. But, it did not help us; it was a fine which we struggled with, but that is our business. We employed 60 people and quite often people in the early days would come to my office saying, 'I am not happy. So-and-so is earning so much and I am earning this much.' And that happened so often, the carpet in my office got worn out, and we put a clause in where it was confidential what you earned, and you could not talk with your colleagues about that; it was actually in the contract, and that was very important. So I can see why the finance industry does it, and I just wonder: our company that was 60 put it in, what would a company like the States, with 5,500 people be like? How much time, on its own, would be taken up with those sorts of discussions?

I think earlier on, John Dyke, who has put this Law under a great deal of scrutiny, and I am so pleased that he has done, I am so pleased that he has ... and let me explain why. He alluded to the fact that I had had conversations with businesses that were upping and leaving sticks, and over a period of years, yes, I have, and I do not like it, because I am a Guernseyman through and through, and I want our Island to have a buoyant economy. I want business to stay here; I do not want business over restricted, I just do not want it, and I do not think we have got to blow ourselves out of the water with over-the-top regulation that makes us uncompetitive. We must not have that.

Recently, and I brought this to Economic Development's attention, but I recently had a conversation with somebody who was finding it all a bit too much, some of the legislation we were introducing. This was not specifically the discrimination legislation, but it is happening around the same time, all these legislations are coming in. During the course of an hour, we discussed various things, and in a reasoned way, I said, 'Well, this is Guernsey, and companies do come and go all the time.' 'Yes, Simon, but what is different is we are losing two companies because of that legislation, as a reason of that legislation which we are bringing in.'

That legislation is still under discussion; it is not the discrimination. But I can tell you that when a company thinks about setting up in Guernsey, the HR department will look at the papers, discrimination law, and they will see a pile of papers that high, for Guernsey, and half the thickness for Jersey. We compete with the Isle of Man, we compete with Jersey in our competitive set, and I think the UK as well. We even compete now with the Isle of Wight; they have made the whole of Bainbridge a free port, and certain businesses are relocating.

I do not like to lose business, because we have worked long and hard, and we have built up that, and Guernsey should be a great place to live and work. (**A Member:** Hear, hear.) In my election promise, I said that everybody deserves the right to thrive, and I believe that. Everybody does. And I also put that down to businesses, so I am going to support this amendment, and I would urge others to support it, too.

At the end of the day, after all the amendments – we have gone through 17 and everything – I am sure there will be a discrimination Law in place. I am sure that is going to happen. But let's make sure that we put things under the sort of scrutiny that Deputy Dyke has done, let's make sure that we do not make any own goals, shoot ourselves in the foot, or introduce legislation that has those dreadful unintended consequences that we see all too often.

One last thing in closing, Deputy Kazantseva-Miller, if I have pronounced that right, mentioned where is the evidence? Well, as Deputies, I have seen emails from small business owners, very concerned, and they have gone out to all Deputies, that have concerns about this legislation coming through. So we have got to maintain our competitiveness, particularly for finance; it is no good us having fines which are perhaps twice the size of other jurisdictions. We have got to remain competitive, and we must not shoot ourselves in the foot.

Thank you, madam.

The Deputy Bailiff: Thank you. Deputy Le Tissier.

Deputy Le Tissier: Thank you, madam.

I am happy to second this amendment, but I would like to say, right at the outset, that I support Guernsey having an anti-discrimination Law. And so there is no confusion, I will say it again: I

1130 support Guernsey having an anti-discrimination Law. But I have been scrutinising this Law, and I have had contact from members of the public, and do they want this Law, as opposed to any Law? I think there are serious concerns, and Amendment 4(b) does seem to address some of these concerns.

1135 I support removal of Sections 16 to 19 as, to me, they make no sense. I refer Members to Section 16, paragraph 2, and this relates to equal pay. It states that the comparison must be with a real person. Okay, I am happy with that, that makes sense. Then, if you move onto Section 17, and that relates to equal benefits, and specifically, paragraph 2, it states that for comparative purposes, it need not be a real person. So, A can compare their benefits with a fictitious person. To me, that is bad law, and it does not make sense. If the comparison was the same as the earlier section, I might be happy with that, but also in both sections, there is a reference to associates.

1140 It is not defined –

The Deputy Bailiff: I am terribly sorry, Deputy Le Tissier. It is quite hard to hear you above the gale that is coming through the Chamber at the moment.

1145 **Deputy Le Tissier:** Right.

The Deputy Bailiff: If as a consequence, Deputies want to take their jackets off, because no doubt it will get rather warm, please do.

1150 **The Deputy Bailiff:** Do carry on, Deputy Le Tissier.

Deputy Le Tissier: Thank you, madam.

1155 I was just querying associates, and other Deputies have mentioned this, that an associate, in this globalised world, could be a company which is not Guernsey-based. And that is particularly relevant in finance. That is not defined, and put together, in my view, this is an unfinished Law; there could be more – shall I stop?

The Deputy Bailiff: Yes, I would just ask His Majesty's Sheriff to – or maybe even Deputy Helyar.

1160 **The Deputy Bailiff:** Carry on, Deputy Le Tissier.

Deputy Le Tissier: Shall I carry on? Thank you, madam.

1165 Where was I? I think there could be more clarity in these sections and I think there should be more commonality between them. ESS have not actually been able to explain, to my satisfaction, as to why one is a fictitious person, and one is a real person. So again, I say, it is unfinished. So these sections will leave an area that lawyers are going to make lots of money on in years to come. Section 18, which I would also like to be withdrawn, it has got similar intent to 16 and 17, but it does not have any sections which I have just referred to, about comparison with real or fictitious persons. I think that maybe that section should have similar wording. Again, it is an unfinished law.

1170 Moving on to Section 19, which is a real 'doozie', it is shooting Guernsey in the foot in a very spectacular way. It is regulation without understanding or caring about our number one industry, and that is finance. As other Deputies have mentioned, we need to retain our finance industry; we have got enough trouble maintaining it as it is, with Covid and globalisation. But we want to grow it, and I know a certain section of the public would be very happy to see finance go; it is not without its critics, but unfortunately, Guernsey plc would be bankrupt in very short order if we lost our finance industry. So it is a public duty of the Assembly to protect it. If they go, then forget about the rights and wrongs of GST; we would be broke.

1175 So I say maintaining a level playing field with our friendly – sometimes – neighbours 20 miles to the southeast is crucial, and this is something that the GFSC have mentioned, as Deputy Dyke kindly

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read out. I have been involved in several finance firms, and they have consolidated, and so I have a little insight into how some of their mindset is.

When they are looking to consolidate, some of these points are very, very finely balanced. Adding one matter in such as this pay disclosure clause, it can honestly tip the balance; it could be the straw that breaks the camel's back, or maybe the donkey. Locating in Jersey would mean just one less issue to deal with. As I said, I have been involved in many finance companies –

Deputy Kazantseva-Miller: Point of correction, madam.

1190 **The Deputy Bailiff:** Yes, Deputy Kazantseva-Miller?

Deputy Kazantseva-Miller: Jersey has this type of legislation. So do the Isle of Man, the UK, and other jurisdictions that have been mentioned on numerous occasions as those that will seem more competitive than Guernsey if we bring this legislation now, 10 years, more than 10 years, after the UK, for example.

Thank you.

Deputy Dyke: Point of correction to the point of correction, madam. *(Laughter)*

1200 **The Deputy Bailiff:** I am not sure that has happened before but Deputy Dyke, I will give you the opportunity, although maybe Deputy Le Tissier could answer that himself.

Deputy Le Tissier: Thank you, madam. Thank you.

Yes, I have had to deal with non-disclosure of pay clauses, and they are pretty standard, and they are good, because they can promote disharmony in the workforce. I have been subject to clauses, and I have also had to deal with my staff, with their salary. I do have some experience in this. Deputy Kazantseva-Miller, I would like to say that I am not sure that is correct, that Jersey does not have these clauses, but I thank her for her comments.

We are referring to experience, I am a little concerned that this has been brought forward by ESS, and of the Deputies on the committee, there is no one, and I stand to be corrected, with any finance background. I think that this could lead to unforeseen consequences, because if this clause remains then we can wave goodbye to our finance industry. It will not happen overnight, but it will happen. Section 50, I am not going to comment on that, it is technical; Section 53, I have got an issue with that, because although it might be denied, I think it does, a tiny, tiny little bit, introduce the concept of equal pay for work of equal value.

That is, as you well know, a plumber complaining that his pay is not equal to the accountant. Well, leaving aside that a plumber probably working for themselves earns an awful lot more than an accountant at the moment, it is going to be debated in the future, but we do not want this tiny little aspect coming in. That may come in phase 2; as I said, we will debate it.

1220 Finally, Section 53(2), whether it is three years or six years, seems to me that three years is ample time to identify discrimination. Six years could be an awful lot of money for a small business. I mean the finance companies could probably deal with it, but this applies to everyone. So I will be supporting this amendment, and I would urge Members to vote the same way.

Thank you.

1225 **The Deputy Bailiff:** Deputy Inder.

Deputy Inder: I am going to move the 26(1), please, madam.

1230 **The Deputy Bailiff:** Deputy Inder has requested a motion under 26(1), which is the guillotine motion. Those who still wish to debate, please stand in your place. Do you still wish to pursue your motion?

Can I ask everybody to turn off their microphones, so we are all equal, in relation to the noise?
(*Laughter*) Yes, it has been noted. (*Laughter*) Those who support the motion to guillotine the debate;
those against?

Some Members voted Pour, others voted Contre.

The Deputy Bailiff: The Contre win. There is a request for a recorded vote, please, States' Greffier.

There was a recorded vote.

Rule 26(1)

Carried – Pour 13, Contre 22, Ne vote pas 0, Absent 1, Did not vote 4

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Aldwell	Deputy Blin	None	Deputy Oliver	Deputy Le Tocq
Deputy Dudley-Owen	Deputy Brouard			Deputy Leadbeater
Deputy Dyke	Deputy Burford			Deputy Queripel
Deputy Helyar	Deputy Bury			Deputy Trott
Deputy Inder	Deputy Cameron			
Deputy Le Tissier	Deputy de Lisle			
Deputy Mahoney	Deputy de Sausmarez			
Deputy Meerveld	Deputy Fairclough			
Deputy Murray	Deputy Falla			
Deputy Prow	Deputy Ferbrache			
Alderney Rep. Roberts	Deputy Gabriel			
Deputy Taylor	Deputy Gollop			
Deputy Vermeulen	Deputy Haskins			
	Deputy Kazantseva-Miller			
	Deputy Matthews			
	Deputy McKenna			
	Deputy Moakes			
	Deputy Parkinson			
	Deputy Roffey			
	Alderney Rep. Snowdon			
	Deputy Soulsby			
	Deputy St Pier			

The Deputy Bailiff: There voted for the motion to guillotine the debate on this amendment, 13; against, 22. There were a total of 5 absences. Therefore, the motion is denied.
Deputy Parkinson.

Deputy Parkinson: Thank you, madam.

Well, I do not have experience of working in the private equity business, which was cited by Deputy Dyke as a potential problem area, but I do have quite a lot of experience of working in the Guernsey finance industry at various levels. In particular, I am a director of several companies, which include possibly Guernsey's largest listed trading company, by market capitalisation. The companies I am involved in have operational headquarters in places like London, New York and Chicago, and they are very used to operating under anti-discrimination rules in other jurisdictions. Moreover, they tend to be fiercely proud of their non-discriminatory cultures, and would be horrified if it was alleged, with any justification, that they had discriminated unfairly against any employee.

And they would expect Guernsey, as a jurisdiction in which they operate, to have appropriate anti-discrimination Laws. Indeed, they would wish to be associated only with modern jurisdictions that meet good modern employment and other environmental etc. standards. (**A Member:** Hear, hear.) In my view, far from this legislation having a deterrent effect on investment decisions and worsening our position in competition terms, I think it would enhance the appeal of Guernsey to good, reputable companies. I think companies such as those that I am involved with would expect

1260 to be operating in a well-regulated jurisdiction, with appropriate social and environmental standards.

I am not just experienced in the larger end of the corporate sector, particularly the listed corporate sector; like Deputy Vermeulen, I have also run a small business in Guernsey. It started in 1983, when it was very small, and by the early 2000s, it had become a medium-sized business, 1265 employing 75 people. I have never personally had a problem with proper regulation on the Island; my business was never fined for breaches of the appropriate regulations, and like other quality businesses on the Island, we took pride in trying to treat employees fairly and doing our job properly. I do not believe there is any future at all in a race to the bottom, in terms of social or environmental policy in Guernsey, and it will always be possible, I think, to find some other 1270 jurisdiction round the world where the rules in relation to any particular aspect of fiscal policy, social policy, environmental policy, are more beneficial in that other jurisdiction.

Actually, people making these kind of decisions look at the situation in and around. One jurisdiction may be more advantageous in one respect, and less advantageous in another respect. And there are far more important issues, in these kind of business investment decisions, than frankly 1275 what the detail of the anti-discrimination legislation looks like. Cost of housing, and availability of good quality educated staff, etc. are vastly more important in a business decision than minutiae of what the anti-discrimination legislation looks like.

What Guernsey needs to have is appropriate, modern anti-discrimination legislation which is comparable with the systems operating in other jurisdictions, with which international groups will 1280 already be familiar, and which their HR departments will already be very experienced in applying. Provided it is broadly in line with, or not worse, not weaker than the systems that operate more generally elsewhere, then that box will just get a tick; it is not going to be the crucial decider that makes a business choose to operate in jurisdiction X or jurisdiction Y. It is just a tickbox element where, have they got appropriate employment legislation? Tick, yes, move on.

I think people are making far too much of the alleged competitive disadvantage that might arise 1285 from some tiny little difference in wording between one section of the Law in Guernsey and the equivalent section of the Law somewhere else. Generally speaking, I think Guernsey has fallen way behind other jurisdictions in terms of social policy generally, and in employment Law, environment and anti-discrimination legislation, in particular, and this is probably operating to our disadvantage.

When people look at that checklist when making their investment decisions at the moment, does 1290 Guernsey have appropriate employment and anti-discrimination legislation? No, it does not. People can discriminate, blatantly, against an employee on the grounds of race. The companies that I am involved with have to publish, because they are mostly public companies, in their annual financial reports, statements about their environmental, social and governance policies, and it is far from 1295 attractive to them to say, 'We operate in an unregulated jurisdiction that allows people to be discriminated against on the grounds of race!' That is not likely to attract any corporate investor, of any substance.

I do think we need to move on; it is extraordinary we are having these very extended debates on legislation which has been produced by ESS in consequence of the States having approved a 1300 policy letter which has been debated for over 15 years; for goodness' sake, let's just get an appropriate regime in place, bring Guernsey's standards up to first-world standards, and make it a more attractive place for reputable businesses to come and invest.

Several Members: Hear, hear.

1305

The Deputy Bailiff: Deputy Soulsby.

Deputy Soulsby: Thank you, madam.

I would like to speak on the back of Deputy Parkinson just now, actually. I too have had long 1310 experience in the finance industry, and also set up my own small businesses as well, one of which was in the finance industry. I just cannot believe it when I am hearing people – I really have been

head in my hands hearing some of the comments about how businesses will leave, because we want to treat employees favourably, fairly. I just cannot believe that, in this day and age, in the 21st century, we think that it is okay that discrimination should be acceptable.

1315 I struggle to see what sort of businesses are we trying to attract. We talk about how we want to attract businesses to Guernsey. Is the strapline going to be 'Come to Guernsey, because we discriminate against our employees'? No!

The sort of businesses we seem to be saying that we want to attract are all those innovative businesses, young entrepreneurs who very much think very differently to many of the comments I have heard this morning. They want to be seen to be very inclusive, they want to care about the environment, and have a really high social conscience. Those are the businesses in the world that are really successful now. Those that do not do that, and are shown to be discriminatory, or do not care, are the ones whose reputations get slashed, and are not the ones that are really growing in this day and age.

1325 I just cannot believe how we think that that is going to be a reason why businesses would leave, or not come here. I think what might stop businesses coming here, or what might make businesses leave, is probably if we get our tax review wrong. It is probably going to be the biggest thing. If we get that wrong that could very well be the last straw for some businesses, (*Interjections*) far more than just what we are debating today.

1330 I just really need to comment on the last point that Deputy Le Tissier referenced about no member of ESS having a finance background. I do not know, but I do know that the person who is instrumental in moving this on for most of the time that this has been considered, former Deputy Le Clerc, had spent all her working life in the finance industry, and knew it very well. I think to use that as a stick to beat this legislation is very misguided, and I cannot support this amendment.

1335

The Deputy Bailiff: Deputy Burford.

Deputy Burford: Thank you, madam.

I was not going to speak, but I am just standing briefly to thank Deputy Parkinson for his speech, because prior to him speaking I was starting to feel immensely depressed. I think we had four speeches, more or less, on the trot, from my Guernsey Party colleagues, and ex-Guernsey Party colleagues, which all really, to me, sounded like arguments for why we want to continue discriminating. I find that immensely uncomfortable, and goodness knows how some of the people listening to this debate outside feel about it.

1345 Deputy Vermeulen actually said that he was taken to a tribunal over unfair dismissal and he believes that every company on this Island has been. I think it only took us five minutes to find that Deputy Parkinson had a company that had not been. But, I think that is highly unlikely or there would have been a tribunal permanently running every day. But it is quite easy, if you do not actually want to be taken to a tribunal for unfair dismissal, do not dismiss somebody unfairly. (*Laughter*) I have a question for Deputy Dyke, when he sums up. I have the email he referred to from the GFSC, which was dated March. The committee have said that in response to concerns from the business sector, including the GFSC, they have introduced this Section 18. Can Deputy Dyke tell me whether he, in the last week or so, when he was putting this amendment together, whether he actually met with the GFSC and business –?

1355

Deputy Taylor: Point of correction.

The Deputy Bailiff: Yes, Deputy Taylor?

1360 **Deputy Taylor:** Apologies for slightly delayed, but it is 17(11)(b), inaccurate or misleading statement. An employer could be taken to a tribunal without unfairly dismissing someone. The determination on whether a person had been unfairly dismissed would be determined after the hearing.

Deputy Burford: I am happy to concede that point to Deputy Taylor, but I am sure it greatly increases one's chances of being taken to a tribunal if one unfairly dismisses somebody.

Returning to the point for Deputy Dyke, I just wondered if he had had a very recent meeting with the GFSC, and they are still of this point of view, because we have had several members of the committee tell us that Section 18 was put in as a response to their concerns. So if that is the case, that is another reason for me not to vote for this amendment, and clearly, the amendment stands or falls in its completeness. As I would not want to remove Section 18, if it had been put in by then, then I would not be able to vote for any of this amendment.

Thank you.

The Deputy Bailiff: Deputy Bury.

Deputy Bury: Thank you, madam.

I do feel that we are getting slightly off the key points here, but I have been brought to my feet to similar points as Deputies Soulsby and Parkinson, that competitiveness has been mentioned many times by those in support of this amendment, and seemingly having concerns about the legislation. But, I think that is a matter of perspective, and I see it from a different perspective, a similar perspective to Deputy Parkinson just raised, that there are different points of view on this, and we have an ageing population; we all know this. Our working age demographic is decreasing, so we are trying to attract, as has been stated in the Population Management Review, we need working age people. Working age people are generally those people coming up through the ranks, younger people; and younger people – specifically I am going to refer to our Guernsey younger people, support – inclusion, as was demonstrated by the most recent assembly of our Youth States, who came into this very Chamber, debated three topics: environment, health and wellbeing, and inclusion, and the top one they voted for was inclusion. The statement from the proposer of that motion was, 'Don't delay the implementation of discrimination legislation'. When we talk about competitiveness, we need to see that from all perspectives. As that point of view has just given from Deputy Parkinson, younger people, the people we need to attract, support this type of legislation. That needs to be borne in mind when people are talking about competitiveness.

As has been mentioned by other Members, but I do think it is worth reiterating, where are these businesses going to go? All of our comparable jurisdictions, possibly where they are working anyway, have this legislation. Perhaps not exactly the same, but we are not jumping into the unknown, we are racing, trying to race, to catch up; we are miles behind, and that is problematic to the types of people that we want to attract to be working here, to boost our economy. Most of the companies that people are referring to, big finance houses – I used to work for our Island's biggest private employer – operating in other jurisdictions have their own policies on this anyway.

While that is great, and perhaps the counter-argument might be, 'Oh, well then, we don't need the legislation', that is not the counter-argument, because for those companies that are not doing it then there are people unprotected. Large businesses are not scared by this, they are already doing it, thankfully, but this legislation is needed to ensure that across the board, people are protected. I believe it is disingenuous to say that large companies will leave, because there is actually nowhere for them to go.

Thank you, madam.

The Deputy Bailiff: Nobody else is rising to speak? I will ask Deputy Roffey, as President of the Committee, to reply.

Deputy Roffey: Thank you, Madam Deputy Bailiff.

Yesterday, I quoted from *Star Wars* so I think today I would like to quote from *Star Trek* (Laughter) because Deputy Ferbrache and one or two others said, 'Don't worry, chaps, at the end of the day, or tomorrow, or whenever it's going to be, we're going to vote through, and Guernsey's going to have an anti-discrimination legislation ordinance'. And I do not doubt that.

Remember what Bones used to say to Captain Kirk? 'It's life, Jim, but not as we know it'. And I really worry that Guernsey is going to end up, if some of these amendments go through, with an anti-discrimination ordinance, but not as we know it; not as anybody else knows it, not that is on all fours or comparable with modern anti-discrimination legislation elsewhere. A lot of these amendments, some of them are 'How much we want to have in wards etc.' does not change the basic nature of the legislation. But there are two or three that absolutely do, and this is one of them. This is absolutely one of them. Before I get onto specific points, just to re-emphasise what others have said, this amendment has almost been sold on the scare tactic of really scaring the horses, and the finance industry is going to disappear. We have, as I was saying yesterday, despite the fact we quite rightly consult with campaign groups for all of the protected sectors, our actual main consultees in many ways have been the employment groups.

We have made more changes to accommodate them than anybody else; we have taken them incredibly seriously, and if GIBA or the IOD had been saying this sort of thing to us, if they really thought for a second, they would not only not be silent, they would be screaming from the rooftops, and yet they have not objected in any way whatsoever. And yes, Deputy Le Tissier is quite right, we do not have somebody with a finance background amongst the Deputies on ESS. That is why, when we go out and find the particular skills we want for our non-States' members, we bear that in mind and try and fill those skills gaps.

Mr Mark Thompson, who was a full member of ESS and has taken part in all of the discussions about this Law, has absolutely been a leading person over recent decades in the finance industry in Guernsey. Again, he would have been able to raise any concerns in this respect. What this amendment does, by stripping out 16 and 17, is remove any clarity about equal pay, any clarity about what is equal work, and we are not talking about work of equal value; that is not in phase 2, that is in phase 3, and it will not be this Assembly that deals with it. Simply equal work – in other words, basically, the same job. It removes that clarity. It removes the clarity that you could compare yourself to.

Deputy Dyke said, 'Well, they could still bring a general discrimination claim under Section 14 if they feel they are being paid less on the basis of a protected ground.' We had Deputy de Lisle and others, I think Deputy Murray, say this is overly complex for small firms. It will be a heck of a lot more complex without the guidance and parameters that are set out clearly in Sections 16 and 17. Just relying on 14, that is when you start getting into the quagmire, a nightmare, because that is when it is far looser, and you do not really know what is a fair comparison for equal pay.

Deputy Dyke is saying 'Just rely on 14, just rely on 14'; when they do, if this amendment goes through, when actions are brought on fair pay, under the protected grounds under 14, Deputy Dyke will have removed the defence that the employer groups asked us to put in about the differences. It is because they are a more productive employee or because they are better qualified or that definition; so he will be putting them on weaker grounds than they are at the moment. Do the employers in this Island really want that? I do not think they do. They asked us for 18 for a purpose; we are putting in for a purpose; it is going to be stripped out, and yet as Deputy Dyke still says, under Section 14, these actions will be brought forward and then they do not have that legitimate defence. He really is, if he is here as a champion of the employers, shooting himself in the foot.

Deputy Dyke: A point of correction in terms of the legal drafting.

The Deputy Bailiff: Yes, Deputy Dyke.

Deputy Dyke: Section 18 only applies to Sections 16 and 17; they stand together. Section 18 does not apply to Section 14, so the employers may have wanted this and will have wanted this to make 16 and 17 less difficult, but they do not help with Section 14. That is how it is drafted.

The Deputy Bailiff: Thank you. Deputy Roffey.

Deputy Roffey: That totally misses the point. If we fall back on Section 14, and the Deputy is quite right, Section 18 does not apply to it, but if we fall back on 14, which is what this will do in the amendment, then in those actions for unfair pay on one of the protected grounds, there will not be the legitimate grounds that are set out in 18 for the employer to say, 'No, I am paying him more because he brings in more business, or I am paying them more because they are better qualified or have been employed for longer and we have got a scale, or whatever else'. They will be bereft of that, they will be in a worse position, whereas if the amendment is defeated then the action will be brought under 16 or 17, and then that defence over 18, that the employers asked for, will be engaged. If he is the champion of the employer, this amendment very much shoots his client in the foot.

I think this whole debate, actually, to me, illustrates the difficulty of Members: they have got every right to debate legislation and to bring lots of amendments to legislation, but I think some of the misunderstandings, not being aware of some of the case law that has been built up elsewhere that legal draftsmen are clearly aware of, I think the main policy debates of this sort should actually be done at policy letter stage. That is my view; I do not deny the right to bring amendments at legislation stage, but I think the debate today, and probably for the next five or six days, will illustrate (*Laughter*) that it is fraught with difficulty.

It was also almost the view amongst some – and I think Deputy de Sausmarez has cleared this up but I am going to say so again – that an employer would be in difficulty if he pays two employees totally different amounts. Actually, shamefully perhaps, even if it is different amounts for no good reason, they have got the right to discriminate; it is only if it is being done for reasons of race, religion or the other protected grounds that it will engage. Those who are going to be vanishingly rare in the sort of high-level post that I think Deputy Dyke is talking about, but they should still have the right, if they can prove – *prove* – to a tribunal that they are being discriminated on that basis.

I think Deputy Trott has probably already answered his own question about the effect in Guernsey and outside of Guernsey, because he has consulted the Law Officers about that.

Deputy Dyke, in opening, also said, 'Well, this might engage the States. What about all of their employees as a big employer?' We already pay people equal pay for the same work. We do. We do not pay one teacher differently to another because one is of a different religion or one is of a different race. We do not pay nurses differently; we might, if they higher qualifications – that is covered by Section 18 that he wants to remove, but other than that, we do not. The issue will come when we deal with equal pay of work of equal value, and that will be tricky, I accept that, but that is not on the agenda today at all. So there is no fear for Guernsey.

Deputy de Lisle said that this goes beyond the understanding of most people. I accept that the discrimination Law is quite complex by its nature, and so is everybody else's. We have not set out to make it complex; it just is quite a complex subject, and that is why we are going to be putting out guidance notes, so that people can understand it more easily. That is why we are doing free training that will be available, and there will be free advice again from the service throughout the lifetime of the legislation.

I think Deputy St Pier's question was answered by the Procureur. Deputy Murray was worried about small businesses. As I say, it would be much more complicated for them if we rely on Section 14.

The definition of disability was worried about; I am not sure what that had to do with this amendment. If somebody did not like the definition in the ordinance they could have brought an amendment to change that definition; nobody chose to do so. But what I will say is that it is well tried and tested elsewhere. In fact, when Australia recently had a post-implementation review of their whole legislation, they picked up quite a few things they wanted to change, but not their definition, which is quite similar to the Guernsey one; they thought that that was working absolutely tickety-boo. So I am not quite sure where his concerns are coming from, but I am also not sure what they had really to do with the debate on this amendment.

Deputy Vermeulen confused me: how would having discrimination legislation affect Guernsey complying with Moneyval? He was bringing up Moneyval. I was not really sure what that had to do.

1520 But I agree with others; I agree very much with the thrust of the later speakers. If Guernsey is
looking to recruit top talent internationally, we are not in the 1950s anymore! Those people are
looking for standards; they are looking for inclusiveness, they are looking for a modern society
where they want to come and work, or come and set up their business, or come and invest. I actually
think we are doing ourselves a disservice if we think that actually, 'pile it high and sell it cheap' is
1525 the way to bring the punters in. It is actually showing ourselves to be a quality destination to come
to. **(A Member:** Hear, hear.)

Deputy Le Tissier was worried about the six years. Well, it is all subjective, but I have to say six
years is exactly the same as under the Equality Act in the UK so it is not as if we will be bringing in
a provision out of nowhere.

1530 Deputy Vermeulen had a chat with somebody who thought Guernsey was just bringing in far
too much legislation generally. I tend to agree; I am not sure we need to ban amateur anglers from
selling their fish, but this, we do need to do. This we need to do if we are going to be seen as a
modern, caring society, and we need to do it properly. We do not need to pass a Law, at the end of
this debate with the guts torn out of it, and this is one of the amendments that does just that. Please,
1535 Members, vote it down.

The Deputy Bailiff: Deputy Dyke.

Deputy Dyke: Thank you, madam.

1540 Well, good grief! I will try to go through all of the comments so far as I can. Deputy de Sausmarez,
I think she raised the question of Section 18, which others have mentioned so I will deal with that
first. Section 18 is not, and as I said to Deputy Roffey, is not a general protection for employers; it
applies only to the extended provisions of Sections 16 and 17, which, as I explained, go far beyond
Section 14, which is the base provision that they have in Jersey. If we take out these Sections, this
1545 does not take away protection from employers; it leaves employers subject to the rules of non-
discrimination under Section 14, and it does not add what I would call the gold plating of Sections
16 and 17. So Section 18 does naturally go if Sections 16 and 17 are taken out.

Deputy Gollop made the point that we should be transparent, and if the finance sector does not
like it, they should put up with it. I cannot agree with that; they do not put up with things. If things
1550 are important to them, they move their operations around, so I do not think we can start telling the
finance sector how it should operate. With the best will in the world, I do not think that can work.

Deputy Kazantseva-Miller, her main points were that everyone agreed with this, that it was all
fine. But I am sorry, they do not; the consultation that happened, obviously I have not been involved
in it all, but the suggestion that everyone has been taken on board, is simply not true. The
1555 Confederation of Guernsey Industry, who represents small business, have been highly frustrated,
(A Member: Hear, hear.) they wrote to Deputy Roffey, and these are conversations I have had –

Deputy Dudley-Owen: Point of correction.

1560 **The Deputy Bailiff:** Yes, sorry, point of correction, Deputy Dudley-Owen.

Deputy Dudley-Owen: I do apologise for interrupting Deputy Dyke. The Confederation of
Guernsey Industry actually represents employers, small and extremely large. One of our main export
businesses here is represented by the CGI, across all sectors. I hope this is a helpful point of
1565 correction.

Deputy Dyke: I thank Deputy Dudley-Owen for her –

The Deputy Bailiff: Sorry, Deputy Dyke, can I just remind you it is in relation to the amendment
1570 we are supposed to be focusing on, so make sure it is specific to that.

Deputy Dyke: I thank Deputy Dudley-Owen.

This consultation has not been, by any means perfect. As I say, the CGI have told me that they contacted Deputy Roffey in February with no response. They tried again in September – no
1575 response. So, they have gone public with their comments and concerns.

Deputy Kazantseva-Miller: Point of correction, and point of order as well.

The Deputy Bailiff: Yes, Deputy Kazantseva-Miller.

1580

Deputy Kazantseva-Miller: The point of correction is that I have raised specifically the statement that was made by IOD, GIBA and the Chamber of Commerce. And because the points that Deputy Dyke was making in his speech were in relation to derailing our finance industry, I specified specifically about information of what GIBA represents, which is the whole of our finance
1585 industry.

The point of order is in relation to the Deputy bringing actually points and evidence that he has not referenced, so for example, information about confederation of industry has not been actually even mentioned in his speech, so he is bringing new points to this debate, which were unsurfaced previously.

1590

The Deputy Bailiff: Thank you, Deputy Kazantseva-Miller.

Deputy Dyke: I am not really sure that is a point of correction. I am trying to answer Deputy Kazantseva-Miller's points.

1595

This consultation has not been all-embracing. Points have not been taken on board. I have also spoken to the Guernsey Private Enterprise Group, who are particularly concerned about this; their concerns have not been taken on board, either. I just need to answer those points; I think those were her main points.

Deputy de Lisle has made the very valuable point that a lot of this very complex legislation – it is roughly twice as long as Jersey's – is very complicated, and most ordinary people cannot read it, particularly, smaller businesses, which goes to some other points. The bigger businesses, the big funds, will be reading it very carefully, that is for sure.

1600

Deputy Falla raised the – sorry, my handwriting is not very good when I am writing quickly – he suggested, I think, that I am suggesting that introducing discrimination legislation creates a doomsday scenario; I am not suggesting that. I am saying that this particular gold-plated wording adds a problem that we do not need to have.

1605

Gavin St Pier – sorry Deputy St Pier –

The Deputy Bailiff: Thank you, Deputy Dyke.

1610

Deputy Dyke: – referred to the UK provisions, in terms of Sections 18 and 19. Yes, he is right there. He suggested that Guernsey had something similar to our Section 19. It does not.

The Deputy Bailiff: Jersey, Deputy Dyke. You keep referring to Jersey as Guernsey.

1615

Deputy Dyke: Sorry, Jersey. He suggested that it had the equivalent of Section 19, which it actually does not, because it does not have any of these sections. This whole group of sections, Jersey does not have. And I have checked myself and I checked with the Procureur on that.

1620

Deputy St Pier: Point of correction.

The Deputy Bailiff: Yes, Deputy St Pier.

Deputy St Pier: I think His Majesty's Procureur has already dealt with that point, and confirmed that Jersey do have a similar provision, that I referred to.

The Deputy Bailiff: I think, Madam Procureur, you said that it was similar in relation to Section 17 and 18? I cannot remember which.

The Procureur: Sections 18 and 19 were, I believe – and apologies if I have got the wrong sections – these sections that Deputy St Pier had raised a query in relation to, those sections are based on UK equivalent sections. Jersey, as I understand it, does not have equal pay provisions as such.

The Deputy Bailiff: Thank you. Deputy Dyke.

Deputy Dyke: Thank you, Madam Procureur.

Deputy Trott, I think, half-agrees with me. Could it be 51%, perhaps? Deputy Trott agrees that there is a point and a potential problem in potential business, but he does not think it is quite as great as I do. The issue with high-flying finance business is that it is a very delicate flower, and you have to look after it. If you find that sections of it are very unhappy and start leaving, it draws other businesses with them, they start talking to each other. You can start a flow that you cannot stop. So you have to be very, very careful.

In the situation that we are in, huge competitive pressures, terrible pressures from Moneyval, which I think Deputy Vermeulen made, there are sections in the EU that do not want us to exist at all. We have huge pressures there. We have competitive pressures that are very difficult for our finance sector. We have a lack of housing, for which we might blame GP11; that is another point we can come on to another day. We have a connectivity which is not as good as Jersey's, so we have competitive disadvantages already, and we should not add to them. I hope Deputy Trott agrees with me that we cannot risk losing any sections of our finance business, for fear of what might follow.

Deputy Ferbrache, Chief Minister, I thank him for his contribution. He reiterated my point that one does not buy into a lawsuit. These additional provisions are very difficult to deal with; as Deputy Le Tissier has pointed out, they are not fully drafted. They add complexity; they do not remove complexity.

Fundamentally, they are unattractive. Deputy Ferbrache said that theory must not destroy the actuality; the theory of perfect legislation should not override the actuality of what we need to do to keep our business here, what we need to do to keep our jobs here, what we need to do to keep our taxes flowing in, to pay for everything that we need, which includes the Social Services that disabled people will need, amongst other things. There is no point in killing the golden goose that underpins our prosperity and our capacity to give the people of the Island what they need, through the tax system, in terms of medical treatment, Social Services, education and all the rest of it. **(A Member:** Hear, hear.) Deputy Ferbrache also asked me as to whether the GFSC had got back to me on the points I have been discussing. The answer is, no, I have not spoken to them recently, but the other point is those provisions are still in there; the points that they have found so difficult are still in there. It is my understanding that they are not happy. Has anyone ...? I cannot ask a question, can I?

Deputy Murray made some very useful points. Every lawyer has a different view on all this. At the end of a day, it will all have to be argued out in court, which is not to our advantage. He made the point that we must balance our desire to introduce a discrimination Law, which we all share that desire, including myself, we have to balance that with some pragmatism for other issues. The other issue in this case is our economic viability, and we have to draw the line somewhere, Deputy Murray has said. He is correctly right. The basic Law that we have, that we have drafted, subject to some amendments, works, but again we do not want to make it more difficult to comply with, with a view to achieving perfection, than our nearest and most difficult competitor, Jersey.

As Deputy Vermeulen has pointed out, and we do know, we have been losing some business to Jersey; we do not wish to give them another reason to move there. Deputy Vermeulen, as a local businessman of 43 years, has made the points that I have been making, focused on the finance sector; he has made the point that the same points apply across the business sector in Guernsey, with small and medium-sized local businesses will have the same problem with these additional provisions, as the finance sector will. I am very glad that he brought that up; I should probably have raised that myself, I have been focusing more on the finance sector, because that is who I have been talking to.

Deputy Le Tissier, I am very grateful for him for seconding this amendment, and thank him for his comments. I think his principle point, that he made very well, is that these additional clauses are not really finished. They take you into an area of difficulty, but they do not really answer all the questions. One has, by this additional add-on, created uncertainty, and he is absolutely right about that.

Deputy Parkinson has made a couple of points; one is that we must have anti-discrimination legislation, otherwise, I think he used the word 'appropriate' anti-discrimination legislation. Yes, we must have appropriate anti-discrimination legislation, I agree with that. I am fully in favour of this. I have been a managing partner at a law firm 40 years ago, and led the way in helping out our staff who had difficulty with hours, in changing them, and do all that. As a decent human being and employer, you do these things, and I have done it. So, yes, a lot of people have no problem with this. He has also made the point in the context of a London-listed company, that they have ESG concerns that they must comply with, and that is right, listed companies will do that.

A lot of our finance companies, of course here are not London listed companies, some are, some are not, some are listed here, some are not listed at all. But it does not affect the point that our appropriate anti-discrimination legislation, that we should have, can be appropriate in many ways, you can draft it in many ways. Again, the question is do we need a gold-plated add-on, that Jersey does not have, and create extra complexity for the companies that are considering where to go? Do they stay here, do they go to Jersey, the Isle of Man, the Cayman Islands, or whatever?

Deputy Parkinson says that companies take pride in doing the right thing; well, he is absolutely right. Most companies will, and most of us will, and most of our ordinary people in Guernsey will also take pride in doing the right thing, but that does not go to the detailed drafting of this anti-discrimination Law.

Deputies Soulsby and Bury have made similar points. Deputy Burford raised Section 18, which I think I have dealt with. Deputy Soulsby raised the question of the tax review. Well, yes, that is another issue, but a related issue in terms of our competitiveness.

If we put up costs, to such an extent that our expenditure goes up considerably, then our tax review is going to be that much worse. These provisions, these additional provisions, will, I am absolutely certain, create huge issues in the States' Human Resources department; it adds another burden, which could cost, we do not know – it could cost millions and millions and millions of pounds over the years as we go forward. We do not have millions and millions of pounds. We do not have enough pounds to buy all the NICE drugs that Deputy Brouard would like to provide for us. There are all sorts of things that we do not have enough money for: we want to redo the harbour, we do not have enough for that if it is going to cost three quarters of a billion pounds.

All of this is related, and we cannot afford to lose business. I think I have answered all the questions, and I have probably spoken for long enough, but to sum it up, we have an anti-discrimination Law in front of us, which broadly is a good Law, subject to some detailed amendments we are looking at. This particular amendment removes a set of clauses that are potentially damaging and difficult for local businesses, and for our international finance business. We cannot, I submit to you, look for perfection in drafting, at the expense of the practicalities of running our economy and keeping our business here.

We must strike a balance, and this point has been made from around this Assembly. We must strike a balance between our desire that we all have to look after our more vulnerable people, to bring them in, not to discriminate against people on the basis of their race or sexuality or sex, and

to do all these things, in the context of a kind human society, which I think we have here, (A Member: Hear, hear.) we have to do all that, but as we do it, we must not take it over the line that damages that very society in another way by undermining our economy. We simply cannot risk it. As Deputy Vermeulen has pointed out, we are losing some companies to Jersey already, and I am aware of some.

We sit here, or I am standing here, as people's Deputies. We are Deputies of all of the people of Guernsey, the vulnerable, the not-so-vulnerable, those that bring in business and tax. All of us, we are Deputies for all of us, and we must take a responsible decision in this matter; we must not be irresponsible and try to draft and implement legislation that could potentially be extremely damaging. My final plea is that if you are going to be responsible towards our economy, and the people as a whole, you must approve this amendment. It is very important. (A Member: Hear, hear.)

Thank you.

The Deputy Bailiff: Thank you, Deputy Dyke.

Greffier, would you open the voting on Amendment 4(b)?

There was a recorded vote.

Amendment 4(b)

Not Carried – Pour 18, Contre 19, Ne vote pas 2, Absent 1, Did not vote 0

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Aldwell	Deputy Brouard	Alderney Rep. Snowdon	Deputy Oliver	None
Deputy Blin	Deputy Burford	Deputy Taylor		
Deputy de Lisle	Deputy Bury			
Deputy Dudley-Owen	Deputy Cameron			
Deputy Dyke	Deputy de Sausmarez			
Deputy Ferbrache	Deputy Fairclough			
Deputy Haskins	Deputy Falla			
Deputy Helyar	Deputy Gabriel			
Deputy Inder	Deputy Gollop			
Deputy Le Tissier	Deputy Kazantseva-Miller			
Deputy Mahoney	Deputy Le Tocq			
Deputy Meerveld	Deputy Leadbeater			
Deputy Moakes	Deputy Matthews			
Deputy Murray	Deputy McKenna			
Deputy Prow	Deputy Parkinson			
Deputy Queripel	Deputy Roffey			
Alderney Rep. Roberts	Deputy Soulsby			
Deputy Vermeulen	Deputy St Pier			
	Deputy Trott			

The Deputy Bailiff: There voted Pour, 18. There voted against, 19. There were 2 abstentions, and there is 1 absentee. The amendment has not been passed.

Before we go to lunch, can I just check with you, Deputy Meerveld, that your intention is to not lay Amendment 5, but the first thing you will be asking the Chamber to do is to suspend the Rules so that you can bring forward Amendment 12?

Deputy Meerveld: That is correct, madam.

The Deputy Bailiff: So just so that everybody knows where we are when we come back after lunch, that is what is going to be the process. Let's adjourn for lunch.

*The Assembly adjourned at 12.26 p.m.
and resumed at 2.30 p.m.*

**The Prevention of Discrimination (Guernsey) Ordinance –
Debate continued**

1760 **The States' Greffier:** Madam, this is the Prevention of Discrimination (Guernsey) Ordinance – Article 5 – and I believe it is Amendment 5 next.

The Deputy Bailiff: Yes, Deputy Meerveld, you said that you were no longer wishing to lay Amendment 5 but you wished to first seek a motion to suspend the Rules of Procedure in order that you can lay Amendment 12.

1765

Deputy Meerveld: Yes please, madam.

1770 **The Deputy Bailiff:** So our first job this afternoon is in relation to the motion under Article 7(1) in order to suspend the Rules of Procedure to the extent necessary to permit the amendment set out below to be considered. I actually have not got working ... yes, is everybody's SEV working? As this is a motion this will be *aux voix*. Again, nobody have their microphones on please. Those who support the motion; those against?

Some Members voted Pour, others voted Contre.

1775

The Deputy Bailiff: Greffier, are you able to set us up in an SEV vote on this please?

The States' Greffier: Yes.

1780 **The Deputy Bailiff:** In that case, I will request that we do that. Greffier, would you kindly start the voting on the motion to suspend the Rules. Just to make it clear, it is for Amendment 12, so this is the motion to suspend the Rules for Amendment 12.

There was a recorded vote.

Carried – Pour 24, Contre 12, Ne vote pas 2, Absent 1, Did not vote 1

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Aldwell	Deputy Bury	Deputy Burford	Deputy Oliver	Deputy Parkinson
Deputy Blin	Deputy Cameron	Deputy de Sausmarez		
Deputy Brouard	Deputy Fairclough			
Deputy de Lisle	Deputy Falla			
Deputy Dudley-Owen	Deputy Gabriel			
Deputy Dyke	Deputy Gollop			
Deputy Ferbrache	Deputy Kazantseva-Miller			
Deputy Haskins	Deputy Le Tocq			
Deputy Helyar	Deputy Roffey			
Deputy Inder	Deputy Soulsby			
Deputy Le Tissier	Deputy St Pier			
Deputy Leadbeater	Deputy Trott			
Deputy Mahoney				
Deputy Matthews				
Deputy McKenna				
Deputy Meerveld				
Deputy Moakes				
Deputy Murray				
Deputy Prow				
Deputy Queripel				
Alderney Rep. Roberts				
Alderney Rep. Snowdon				
Deputy Taylor				
Deputy Vermeulen				

The Deputy Bailiff: I think that is everybody in the Chamber, isn't it, States' Greffier? So if you would close the vote please.

The motion to suspend the Rules of Procedure to the extent to permit the amendment is 24 Pour, 12 Contre, 2 abstentions and we had 2 absences. So the motion is carried.

Deputy Meerveld, if you wish to carry on with your amendment, that is Amendment 12.

[Amendment 12.](#)

At the end of the Proposition add:

"subject to the amendment indicated below". In section 27, renumber subsection (5) as subsection (6) and insert the following subsection –

"(5) For the avoidance of doubt, in the circumstances and in respect of the matters set out in subsections (1) and (2), A does not discriminate against B or C (as the case may be) by imposing requirements to possess relevant skills, experience or professional integrity, or by requiring the passing of examinations."

Deputy Meerveld: Yes please.

This is a very simple amendment and it replaces 5 because, from my own mistake, I directed the Law Officers to target the wrong section, so this now targets the correct section, so that is the reason for the suspension and the substitution. But it is a very simple amendment. It just makes absolutely clear that professional bodies can differentiate on their membership, based on skills or qualifications for their groups.

I have been informed by ESS that they do not believe this is necessary but they will not be opposing it so I will not make a very long speech and hopefully we can get this behind us very quickly.

Thank you.

The Deputy Bailiff: Deputy Roffey.

Deputy Roffey: Yes. I will forego my right to speak later if I need to. I hopefully will not need to.

Just to confirm, though, as far as we are concerned there is absolutely nothing in the legislation that prevents professional bodies from making that sort of distinction but if it makes Deputy Meerveld and others feel more comfortable we are happy for this amendment to be passed. I was wondering where to go after *Star Wars* and *Star Trek*; I think maybe *Hitchhiker's Guide to the Galaxy*! I think they described the Earth in that document as 'mostly harmless' and I think that can be a fair epithet for this amendment, too.

The Deputy Bailiff: Deputy Leadbeater.

Deputy Leadbeater: Do I need to formally second it, madam?

The Deputy Bailiff: I am terribly sorry, Deputy Leadbeater, you are absolutely right.

Yes, you do and, yes, thank you very much for doing so. If nobody else is rising to speak, Deputy Meerveld, do you want to say anything in response?

Let us go, then, to the vote. This is on Amendment 12, States' Greffier, if you would open the voting. Deputy Prow, you do not appear to have voted. It will happen to us all, Deputy Prow!

There was a recorded vote.

Carried – Pour 31, Contre 2, Ne vote pas 5, Absent 1, Did not vote 1

POUR

Deputy Aldwell
Deputy Blin

CONTRE

Deputy Cameron
Deputy Fairclough

NE VOTE PAS

Deputy de Sausmarez
Deputy Gollop

ABSENT

Deputy
Oliver

DID NOT VOTE

Deputy Parkinson

Deputy Brouard
Deputy Burford
Deputy Bury
Deputy de Lisle
Deputy Dudley-Owen
Deputy Dyke
Deputy Falla
Deputy Ferbrache
Deputy Gabriel
Deputy Haskins
Deputy Helyar
Deputy Inder
Deputy Kazantseva-Miller
Deputy Le Tissier
Deputy Le Tocq
Deputy Leadbeater
Deputy Mahoney
Deputy Matthews
Deputy McKenna
Deputy Meerveld
Deputy Moakes
Deputy Murray
Deputy Prow
Deputy Queripel
Alderney Rep. Roberts
Alderney Rep. Snowdon
Deputy Taylor
Deputy Trott
Deputy Vermeulen

Deputy Roffey
Deputy Soulsby
Deputy St Pier

The Deputy Bailiff: Thank you. Greffier, would you close the voting please?

1825 There voted Pour 31, Contre 2, there were 5 abstentions and 2 absentees. Therefore the Amendment is passed.

[Amendment 6.](#)

At the end of the Proposition add: "subject to the amendment indicated below".

In sections 50(1)(b), 51(1)(b), 51(2)(b), 52(b), 55(4)(a)(ii), 55(4)(b)(ii), and 56(2)(b)(ii), for "£10,000" substitute "£5,000"

The Deputy Bailiff: We now move to Amendment 6, which is proposed by Deputy Moakes.

1830 **Deputy Moakes:** Thank you, madam.

You will be pleased to hear, I think, that this amendment is far less technical than some of the ones we have been hearing. In fact, I can probably summarise this in a few short paragraphs. The purpose of this amendment is quite straight forward really. It does not attempt to change the legislation in any way whatsoever, other than to reduce the amount of compensation payable for injury to feelings from £10,000 to £5,000.

1835 The reason that we have submitted this amendment is that the Proposition as it stands uses very broad brush strokes when it comes to compensation. Whilst a large firm might be able to absorb a £10,000 fine very easily, it could have a devastating effect on a small or micro business. It is not only the £10,000 fine itself that these small businesses might face. A small business is unlikely to have
1840 in-house lawyers or a full-time HR professional, so they will probably need to take legal advice and/or HR advice, which will significantly add to these costs.

1845 Now, £5,000 is still a significant amount of money and let us be honest, for most businesses it is the reputational damage rather than the fine itself that will be a greater concern. An employer who cares passionately about his or her employees and falls foul of this Ordinance by accident, will be absolutely devastated. The vast majority of businesses on this Island are classified as small or micro-businesses. The butcher, the baker and the candlestick maker, if you like. I strongly urge you to

support this amendment and ask you to consider the consequences that a £10,000 fine will have on one of our small local businesses when you vote.

Thank you.

1850

The Deputy Bailiff: Deputy Vermeulen, do you formally second this?

Deputy Vermeulen: I do, madam. I am proud to second this amendment.

1855

The Deputy Bailiff: Thank you.

Are you standing to speak as well?

Deputy Vermeulen: I am if you will allow it, madam.

1860

The Deputy Bailiff: Yes, you may.

Deputy Vermeulen: Thank you.

So yes, this morning, madam, towards lunch time we heard the amendment 4B lose. Just before the vote was cast H.M. Procureur said we would be introducing Laws that they do not have in Jersey and that has come across. Since lunchtime, this Amendment 6 is even more important to retain our competitiveness.

1865

So, I have got very little, really, that is new to add from what Deputy Moakes has alluded to earlier. It is that reputational damage that local businesses will jealously guard. They will not be able to recruit people if they break any Laws, so the size of the fine, really, is neither here nor there.

1870

Now, as a starting point, I think £5,000 is far more reasonable than £10,000 and if I am wrong, in two years, when this Law is reviewed, that can be changed. But you do not get more business into the Island by making yourself more uncompetitive and we must not blow ourselves out of the water – the States has a fine record of scoring some spectacular own goals, the sort of back-to-the goal overhead kick type of own goals – we must not do this to ourselves.

1875

So the legislation would still be in place. There would be a fine and there would be negative reputational damage to anybody that broke that Law. I think it is far more reasonable to have the headline £5,000 the same as is in Jersey, the £5,000. It will be the HR managers that are scrutinising where to set up in Guernsey or in Jersey and they will look at the size of the fines, they will look at the amount of legislation, which Guernsey has twice as thick a pile as Jersey; they will be looking for parity really.

1880

Jersey does beat us, unfortunately I hate to admit, in the area of connectivity, which I have seen businesses leave Guernsey for because they felt there was better connectivity offered with Jersey Airport and its links.

Now, it is important that we do retain those businesses. A friend of mine, who I went to school with, recently built a huge block of offices and had a tenant lined up but they have left Guernsey to go to Jersey to set up their headquarters in Jersey. So that has happened. Nothing to do, really, with discrimination law, everything to do with why perhaps the ownership of that company changed. Perhaps there was too much onerous legislation put in place for him to maintain that business in Guernsey.

1885

So he sold the business. The business is now headquartered in Jersey, and I do not like that, madam. I do not like that one little bit, because it is taxes that Guernsey would be getting from the profit of the company. It is jobs that Guernsey would be getting and they could also be taxed, and we cannot afford to put in too high a fee to start off with.

1890

So I would implore and appeal to all my fellow Deputies to listen on this occasion and support this amendment.

1895

Thank you, madam.

The Deputy Bailiff: Deputy Falla.

Deputy Falla: Thank you, madam.

1900 Yes, Jersey's limit is set at £5,000 but that is per each head of claim, with no limit on the number of awards that can be made. So you could end up with very much more than £10,000. The proposed £10,000 limit has been set at that level because it is aimed to be dissuasive and if Members have had the opportunity to read Appendix A, that the ESS Committee secretary circulated to us all, you will see the very severe discrimination that can occur, which would attract that top level £10,000 limit. It is only the top level.

1905 The starting level is only £500. It is the top level for extremely severe discrimination and I think any of us that read that, it was awkward to read because it was so –

Deputy Vermeulen: Point of order.

1910

The Deputy Bailiff: Yes, which particular point of order are you taking?

Deputy Vermeulen: I am worried that inadvertently –

1915 **The Deputy Bailiff:** No, it is a point of order you are taking Deputy Vermeulen, so you need to point to which particular Rule that you are raising.

Deputy Vermeulen: I think he is misinforming the States.

1920 **The Deputy Bailiff:** So which Rule of Procedure are you referring to?

Deputy Vermeulen: I am at a loss at the moment.

1925 **The Deputy Bailiff:** For a point of order, I am afraid, Deputy Vermeulen, you need a Rule of Procedure.

Thank you Deputy Falla.

1930 **Deputy Falla:** It would only be in circumstances where the employer or service provider had a blatant disregard for the legislation that the upper limit would be applied, that limit of £10,000. It starts at £500. If the upper limit was £500, I know people that treat parking fines as a fee for parking. Now, I am not suggesting for a moment that anyone would wish to discriminate and just treat it as a throwaway small amount of money. However, there is a reason why the limit has been set at this point and there is a difference between Guernsey and Jersey because in Jersey it is £5,000 per head of claim.

1935 Thank you.

The Deputy Bailiff: Deputy Kazantseva-Miller.

Deputy Kazantseva-Miller: Thank you, madam.

1940 I think, as Deputy Falla has explained, there is a Vento scale. So the upper band will only be applied in most severe cases and in the Committee response that ESS has sent to all Deputies, it helpfully included some of the cases that made it to the tribunal in the UK and I wanted to take the time to perhaps outline some of the cases that have been taken to the tribunal and awarded compensation and that included the upper band in the UK, so technically or potentially the same situation would apply in Guernsey, to those £10,000 compensation.

1945

So, case *Henderson v Asda Stores Ltd*, in 2019, I am quoting from the response submitted by ESS:

She was subject to a lengthy campaign of harassment over 14 months by two managers in a position of authority, the impact of which was profound. The majority of the harassment took place behind closed doors, in particular a chiller back up area, and related to her being singled out and spoken to in a demeaning and disrespectful manner because

English was not her first language, as well as because of her perceived cultural work ethic and subservient attitude towards management.

One manager also invaded her body space and raised his voice at her on several occasions when no one else was present. She was not invited to team social events outside of work. As a result of Mrs Henderson's treatment at work, she lost her confidence and found herself in a vulnerable position, unable to work, and on medication.

Award: upper band.

Another case, Southern v Britannia Hotels Ltd.

1950

She was 22, at the time of the alleged harassment and had a history of mental health issues. The harassment included Mr Nkoroi questioning Miss Southern about her sex life, touching her bottom and simulating sexual intercourse with her. The first time Miss Southern complained about this to another manager no action was taken and even after Miss Southern later lodged a grievance no disciplinary action was brought against Mr Nkoroi.

Award: upper band.

1955

Members, what Deputies Moakes and Vermeulen are suggesting, that in Guernsey this type of serious behaviour does not merit a serious award. That this type of behaviour perhaps should be endorsed because the headline rate is going to make us uncompetitive. So this is the implication of what we are saying, that we do not want to punish businesses for, in this case as I have just read, causing really serious discriminatory action that profoundly affects the life of those people. Interestingly, those cases seem to really refer to women more than men.

1960

So this is the type of behaviour that this legislation is trying to punish and if this legislation is to be serious you have to be serious enough to award these levels of compensation. As I have said before, this is going to be a Vento scale so if the claims are not as serious as some of the ones I have just highlighted as examples provided, that compensation will not be at the upper band.

1965

So, Members if you decide to vote for this amendment, just put yourself in the situations of those victims of discrimination, that have been subject to proven discrimination by those businesses and whether you are okay to really endorse that kind of behaviour as being acceptable. Is there a cost to the dignity of human beings?

Thank you.

The Deputy Bailiff: Deputy de Sausmarez.

1970

Deputy de Sausmarez: Thank you, madam.

One of the main arguments made by the proposer and seconder is about the relative competitiveness; it seems weird to be explaining it in those terms, but really not wanting to put Guernsey at some form of competitive disadvantage because we appear to have a more punitive Vento scale in this respect than Jersey in particular.

1975

So the point has been made that in the UK there is no upper limit at all. None. So there is absolutely no way in which we could seem – sorry, there is, it is £49,000 – sorry it is not no upper limit there is an upper limit of £49,000, which is quite a lot more than what we are talking about here with ours.

1980

In Jersey, I can understand where there is perception that theirs is lower but, as Deputy Falla explained, in reality, it is not lower because there is no limit on the number of individual head of claims that can be made. So those awards of up to £5,000 can indeed add up and, therefore, if this amendment is approved, it would make us very much more stingy. I am trying to think of a better word. I do not think that is the right word.

1985

I think it is worth rolling back to understanding why these awards are in place at all and that is primarily, again the clue is in the name, it is in the prevention of discrimination legislation. We want to prevent discrimination from happening in the first place. For that to be effective, as someone has just made, it needs to be at a level that will effectively dissuade people from discriminating and, if we are going to use the parking fine analogy which Deputy Falla used, it is quite possible that our

level being set so very much lower than Jersey's and everywhere else, it is really not going to have the kind of dissuasive effect that we hope it would.

So that is the main thing to bear in mind. I think it is also important, obviously this is a subjective thing, isn't it, about where to set the level of awards? Deputy Falla was quite right to say although the proposer and seconder focus on the upper limit, that is not how the system works. It does not start with £10,000 and then the tribunal would knock a bit off if it was not quite that severe. It is built from the bottom up. These awards are built from the bottom up.

So it is split into three bands and the lower band is from £500 up to £3,000. So that is the lower band of award. The middle band is from £3,000 to £6,000, and the top band is from £6,000 to £10,000. So it is absolutely not the case that £10,000 is anywhere near the default award that would be decided. It would be about whether the discriminatory behaviour, and let us remember that by this stage, by the time we were talking about these awards, this is behaviour that has proved to be discriminatory. It would have to fit into one of those bands.

Deputy Kazantseva-Miller read some good examples and I am going to choose a much more difficult example to read out. I think this one does translate better in written text but I am not convinced everyone has seen it, so there is going to be a lot of my attempts to bleep out some of the language that really should not be broadcast.

But just to give an idea of the kind of discriminatory behaviour that is subject to these awards, I think it does help. So this is the first example actually given in the appendix of the briefing not that ESS circulated. It is the case of *Abdi v Deltech International Courier Ltd*. Mrs Abdi is black, of Somali origin, and wears a hijab, a headscarf covering her head and hair. The tribunal upheld Mrs Abdi's claim for unlawful harassment on the grounds of sex, race and religious belief, covering the following three distinct findings of harassment, which occurred placed together in time.

While at work, two of Mrs Abdi's male colleagues repeatedly asserted to her that the majority of crime in England was made by black people. At around the same time there was a WhatsApp exchange between Ms Abdi's colleagues, including her immediate line manager, which the tribunal considered to be highly offensive and threatening and included threats of violence directed personally towards Ms Abdi. The WhatsApp exchange included comments such as bleeping 'immigrants;', 'smell like a' bleeping 'chucked tikka', bleeping bleeps, 'the lot of them' – I told you this would be difficult to translate, bleeping 'suffer your little postbox', 'bruv, what's her problem, can we ...' bleep her, 'bruv, someone shut this terrorist up before I get vexed' and 'I'll rip her headscarf off'.

The conversation also contains smiling and laughing emojis and emojis of women wearing hijabs.

In a subsequent WhatsApp conversation, the group's icon was changed to a black hijab picture and the name had been changed to ALHAMDULLAH, the messages included further comments such as 'ALLAHUMMMMDILILAAHH' and smiley faces and hijab emojis.

Now I found that quite uncomfortable reading and hopefully I am sure many people here would have found it quite uncomfortable listening, albeit it does not translate particularly effectively when you have to bleep out many of the most offensive words. That was a middle band. That was a middle band award. So if that kind of discriminatory behaviour were to have been found against in Guernsey, the absolute upper limit of the award that could be given would be £6,000. Actually it could be £3,000 because that is the middle band there.

So I hope that adds a little bit of perspective. Certainly, if this amendment carries through, our awards would be by some way the potentially lowest of the three jurisdictions we are talking about, us, Jersey and the UK.

I think there is just one more comment that I want to draw Members' attention to, which is of course this is very subjective. It was the subject of a lot of public consultation and the results of that public consultation were really interesting. This was back in the original consultation in 2019. In answer to the question 'Do you think there should be an upper limit to compensation for injury to feelings?' the two most selected answers were polar opposites; 21% selected the lowest upper limit of £5,000 and 21% selected no upper limit at all. But nearly 50%, so 49% selected upper limit options

of £50,000 or less. Very few respondents selected upper limits of £75,000 or £100,000, which of course would be higher than the UK, 12 had no opinion and 15 selected 'other'.

So I think that shows that this is subjective. It does come down to a judgement call, really, about where we feel is right. But I hope that is insightful, that when the public were consulted on this, the majority of them felt that the range that we have included in the proposed legislation was about right, so I hope that actually, as a representative Assembly, we might be able to reflect that by rejecting this amendment and supporting the levels set out in the legislation as currently drafted.

Thank you.

The Deputy Bailiff: Deputy Gabriel.

Deputy Gabriel: Thank you, madam. I will be very brief.

If this amendment gets passed we will be limiting the maximum sanction to £5,000. Compare that with, we heard Deputy Vermeulen speaking earlier, about when he was running a business and unfortunately the business transgressed and the business was found guilty at an employment tribunal and that employment tribunal found that there was an unfair dismissal, I believe. His very words were, 'The business learned their lesson.' I am sure they did and I am sure the fine helped them learn their lesson.

Now are we saying that the current employment tribunal rules for a maximum reward, which I believe is six months' of an employees' salary, are we saying then that even that minimum wage, 40 hours a week, 26 weeks, that comes out to much more than the £5,000 for the maximum that this legislation is claiming, that is a different scale? We have seen the appendix one and the some of the disgusting behaviours in there and we have heard them in this room as well. Are we saying that the employment tribunal is wrong and that perhaps if we do accept this amendment, of £5,000, that perhaps businesses will only learn half a lesson?

I will not be supporting this because I think it needs to run in parallel and that the maximum award of £10,000 is legitimate and correct. Thank you.

The Deputy Bailiff: Deputy Inder.

Deputy Inder: Just briefly, madam, because some of it is going to touch on the amendment that I may or may not get the Rules suspended to debate on I think it will be the next one. But of the instances given I think if I understand correctly there is the act of discrimination and there is also the act of the injury to feelings or the emotion. So, in most of the cases that have been discussed what I have not heard from those that are in support of it, they may have forgotten the act of discrimination can be up to six months of the salary of the employed person then on top of that there is an entirely different act of emotional damage.

So it is not £5,000 or £10,000 on its own in the employer circumstances. There is the act of discrimination, under Guernsey would be, let us say, in the most heinous examples we have seen given today, what is the average wage in Guernsey, probably close to £35,000-£40,000, I will take £40,000. So you get your £20,000 for the most heinous act, which we have heard described today, none of them actually in Guernsey, I note, but on top of that, there is another claim for the emotional turmoil or the injury to feelings. So any claimant will get the six months' salary, at the worst end of the scale, which would be £20,000 and then at the worst end of the scale, that is £30,000. That is £30,000. That is an awful lot of money.

So let us not diminish this or use some fairly awful instances of discrimination, what are basically abuse and sounds like assault to me, some of that being verbal assaults, let us not diminish and pretend it is just £5,000 or £10,000. In the employed circumstances, it is not. It is up to six months of salary plus the separate claim of injury to feelings. So in a Guernsey context, in the smallest level, it is £30,000. That is what effectively can be claimed on.

The Deputy Bailiff: Deputy Dyke.

Deputy Dyke: Thank you, madam.

2095 I feel I must make a couple of points here. Deputy de Sausmarez says that it is weird that we should worry about economic disadvantage in terms of our competitiveness with other jurisdictions. Well, to be honest, when we are a small Island that must remain competitive against the rest of the world that wants to eat our lunch, it is weird not to care about those things. It is weird not to care about economic costs. It is totally weird to tell the population that you do not care what anything costs and what the results are. This is the whole problem with this conversation we are having today.
2100 No, I will not give way.

Deputy de Sausmarez: Point of correction, in that case.

2105 **The Deputy Bailiff:** Deputy de Sausmarez, what is your point of correction.

Deputy de Sausmarez: Deputy Dyke, and this was not his opinion, he did state as a fact, that I said it was weird that we should want to compare ourselves in terms of economic disadvantages. That is of course not what I was saying at all. My reference to weird was that I found it weird that we should be using awards for discrimination in the context of economic competitiveness.
2110 Thank you.

The Deputy Bailiff: Deputy Dyke.

Deputy Dyke: Hmm.
2115 The other point I would raise is, I think it was Deputy de Sausmarez, possibly someone else, has said that in Jersey the awards can mount up so that you get more than one of £5,000. In Guernsey it is not necessarily the case that the sums will not add up. The relevant section 56 in terms of joint employment complaints say they may be joined or they may not be joined. We do not know what the tribunal is going to do. If they are not joined then they will multiply out.
2120 To add to Deputy Inder's point about six months, if there are multiple claims and they are joined, then the total cost to the employer could be nine months' salary, plus the £10,000 or £5,000 if we reduce it. If you take the median income of pushing £40,000 then that is £30,000 plus £10,000, £40,000 in total for joined complaints in the employment arena.

In the context of all that, it seems perfectly reasonable to reduce the £10,000 to £5,000, (a) to make us competitive with Jersey and, (b) to simply keep a better lid on the total cost to small businesses. Because once you get up to £40,000, you are not just taking out small businesses, you are taking out mid-sized businesses. I think we need to see how this thing works out before we take these figures up. It seems to me that the proposal to reduce the £10,000 to £5,000 is eminently sensible if you worry too much about the economy, which as I say, I have said so many times, we really should be worried a bit more about.
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The Deputy Bailiff: Deputy Ferbrache.

Deputy Ferbrache: I am not going to add any words to whether it should be £5,000 or £10,000; those are for the people to decide. But whatever the sum, if the employer knows that there is an act of discrimination, I do not think anybody would argue that they should be responsible, if they allow to go on implicitly or whatever and they would be sanctioned, whether it was £2,000, £4,000, whatever the figure is.
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But my understanding of the Law is, under the basic principle of vicarious liability, that even if the employer does not know that these acts are being perpetrated in the kind of conduct that Deputy de Sausmarez listed, the people that were sending those terrible notes and memos and things, as long as the facts were established, clearly, they, the employer, would still be liable, and they would be the ones that were being fined £5,000, £6,000 or whatever the sum may be. That is
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my understanding of the Law. If that is wrong then of course His Majesty's Comptroller will be able to tell us otherwise.

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Thank you, madam.

I wish to raise a point, which has not appeared in this debate but has appeared in previous debates or previous amendments and discussion so far, which is the silence of industry groups around this particular issue and this particular amendment. We have not been lobbied by employers and their representative groups, saying that this is a problem.

So my challenge to Deputy Moakes in responding to this debate is where is his evidence that this is a real challenge? The Committee for Employment & Social Security, who have been charged with progressing this issue, have gone to considerable effort to consult and that was laid out in both the draft notes, which were distributed on behalf of the Committee a few days ago, and have been repeated in debate by Deputy de Sausmarez this afternoon and that consultation was extensive and, as a result of that, the Committee have settled their view and, as Deputy Falla has said, it is different from Jersey's position because Jersey is £5,000 per head of play, which is different.

So I really need to say, other than a gut feeling, which appears to be what is driving Deputy Moakes and Deputy Vermeulen, there is no other evidence that supports this particular figure being the right figure and I think it is incumbent on them to bring that evidence to the floor of this Assembly, if they are seeking to persuade a majority of this Assembly that the number in the draft legislation is the wrong number and it needs changing. We have not had that in the debate so far and I would certainly like to see it.

Thank you, madam.

The Deputy Bailiff: If nobody ... Ah, Deputy Haskins.

Deputy Haskins: Thank you.

I do take some umbrage to Deputy Kazantseva-Miller suggesting that voting against this is me or any other Members endorsing the behaviour that Deputy Kazantseva-Miller gave examples for. I certainly do not endorse that type of behaviour or discrimination.

On the back of Deputy Gabriel's maths, £5,000 at minimum wage, at 40 hours a week, this equates to 13.8 weeks. That is just for some context. Personally, I am leading towards Deputy Moakes and Deputy Vermeulen. I also think that £5,000 for injury to feelings is enough, especially on top of the six months' pay. I think that is a level that should and would dissuade employers from being discriminatory.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: I think some of us would agree that the phrase 'hurt feelings' is not the most helpful. But it is used in other jurisdictions. Because what it really is is it damages to people's welfare and psyche and may be linked to harassment or other forms of unacceptable behaviour.

I would just like to emphasise, though, several Members already have made the point and I do it from my perspective rather than being a Member of ESS, that we look at life from a competitive point of view and we have heard, was it Deputy Dyke who said competitors want to eat our lunch. But of course we compete on another level for people who work here and we know that in some respects, our personal tax allowances, for example, are not as competitive as other places.

I make the point because the cost of living in Guernsey, the cost of housing, is higher than some other places and so, sometimes, are wages. And that is why it is curious in a way that this amendment wishes to go down from £10,000 to £5,000 as a maximum because I will quote from this article by a Mr Jones, a senior associate to the law firm in the UK. It was written in 2019, before the uplift to £49,000. In the UK, the tribunals will sometimes not only give for hurt feelings but for

injury as well. But the claims brought on or after that point, 6th April 2019, the current bands are lower band £900-£8,800, middle band £8,800 to £26,300, top band £26,300 to £44,000. It is more like £29,000 to £44,000.

2200 In a session, which bands should apply, an employment tribunal needs to consider the effect of the discriminatory conduct on the individual. One factor to take into account is the individual's vulnerability, for instance any medical condition they are suffering from and whether they have suffered stress or loss of confidence, the effect of the discriminatory conduct, the position of the persons discriminating.

2205 Although the frequency of the discrimination is a relevant factor, that is whether it was a single incident or an ongoing course of conduct, this does not mean that a one-off incident will necessarily mean an award in the lower band or that the course of conduct will always mean an award in the middle of the top band. This was relevant, the case I need to go into, about somebody from a particular ethnic group who felt they had been discriminated against for promotion and to go onto the next level of training. It made the point that feelings is not just about financial issues.

2210 But the point I am making, there was an argument that went to appeal as to whether the panel had actually erred, in going to the upper parts of the lower band rather than the lower part of the upper band. They did in fact get more on a technicality. But the judgment of the appeal of the tribunal, was that an employment had heard the direct evidence and was best placed to determine the appropriate level of award for injury to feelings. They also made the point very much that they
2215 did not feel that ... I will read this point:

The employment appeals tribunal acknowledge that other employment tribunals might have reached a different decision but there was no error in law in how the award had been assessed. It was not the case that one-off incidents fell within the lower band and unless an employment tribunal had wrongly categorised a band and made an award that was manifestly too high or too low there was no scope for the appeals tribunal to intervene in the level of the injury to feelings award.

The relevance of this is first of all there will be a lot of trust placed in the good sense of the employment tribunal and the second, I think, crucial point is this judgment was arguing about whether the top of the lower band, which was nearly £9,000 or the lower part of the middle band
2220 was more appropriate. But we have heard some examples from Members of serious cases and the most serious case imaginable, which in England might be theoretically £48,000-£49,000, under the amendment would get £5,000; under our proposals, would get up to £10,000.

2225 We actually listened to the employers in the Guernsey context in putting together the maximum of £10,000 and I am just saying there is a huge disparity when you consider the upper level that is ongoing in the United Kingdom and the upper level that will manifest if this amendment is successful, bearing in mind the fact that the cost of living in Guernsey is significantly higher than parts of the United Kingdom. So I think we are much nearer the mark with the original proposals than the reduction, as proposed in the amendment.

2230 **The Deputy Bailiff:** Deputy Queripel.

Deputy Queripel: Thank you.

2235 Madam, I have to declare an interest. My feelings have been hurt loads of times since I was first elected as a Deputy back in 2012. I could have made a fortune if this legislation had been in place back then!

I am being slightly flippant, of course, but there is a serious message in what I am saying. The irony is that my employer, as far as I can see it, is the people of Guernsey and the irony is that the majority of slanderous comments and insults that have been thrown at me have come from some of the very people who say they are totally opposed to harassment and discrimination. Yet, for some
2240 reason, they think it is perfectly okay for them to harass and discriminate as politicians and hurt their feelings.

Well, I have got news for them, it is not. Not only have I had slanderous comments and insults hurled at me by unenlightened and misinformed Islanders who do not really know what the issues are about, I have also been physically assaulted three times. Twice by people who were really angry about the way I voted on a couple of issues. They were obviously of the view that anybody who so much as dares has a different opinion to them deserves a good kicking.

The third time was when an issue was misreported in the media and the person who read it believed it and I got assaulted because they believe everything they read. Eventually I received an apology from the *Guernsey Press* after nearly four months for misreporting the issue but I never received an apology from the guy who assaulted me. It was pointless reporting the incident to the Police because I was so traumatised I could not possibly describe what he looked like.

Now I am not being flippant when I say that hopefully those Islanders who seem to enjoy giving Deputies, or anyone else for that matter, a good kicking verbally or physically will think twice about doing that when this Ordinance comes into play. Irrespective of whether or not this amendment succeeds. But in an attempt to attain a balance I am going to support this amendment.

Thank you, madam.

The Deputy Bailiff: Thank you.

Deputy Bury.

Deputy Bury: Thank you, madam.

I had not intended to speak but Deputy Queripel has just brought me to my feet and even though I know, I sympathise and it is horrible to hear the story that he has just told and I am sure that many of us and those that have gone before us, have experienced similar things, I think it is important to say, because it is something that keeps coming up, he would not have made a fortune because being a Deputy is not a protected ground. You can only be discriminated against on one of the protected grounds and I am sure everybody would agree they are widely recognised as minority groups that we want to protect because they need that protection –

Deputy Dudley-Owen: Point of correction, madam.

The Deputy Bailiff: Yes, Deputy Dudley-Owen.

Deputy Dudley-Owen: I think that being a female is a protected ground and females are not in minority.

The Deputy Bailiff: Deputy Bury.

Deputy Bury: Thank you very much. Happy to concede that. Well, being a Deputy is not a protected ground and therefore Deputy Queripel's comparison is not quite right in this context. *(Interjection)* I do think it is important to keep making that distinction that discrimination is only related to the protected grounds that we are talking about in this phase of the legislation.

Thank you.

The Deputy Bailiff: Deputy Roffey, on behalf of the Committee, to reply.

Deputy Roffey: Thank you, Madam Deputy Bailiff.

I agree with Deputy Gollop that in a way the legal term 'injury to feelings' is unfortunate because it just makes them sound like they are a bit of a wuss, 'pull your socks up, your feelings are being hurt, buck your ideas up'. We have heard some of the cases read out today, these are situations that actually damage people's mental health, that render them sometimes unable to work for periods of time that are really traumatic.

So I think, unfortunately, it is played down by the expression in the Law but I am not blaming the legal draftsman, who was just using the standard term that is used everywhere. I wanted to start off where Deputy St Pier left off. He said we have not been lobbied by employer organisations. I would go further than that. We have consulted them time after time, the most recent being the technical consultation. No employer representative group – that includes the CGI who, by the way, I can tell Deputy Dyke, just to correct him from earlier in the day, not only did I reply to them I got thanks from them for my fulsome reply to their letter of representation – but that is going back to something that was said earlier ... Not them, not the Chamber of Commerce, not the IoD, not any of these bodies representing employers in Guernsey had an issue with a level of reward that we were proposing, or the maximum level of award that we were proposing, in this policy letter.

Okay, I accept fully the rights of Deputy Moakes and Deputy Vermeulen to say that they think this is going to be problematic for local employers. The employer groups do not seem to think that.

Just a few misconceptions I want to draw out. People have said, 'But there are going to be two types of compensation, aren't there? There is going to be compensation for so many months' pay, up to six months, depending upon how serious it is. There are lots of areas where this Law applies, not only in employment. If you have been discriminated against as a service user, you cannot access that type of award. So unless you can show proof that you have lost actual financial loss, your only recompense is actually through the injury to feelings. The only award that you will qualify for.

We heard the horrendous case that Deputy de Sausmarez read out. That qualifies for the middle band of the Vento scale. Middle band. So in Guernsey, that will be £3,000 to £6,000. If this amendment goes through, it will be £1,500 to £3,000 and that could be, if you were treated like that as a service user rather than an employee, that could be your only award. So I think there has been a lot of skewing of the way things have been portrayed and do not forget we were coming in at roughly one fifth of the maximum under the Equality Act in the UK.

The people who have said that in Jersey, actually, although it is £5,000, it is £5,000 per head of claim are quite right. Deputy Dyke said as well in theory you could have – no, I am not going to give way – you could have non-co-joined claims in Guernsey. But he knows, because he sits on the Legislation Review Panel that the tribunals and their legally qualified head, will have the power, if it is the same set of circumstances being complained about, to say, 'No, I am not going to treat these as separate. I am going to co-join them and treat them as different heads under the same gaze.'

So that is almost certainly going to happen if we are talking about the same set of circumstances. So we will be absolutely rock bottom, lower potentially than Jersey.

Now Deputy Ferbrache said, yes, he is fine with this except for the business of vicarious liability. He asked the Comptroller –

The Deputy Bailiff: Would you like the Comptroller to answer?

Deputy Roffey: No, I would like to answer it because I think I know. Because I think there is a defence in the Law for the employer against vicarious liability if they can show they have done as much as they reasonably can to prevent discrimination. So, somebody that is really doing the right thing and suddenly one of their employees, despite that, goes off and spoils the show on their behalf; have they got a very firm defence there?

Deputy Vermeulen has told an interesting story of somebody he went to school with. I am not sure which school it was but he went to school with this person and some time ago they relocated from Guernsey to Jersey. That is interesting. I will give way if I have got that wrong.

Deputy Vermeulen: You have got the wrong end of the –

The Deputy Bailiff: Sorry, Deputy Vermeulen, you still need to speak via me, to tell him that in fact it was the friend of a friend who left for Jersey, but please go ahead.

2345 **Deputy Vermeulen:** Deputy Roffey has got the wrong end of the gigglestick, I am afraid. I went to school with the builder that built an office block. He is still in Guernsey but he lost his tenant. The whole point of him losing the tenant was because ownership had changed, headquarters moved to Jersey due to over-regulation. I think you have got the wrong end of the gigglestick.

Thank you, madam.

2350 **Deputy Roffey:** Very interesting, then. His tenant moved from a place that had absolutely no anti-discrimination legislation and decided they wanted, really wanted to go to a place that did have anti-discrimination legislation. I think the argument is made for itself. *(Laughter)*

Deputy Inder, there is a single act of discrimination. The reason there are two different awards possible, particularly if it is in employment, is there are two different effects. There is the financial loss that is caused – very often you have lost your job because of that discrimination; been driven out – and then there is the effect on you as an individual that requires a degree of compensation.

If we did not go down this road, I think we would be the only country that I am aware of whose legislation does not cover both of those things. So I think every other territory that I have looked at, they have got anti-discrimination that has that feature.

2360 It is a matter of judgement. Oh yes, I will join in with Deputy Bury in saying I am sorry that Deputy Queripel has been assaulted three times, that is more than me. I have only be assaulted twice, although I almost draw with him because I did go into a pub once and a bloke came up to me and said, 'Are you Deputy Roffey.' This bloke looked a bit like me, he had a beard, and he said, 'I got beaten up the other day because somebody thought I was you!' So if that counts as a vicarious assault then I draw. But it is quite right, it is not an act of discrimination it is just a very poor act by a member of the public.

Deputy Dyke: Madam, can I make a belated point of correction?

2370 **The Deputy Bailiff:** Who are you are making the point of correction to?

Deputy Dyke: Deputy Roffey.

Deputy Roffey: Somebody did come up to me and say that.

2375 **Deputy Dyke:** He effectively accused me of misleading the Assembly with regard to the communications I have had from the CGI. I am quoting an email here:

Here you will see my letter to Deputy Roffey, in February of this year, which he completely ignored and also my follow-up letter this month.

2380 Now you were suggesting that they have responded to you and in some way I was misleading the Assembly. That is completely wrong –

The Deputy Bailiff: Deputy Dyke, I do not think he was saying that it was misleading. I think what he was saying was that in fact he had responded. I do not think he was suggesting that you were misleading the Assembly, I think he was just telling you the fact that he had responded.

2385 **Deputy Dyke:** Well that itself is not correct.

The Deputy Bailiff: Deputy Dyke that is what I am ruling, so can you sit down now? Deputy Roffey.

2390 **Deputy Roffey:** Not only did I respond but I got a very nice thank you back from the CGI, saying thank you for your fulsome response. So I just thought I would get that on record.

2395 This is a matter of judgement, of course it is, and I know it is what some Members of the Assembly want. I think it is sending out the wrong message. We would be sending out penalties well below anywhere else and I actually do not expect there to be almost any cases. I hope not, I really would be shocked, if there were any cases at the top end of the Vento scale. We have heard the sort of cases that come in at the middle. The middle of the Vento scale. I think the vast majority would be at the bottom. That, at the moment, is £500 to £3,000. We would be moving, I guess, to £250 to £1,500.

2400 So please, Members, I believe that this is right. We will hear Deputy Moakes put his argument forward and you would make a judgement but I think you would be saying, 'We want an anti-discrimination law but we want it really weak. We really want it half-hearted. We do not really want it to really do the job that I think it is intended to do.' I think there is a real danger of that.

2405 **The Deputy Bailiff:** Deputy Moakes.

Deputy Moakes: Thank you, madam.

2410 Right, I will try and answer all the points raised. I think Deputy Falla was the first to ask a question or make a point. He said in Jersey each head of claim is £5,000 so the total could be far higher. He is absolutely correct. It could be. But the true headline number in Jersey is £5,000. Here it would be £10,000. I will explain a little bit more later on because some of his questions cross one another but that is the headline number.

2415 Deputy Kazantseva-Miller provided us with some truly terrible – and I do mean terrible – examples of harassment and abuse of all kinds. It is absolutely appalling. I have got to be honest, £5,000 does not cover that. But neither does £10,000. I cannot see how any amount of money can make somebody forget an ordeal as horrific as some of the ones that you have mentioned and other people have as well. It is truly, truly awful, I hope none of those examples are from Guernsey.

2420 Deputy de Sausmarez, Jersey is no lower due to the number of claims. She also provided some awful examples as well, just reminding as to what some people are put through and what is completely unacceptable. Again I say no amount of money, I think, can probably ever make or help anybody get over that type of situation. It is truly appalling.

2425 Deputy Haskins tended to agree, so thank you. Deputy Gabriel – this amendment will limit compensation to £5,000. He also reminded us that this amendment relates only to the hurt feelings, which is correct, and it does not affect any other compensation that the person might be entitled to, which could be significantly more, as a number of people have already said. Many thousands, in fact, in the worst cases.

2430 Deputy Dyke seemed supportive and reminded us that there could be multiple claims and I think he suggested that £40,000 is possible still. Deputy St Pier, where is the evidence that £10k is a problem? Well the evidence is perhaps in the fact that people who are responsible for small businesses have said this type of legislation is difficult. But I think £10,000 for a small shop, you need to think very carefully about that. It is a huge amount of money for a one-, two-, five-person business and all I am saying is that this legislation is a very broad brush stroke. It is £10,000 for everybody. For a big multi-national, £10,000 is probably a drop in the ocean. For a little tiny business in town, it could wipe them out. That is the point I am trying to make.

2435 So we go onto Deputy Gollop, I believe, next. He said we look at things from a competitive point of view, the cost of living is higher, etc. He talked about the severity of the issue. I think it was more points he was making about the way it works in the UK. I am not sure there was a question in there specifically. Deputy Queripel talked about the bullying, intimidation and harassment that Deputies are subjected to from time to time. Again, he mentioned some dreadful instances that related specifically to him. Again, just unacceptable.

2440 In my opinion and I think everybody in this room and outside would agree, bullying, intimidation and harassment of any type are never acceptable in any circumstance whatsoever. (**A Member:** Hear, hear.)

Deputy Bury went on to make a clarification point, so I thank her for that. Deputy Roffey agreed with Deputy Gollop and reminded us of some of the terrible examples which had come out earlier. I do not think he raised any questions but he did a brilliant job again of reminding us why this legislation is so important. It is. I am certainly not questioning this legislation, which is why I made the point at the very beginning: this amendment is not designed to change anything. It is purely designed, I hope, to help the smaller businesses out a little bit because the amount they would potentially be fined I think is disproportionate. That is the point here. None of the arguments, I think, that were made actually addressed that key point, which is that micro-businesses and large businesses are going to be fined exactly the same amount of money.

I think that is probably everything. I do apologise if I have not answered something. So my last thing to say is it is not designed to change legislation. It is purely designed to reflect the fact that this applies to the small, tiny businesses, as well as great big businesses and I recommend it to the Assembly, thank you.

The Deputy Bailiff: Thank you, Deputy Moakes.

So this is the vote in relation to Amendment 6. Greffier, would you open the voting, please?

Amendment 6

There was a recorded vote.

Not carried – Pour 17, Contre 19, Ne vote pas 2, Absent 1, Did not vote 1

POUR

Deputy Aldwell
Deputy Blin
Deputy de Lisle
Deputy Dudley-Owen
Deputy Dyke
Deputy Ferbrache
Deputy Haskins
Deputy Helyar
Deputy Inder
Deputy Le Tissier
Deputy Mahoney
Deputy Meerveld
Deputy Moakes
Deputy Murray
Deputy Prow
Deputy Queripel
Deputy Vermeulen

CONTRE

Deputy Brouard
Deputy Burford
Deputy Bury
Deputy Cameron
Deputy de Sausmarez
Deputy Fairclough
Deputy Falla
Deputy Gabriel
Deputy Gollop
Deputy Kazantseva-Miller
Deputy Le Tocq
Deputy Leadbeater
Deputy Mathews
Deputy McKenna
Deputy Roffey
Deputy Soulsby
Deputy St Pier
Deputy Taylor
Deputy Trott

NE VOTE PAS

Alderney Rep. Roberts
Alderney Rep. Snowdon

ABSENT

Deputy Oliver

DID NOT VOTE

Deputy Parkinson

The Deputy Bailiff: Thank you.

Greffier, would you close the voting please? There voted Pour, 17; Conte 19, there were 2 abstentions and 2 absences, therefore the amendment did not pass.

I am now going to invite Deputy Inder to present his amendment but first there needs to be a motion to suspend the Rules to permit the amendment set out below to be considered. So it is Amendment 13 but in order to consider that, first the Rules need to be suspended. So I am going to ask the States' Greffier to ... actually, no, I am not, I am going to take an *aux voix* vote on it. Those who wish to suspend the Rules of Procedure to the extent necessary to permit the amendment say Pour; those against?

Some Members voted Pour, others voted Contre.

Deputy Taylor: Recorded vote, please.

The Deputy Bailiff: States' Greffier, can we have a recorded vote, please?

There was a recorded vote.

Not carried – Pour 23, Contre 15, Ne vote pas 0, Absent 1, Did not vote 1

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Aldwell	Deputy Burford	None	Deputy Oliver	Deputy Parkinson
Deputy Blin	Deputy Bury			
Deputy Brouard	Deputy Cameron			
Deputy de Lisle	Deputy de Sausmarez			
Deputy Dudley-Owen	Deputy Fairclough			
Deputy Dyke	Deputy Falla			
Deputy Ferbrache	Deputy Gabriel			
Deputy Haskins	Deputy Gollop			
Deputy Helyar	Deputy Kazantseva-Miller			
Deputy Inder	Deputy Le Tocq			
Deputy Le Tissier	Deputy McKenna			
Deputy Leadbeater	Deputy Roffey			
Deputy Mahoney	Deputy Soulsby			
Deputy Matthews	Deputy St Pier			
Deputy Meerveld	Deputy Trott			
Deputy Moakes				
Deputy Murray				
Deputy Prow				
Deputy Queripel				
Alderney Rep. Roberts				
Alderney Rep. Snowdon				
Deputy Taylor				
Deputy Vermeulen				

2480

The Deputy Bailiff: Thank you. Would you close the voting, please?

The motion to suspend Article 7(1) in relation to the Rules of Procedure, there voted Pour 23, Contre 15, there were 2 absences. Therefore the motion is passed.
Deputy Inder.

[Amendment 13.](#)

At the end of the Proposition add:

“, subject to the amendments indicated below”.

1. In section 50(1), for “in the sum of –” to the end, substitute “in the sum of up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26.”, and in section 50(2) and (3) for “subsection (1)(a)” substitute “subsection (1)”.

2. In section 51(1), for “in the sum of –” to the end, substitute “in the sum of up to six months' pay, or where the complainant is paid on a weekly basis, up to one week's pay multiplied by 26, and section 50(2) to (4) apply to the calculation of an amount of an award of compensation under this section.”.

3. In section 55(4)(a), for “to be appropriate –” to the end, substitute “to be appropriate, nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39), and”.

4. In section 56(2), from “joined complaints is -” to the end, substitute “joined complaints is nine months' pay (or where the complainant is paid on a weekly basis, one week's pay multiplied by 39).”.

5. In section 56(3), for “limits” substitute “limit”, and for “do” substitute “does”.

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Deputy Inder: That was a surprise, based in the *aux voix*.

Madam Bailiff, Members of the States, some of the debate we have had in the previous amendment so I hopefully will not go over too much of the old ground, but I will make reference at some point and I may as well do it now, to some of the examples that were given by, I think it was, Deputy Kazantseva-Miller, Deputy de Sausmarez and all of those who found them. They were incredibly vile and, rightly so, people were fined.

What I think Members have done quite a good job of is pretending in the Employment Law or suggesting in the Employment Law that that is the only method to compensation. It is not the only method to compensation. In all likelihood in those examples, an award was given to an amount of money but separately there would have been a separate award for the act of discrimination for those who were employed. So in the employed circumstance it is not the only route to a form of compensation.

Now, first of all, I would like to thank you all for allowing this to be debated and my concerns over injury to feelings has not dissipated since when we discussed this, I think it was back in 2017-18. But like everything, you do not throw the baby out with the bathwater. I think the policy letter itself was accepted, I believe it was unanimously, and we are here today to discuss the Law itself.

I note with interest, one Deputy took to Twitter and stated that this amendment is 'days late and there was no consultation with the Committee'. Now to set the record straight and I think I communicated this with Members on Monday or Tuesday night ... and it refers back, actually, to something our Chief Minister said on the state of public service reform and the state of our FDS. Now this is more out of interest and this is really more for members of the public to show what a something-show the States can be in sometimes.

Now, I first wrote to the responsible Law Officer on Sunday night of this week. She responded, offering a meeting. I did not receive that email. So I chased it, leaving it half a day or so, as you would, because all the Law Officers are fairly busy and I do not generally hassle people more than that. To my surprise an email was told it was sent back to me and I did not receive it. So there you go, another half a day gone. We are screaming towards the Tuesday date.

Effectively, both of us politely waited for each other to respond, not realising the other had not received the email. I had to eventually ask her for her private Gmail account. That is how bad the States' IT system is. Reminding ourselves that we are spending £220 million over a 10-year period, we cannot even hold an email server up, it is that bad.

Now, anyway, we got to where we were. So, Members, for the record, the piece would have been in time had the email system been working and this is why we are here today and the IT provision, or lack thereof, is now impacting on the parliamentary ability to function and I would encourage Members of SACC, particularly, and maybe our digital lead, to take this up. So it was not about being seven days late and I will move onto the communication, which under our rules we are asked to do and work with the Committee.

Now, moving onto the amendment proper. Deputy Roffey, in his opening to the Ordinance, made reference to the fact that he is delivering on a policy decision of the States. Actually correct, again in part. I would have to remind him that there was some concern over the concept of injury to feelings when this was debated last time. Since then, I cannot remember which side it was, but he left. We have had a referendum. We have had a new Assembly and over half of the Members were not in a position to vote on this policy letter. So it is perfectly right for you, as elected Members of this Assembly, to have that ability to make a different decision. You are bound by no one at all.

No previous Assembly, as we all know, can bind a future Assembly. Maybe Deputy Roffey gets that he has previously said, he railed against our policy letter, the first sale of fish, for reasons which are his views of right to hold, and then went on to say in either an opinion column or possibly by email, they would find a way to defeat it and have a second pop at the argument when or if the Ordinance comes back to the States. So what is good for the goose is good for the gander. But not always, is it? It is not always good for the goose and it is not always good for the gander. It depends who says what.

2540 Anyway, my concerns to injury of feelings has not dissipated and I am here today with the same concerns and hopefully getting some support. Let us remind ourselves of the piece in the original policy letter and I will just read from the original policy letter:

It should be recognised that the unfair dismissal element of any form of award is entirely separate from discrimination legislation and there is no requirement to change the unfair dismissal regime.

Fine.

The Committee is therefore proposing the idea of a simple development of the award structure, already in operation under the Sex Discrimination Ordinance, successful discrimination complaints in the field of employment, which would work alongside the current award structure for unfair dismissal. For discrimination in the field of employment, the Committee recommends an upper limit of six months' pay, plus up to £10,000 for injury to feelings, based on a three-banded scale akin to the Vento scale.

2545 So through the last amendment, you have seen a clear separation. Cleverly, it is only about injury to feelings. But in the employed circumstances, it is not. It clearly sets out in the policy letter what the intention was and it is here today in the Law what will actually happen. This is what was wanted, this is what is going to happen.

2550 So under the employed circumstances, should you be discriminated against, you will have an ability to take the employer for that act of discrimination and separately you have an ability to take the employer through a similar process, even though it is slightly different, for injury to feelings. Now I am sorry, Members, and I hope some of you will agree with me, that feels like double jeopardy. It genuinely feels like double jeopardy. We do not get it under Employment Law. There is nothing under Employment Law. The maximum compensation for constructive dismissal is six months. That is what it is.

2555 So why are we creating a brand new method to find a way of getting extra compensation, which we do not have under constructive dismissal? You could possibly go through a same process of having a fairly miserable time, some of which was explained by the examples given in the previous amendment, and under constructive dismissal there is no injury to feelings.

2560 Now we will be told by members of ESS it is the right thing to do. Is it? The concept of injury to feelings, irrespective of whatever scale has been put in place, is entirely subjective in the area of employment.

2565 Now, before I got to this amendment, so I am being consistent in my concern over it, I had engaged with the Guernsey Disability Alliance. In fact they invited me out for a coffee and I largely informed them that I would be supporting the Ordinance but this was way before the amendment had turned up, providing that I would consider any amendment that arose, as is my right and all of our duty to consider any amendment.

2570 The lead I met responded to my concerns, made reference to my main issue on the subjectivity of injury to feelings; they wrote to me and the main paragraphs related to the matter were actually shared back with all Members I have had a meeting with them. I thought it was reasonable. They had written very well and very professionally back to me and those of you may or may not remember, what I did immediately was share it with States' Members, providing no comment and just saying, 'Look, I have been to see, I have been invited and this is where we are.'

2575 Actually running through it, it follows the party line. It reminded me of what I voted for in the policy letter. It went on to talk about the policy letter and injuries to feelings but did not really address my concerns.

2580 Now getting back to the explanatory note itself, the amendment seeks to remove the element of compensation for injury to feelings, hurt or distress in any case where pay is awarded under the ordinance. Principally, this is likely to be in disputes between employers and employees. It does not seek to remove the possibility of compensation for injury to feelings, where the Ordinance is contravened in the context of provisions for goods and services.

Now, I will give some examples, which are already in the explanatory note but, for the record. Should the States agree the whole Ordinance, unamended, the following examples are possible outcomes.

So unamended ordinance:

An employer who has discriminated against an employee could be liable up to 6 months of salary and a further finding of up to £10,000 for 'Injury to feelings'. In the current context of the average salary ...

– and I am glad I spoke, through you madam, to Deputy Moakes' and Deputy Vermeulen's amendment because it allows me to say the same thing again – in the average salary –

... in Guernsey being around £40,000 the bill to the employer could be £30,000

You do not get that for death by dangerous driving in Guernsey. It is a substantial amount of money. It may well be the bonuses for some Members of the Assembly but these kinds of figures can break people; they can break businesses.

Now, under goods and services currently, if a member of the public is refused goods or services there is a potential liability of up to £10,000 for injury to feelings along with any actual financial loss the person has suffered. Now, before someone gets up and tells me this is going to break goods and services, it does nothing of the sort. It purely asks Members if they are happy to take this out of the employed portion of the Ordinance.

So if the States agree, on the amended Ordinance, the example would be, as an amended Ordinance:

An employer who has discriminated against an employee could be liable up to 6 months of salary.

Very similar to Employment Law and why would we create a new method of compensation just because it is somewhere else? Just because it is somewhere else does not make it a good Law. It is entirely subjective, irrespective of what the scales may be elsewhere in case law but there is no reason to it. Six months is, in my view, particularly satisfactory for someone who has erred, especially extremely, in any discriminatory case.

So the discrimination ordinance should go no further, in my mind, than the current Guernsey Employment Law, where the maximum compensation for unfair or constructive dismissal under the Employment Protection (Guernsey) Law 1998, is six months' pay. It is also worth noting that there is no Law or concept of injury to feelings in employment protection law. So why start it again? Why has Guernsey got to be exactly the same as everywhere else or, as we have just discovered, we have actually made ourselves substantially different to Jersey. This Ordinance is going to go through; there is no doubt but let us just try and do it better. Why should there be a double jeopardy element under the Discrimination Ordinance; why should there be any double jeopardy at all?

This is my problem with it and it has been my problem from day one. This may or may not be a long debate. It is entirely up to you how you vote but this is where I am with it.

Thank you, madam, and thank you, Deputy Helyar, for seconding it.

The Deputy Bailiff: Deputy Helyar, do you formally second this?

Deputy Helyar: I do, madam.

Thank you.

The Deputy Bailiff: Deputy Matthews.

Deputy Matthews: Thank you, madam.

I almost was not going to speak on this. I am in two minds about the amendment. But I will say one or two things on the back of Deputy Inder's speech. I agree with him in some parts. I think there

was one issue, where he talked about constructive dismissal. I think you will find you would actually have to prove two things. You would have to first prove that the constructive dismissal, which is where somebody has left work, proved it was effectively a dismissal, and then have to prove it was unfair.

He is right that the maximum that could be awarded is six months and some people would say that does seem that, since there is a crossover in many of these incidents, it does seem a little unfair that in one case the maximum would be six months and the other case the maximum would be six months and £10,000. I actually tend to feel that the six months' under Employment Law is a little too low. In other words, I would equalise it up on the other side. But I do feel that there is a potential view that the difference between the two could be seen as being unfair.

One of the issues, I think, in general, that people would probably say with discrimination laws and it has been mentioned about the Equalities Act in the UK, is that it only does act upon instances where there is a protected characteristic – or a protected ground, sorry – and some people can feel that that is not comprehensive, that there are lots of things that are left out and one of the groups that does feel left out sometimes is the white working class that feel that they do not have protected status that perhaps they feel ought to be there.

I think there is a genuine point that Deputy Inder has picked up. As I say, I would rather it went up the other way than down this way but I certainly think he has got some fair points there.

Thank you.

The Deputy Bailiff: Deputy St Pier.

Deputy St Pier: Yes, madam.

I wish to raise the same challenge to Deputy Inder as I did to Deputy Moakes on the last amendment, which is really where is the evidence to support this particular amendment, in terms of the pressure from industry and business representatives and groups that are dissatisfied with the technical consultation undertaken by the Committee for Employment & Social Security preparing this legislation?

That is the first point. The second point is whilst he has illustrated, in presenting the amendment this afternoon and indeed in the explanatory note, if you like, the worst case for an example using a maximum of £10,000 for injury to feelings, as was quite apparent in the previous debate and I think was accepted by everybody in that debate that actually the prospect of that maximum level being levied is extremely rare and only for the most egregious examples. Hopefully, he will concede that point in his summing up as well.

But I think the main point for which I rose was really to challenge what is driving this amendment, other than simply his own opinion and where is the evidence?

Thank you, madam.

The Deputy Bailiff: Deputy Gollop.

Deputy Gollop: A few points, really.

I am not going to support the amendment. Yes, I am concerned that we do need to support smaller businesses in Guernsey but I think there are many other things we could do with tax and policy, rather than just allow them to not fully reward people who have been discriminated against. I agree with a lot of what the previous speaker has said, that there has not been much evidence to ESS of concern on this particular level.

Of course this amendment is a Johnny-Come-Lately, in that it has come because we have suspended the Rules and it has meant that all the employers, lobbyists, campaigners, Committee members, everybody, has had very limited time to think about the consequences of this. In a way, if we voted for this, it would wipe out not only the purpose of the hurt feelings section but the last vote.

2680 So that, in itself, would be unwise. I have often attended just as an observer, I have not been a participant, perhaps just as well, to these employment tribunals, and over the years, they are usually held in public. They were held by lay people, sometimes persons to the dispute had legal representation, sometimes not. But what was interesting is that the six months that Deputy Matthews alluded to was a bit of a barrier, because I have seen cases where somebody who is extremely successful at one point of the finance sector, could walk away with several hundred thousand because there was an accurate estimation of their six-month salary, whereas other employees in less well-paid areas would have substantially less.

2685 The point has been already made by Deputy St Pier and others that it is extremely unlikely anybody would get £10,000 for the most serious and I would see this mechanism as not only legitimately compensating somebody for significant distress, mental stress, discrimination, but also for those perhaps on the lowest of salaries, act as a way of allowing that person to move on and rebuild their life.

2690 There is one other important point that perhaps nobody else has raised or will raise. High fines are not totally uncommon in Guernsey, maybe not for parking or speeding, but we have seen fishing fines that have been large and I have in front of me a case that occurred in October 2020, around about the time of the election transfer, when we were re-elected, whereby an institution in Guernsey was fined £20,000 in the Royal Court – not by you, madam – for breaching health and safety rules, which are under ESS.

2695 It was to do with scaffolding. I went to a presentation on that the other day, it was very interesting. But this scaffolding safety issue, when a man fell, and the little firm that was fined, I will name them, was none other than the States' Trading Supervisory Board. So they took the penalty of a £20,000 fine. So we do not necessarily just have smaller figures. That is a lot higher than any hurt feelings.

The Deputy Bailiff: Thank you.
Deputy Kazantseva-Miller.

2705 **Deputy Kazantseva-Miller:** Thank you, madam.

I have tried in this short period of time to research some of the cases that have been stated, because Deputy Inder in his speech said what we have tried to find is some other amount of compensation that is clearly not stated in the response that the Committee has provided. It has been a short time so please do not judge my quick research. But from what I see, the awards stated are the awards that were given and they were awards for injury of feelings.

2715 I think it is important to emphasise that perhaps some of the cases stated and some of the ones I have certainly selected relate to, specifically, racial harassment and so this is a case where the discrimination is brought on those grounds. So there is, specifically in the cases stated, no other double dip award here. This is specifically an award to injury and feelings. If I am reading correctly the Ordinance, the compensation in relation to your pay is where you can prove financial discrimination has taken place, specifically on those protected grounds.

2720 So if you can say that, because of the protected grounds, because of my disability, carer status or race, I can prove that on those grounds I have been paid less than my comparable colleague, these are the cases where you will be entitled for compensation. So in this case, the injury of feelings is an award for something different and it is important to have that mechanism because there will be cases where an award in relation to your pay is not relevant, while an award to the injury and feelings on the Vento scale is the tool that is available.

2725 I hope that has clarified the situation and Members are free to look at those cases. That information is open. I have not seen any other double dip situation of awards here.

The Bailiff: Deputy Dyke.

Deputy Dyke: I actually was not going to speak on this but I will do very quickly.

2730 Deputy Inder has very cleverly picked up on this point. I have to say it is one I missed so congratulations to him on that. There is another point that goes with this that we probably have not discussed, namely that if you employ someone under the Employment Law, you have got a probationary period during which you can let someone go if it does not work out.

2735 The way the Discrimination Law now operates with that is that, instead of having a clear period when you are recruiting someone, if you do let them go, although they do not have a claim under the Employment Law, pretty likely they are going to be making a claim under the Discrimination Law. So there is probably a much bigger issue that Deputy Inder has unearthed but that is another thing; we have not brought an amendment to deal with that.

Insofar as it goes, I think Deputy ... Yes –

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The Deputy Bailiff: Is that a give-way?

Before you speak, Deputy, is that a give-way?

Deputy Dyke: Yes.

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The Deputy Bailiff: Deputy Inder.

Deputy Inder: Thank you for giving way.

2750 He is absolutely right and I am afraid the previous speaker was absolutely wrong. Effectively 5.15 of the policy letter clearly separates and I will read it again:

For discrimination in the field of employment the Committee recommends an upper limit of six months' pay plus up to £10,000 for injury to feelings.

2755 So it is entirely in the policy letter and it is in the Law. So creating, I hope people will agree with me, Google searches for something that was not designed to present that, as we saw previously, from the previous speaker is not, I am afraid, evidence. If anything, it is more evidence to support this amendment. Because this is almost certainly the intention of the Committee to allow, effectively, two pops at the same problem.

The Deputy Bailiff: Deputy Dyke.

2760 **Deputy Dyke:** I thank Deputy Inder for his contribution.

2765 I think one of the things that emerges from this is that a number of us who take our responsibilities seriously have really had a problem with dealing with this. It finally came to the Deputies at the end of about the middle of August, when a lot of people were on holiday, some Law Officers were on holiday. We have been scrabbling around to try and make these amendments and you can see that it has been very difficult. You have had late amendments because we have simply not had much time to do it. I just make that point.

2770 I have got to comment on Deputy St Pier. Deputy St Pier keeps saying, 'Where is the evidence? I want the evidence.' Well a lot of these arguments should be based on coherent analysis, which we should all be capable of without relying totally on input from various industry and pressure groups. So we should be able to do coherent analysis ourselves, without having evidence all the time. Just think things through.

Thank you, that is all I have got to say.

The Deputy Bailiff: Deputy Helyar.

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Deputy Helyar: Thank you, madam.

I thought I would say a few words as seconder of this particular amendment. It did come very late in the day, for which I apologise. I just have some lawyerly observations about it. I do not have any particular problem with the extent of the total amount of damages which could be awarded for

2780 discrimination. We have heard some truly dreadful examples today, which absolutely deserve the highest possible awards which anybody could contemplate. The problem for me is the subjective nature of the term 'hurt feelings'. It is no more than that.

I think Deputy Roffey described it as unfortunate – is that correct? – to categorise, I think he used that word to describe it, perhaps it is unfortunate. In the context of the civil law if there is a case, those damages are split, as you will be well aware, madam, between special and general damages; special damages being putting you back in the position you would have been had the thing not happened and general damages being for this type of loss, in terms of your feelings, your pain and suffering or, in Latin, it would be called the *solatium*.

2790 The difficulty I have with the use of the description of hurt feelings in legislation is it gives rise to an expectation. Now I am fully aware and before anybody tries to interject that that head of damage cannot be triggered unless there has been a proven act of discrimination. I completely understand that. But for the same reasons as lots of industry organisations are not jumping up and down over this legislation, it is because they have not read it. They have not analysed it.

2795 They have not been in a situation yet where they need to start thinking about what the costs are and what the implications for them are of these types of problems. We have got another amendment coming up, which will focus very much on small business but those businesses, in particular, if you think of your small garage or your decorating company, or two or three guys in a building firm, they will have not looked at any of this at all. None of it. They probably do not even read the *Guernsey Press*.

2800 That is a real concern for me because I think using the term hurt feelings gives rise to an expectation in the future and with the development of legislation that members of the public are entitled to be compensated money because they feel that their feelings are hurt for some reason and I think that is a slippery slope. I completely understand, we would be quite happy if we could have changed that terminology to call it pain and suffering, or *solatium*, or something different from feelings, because that is a hugely subjective area.

2805 We have lots of States' Members in here with very thick skins. Some with very thin. The way in which we would approach, whether it be Deputy Queripel being personally attacked or abuse on the internet is quite different. It is different between every human and people react in different ways, not just to events but at different times, according to what they are going through personally, things that they may be suffering and things that other people have said to them.

2810 So that was the real concern I had with this. I think it could be used to manufacture claims. It is unfortunate to have to say that but as a lawyer I have been through dozens of employment cases where claims have just simply been manufactured for the purposes of forcing an employer to write a cheque for a problem to go away. I do think if it had better – not better, better is probably not the right word for it – had something less emotionally reactive been used to describe this head of damage I would have been more supportive of it.

2815 So in the circumstances I do support the amendment and would ask Members to support it as well. Thank you.

2820 **The Bailiff:** Deputy de Sausmarez.

Deputy de Sausmarez: Thank you, madam.

2825 It is worth noting that this is actually a change made at the request of the Policy & Resources Committee. I am just going to see if I can find the right bit of the original policy letter that explains why but, basically, it has been structured in this way to avoid P&R the hassle of having to change the unfair dismissal Law. So it is very much to work in concert with that particular legislation. I probably cannot find the right bit so I do not think I will bother.

2830 But just to explain, I think it is important to understand that when it comes to the awards, the tribunal, the remedies, the tribunal will consider both parts together and there are two different parts to that. So they are not the same thing.

I completely agree with Deputy Helyar that injury to feelings is a painful, if you will pardon the pun, way of putting it because I think it does give the wrong impression. But we know we are dealing with emotional trauma at times and very genuine and deep-seated hurt that can lead to mental ill health and all kinds of very genuine suffering. So I think the label kind of trivialises it but unfortunately it is the standard term that does seem to be used across this kind of legislation.

So that is the phrase that has been used here as well. But I think it is important to understand that there are two elements to this and the first element does not take into account that. We are standing here, having just had a debate on the previous amendment, where we agreed not to lower the value of that scale of those awards, so I think this Assembly does recognise the importance of the awards, injury to feelings, no matter how much we might dislike the label that we have to give them. So I think people do appreciate that.

But the other part, in an employment sense, is ultimately based on financial loss. So if someone has had to leave their job, for example, because of an acute case of discrimination, the injury to feelings, that covers the emotional pain aspect. It does not cover the main award. Again, the main award is structured in a way that again fits in with our other legislation. So it is up to six months' pay. It could be significantly less than that; it could be nothing. But it is there to compensate for the bit that is not the emotional trauma and we have just gone through a debate on a previous amendment, where we have recognised that that emotional trauma is indeed worthy of this particular level of compensation.

So if we accept that I do not see how we would logically be able to deny what we have just confirmed in the previous debate.

Deputy Inder: Point of correction, madam.

The Deputy Bailiff: Yes, Deputy Inder.

Deputy Inder: Deputy de Sausmarez, I think knowingly, understands that the previous amendment actually just looked to lower it off goods and services and employment and the States indeed did reject it. But what she seems to be suggesting is that therefore we should not carry on with this. This is an entirely different argument. This is purely about the employment space. This is not just getting rid of it, as is being suggested. It is just not true.

The Deputy Bailiff: Please carry on, Deputy de Sausmarez, if you are going to carry on speaking.

Deputy de Sausmarez: I did not really understand the point of correction but I am sure Deputy Roffey will pick it up.

Yes, I think we need to be consistent. We have confirmed the value that we have recognised with the previous amendment and I think we should logically be consistent with that as well and I urge people to reject this amendment.

Thank you.

The Deputy Bailiff: Thank you.
Deputy Taylor.

Deputy Taylor: Thank you, madam.

I am just rising to get a little bit of clarification. I think Deputy Inder has confused me a little bit with one of his give ways. So the question, I suppose it is to Deputy Inder or Deputy Roffey: I have not had a chance to quickly flick through this but the original policy intent from the policy letter, was it directing that the legislation would have the allowance in this way or was it ...? It was, I can see a nod there, that is fine.

Then the second point I just wanted to clarify is if you have been discriminated against in a way under the protected grounds it was to lead to the award of the six months' pay, is it then possible

that your feelings have not been injured? Is there going to be grounds that you could have been discriminated against but it has not injured your feelings? That is something I am just trying to get my head around, if that would be possible. Otherwise it feels like this is not six months, you are open to both of those.

The reason I am interested in that is, I am not saying it is a double jeopardy thing but if I compare with someone who has had Class A drugs on them and they have beaten up somebody outside Folies on a Saturday night and they get a sentence of one month in prison for the assault and one month in prison for the drugs, it is run concurrently. They do not end up with two months.

I feel here, if you are a member of the public and you are seeking goods and services and you get called something or other under the protected grounds that offends you, I do not feel like it is any different to being an employee and having that. But you are almost getting less for that insult just because you are not an employee. That does not really sit quite right with me. I am trying to get my head around that.

Whereas, if you are the employee and you get called the exact same phrase that a customer was called, you would get more money for it. I cannot really see that. I am not really sure what Deputy Roffey could respond to that on but that is just what is in my head and that is probably the reason why I am minded to support this amendment.

Then one that I do want to touch on as well is just the comments made a couple of times by Deputy St Pier about the need and the public shouting out about this. You may well remember, you crossed the threshold of my coffee shop and I would normally comment on things that have already been voted on because I did not have time to read on them beforehand and I did not really follow things in detail but, once I had seen it in the *Guernsey Press*, once it was there, that was when I kind of commented, if Deputies did come in. I apologise to them for that now because I appreciate that was the wrong way.

But some of the consultation, and I am going to refer, not as part of debate, madam, to Amendment 10. I have received a lot of emails that have said to throw out every amendment from 3-11 and I have gone back with a question, 'What about Amendment 10?' It feels like the Committee, ESS, have agreed that is a bit of a drafting error and they have put together their own amendment to satisfy that concern, where we have seen a bit of a mistake. So I did not understand why members of the public would want that amendment also thrown out.

I have emailed lots of people back on that. I have had a few replies and my gut feeling is that they have not really read all the amendments. I know that is probably a bold thing to say, a bold claim to make, but I do not feel that they have really read all the amendments. So I do not think it is unreasonable, as another Member has said, that Bob the Builder or anyone on their site, will have read these in the detail and will have read through the legislation, would have a firm concept on it upon which to base an objection to one of their Deputies.

I do not really accept the point that Deputy St Pier made there, although I accept that he sought some form of evidence. I do think as well we have responsibility to use our own judgement, look at things, read them through, and think what we think of them, consult with a few people as we see fit and bring that forward to the Assembly.

That is all I have really got to add, madam. Thank you.

The Deputy Bailiff: Thank you.

Nobody else is rising to their feet. I will ask Deputy Roffey to respond on behalf of the Committee.

Deputy Roffey: Unlike my Vice-President, I did understand Deputy Inder's point of correction and on a technicality, it may be right, but really it misses the main point that I think Deputy de Sausmarez was trying to make.

Yes, it is not quite the same as the previous amendment, because the previous amendment sought to lessen the maximum award for, I was going to call it emotional trauma, because I think

that is what it really is, from £10,000 to £5,000, in both the employment and the service and other areas.

Deputy Inder, as I understand, is not trying to affect the one in the service area, but the basic fact is we just turned one down that was going to halve the maximum award from £10,000 to £5,000 for employees and now we are being invited to take it down to zero in exactly those circumstances. So I think it would be a bizarre vote if the States, having rejected the idea of taking the maximum from £10,000 to £5,000, decides to move the maximum to zero.

And again I am going to pick up on what Deputy St Pier said about the response from the employer groups. We have had no objection to this because they understand that this is normal in every territory. Now, why do we have to do the same as other places, Deputy Inder says. I would ask rather why does every other territory see the difference between unfair dismissal law – I do not know anywhere else where this comes in under unfair dismissal law – but all of them include it in discrimination law because acts of discrimination are far more – I am not saying could never happen in a constructive dismissal, but far more likely to involve events that are going to emotionally traumatise somebody.

In the UK, for instance, if you were to lose your job and be so emotionally traumatised you could not work for a year, you would be able to claim that as loss of income. In Guernsey it would only be up to six months. So if you do not recognise the fact that you have been emotionally damaged by allowing a separate claim, we are sinking even further below.

Now, Deputy Helyar has got a theory about why the employer groups are not jumping up and down yet, because the penny has not dropped about what it is going to be like. I have to tell them, we have sat down and gone through this with employer representative groups time and time again. They bring their employment lawyers, they go through it, they go through every point they do not like, saying can you do something about this? Some of them quite arcane. If they were really worried about the inclusion of injury to feelings, for which it has got far more serious names we could put to it, they would have let us know in no uncertain circumstances.

There is not an anti-discrimination law I could find anywhere that does not involve this concept, the cost of what discrimination can do to people. I think we trivialise what the discrimination could do to people we do not allow for this sort of award. It is not a double jeopardy. You cannot have a go.

Double jeopardy sounds like you have got two chances, you can go and say, 'Look, I have been discriminated against and lost my job and therefore can I have an award here?' Or, 'No, you have not won that one, so have another go of also being emotionally traumatised.' No, it is one action. You have to prove that you have been discriminated against. The award may be in two different parts but it is not double jeopardy. You do not have two goes at actually winning your case.

Deputy Helyar said, well, this could be used to manufacture claims. Yet he expressed the fact that he knew, really, that this cannot happen because the injury to feelings is not a reason or a case for taking things to a tribunal. You just would not begin to set off. If cases are invented, my advice to employers is do not pay people off for being frivolous because as soon as it gets to the tribunal system we have built in a system where any kind of frivolous or vexatious case will be removed straight away, will not even get to the next stage. So I certainly do not think anybody should be blackmailed.

A couple of minor points, I suppose. I am not sure it is central to it, but I will tell Deputy Matthews that actually, being white is a protected ground and therefore if you feel you were being discriminated against – not *you* – if one feels they have been discriminated against ... I give way to Deputy Matthews.

Deputy Matthews: I was not saying that there was not potentially the possibility for people to bring claims under the Discrimination Law, what I was saying was that one of the groups that I think might feel most left out in Discrimination Law in general is white, working class men. I think that is something that is a feature of Discrimination Law.

Deputy Roffey: Okay.

Just to sum up, I mean really the reason this exists in anti-discrimination legislation over here is quite simple. You may have two people. One person is clearly discriminated against but actually, it affects them, it affects their financial position. It might mean they have to leave their job but they are not in any way caused particular emotional trauma. They can just get on with their lives, work elsewhere, do whatever. You have got another person who is discriminated in such a way that it actually breaks them and when you do that there should be some compensation for those aggravating factors.

Every other discrimination law that I can find includes that feature. Guernsey would be unique. I know we are unique but I do not think this is a good way to be unique in saying that we are just, I think, callous enough not to recognise that aggravating factor. I really think it should be recognised and I think we did. We recognised how serious that factor was when we just said, 'No, we will not reduce the maximum amount.' And now we are being asked to get rid of it altogether. It would be perverse if we voted, having voted not to reduce it, to vote to get rid of it altogether in the employment status. But employment status will be probably the preponderance of cases and because that person ...

Sorry, I was winding up to a finish there. Deputy Taylor, I am not sure what you could do. It would be a bit odd if you go into a restaurant and they said, 'We do not serve you because you are whatever,' to say that the penalty is then going to be however many weeks of your salary because the salary really relates to the employment situation. So that is why there has to be two different routes. That is the reason for that and I think again that is in common with everybody else.

But as I say, some people, we have heard the kind of cases that have happened. Worse ones have happened we could have put in and decided it actually was not desirable to put in. Please, these things damage people and they need some recognition for it.

The Deputy Bailiff: Deputy Inder.

Deputy Inder: Thank you.

I am just going to go sort of back to front, probably a little bit all over the place. White, working class men. Oh, I do love our labels. Most of them are coming from English but I accept that they exist. I think the greatest threat to working class men in Guernsey is housing. That is our greatest threat and they are leaving in their droves, as Deputy Matthews well knows. But I do not really come from, not his particular world, that sort of English world of middle class, working class, social classes. I am just a Guernseyman who works in the Island that he lives in and loves.

Now both, through you madam, Deputy de Sausmarez and Deputy Roffey, have made the, I think, incorrect argument from the previous amendment to this amendment. There is no point going over old ground. The decision you make today will be your decision. I think I dealt with Deputy Kazantseva-Miller's rabbit hole when I addressed Deputy Dyke. Whether we like it or not, I know it is not truly double jeopardy, but it is simply two bites at the same pocket. If you are discriminated against, whether you like it or not, the Law will say you can get up to six months' salary and then up to £10,000 for injury to feelings.

It is there. It exists. I just do not believe it should be done in the employment space and I do not think it is going to damage our reputation and I think it is a sensible and pragmatic thing to do. Just because Jersey does it, England does it, Isle of Man does it, somewhere else does it, there is nothing wrong with Guernsey being unique sometimes and this is one of the times when Guernsey should realise it does not need to do it. We do not do it under Employment Law. Deputy Roffey made great store of the types of emotional damage that can be done in a discriminatory manner. Well, why haven't we got one under Employment Law?

Why are we again trying to create another system of compensation, which we do not have to do? Six months, in my view, and it may or may not be your view, is perfectly acceptable for acts of discrimination.

I did speak to one Deputy about this, who will remain nameless, and they, without wanting to identify them too much, were somewhat concerned. They sort of said to me, 'Well it is quite good because the tribunal could sort of work out if someone was really quite lower paid, at around
3040 £30,000-£40,000 a year, then it could give the tribunal an opportunity to give them a bit more money.'

Now, if that is the kind of thinking that we have got and it permeates somewhere – now Deputy de Sausmarez can shake her head as much – but humans are humans. They may sit on the tribunals, they may have ... you cannot entirely dismiss the fact that some things are considered based on
3045 certain circumstances.

Where are we going? I have got bits and pieces around here somewhere, or I did have. I feel like Deputy Gollop. Where has everything gone? Oh yes, done that one. Sorry. Anyway, I cannot respond to all of them. I think the one I need to respond to is Deputy St Pier. He seems to think that where is the evidence. Like Deputy Helyar, as he full well knows, you give a lawyer a job, he will argue black
3050 is white even if it is green, as long as he is getting paid for it. It is a fact.

Now if we take the Deputy St Pier rule to its natural conclusion, we can all go away. You have got five or six Presidents, they go out, have a bit of a consultation, the evidence, which is always superficial because let's face it, evidence is opinion and we know that. On our consultations most of them are done by SurveyMonkey. With the greatest respect, the consultation, I very much doubt
3055 ESS if you have even got a clue of the types of people that responded and I can tell you now, having run more surveys than most people have in this Chamber, I can tell you one thing, those who are most interested in a subject are the ones most likely to respond to something. I am not giving way.

So there we are –

3060 **Deputy de Sausmarez:** Point of correction.

The Deputy Bailiff: Yes.

Deputy de Sausmarez: I think Deputy Inder is confusing two things. The public survey that was
3065 carried out in 2019, which was on the previous draft of legislation and the consultation that has taken place since, especially the one that Deputy Roffey was referring to, which was the technical consultation, which was absolutely not SurveyMonkey. It was a very detailed thing involving, as Deputy Roffey said, specific employment groups, with their HR and employment lawyer representatives going through everything with a very fine tooth comb.

3070 **Deputy Inder:** As long as it is as good as the survey that lost us the Grammar School.

To be perfectly honest with you, Members of the States, I have seen surveys and whether we like it or not, often we would be very surprised if consultations do not come out generally with the steer of the prevailing Committee. I have yet to see one come out with a different result.

3075 Deputy Gollop was concerned that it had not been handed to social media, because it was a bit late. Well, I am sorry about that, Deputy Gollop. I am not that stupid. And Deputy Helyar has spoken about manufactured claims. There is always a danger of that. There is the bad back syndrome, that is always ... But I do not really want to dwell on that. If that happens, it happens, and people a lot brighter than me will work with it.

3080 Members of the States, thank you for hearing me out and thank you for the time. It is entirely up to you. I think this is the wrong thing for Guernsey. I think that we can differentiate from Guernsey. I believe Guernsey is unique. I believe it should stay unique. I do not believe this breaks the Ordinance and I believe you should vote for it.

Thank you.

3085 **The Deputy Bailiff:** Thank you, Deputy Inder.

States' Greffier, would you open the voting on Amendment 13?

There was a recorded vote.

Not carried – Pour 18, Contre 19, Ne vote pas 1, Absent 1, Did not vote 1

POUR	CONTRE	NE VOTE PAS	ABSENT	DID NOT VOTE
Deputy Blin	Deputy Aldwell	Alderney Rep. Snowdon	Deputy Oliver	Deputy Parkinson
Deputy de Lisle	Deputy Brouard			
Deputy Dudley-Owen	Deputy Burford			
Deputy Dyke	Deputy Bury			
Deputy Ferbrache	Deputy Cameron			
Deputy Haskins	Deputy de Sausmarez			
Deputy Helyar	Deputy Fairclough			
Deputy Inder	Deputy Falla			
Deputy Le Tissier	Deputy Gabriel			
Deputy Mahoney	Deputy Gollop			
Deputy Meerveld	Deputy Kazantseva-Miller			
Deputy Moakes	Deputy Le Tocq			
Deputy Murray	Deputy Leadbeater			
Deputy Prow	Deputy Matthews			
Deputy Queripel	Deputy McKenna			
Alderney Rep. Roberts	Deputy Roffey			
Deputy Taylor	Deputy Soulsby			
Deputy Vermeulen	Deputy St Pier			
	Deputy Trott			

3090

The Deputy Bailiff: Greffier, would you close the voting, please?

In relation to Amendment 13, there voted Pour, 18; Contre, 19. There was 1 abstention and 2 absentees. Therefore I declare the amendment was not passed.

[Amendment 7.](#)

At the end of the Proposition add: "subject to the amendments indicated below".

1. In paragraph 5(5) of the Schedule, delete: "on the ground that doing so is necessary for the public good".

2. In paragraph 6(2) of the Schedule, delete: ", provided that the action taken is a proportionate means of achieving that aim".

3095

The Deputy Bailiff: We now turn to Amendment 7.

Deputy Ferbrache.

Deputy Ferbrache: Thank you very much, madam.

3100

This amendment will be seconded by Deputy Mahoney.

Now we have had in the course of the various debates that we have had, Deputy Roffey referring to *Star Wars* and *Star Trek*. He also said that two or three of the amendments were really substantial, the others were not as substantial. Now this amendment will not bring the Walls of Jericho tumbling down and I see Deputy Roffey agreeing that by nodding, firmly for the other away, if it is successful.

3105

I will tell Members why it is an amendment that should be accepted because Deputy St Pier two or three times today has said, 'Where is the evidence?' So I would ask anybody and I would ask Deputy Roffey if he chooses to reply to this particular amendment today to say, 'Where is the evidence that the words that we wish to be deleted from two paragraphs in the schedule is necessary to be included? Where is the evidence that they received that said that these words were important to these particular paragraphs, paragraphs 5.5 and 6.2 of the schedule.

3110

Because I would be surprised and Deputy Helyar said it in a different context just before, if the man or woman in the street has read this particular provision of article 5 and article 6, or paragraph 5 and paragraph 6 of the schedule and understood it. Because it took me, a lawyer with a reasonable degree of experience, some considerable time to understand the provisions of those particular paragraphs.

3115

And I am going to set out what my understanding in. Clearly we have H.M. Comptroller present in the Chamber and if my understanding of the Law is felt to be incorrect I have absolutely no hesitation in inviting him to tell the Assembly that I am incorrect.

3120 The amendments relate as follows. These amendments should be non-controversial. The schedule that is referred to is headed, if we turn to the policy letter, the relevant paragraphs of the schedule and we see that the schedule itself is headed, and it begins materially at page 114 and is headed 'General exceptions to the prohibitions in parts IV to VII.' So these are exceptions to the general things that you cannot do that would be precluded by those various four parts of the Ordinance.

3125 So if we look back to the explanatory memorandum in relation to the various parts:

Part IV sets out two courses of conduct which are prohibited generally by the Ordinance; publishing an advertisement which indicates an intention by a person to do any act which is prohibited under the Ordinance, and causing, instructing or inducing another person to do a prohibited act.

That is part IV. Part V I am not going to read all of it out, I will just read out the first sentence because the rest of it is there and Members will have read it. I doubt that the man or woman in the street will have read it. Part V says it:

3130 ... sets out the provisions relating to work, including the prohibitions on discrimination, harassment ...

– as I still pronounce it, I know people pronounce it a different way nowadays –

... and victimisation in this context.

Part VI, and again just reading the initial sentence:

... sets out the provisions relating to goods and services providers, schools and education providers, clubs and associations and accommodation providers.

3135 Part VII, and I will read the whole of that out:

... sets out the duty to make reasonable adjustments for a disabled person, together with an additional duty for service providers and school and education providers, and separate provisions relating to the duties owed by commercial and residential landlords.

3140 So that is what this schedule does. It says that in certain circumstances those parts of the Law are exempt. They are an exception to the prohibition. They have all got various headings. The first one that I am referring to is paragraph 5, which is headed 'immigration'. Now just pausing there, there is one expert who knows more about immigration from his considerable professional expertise over a number of years than anybody else in this Assembly, with considerable respect, and that is Deputy Prow.

Now what immigration, what paragraph 5.1 of the schedule says is:

This paragraph applies to discrimination on the protected grounds of race, disability, carer status and religious belief.

3145 For some reason this does not include sexual orientation. I do not know why but it does not. Subsection (2) says:

Subject to subsection (3), this Ordinance does not prohibit a relevant person from taking any action which is done with the aim of giving effect to or in the exercise of functions exercisable under, in connection with or for the purposes ...

And it is a mouthful, isn't it? I have had a job reading it out.

... of any –

(a) enactment which relates to immigration, including but not limited to –

(i) the Immigration Acts ...

3150 Immigration Acts. Because the immigration laws of England have particular effect here. We very much are governed. We are not a sovereign state. To enter the Bailiwick of Guernsey, you have got to comply with English, British immigration laws. I carry on:

(ii) the Immigration (Bailiwick of Guernsey) Rules, 2008 ...

Because we can make our own Rules as long as they do not contravene the English statute and the English laws.

(iii) the Directions of the Lieutenant Governor Concerning Leave to Enter and Remain, 2019,

Or

(b) a policy of the States of Guernsey or the Committee for Home Affairs which relates to immigration.

3155 So these are very complex provisions, immigration. You have got to be an expert to understand them. Very few lawyers, and I do not pretend to be one of them, understand immigration rules in their particulars.

(3) Subsection (2) does not apply to the duty to make reasonable adjustments for a disabled person under sections 32 and 33.

I can understand that and I do not have any objection to that but we will read on.

(4) The duty to make reasonable adjustments for a disabled person under section 32 and 33 does not apply to a relevant person –

(a) taking a decision within subparagraph (5), or

(b) doing anything for the purposes of or in pursuance of a decision within that subparagraph

3160 So therefore you do not have to make reasonable adjustments under sections 32 and 33. If you are making a decision under subpara (5), or you are doing anything in pursuance of that subparagraph.

So let us come to that subpara. Subpara (5) says:

A decision is within this subparagraph if it is a decision to do any of the following on the ground that doing so is necessary for the public good –

(a) to refuse entry clearance,

(b) to refuse, cancel or vary leave to enter or remain,

c) to refuse an application to vary leave to enter or remain.

3165 So the words that Deputy Mahoney and I want excluded, because we do not see how they add anything, they do not make any sense and they are contrary to basic immigration rules and law as I understand them in their interpretation are the words 'on the ground that doing so is necessary for the public good'.

3170 Because we have something called the Human Rights (Bailiwick of Guernsey) Law, 2000. It did not come into force till September 2006 and that makes it, it is part of our substantive Law that the European convention and one or two of the bits afterwards, if I can call it that, are part of our substantive Law. So any law and any various other bits and pieces of statutes has to have applied principles. You have to comply with the European Convention on Human Rights in relation to the various particulars in the rest of this section.

3175 That has been our Law now for about 16 years and if you do not (a) there can be a declaration of incompatibility by a law court from above, and/or (b) in any event, that decision can be judicially reviewed. Now for many years in Guernsey, when I was an advocate, we were told, 'You have not got judicial review.' It was a bit like the Emperor with no clothes because suddenly in about 1995-1996, a Court of Appeal judge in Guernsey said: 'Yes, you have. You have always had it. It exists.' Now we operate under the principle of judicial review.

3180 So any decision made in relation to the matters that I have referred to is judicially reviewable. It is test-able. So what do the words – and Deputy Roffey will be able to tell me because no doubt he

has told me all the consultations he has had, all the learning he has had, all the lawyers he has spoken to, all the people he has spoken to, all the interest groups, the employer groups, they could tell you what the words in this particular context, on the ground that doing so is necessary for the public good.

My understanding, in relation to the English legislation, and I will be corrected if I am wrong and I have already said that I may well be wrong, is that it does not have exactly equivalent words in the English legislation. I may be wrong but even if it does I do not understand what that says. I do not understand if it has been judicially tested in other jurisdictions how that could interfere with the people who are exercising their duties under the immigration statutes and laws, how that could interfere with it.

Is that meant to add something to it? If it does, what does it add to it? Does that then mean that, even though you have had your immigration status, your immigration entry clearance or whatever it may be, tested in the sense that I said it could be tested, that under the Discrimination Ordinance you have got to add something else? If so, what do you add? How do you add it? Who interprets it? How do they interpret it? What legislation do they look for? What guidance do they get? What consultation did they do? Because I would not know where to start if I was challenged with that provision in relation to any legal matters.

Now paragraph 6 is headed 'population management'. Because what the schedule does is it looks at each individual topic. I have dealt with immigration, that is dealt with in paragraph 5. Paragraph 6 deals with population management and subparagraph (1) says:

This paragraph applies to discrimination on the protected grounds of race and carer status.

So it only applies to two grounds: race and carer status. I am not sure and I will be grateful for Deputy Roffey, because he said he has consulted this, he knows all about it, knows it backwards-forwards, he has gone off like Captain Kirk into the worlds unknown in relation to this project on the *Star Trek Enterprise*, he will be able to deal with this, click of the thumb. He will be able to tell us all how this operates. Because I do not think carer status is included in the relevant English provision as regards immigration. Here, under paragraph 6, it only deals with the grounds of race and carer status. Subsection (2) of that paragraph says:

This Ordinance does not prohibit a relevant person from taking any action which is done with the aim of giving effect to or in the exercise of functions exercisable under, in connection with or for the purposes of –
(a) the Population Management (Guernsey) Law, 2016, or
(b) any policy of the States of Guernsey or the Committee for Home Affairs which relates to population management, provided that the action taken is a proportionate means of achieving that aim.

Again, these are the words that Deputy Mahoney and I take objection to: 'provided that the action taken is a proportionate means of achieving that aim'.

Now I am sure Deputy Roffey would have read the Population Management (Guernsey) Law, 2016, as amended, because it was amended in 2017, so he will be able to tell us what Article 43 says, because Article 43, which gives a ground which provides and it says 'gives a right of appeal' – this is the Population Management Law – 'to the Royal Court against a decision of the administrator' – that is the administrator dealing with population management matters – 'on various grounds including those of unreasonableness and a lack of proportionality'.

So you have got a ground of appeal, in relation to population management anyway, on various grounds, including a lack of proportionality. So why do we have to have the words, 'provided the action taken is a proportionate means of achieving that aim'. What does that add to Article 43 of the Population Management Law? Is it meant to add something else? Is it meant to make it even more difficult for the administrator dealing with his job on population management? If so, what is the learning, what is the case law, what research did Deputy Roffey and his team do? What did the employment lawyers tell him? What did the Law Officers tell him? How is it necessary?

3230 Completely unnecessary. Bureaucratic bumbleduff. That is what it is in relation to this. It adds absolutely nothing. It makes no sense at all. I can see somebody in the Law Officers' chambers having to sit down and draft this, perhaps late at night when they have already got to – because they have dealt with the substantive part – they have now got to draft this blinking schedule and deal with all these points and put these words in. What does it add? Nothing. It is a nonsense. Please support the amendment.

3235 **The Deputy Bailiff:** Deputy Prow.

Sorry, Deputy Mahoney, you were going to second this, please.

Deputy Mahoney: Yes, I do, madam.

3240 **The Deputy Bailiff:** Thank you.

There is lots of hovering. Sorry, Deputy Prow.

Deputy Prow: Thank you, Madam Deputy Bailiff.

3245 ESS have circulated to all Deputies a very helpful document where they have set out those amendments that they would resist and those that they would not oppose. As I understand it, this amendment is one that they would not oppose.

3250 I just want to start by giving a view from the Committee *for* Home Affairs, because, and I am very grateful this amendment has been laid. I just wanted to make sure and check the legal advice. Deputy Ferbrache has given a very thorough summary of the Law and the position so I will not repeat that but the bottom line of the advice that we were given in Committee around this amendment was that in fact there appears to be no reason to object from a population management or an immigration perspective.

3255 So there are no unintended consequences and there is nothing in the advice that we have had from the Law Officers on this. So that is the view of the Committee *for* Home Affairs, that this should not be opposed.

3260 My view is that I completely support the excellent opening to this amendment from Deputy Ferbrache. I think it outlines what a technical issue this is and the appropriateness of a tribunal getting to grips with these areas. Just to reinforce one very important point that Deputy Ferbrache has made, I just want to read from the Immigration (Bailiwick of Guernsey) Rules, 2008, in section 2. It says this:

Immigration officers and all staff of the Immigration and Nationality Division of the States of Guernsey will carry out their duties without regard to race, colour or religion of person seeking to enter or remain in the Bailiwick of Guernsey and in compliance with the provisions of the Human Rights (Bailiwick of Guernsey) Law, 2000.

3265 So not only is there a right to take a matter for judicial review, or make an objection over human rights law, but there is enshrined in the rules and the rules then go out to lay out matters around leave to enter and leave to remain and the other matters that were referred to by Deputy Ferbrache.

So, giving that assurance, Deputy Ferbrache has laid out the very good reasons why there is absolutely no value, in my view, of the words this amendment is seeking to remove.

Thank you, madam.

3270 **The Bailiff:** Deputy Roffey.

Deputy Roffey: Deputy Prow is quite right. This is one of the amendments we do not object to.

3275 I am really tempted to go into a long ramble about a lot of the points that Deputy Ferbrache raised because there are absolute answers to most of them but I am aware that we have got only a day and a little bit to go and a lot of amendments to go through and then we start the debate on this item of legislation and there may be some general debate.

I am finding it painful but as there is no dispute over this amendment, I am just going to say let us just rattle on with it and I will take the conversation offline and talk to Deputy Ferbrache about the reasons why the words were in here – and they were good reasons – but in actual fact nobody is suggesting that people are going to act in a disproportionate ... or not in the public good, so we have no objection to this amendment and I invite Members to support it if they wish to.

The Deputy Bailiff: Deputy Trott.

Deputy Trott: Thank you, madam.

It seems to me that in bringing this amendment, Deputy Ferbrache is wasting the Assembly's time, because in his own words, if it adds absolutely nothing, why is it an issue keeping it in? So all we have done is seen a speech, him telling us that he does not particularly understand this part of the Law, despite having been called to the Bar for 50 years or whatever it is.

It does not seem to create any offence. Nobody is particularly hot and bothered by it. But here we are debating its removal. It seems to me to be an absolute farce.

The Deputy Bailiff: Thank you, Deputy Trott.

Does anybody else want to add to the debate, then?

Deputy St Pier.

Deputy St Pier: Yes, very briefly.

I am sure Deputy Ferbrache will be pleased that I am not going to present the same challenge to him as I did on the previous two amendments. But on this occasion my challenge, I think, is probably to H.M. Comptroller because, whilst Deputy Ferbrache, as an advocate with a long track record, has presented a very articulate legal case for change, I would be interested in hearing the Comptroller's view on the purpose – forgive me, I am interrupting my question but we have had the benefit of Deputy Roffey's interpretation, we have had the benefit of the draft opinion from the Committee around this – but I would be interested, given this does seem to be a very, strictly, legal point, as to the Comptroller's view on what the purpose of the original wording was, what the purpose and the objective of it was and what the effect of its removal would be and whether that may contribute to the debate.

I do not know, but that is my question and if he is able to, I look forward to the response.

The Deputy Bailiff: Thank you.

Mr Comptroller, are you ready to answer those questions now?

The Comptroller: Madam, I will have a go.

The drafting of the Ordinance took quite some time. It was quite a technical and complicated affair. Just dealing with the first amendment, which is to remove the words 'on the ground that doing so is necessary for the public good'. My understanding is that those words, in fact this provision, was drafted with input from the Committee for Home Affairs and that it reflects some wording somewhere in the myriad of immigration rules that there are. The public good is something that, in the context of immigration rules, means something. So I think it was put there for consistency.

I tend to agree it probably does not add or detract from the provision, probably ultimately. That would have to be argued in court. It might be necessary to show that the decision was in the public good but anyway, if that helps, it was put there to be consistent with the immigration rules.

I think in relation to the second amendment again, although I do not know this, I suspect that the draftsman probably tried to tie in this legislation to the population management legislation by referring to proportionality. But I tend to agree that probably its removal is not going to make a lot of difference at the end of the day. If there was access to a court I think a court would want to ensure that there has been some proportionality when it has come to the decision.

If that helps Deputy St Pier and Members.

3330 **The Deputy Bailiff:** Thank you, Mr Comptroller.

Deputy St Pier: Do you mind if I ask a supplementary to that advice, madam?

3335 **The Deputy Bailiff:** I am not sure on what basis you would do that, Deputy St Pier. I am afraid not.
Deputy Dudley-Owen.

Deputy Dudley-Owen: Thank you, madam.

3340 I am not going to contribute anything technically to this debate other than to request that Deputy Roffey may want to interrupt me because I would like to know, because he did not want to go into any lengthy explanation and he does not need to, but if he might want to summarise whether indeed what the Comptroller has told us is what he was going to say that he said would waste all of our time. Actually I would be very interested to know what those reasons are in summary as to the inclusion of that wording because he said that they were good reasons, so I am happy to give way.

3345

Deputy Roffey: Absolutely right.

3350 This was drafted, actually, in co-operation with officers at Home Affairs and was seeking to tie in. Also I think that technically if we do not include these words it would leave immigration officials more able to discriminate. Even though you were saying that they are using the same legislation as in the UK, so we would be putting the same constraints as in the UK.

3355 We do not believe that is going to happen. I could explain, go into why sexual orientation is not relevant in this particular case but actually we are all dancing on the head of a pin. We are getting up and saying there is no particular problem, please. I agree with Deputy Trott, removing these words actually is not going to gain anything whatsoever but fighting to keep them in will not really gain anything, so let us get onto number eight. People are quite interested in that, I think.

3360 **Deputy Dudley-Owen:** Thank you to Deputy Roffey for his intervention there.
Would you like me to give way to you?

The Deputy Bailiff: Deputy Prow.

3365 **Deputy Prow:** Yes, I thank you for giving way.
Just perhaps to give some assistance –

The Deputy Bailiff: Is your microphone on, Deputy Prow?

3370 **Deputy Prow:** Just perhaps to give some assistance from H.M. Comptroller's answer. As I understand it, the drafting was the result of looking at the UK tribunal legislation and I think that, although the wording is different, it is in translating some of the wording in the tribunal, this was a way of coping with that.

3375 But I think the most important point that has been drawn out from Deputy Ferbrache's opening is the appropriateness of the tribunal to deal with these complex matters of human rights and matters of refusing leave to enter, the exclusion orders, being dealt with by a tribunal and actually understanding what possible reasonable adjustment could be made.

I hope that is helpful, thank you, madam.

Deputy Dudley-Owen: Yes, I personally found that extremely insightful in terms of the complexities for drafting the Law.

3380 Thank you very much.

The Deputy Bailiff: Deputy Gabriel.

Deputy Gabriel: Thank you, madam.

3385 From my understanding of H.M. Comptroller's advice, then, perhaps he could just help me with my limited understanding. Would the presence or absence of the wording make absolutely any difference at all? Because I did not get that it would or it would not from his advice.
Thank you.

3390 **The Deputy Bailiff:** Mr Comptroller, are you able to answer that now?

The Comptroller: Madam, I will have a go!

I think there is an argument that removal of the words, looking at paragraph 5.5, the words 'on the grounds that doing so is necessary for the public good', arguably it makes officials more able to discriminate because they do not have to go through that. In relation to the other amendment, I am not sure it actually makes any difference at all.

The Deputy Bailiff: Deputy Leadbeater.

3400 **Deputy Leadbeater:** Rule 26(1), please madam.

The Deputy Bailiff: So the motion is to guillotine the debate. Those who wish to take part in the debate, will you stand in your places?

Well, there we are. Is it necessary to put the motion? No,

3405 I turn then to Deputy Ferbrache, as there does not appear to be anybody who wishes to add further to the debate.

Deputy Ferbrache: I am surprised at Deputy Trott, who tells me he works in the finance industry and has some experience in that regard, to say that you leave words into a statutory document that are of no effect. That is farcical and I will be looking to see – who was the man that died, Brian Whatshisname, who did those Whitehall farces – perhaps Deputy Trott will be his reincarnation at Christmas time.

In connection with the serious point, if these words were left in they would have a detrimental effect because the tribunal, or whoever was considering them, would have to look at them and have regard to them. They are already covered elsewhere. That is the point. If they are left in they have to have regard to and how on earth is anybody going to grasp that?

The Deputy Bailiff: States' Greffier, could you open the voting for this vote on this amendment, which is Amendment 7?

3420 *There was a recorded vote.*

Amendment 7

Carried – Pour 24, Contre 9, Ne vote pas 4, Absent 1, Did not vote 2

POUR

Deputy Aldwell
Deputy Blin
Deputy Brouard
Deputy de Lisle
Deputy Dudley-Owen
Deputy Dyke
Deputy Ferbrache

CONTRE

Deputy Burford
Deputy Cameron
Deputy Fairclough
Deputy Falla
Deputy Gabriel
Deputy Le Tocq
Deputy Soulsby

NE VOTE PAS

Deputy de Sausmarez
Deputy Kazantseva-Miller
Deputy Roffey
Alderney Rep. Snowdon

ABSENT

Deputy Oliver

DID NOT VOTE

Deputy Bury
Deputy Parkinson

Deputy Gollop
Deputy Haskins
Deputy Helyar
Deputy Inder
Deputy Le Tissier
Deputy Leadbeater
Deputy Mahoney
Deputy Matthews
Deputy McKenna
Deputy Meerveld
Deputy Moakes
Deputy Murray
Deputy Prow
Deputy Queripel
Alderney Rep. Roberts
Deputy Taylor
Deputy Vermeulen

Deputy St Pier
Deputy Trott

The Deputy Bailiff: States' Greffier, will you close the voting please?

On this amendment there voted Pour, 24; Contre, 9; there were 4 abstentions and 3 absences. I therefore declare the amendment passed.

**Procedural –
Motion to continue sitting until 6.30 p.m. –
Not carried**

3425

The Deputy Bailiff: Members of the Chamber, I am mindful it is now five past five and we are now getting to Amendment 8. Is there a will within the Chamber to carry on late this evening, because we still have quite a lot of amendments and general debate and a considerable amount of business still left to do?

3430

I know there is some anxiety in relation to at least two of the matters that are to come that this is dealt with by this sitting of the States. Is anybody going to suggest that I put a motion to the Chamber that we continue on until, say, 6.30 p.m.?

Deputy Queripel: I will be the proposer of that, madam.

3435

The Deputy Bailiff: Thank you, Deputy Queripel.

So the motion is, although I do not think it is going to get much enthusiasm from the sounds of the groans, the motion is for this States' sitting today to continue until 6.30. Those who support; those against?

3440

Members voted Contre.

The Deputy Bailiff: I am afraid it did not pass. So we will finish at around 5.30.

**The Prevention of Discrimination (Guernsey) Ordinance –
Debate continued**

[Amendment 8](#)

At the end of the Proposition add: "; subject to the amendment indicated below".

After paragraph 22 of the Schedule, insert:-

"Small employers.

23. (1) *This Ordinance, so far as relating to the protected ground of carer status, does not apply to any employer of five or fewer employees.*

(2) *No employer of five or fewer employees is under a duty to make reasonable adjustments for a disabled person under section 32 or 33.",*
and renumber subsequent provisions and amend relevant cross-references accordingly.

3445 **The Deputy Bailiff:** Therefore I will ask Deputy Blin to go forward with his amendment, Amendment 8.

Deputy Blin: In accordance with the Rules that govern special interests, if I may make a declaration there, madam?

3450

The Deputy Bailiff: Yes, please do.

Deputy Blin: So I would like to declare at the outset that I am an owner of small businesses and have been over 30 years, bearing in mind this amendment refers to those.

3455

The Deputy Bailiff: Thank you.

Deputy Blin: I wish to commence speaking to this amendment by stating that I am not against any anti-discrimination legislation and the reason I share that is because of the social media
3460 comments and things I have been receiving since the beginning of this. I do wish to see it implemented but I would like it to be proportional and that is why this amendment has come in.

 The Ordinance we are debating today goes well beyond what was envisaged when initially commenced and debated right on the A&F in 2003 and it has expanded rather to include not just disability but race, carer status, sexual orientation, religious belief and direct discrimination,
3465 discrimination through association and indirect discrimination.

 We are not adopting a well-established and proven legislation from the UK or Jersey and appreciate it is a new legislation, since 2018. But this Ordinance is unique. It has definitions of disability which are much broader and specific and we have been told can be compared only with Ireland and Australia, with other provisions having been drawn from a variety of jurisdictions.

3470 The result is that we have a complex, far-reaching Ordinance for which there are no specific precedents that can be adopted as this specific legislation does not exist elsewhere. Deputy de Lisle and I have laid this amendment because we are concerned about the impact and burden of this unprecedented legislation and its practical implementation on the more vulnerable, small – very small in some cases – locally owned and managed businesses, who are already currently facing
3475 incredibly difficult and uncertain trading conditions and need help rather than being weighed down by, potentially, more regulations.

 These small businesses do not have in-house HR departments or in-house legal counsel. In fact, they do not even have the resources or time to deal with these potentially complex situations and Laws and, as much as I encourage having the anti-discrimination Law, one has to also accept that
3480 some of the smaller businesses can be vulnerable to exploitation and abuse of process and what we do not want to see is them drowning in red tape. These businesses want to just get on with their daily work – as if that is not hard enough, especially now.

 I am just going to interject something here because I had a communication from a person who has given me permission to name him, which is Lord Digby Jones, who we know was the director
3485 general of the Confederation of British Industry (CBI) and Minister of State for Trade and Investment for 18 months, as well. The reason I want to put him in is he contacted us, as Deputies all together, and it is just to put a little bit of an extract, which I think kind of puts a picture on this to give a bit more understanding.

 So this is from Lord Digby Jones who commented that I could use this.

3490

In the rush to put this Law on the statute books you are being asked this week to inhibit the small businesses on Island in employing people and developing successful businesses. Small businesses have different dynamics and challenges to larger businesses and they surely have a right to be shown that those who are elected to govern them appreciate these differences.

The Island's small businesses, which do so much to deliver for so many of the services we need and the important myth that has been peddled is that this will not hurt good, trained employers who have nothing to fear.

So, that was in addition to comments that I had used. But this amendment does not allow these same small businesses to discriminate. They have the same obligations to avoid the specified forms of discrimination as everyone else and can face the same penalties. But what it does do is exempt those very small businesses of two to five people from their legal obligation, exempted from the grounds of carer status and exemption from the duty to make reasonable adjustments for a disabled person.

Because do we all really believe that by allowing these small businesses a period of time – this is never going to be forever – until the Law is properly bedded that they will positively discriminate against disabled and carers in the interim? Because I do not.

Most people and businesses on this Island are helpful and sincere and in a small community like ours, they want to do the best they can to not discriminate against anybody and will try to make all reasonable adjustments if they can. We live on a good Island with good people, who do good things.

I never intended this to be a permanent situation and fully anticipate Employment & Social Security returning to this Assembly with proposals to include small businesses, once this legislation is in force, and local interpretation precedents have been established.

I did propose to the Committee *for* Employment & Social Security a practical, pragmatic compromise solution to address the concerns behind this amendment and that is to say a two-year delay in implementation of the legal requirement for adjustments applying to businesses with five or fewer employees, to provide time for this unique and far-reaching legislation to bed in. But this was, sadly, rejected.

I am sure that Deputy Roffey will argue that this amendment is not needed, due to the Ordinance containing the phrases 'reasonable' and 'proportionate'. However, these are completely subjective and the only route for appealing a decision from the tribunal that is believed to be wrong or unjust, is just to hire a lawyer or go to court.

I believe that Deputy Roffey will also argue that no other countries exclude small business and neither will we. We simply desire a phased rollout with small, locally owned businesses being allowed more time to adjust. So I do regret the Committee *for* Employment & Social Security rejecting this compromise to phase in a full application for small businesses. But I look forward to supporting a suitable policy letter later.

What Deputy de Lisle and I are proposing is not unprecedented. Numerous countries have phased in the introduction of such legislation, with the UK not applying all aspects of their Discrimination Law to smaller companies with 20 or fewer employees over a period, which lasted for nine years.

If ESS had accepted our proposed two-year phase-in for companies with five or fewer employees, it would have come into force for them just one year after the larger companies. The Ordinance before us is unique and goes beyond similar provisions in Jersey and the UK and therefore there was justification for a legislative or an impact assessment. But we have been informed that ESS chose not to undertake one because it would cost up to £500,000, even though there is clearly concern that the impact on our economy could be higher.

Unfortunately, the campaign against this amendment has been driven by misinformation and misleading statistics. This amendment does not allow small, locally owned and managed businesses to discriminate. It was simply aimed to exempt them from a legal obligation to make adjustments, not the moral one.

As for the misleading statistics, stating that this amendment will affect the majority of Guernsey's economy, the figure that was bandied around as ??? [17.15.08] and in the final summary report from

ESS was 63% and 65%, they would work on 65% of the working population will be actively discriminated people with disabilities and their carers – 65%.

3540 But it will not. Because the cold, hard facts are, it is correct, 65% of small businesses in Guernsey have five or fewer employees but this needs to be broken down or can be broken down in a more detailed way by stating that actually it is 37% with two to five employees and 28% with one employee, i.e. the category that do not have to contend with this issue unless they grow and expand. And the total was the figure that comes to be 65%.

3545 Now here is the key to this. If we take the 37% of the small, locally owned businesses of two to five employees, it actually represents 9% of the total number of employees' workforce and not the 65% that has been applied and spread constantly across and on social media and messages, etc. It is less than a tenth of our current workforce. Furthermore the smallest and most vulnerable of businesses.

3550 Therefore this amendment only affects a very small percentage of the workforce, as I say, less than one tenth, and if this amendment is successful, it will be for a limited period, as I anticipate the Committee for Employment & Social Security bringing a policy letter to expand this again to reach all businesses within a two-year period.

3555 As I say, this is not intended to be permanent, as I have indicated through my speech, I fully expect and support the principle of the Committee for Employment & Social Security bringing a Proposition to expand requirements to smaller business once this broad, far-reaching and unique legislation has had time to bed in and local precedents have been established to provide guidance in our local context.

3560 I wish that the Committee for ESS had accepted the compromise for a phased introduction of obligations but as they have not I hope that Members will support this amendment and provide our vulnerable, small, locally owned and managed businesses a brief respite from legal obligations for adjustment at a time when they are facing hugely difficult and unpredictable trading environments and times and this can be further impacted just by the news in the last 24 hours, regarding mortgages and everything else.

3565 Just a small detail, in the UK, we mentioned that they had a nine-year period. But they also, in that time, managed to put together their sort of statutory pack. But that was 240 pages. But I know that, for all the recent adjustments we have in here, we do not have that or anything like that. So again the request is to get to a point where you can embed and word this together.

3570 **The Deputy Bailiff:** Thank you.
Deputy de Lisle, do you formally second this?

Deputy de Lisle: I do, madam. Yes.

3575 **The Deputy Bailiff:** Thank you.

Deputy St Pier: May I move a motion of 24(4) please?

Deputy de Lisle: I would like to have my right to speak, madam.

3580 **The Deputy Bailiff:** Hold on one moment, please, Deputy de Lisle. I am just going to remind ourselves what 24(4) is. Immediately after any amendment has been proposed and formally seconded but before any speech by the seconder. Yes, that is what I thought it said. Any Member may request the Presiding Officer to invite Members who support the debate on the amendment to stand in their places. So this is to ensure that at least seven Members support debate on this particular amendment. So those who support debate on this amendment, please stand in your places. That is rather more than seven, so thank you.

Deputy McKenna.

Deputy McKenna: Thank you, Madam Bailiff.

3590 I just do not like this amendment at all. You know, 12 years ago I refurbished my dental clinic so it would include disabled access, disabled toilets, disabled facilities. That to me was only right and proper. So to ask for another two years' extension from the 14 years previous, I do not understand.

Where I am coming from is, I will paint a picture. My brother-in-law is over from Belfast and we took him to the Vallette last night. He has got Down's Syndrome. My sons and my daughters, we made sure that he was going to swim across that children's pool, it is only about three feet deep, and when he made it, it was like he had won the Olympics.

3600 You see, we want him to feel included. We want Brendan to feel incredible and for him to know that he is loved. We have over 13,500 people with disability in Guernsey and we want, as an Assembly, to tell them they are included, they are incredible, and they are loved. We have over 6,000 carers in Guernsey. Six thousand. Each one of them wants to feel that their loved one is included, incredible and loved.

That is the society we are. We are a multi-cultural, diverse society and that is the way it should be and we should be doing our very best to let every member of our society in Guernsey know that they are included, they are incredible and they are loved. And if small businesses have to make some changes, that is evolvement. That is not radical. I do not believe we should be even having this debate. I believe that everybody here that is in this Gallery should know that they are included, incredible and loved and I would ask, and I very much like Deputy Blin and I admire greatly Deputy de Lisle, I think they should pull a 26(1) and let us move on. Because we should not be debating this. This is the least our society deserves.

3610 **The Deputy Bailiff:** Thank you.
Deputy Aldwell.

Deputy Aldwell: Thank you, madam.

3615 I think we should debate this because I should have the right to be able to stand up for my son and, madam, declaration of interest, obviously I have one. I have an awesome son. Madam, the Ordinance prohibits discrimination on grounds of a person's disability, race, carer status, sexual orientation and religious belief and we have before us now Amendment 8.

3620 The amendment deals with protected grounds of carer status, which would not apply to small businesses with five staff or fewer, along with reasonable adjustments for disabled people in businesses of five staff or fewer. I heard on the television last evening a quote from the member of a lobbying group, which said that there was no understanding, referring I think to the problems people face with a disability or as a carer.

3625 Madam, as a carer of a son with a severe disability I probably have as much understanding as any person gathered outside that court yesterday, and I fully understand the importance of this legislation and indeed, as I do every day, before I leave home and I have bathed and shaved my awesome son.

3630 When legislation was first spoken of in the Parents and Carers' Council for people who had children with learning disabilities, of which I was a member for many years, my son was a boy. And there was great excitement that the legislation would cover the prevention of disability discrimination and would be completed in a timely fashion.

Years went past and officers attended our quarterly meetings again to inform us it was going to take a great deal longer than first envisaged as it had been agreed to add several more grounds and, madam, they were quite right.

3635 Instead of getting the original prevention of disability discrimination passed, it was all delayed to add extra grounds and it has taken so long my son is no longer a boy, but now a 24-year-old young man. We can put laws in place to stop discrimination but more difficult is to change people's actual mindsets and the only way to change mindsets is through education.

3640 We educate in our PHSE lessons in schools to show respect, to be kind to each other from an early age, right throughout our educational lives, weaving a golden thread, teaching how to be

respectful and have respectful relationships of all walks of life, giving a sound platform and understanding against discrimination.

Representative Roberts told us about his beliefs with a story of a precious moment yesterday and I wanted to relay a memory of my own, which was of my severely autistic son at five years old being taken by the hand by two little girls at Amherst School, running down the field with him, all laughing together. They did not see the disability, they just saw the child.

When I was a child, I spoke as a child, I understood as a child and I thought as a child. Young people are non-judgemental. In our homes and schools we need to send a clear message of respect and tolerance across our community, which is why, madam, I have been disappointed over the past few days, lobbyists trying to stop debate, wanting amendments withdrawn to stop the voice of democracy. **(Several Members: Hear, hear.)**

Some Deputies have been bullied on social media over the past few days, which has been shocking. Every Deputy has a right to bring amendments to challenge a policy letter, to be debated on the floor of this Assembly and there is no place for inciting this kind of behaviour.

But of course I support this legislation, but I also am realistic enough to understand that some tweaks do need to be made and so have voted for some of the amendments. I know Amendment 8 has upset a great many people and I understand all too well that Carers' Allowance is £90 a week and so carers absolutely need to work and I know most employers understand the need for give and take when a carer is called home unexpectedly. But not all.

I understand fully how difficult it is to have to arrange life around caring duties for your loved ones and the worry of letting your employer down. Life is a constant struggle. Only last week, the very kind help I rely on in the mornings from a friend, who sits for my son between 8.30 a.m. and 10 a.m., before he attends adult disability day service, which allows me to attend committee and States' Meetings, was off-Island. And so a reasonable adjustment was needed to be made for me to attend Education, Sport & Culture meetings on Wednesday and Thursday, which I was able to attend via Teams meetings.

Madam, this Ordinance has been a long time in the making and I wholeheartedly welcome it, with some reasonable adjustments. I look forward to hearing the rest of the debate.

Thank you, madam.

[Applause.]

The Deputy Bailiff: Thank you.

Given the time, I think we will close the day's hearing now, since I know the vote to extend was defeated, and we will gather again at 9.30 tomorrow morning.

The Assembly adjourned at 5.28 p.m.