

Introduction

The States of Deliberation approved the Disability and Inclusion Strategy in November 2013. The Disability and Inclusion Strategy aims to improve the quality of life of disabled islanders and their carers through changing attitudes so that they can be active and engaged socially, economically and culturally in the Guernsey community.

It intends to do this by:

- Improving opportunities for disabled people and carers to participate across society.
- Promoting more positive and inclusive attitudes towards disability in the community.
- Challenging instances of disadvantage facing disabled islanders.

Within the Strategy there is a commitment to introduce legislation to protect disabled islanders from discrimination which will include discrimination in employment.

Also contained in the Strategy was the aim to create the Guernsey Employment Trust to help disabled prepare for, find and maintain employment, and to provide information for businesses in preparation for the forthcoming legislation.

Employers should strive to employ the right person for every role in their organisation and to retain valuable and effective staff for as long as possible. By ensuring that this aim includes disabled people or people with a long term health issue, a wider pool of

talent and experience will be available to benefit the organisation. To put this in perspective, it is estimated by the Office for Disability Issues in the UK that there were 5.7 million disabled people of working age in Great Britain.¹ This represents 14% of the working age population in Great Britain. If these figures are applied to Guernsey which has a working age population of 40,475² then it is estimated that there are more than 5,500 of working age people with a disability or long term health condition.

Employers tell us that disabled people can be a labour source that provides some of the best employees within an organisation. They are generally dependable, dedicated, hardworking, and productive. Unfortunately, many employers are not aware of this potential source of skilled workers. Even those who recognise the potential of this labour pool do not know how to reach them, and are concerned about the perceived cost and challenge of providing any reasonable adjustments.

This Guide aims to support anticipated legislation in Guernsey, to assist employers meet their future legal responsibilities and implement good practice advice and guidance that may well go beyond forthcoming legislation. The issues surrounding employment and disability can sound demanding but, approached with goodwill and common sense, good practice can provide a framework to develop a supportive organisation.

¹ HM Government - The Office for Disability Issues 2011.

<https://www.gov.uk/government/statistics/disability-prevalence-estimates-200203-to-201112-apr-to-mar>

² Guernsey Quarterly Population, Employment and Earnings Bulletin Quarter 4: 2015

This Guide goes on to describe elements of good practice that should be embedded into managerial practice and organisational culture. There is guidance on recruitment and selection, retention and redeployment, redundancy, disciplinary hearings and work experience placements.

Findings³ indicate that ‘a range of policies and interventions tailored to disabled people, particular employment needs and circumstances, as well as their life experience, is likely to be most effective in challenging the disadvantages they face in the labour market’, and concluded that there is ‘the need to raise co-workers’ and managers’ awareness of disability’.

Some people avoid issues surrounding disability as they fear ‘doing the wrong thing’. As all disabled people are individuals, complete guidance cannot be given on what words to use or how to support them. However, this Guide includes tips on disability etiquette, commonly accepted language and suggested ways to support people with particular disabilities which will reduce any chance of awkwardness.

The final section provides details of sources of support that can be accessed to facilitate employment of disabled people.

Much of the good practice described will not only support disabled people but also be of benefit to all applicants and employees.

³Hirst, M., Thornton, P., Dearey, M. & Maynard Campbell, S. (2004) – The Employment of Disabled People in the Public Sector: A Review of Data and Literature. Published by the Disability Rights Commission.



Disability discrimination

As part of the Disability and Inclusion Strategy, the States of Guernsey will introduce disability discrimination legislation that will encompass employment.

The primary objective of disability discrimination legislation is to protect disabled people and carers from discrimination, to bring greater equality of opportunity for them to participate in society and reduce the number of barriers they have to overcome in all aspects of life.

The forthcoming legislation will be introduced by an Ordinance which will explain (in the form of statutory definitions) what is meant by terms such as ‘discrimination’ and ‘disability’. The Ordinance will also include provisions dealing with exclusions from the requirements of the law, monitoring, governance, dispute resolution process etc. The intention of this Guide is not to provide legal advice, and should not be relied upon as such, but to offer practical guidance. Employers may also need to obtain their own legal advice on the approach to take in any particular case.

What is meant by disability?

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognises that people with disabilities include, among others, those with: ‘physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’. This includes all forms of disability including physical disabilities, mental health issues, sensory impairments, autism, brain injuries and learning difficulties.

The UN Convention notes that society’s understanding of disability is evolving, and that the social attitudes and environments which exclude people are as much a part of disability as the physical or mental characteristics of the individual person.

It is important to remember that not all individuals who would be covered by this description would regard themselves as having a disability – research in the UK found that 52% of people who would meet the UK definition of disability did not identify themselves as having a disability⁴. Employers should also remember that anyone that has a condition that fits the definition of disability in this Guide is included; they do not need to have a particular diagnosis or identify themselves as disabled.

For the avoidance of doubt, what is meant by disability, set out in this Guide should not be taken as an indication of how disability may be defined in future Guernsey disability discrimination legislation.

What is meant by disability discrimination?

For the purposes of this Guide we will use the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) definition from Article 2 which states:

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

⁴ A Practical Guide to the Law and Best Practice for Employers. Published by the Disability Rights Commission.

Types of discrimination / disadvantage

In developing and introducing good practice to the workplace, employers should be careful to avoid any form of disability discrimination or acts that will directly or indirectly disadvantage certain people. There are three kinds of potential acts or policies that could be considered discriminatory covered for the purposes of this Guide:

- Direct discrimination
- Indirect discrimination
- Failure to make reasonable adjustments

Direct discrimination

Direct discrimination occurs when someone with a disability is treated less favourably than someone without a disability in the same circumstances, simply because of that disability. Usually this is based on generalised, or stereotypical, assumptions about the disability or its effects and not considering a person's individual abilities. There is no justification for direct discrimination.

EXAMPLE

Having a blanket ban on anyone with a particular condition being employed would be direct discrimination, for example, "we are not going to recruit someone with a history of depression, no matter what". This would be direct discrimination."

Indirect discrimination

Indirect discrimination broadly occurs where an employer applies a provision, criterion or practice to people generally but it puts disabled people at a particular disadvantage, in comparison with people who do not have a disability.

This type of discrimination focuses on how a person's disability affects them and how this affects their employment and often occurs when a specific provision is applied to everyone, which in reality substantially disadvantages some people, as demonstrated by the following case study.



CASE STUDY

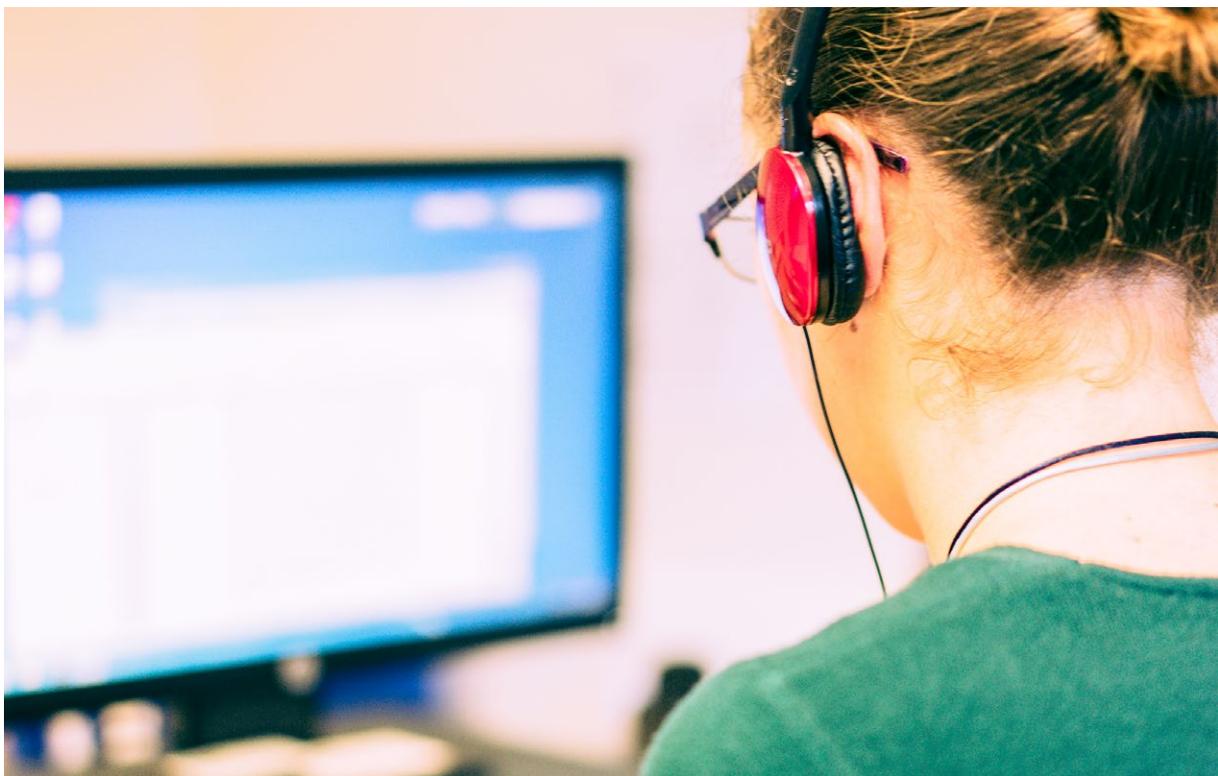
A large international hotel chain introduced a new telephone exchange and caller ID system which was installed across all sites. One of the receptionists had a visual impairment and had previously used software to enlarge the text on the screen. The new protocol on answering the telephone stated that external calls and internal calls had to be answered with a different greeting message. The notification as for whether a call was external or internal was identified on screen as the call came in, but this was too small for the receptionist in question to see. The new exchange was not compatible with the vision software the employee used and it was not possible to link it to an audio adaptation. Extensive discussions took place at a local and corporate level to see if the receptionist could have a standard greeting but this was declined by the head office. The receptionist's contract was terminated. This could be classed as indirect discrimination.

Unlike direct discrimination, indirect discrimination can occasionally be justified as long as there is a material and substantial reason for doing so. It must also have been considered whether any reasonable adjustments could be made to remove any barriers.

Making reasonable adjustments

Employers should consider making 'reasonable adjustments' to their workplace environments and employment processes to ensure that they implement good practice, offer equal employment opportunities and that a disabled person is not discriminated against or disadvantaged.

Good practice suggests that employers should make reasonable adjustments to any "provision, criterion or practice" that the employer applies and to physical features of any premises in order to accommodate the needs of a worker or job applicant with a disability. It is not discriminatory against other employees to make these adjustments for an employee with a disability. It is the employer's responsibility to consider if any adjustments are required as soon as they are aware that a person has a disability. The employer should not wait for an individual to ask for what they need.





CASE STUDY

A man with a severe visual impairment, which cannot be corrected by glasses, is not selected for a job as a bus driver as he cannot carry out the essential requirements of the job.

This is likely to be justified as the reason he is not selected is a substantial one, is clearly linked to the safe performance of the role, and where no reasonable adjustments could be made that would have made a difference to his performance in that role.

What kind of adjustments might be appropriate?

The following are examples of the kind of reasonable adjustments that an employer might make in relation to a disabled person:

- Allocating some duties to another person
- Transferring the disabled person to an existing and more appropriate vacancy
- Providing a reader, signer or interpreter
- Altering the disabled person's working hours
- Facilitating a graded/phased return after a long period of sickness
- Acquiring new or modifying existing equipment
- Providing additional supervision, coaching or mentoring
- Modifying procedures for testing or assessment

This list is not exhaustive but shows some reasonable adjustments that could be made.

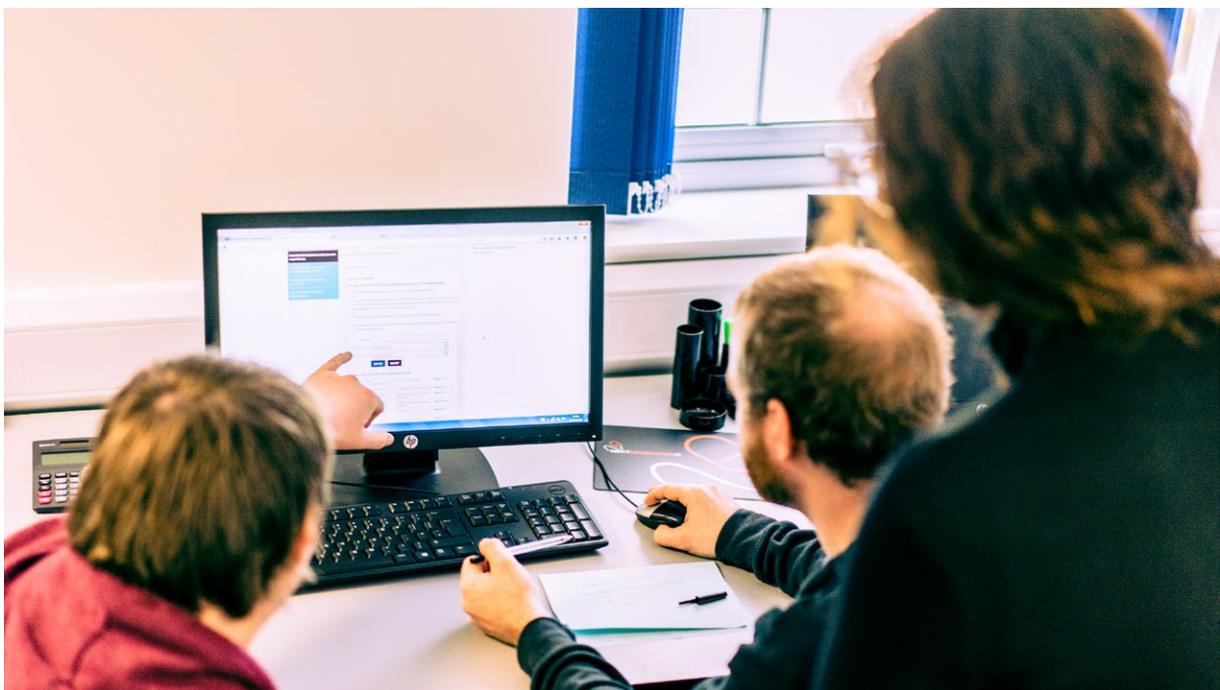
What is considered ‘reasonable’?

Good practice would only expect an employer to make an adjustment if it is considered to be ‘reasonable’. It could be considered discriminatory if an employer does not make an adjustment that is considered ‘reasonable’.

The employer is entitled to take into account all circumstances when deciding what steps it would be reasonable to take. This includes:

- Effectiveness – will the adjustment prevent the disadvantage? It is important not to make assumptions about what will be effective. Possible adjustments should be discussed with the individual and never imposed. In most cases, the disabled person will have a better understanding of what measures will help and there are services within Guernsey that can assist. (See Sources of Support on page 57)
- Practicality – how practical is it to make an adjustment? Would it help or hinder other members of staff or have a neutral impact?
- Financial and other costs – how much will the adjustment cost and will it disrupt any of the organisation’s activities? Many reasonable adjustments cost little or nothing to implement. Employers could consider if any assistance or support is available.
- Nature of employer’s activity and size of undertaking – what may be reasonable in a very large company may not necessarily be so in a very small company.

Employers should note that forthcoming legislation in Guernsey is likely to include further important protection outlawing disability-related victimisation and harassment (or bullying) against disabled people or their carers in the workplace. Victimisation could be in the form of an employer dismissing or otherwise retaliating against an employee who has brought a disability discrimination claim, or got involved in some way with a disability discrimination claim (e.g. as a witness for another employee), or complained about any form of harassment relating to disability. Harassment in this context is unwanted behaviour, whether intended or not, that is related to disability and which causes feelings such as offence or humiliation or hurt, or creates an intimidating or hostile working environment. It can include behaviour such as name-calling or making fun of a disabled person’s disability or of making fun of disabled people generally.



Potential organisational consequences

By taking steps to prevent discrimination, and removing barriers in the recruitment and selection process, the organisation can ensure that the right person for the job is recruited. Encouraging the recruitment of disabled people increases the pool of talent that is available and, by being flexible to the needs of disabled people, the organisation will be a more attractive employer. Where members of staff are encouraged to develop, regardless of disability, all staff are likely to feel valued and demonstrate increased commitment.

Sickness absence is a major cost to many organisations. Ensuring that staff with an acquired disability or with a long-term health issue are supported to return to work at the earliest opportunity, and considering all adjustments that may make this possible, makes financial sense as well as demonstrating commitment to employees. The cost of any adjustment that allows the organisation to retain a member of staff, and their knowledge and experience, is likely to be far less than the cost of recruiting a replacement member of staff. Moreover, there may be assistance with these costs: See Sources of Support on page 57.

Improving access to premises and awareness of good practice will have knock-on benefits to other staff, visitors and customers.

Finding and keeping good workers are among the greatest challenges facing businesses in the 21st century. Today, more than ever, businesses need access to a skilled and diverse workforce. They cannot stay competitive and increase profitability without qualified personnel. Moreover, employers should consider promotion and advancement opportunities for disabled employees.

Disabled people are a source of qualified and motivated workers that are frequently overlooked. This pool of workers represents one of the largest groups seeking employment in today's market – more than 5,500 people of working age have some form of disability or long term health condition in Guernsey and many are of course in employment.





Medical and social models explained

There has been much discussion in Guernsey regarding the rights of disabled islanders; you may hear people talking about the ‘social model of disability’ and the ‘medical model of disability’.

What is the medical model?

The **medical model** focuses on the individual’s medical condition and locates disability within the person.

This model assumes that with medical treatment or intervention the individual can be helped to overcome their limitations. It often results in the perception of disabled people as dependent, deserving of pity and/or praise for overcoming their difficulties.

The medical model sees the disabled person’s impairment or health condition as the ‘problem’. The focus is therefore on ‘fixing’ or ‘curing’ the individual.

What is the social model?

The **social model** shifts the emphasis from personal inadequacy or abnormality to physical and societal barriers experienced by a person with an impairment. These barriers are viewed as disabling the person and are outwith the control of the individual. This viewpoint shifts the focus onto the rights of disabled people and the requirement for society to change. The social model was developed by disabled people.

The social model takes the view that society creates barriers that ‘disable’ people from participating fully on an equal basis with others and that these barriers must be removed. By creating barriers in buildings and structures or by not producing information in different formats such as Braille or easy read, people with impairments/health conditions are ‘disabled’. This way of thinking takes the focus away from what is ‘wrong’ with a disabled person (their impairment or condition) and puts the emphasis on what we should do to identify and remove barriers.