Channel Islands employment law update: January 2022

Newsletters - 31/01/2022

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Jersey

Disability discrimination: no disadvantage to deaf resident in the provision of property services

In *Kathleen Fortun v G4S Secure Solutions (Jersey) Limited*, [1] the Employment and Discrimination Tribunal (the **Jersey Tribunal**) found that the claimant was not treated less favourably than a non-disabled comparator and her complaint of direct discrimination failed.

The claimant was dissatisfied with the way her residential parking complaint was handled by the respondent, alleging that they refused to communicate with her by email and that they closed her complaint without resolving it and refused to engage with her any further.

The Jersey Tribunal determined that (i) the claimant was disabled within the meaning of the Discrimination (Jersey) Law 2013 (the **Discrimination Law**) and (ii) that the respondent did provide services to the claimant within the scope of the law (despite having no direct contract with the apartment residents) and that in providing those services, the respondent was obliged to act in a manner that is consistent with the Discrimination Law.

The Jersey Tribunal went on to consider whether the respondent had a duty to make a reasonable adjustment where a provision, criterion or practice puts a disabled person at a substantial disadvantage. The claimant asserted that the respondent wanted to speak to her on the phone which was not possible due to her hearing loss. However, the Jersey Tribunal found that there was no substantial disadvantage - the respondent was clear that it was willing to communicate by email; it did not suggest that telephone was the only mode of communication and the claimant had either misread or deliberately misinterpreted the respondents reply.

The Jersey Tribunal also highlighted that the obligation to make a reasonable adjustment in the provision of services only applies if the service provider knows or reasonably should have been expected to know about the disability. As a result, it was not discriminatory to suggest a phone call when the respondent did not know at that time that the claimant was deaf. A reasonable adjustment was made in that all later communications from the respondent made it clear that email communication was acceptable.

The Jersey Tribunal also considered whether closing the parking complaint was direct

discrimination (less favourable treatment because of a protected characteristic, in this case that the claimant was treated less favourably than a comparator in identical circumstances who is not deaf). However, having been unable to obtain any further information from the claimant that would allow action to be taken in relation to the parking issue, the Jersey Tribunal concluded that the respondent was entitled to close the complaint and refuse any further communication.

Interestingly, this case was heard on the papers alone with no hearing, potentially a "reasonable adjustment" in the provision of the Jersey Tribunal's services.

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Further investigation could be "dispensed with" in case of gross misconduct justifying summary dismissal

In *Gordon Mullan v Newtel Limited*, [2] the Jersey Tribunal rejected the claimant's claims for unfair dismissal, wrongful dismissal, breach of contract for failing to follow company disciplinary procedure, unlawful deduction from wages and accrued but unpaid holiday pay.

In summary, the claimant's position was that he witnessed the respondent's company van being damaged in an accident when it was being driven by another employee who had no driving licence. On informing the respondent of the accident, the claimant said that he was instructed to report that he was driving the van so that an insurance claim could be made. The claimant alleges that, when he refused, he was given an ultimatum of either resigning with a settlement agreement (with a sum of eight weeks' pay) or being subject to a disciplinary investigation. He rejected the settlement and was then summarily dismissed.

The respondent denied the claim. As part of its investigation into the incident with the van, the respondent discovered that the claimant had encouraged and invited the junior member of staff to drive the van, he gave inconsistent accounts of his conduct and, it is alleged, lied to the respondent during the investigation procedure. The claimant also covertly recorded meetings with the respondent having been told that it was not permitted and lied about his actions in that regard. As a result, the respondent said that the claimant was summarily dismissed for gross misconduct.

The Jersey Tribunal rehearsed the arguments surrounding the right not to be unfairly dismissed and its own role in determining whether the employer has acted in a manner in which a reasonable employer might have acted in the circumstances of the case – and specifically that it is not for the Tribunal to substitute its own opinion for that of the employer – citing the relevant authorities in the decision of the *Royal Court in Voisin v Brown* [2007] JLR 141, which was considered in *JT (Jersey) Limited v Wood* [2016] JCA 183.

The Jersey Tribunal found that the respondent did undertake an investigation process in relation to the accident, including taking statements from the claimant and the driver of the van. The

claimant was also invited to attend a meeting to discuss the incident with his representative. The Jersey Tribunal considered that the respondent had a genuine belief that the claimant was guilty of gross misconduct and had reasonable grounds for that belief from the evidence it had obtained from the investigation conducted. The Jersey Tribunal agreed that lying to the employer, encouraging junior employees to break the law potentially putting members of the public at risk, and covertly recording meetings were "acts clearly amounting to gross misconduct justifying summary dismissal".

The Jersey Tribunal concluded that, while the claimant may have expected a further investigation following his rejection of the settlement offer, in the circumstances of the case, including the evidence already available to the respondent and the relatively small size and administrative resources of the respondent, that "any further investigation process would have been futile and could be dispensed with".

This case demonstrates that there are some circumstances in which an employer can fairly dismiss an employee without conducting a full investigation or disciplinary process. However, employers should take care to ensure that reasonable grounds can be demonstrated based on any evidence that is available.

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COVID-19 related cases

The Jersey Tribunal dealt with a number of claims last year that, either directly or indirectly, related to the impact of the Covid-19 pandemic.

Refusal to wear a face covering, disability discrimination and dismissal

In *David Pallot v Jersey Heritage Trust*, [3] the claimant (a driver of "amphibious passenger vehicles") refused to wear a face covering on grounds of a disability. The claimant argued that his anxiety, triggered by the wearing of a face covering, is a hidden disability which has manifested itself only with the advent of COVID-19 and that the symptoms of this disability make it dangerous for him to drive while wearing a face covering. He claimed unfair dismissal (including automatic unfair dismissal); direct/indirect discrimination; and a failure to make reasonable adjustments.

Mr Pallot was a seasonal worker working under short fixed term contracts and had not accrued the required 52 weeks of continuous service to qualify for the right not to be unfairly dismissed. Mr Pallot claimed that he received newsletters from the respondent between his periods of employment which should therefore constitute a continuation of his employment, however this was rejected by the Jersey Tribunal.

Even if the claimant had the requisite period of continuous service, the Jersey Tribunal found that the respondent was within its right to dismiss him. Having taken advice, the respondent concluded

that to permit the claimant to do his job without a face covering would put it in breach of the COVID-19 (Workplace Restrictions) (Jersey) Order 2020 (the **Order**). The Order requires the occupier of a workplace to ensure that workers wear face coverings in the presence of visitors. While the Order provides an exemption for public service vehicle drivers when the wearing of a face covering would make driving unsafe, due to the nature of the vehicle, its maximum permitted speeds and the brief nature of the vehicle's passage, the respondent considered that the claimant could not fairly be regarded as falling within this exemption. The Jersey Tribunal regarded this as a reasonable conclusion and considered termination of the contract to have been within the range of options reasonably available to the respondent.

In regard to the claim for automatically unfair dismissal, this was considered in tandem with the disability discrimination claims. The Jersey Tribunal accepted that the claimant was disabled. However, the Jersey Tribunal found that the termination of employment was not an act of discrimination on the basis of a general exception within the legislation; that no act of discrimination is committed where such discrimination is done necessarily for the purpose of complying with any enactment or any associated condition or requirement. It is a condition of the Order that all employees dealing with customers must wear a face covering. The respondent was bound by that Order and so, in complying with it, did not commit an act of discrimination.

Finally, in regard to reasonable adjustments, the Jersey Tribunal found that the respondent had considered (and reasonably rejected) a number of potential adjustments, including moving the claimant to non-customer facing duties (none suitable and unable to work with colleagues due to inability to wear a face covering); a period of paid leave until the Order ceased to apply (not financially realistic); installing a Perspex divider behind the driving position (investigated and found to be unsafe). The claimant had not notified the respondent of his disability until after he had signed the second fixed-term contract, following which it was clear to the respondent that the particular disability could not be accommodated.

Employers seeking to require employees to wear face coverings in the workplace should obtain advice tailored to their specific circumstances. Tribunals are likely to reach different decisions depending on the circumstances, including whether face coverings are mandatory during the relevant time period.

"Rational and fair" request to voluntarily take annual leave as a COVID-19 business protection measure

Marco Da Silva v Pastella Ceramics Limited [4] is a second recent decision related to COVID-19.

During Jersey's first period of lockdown in 2020, the claimant (along with all other employees of the respondent) was asked to take one week from his annual holiday entitlement during April 2020 to prevent a general backlog of untaken leave later in the year to help combat the effects of the pandemic on the business. The claimant claimed that the respondent company closed down for a week in April 2020. Although he was paid his wages for that week, he argued that the week’s pay he

received was in fact a week of his holiday entitlement taken without his consent or knowledge. He claimed that the respondent owed him one week's holiday pay.

The respondent provided evidence that it had asked staff in writing on 7 April 2020 to voluntarily take leave during April 2020 and of a meeting held with the employee, with a Portuguese-speaker present, to ensure that the employee understood what was being asked of him. The Jersey Tribunal heard evidence from one of the meeting attendees that the claimant had confirmed that he was happy to take five days' leave and that he had commented during the meeting that he would do whatever was necessary to get the respondent through a difficult situation. One week after receiving the written request, the claimant took a week's leave. The respondent also provided evidence showing that it did not shut during the period that the claimant claimed.

The claimant's claim for holiday pay failed. The Jersey Tribunal found the respondent to be "a caring and responsible employer which managed fairly to maintain its business – and therefore preserve jobs – throughout unusually testing trading times", and that its holiday proposal was "rational and fair".

This case demonstrates the importance of ensuring that employees understand what is being asked of them and confirming in writing what has been agreed.

Unauthorised deductions from wages where contractual hours were not worked during lockdown period

In *Petros Neonakis v La Trape Properties (Divers) ARL*, [5] a sous chef at Chateau La Chaire Hotel claimed unpaid wages on the grounds that he was not paid for overtime that he worked from July to December 2020. The respondent defended the claim on the basis that the claimant was given paid time off in lieu during the “lockdown period", between 4 December 2020 and 14 February 2021.

The claimant also made a claim for unauthorised deductions from his wages. The respondent said it was entitled to make deductions because the claimant did not work his full hours during the lockdown period due to the COVID-19 pandemic and the claimant had agreed to deductions being made from his wages. The respondent counterclaimed for overpayment of wages.

The unpaid wages (overtime) claim was rejected by the Jersey Tribunal. The claimant's employment contract permitted the claimant to be given time off in lieu of overtime worked at the respondent’s discretion and the respondent advised the claimant this would be given in December, with no requirement for the agreement of the claimant.

The claimant argued that he was not, in reality, given time off as he was "on standby" and the head chef had asked him to work during the lockdown period. However, he was not "required" to be available for work during that period. The Jersey Tribunal found that the claimant was not "on standby" to the extent that his time off work could not be considered time off in lieu of overtime

and the claim in respect of overtime was rejected.

The claim for unauthorised deductions was successful. The Jersey Tribunal found that there was no written agreement permitting the deductions from the claimant's salary. The Jersey Tribunal stated that the legislation is clear that an employee's wages must be set out in writing and, as was found in the earlier Jersey Tribunal case of *Jardim v Cleanlife Limited*, any agreement for a deduction from wages must also be set out in writing. Here, the employment contract clearly stated the claimant's annual salary, as well as the amount he should be paid for each payment period. The employment contract further stated that any changes to its terms, and more specifically the claimant's salary, would be notified in writing. However, the employment contract also stated that payment is only made against weekly timesheets, in contradiction to the reference to annual salary. The Jersey Tribunal found that this ambiguity should be construed in favour of the claimant. The evidence showed that, in practice, reference to weekly timesheets was not made when calculating pay and the annual salary amount was paid without deductions for every payment period, save for the three payment periods between January to March 2021. Accordingly, the clear provision in relation to annual salary and the lack of written agreement permitting the deductions resulted in the respondent being ordered to reimburse the claimant.

This case demonstrates the importance of unambiguously stating the method of calculating an employee's pay. If an employer intends to make deductions from salary, this should permitted via the contract or another written agreement.

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Common Population Policy

Jersey's Common Population Policy was lodged in December 2021 and is due to be debated by the States Assembly in early February 2022.

The policy's goal is to achieve a stable population and to progressively reduce Jersey's reliance on net inward migration. No specific population target has been set at this time. The Council of Ministers has stated that any population policy must be backed up by responsive and proportionate controls that will allow the Government to manage the flow of people into the Island. The Control of Housing and Work (Jersey) Law 2013 controls access to housing and employment in Jersey. It affects everyone who wants to reside and work in the Island, regardless of their nationality.

The current system of Entitled, Entitled for work, Registered and Licensed permissions are proposed to be replaced with long-term and short-term permissions to give the Government more control over the number of migrants receiving permission to live permanently in Jersey and would allow for significant flexibility to align with changes to the common population policy over time. The existing permissions are expected to be replaced with nine-month, four-year, ten-year and long-term permissions. Proposed changes would also remove the ability for a business to "recycle" a permission between employees and tighten the criminal record checks.

Amendments to the Control of Housing and Work Law are expected to be debated early this year. Further detailed regulations are expected to follow later in 2022, after the general election in June 2022.

The Migration and Population Review Panel is currently seeking views on the policy. The Control of Housing and Work Law amendments may also be the subject of a separate scrutiny review.

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Combined Employer Returns

From this month, employers are required to submit new combined returns to Jersey's Government for their income tax, social security, manpower and benefits in kind. The filing dates for these returns have now been aligned so that a single Combined Employer Return can be submitted. [6]

This applies to the January 2022 return which is due by 15th February 2022. Returns in the old format will no longer be accepted.

For businesses that have a payroll system, this should be amended to allow the combined employer return. For businesses that use the employer web service to submit employee tax information, this service will now also allow the submission of contributions and manpower information for the January 2022 submission.

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Annual leave increase and daily rest breaks from January 2022

From 1 January 2022 employees are entitled to:

- At least three weeks of paid annual leave in each leave year (an increase from the current two-week statutory minimum)
- A 20-minute rest break for employees who work for six or more hours each day

For employees working under zero-hours contracts, rolled up holiday pay will need to be increased to account for the additional week of annual leave.

Clients may wish to consider reviewing their employment contracts, policies and staff handbooks. In our recent article, we answered some key questions about the forthcoming new rights. Read it here.

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Increase to Jersey's minimum wage and trainee rates

The minimum wage increased to £9.22 from 1 January 2022. As a temporary measure for 2022, the Social Security Minister set this minimum wage rate without first directing the Employment Forum to consult with stakeholders. In our recent article, we advised about the increase and the associated changes to the trainee rate. Read it here.

In November 2021, Jersey's States Assembly agreed that the Employment Forum should have regard to the objective to increase the minimum wage to two-thirds of median earnings by the end of 2024, subject to consideration of economic conditions and the impact on competitiveness and employment of the low paid in Jersey. Jersey's States Assembly also agreed that the Employment Forum should be asked to consider the potential for the minimum wage to be set at the level of the Jersey Living Wage.

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Guidance on compensation for statutory breaches

The Jersey Tribunal has issued guidance [7] on matters that it will consider when calculating the level of compensation to be awarded where an employer has failed to provide written terms of employment or payslips.

Compensation of up to four weeks' pay can be awarded. In determining the level of compensation the Jersey Tribunal may consider factors such as the reason for the employer's breach and, where a defective statement or payslip is provided, the extent of the defect, such as what information is missing.

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Extension to work permit policy for hospitality sector

The Government of Jersey has introduced a one-off exception to the Immigration Work Permit Policy. [8] This will allow migrant workers from outside the Common Travel Area, who are working in the hospitality sector, to remain beyond the existing nine-month temporary seasonal permission.

The permit extension will allow an additional nine months, to run consecutively to the original permit, without the requirement for the holder to leave Jersey for three months in between. This exception will apply to staff currently on a nine-month hospitality work permit, or whose start date is on or before 1 May 2022. Jersey's Government has described this as an interim measure to provide immediate assistance to the hospitality sector.

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Guernsey

First application of Guernsey Tribunal's strike-out and dismissal powers

One of the most interesting developments in Guernsey employment law in 2021 was the first use by the Guernsey Employment and Discrimination Tribunal (**Guernsey Tribunal**) of its new strike-out and dismissal powers.

Gints Slesers and Leva Steimane v Alison De La Mare or Edmond Ltd t/a The Captain's was the first application to be brought before the Guernsey Tribunal under the new Employment and Discrimination Tribunal (Guernsey) Order, 2020 (the **2020 Order**), and sets the way, at least for now, for how future applications will be approached.

In June 2020, the applicants each lodged complaints about the way in which their employment was terminated by The Captain's Hotel. When entering their complaints they named their employer as "Alison De La Mare" (**Ms De La Mare**). Response forms were lodged in respect of each of the complaints, denying unfair dismissal and instead identifying the employer as "Edmond Ltd t/a The Captain's".

In April 2021, Ms De La Mare lodged an application for an order dismissing the complaints, alternatively, striking out the complaints. This application claimed that the applicants had brought their claims against the wrong respondent, that it was now too late to bring a claim against the correct employer and that the Guernsey Tribunal had no power to substitute in the correct employer.

Applications for dismissal of a complaint (paragraph 1(1)(b) of the 2020 Order) and applications for striking out complaints (paragraph 2(1)(a) of the 2020 Order) both succeed where the complaint has no reasonable prospects of success. The test that the Guernsey Tribunal gave to determine this was for the complaint to be "unarguable, bound to fail or no significant chance of success".

What is important in this application is how the time limit in section 17 of the Employment Protection (Guernsey) Law 1998 (the **1998 Law**) applies to a complaint and the powers of the Guernsey Tribunal. Section 17(1) provides that "the Tribunal shall not hear or determine a complaint under section 16(1) unless it is presented to the Secretary within a period of three months beginning on the effective date of termination".

The Guernsey Tribunal determined that because the respondent did not deny Ms De La Mare's liability (responding on behalf of Edmond Ltd), it had waived its right to raise the potential irregularity. The manner of the response constituted an acceptance by Edmond Ltd that it was the correct respondent. The applicants brought their complaint within the time frame required and the response form had corrected the mistakenly identified employer, therefore the applicants were compliant with section 17 of the 1998 Law.

In considering the position, the Guernsey Tribunal noted that paragraph 2(m) of The Employment and Discrimination Tribunal (Guernsey) Ordinance 2005 gives the Guernsey Tribunal wide powers to determine its own procedure and that the addition, substitution or removal of a party was a power required for hearings. The Guernsey Tribunal therefore concluded that it did have the power to add, substitute or remove parties. For guidance as to how it should exercise this power, the Guernsey Tribunal considered:

- whether the relevant time limit was obeyed
- whether the addition or substitution was necessary
- whether the substitution was necessary (noting it would only be so if the new party was substituted for a party named by mistake)
- and whether it was possible to identify the intended defendant

The Guernsey Tribunal determined that:

- the time limit was current
- the substitution was necessary as Edmond Ltd was the employer and must be the respondent
- Ms De La Mare was named by mistake
- and it was possible to identify the intended defendant by description

In this unprecedented case, the Guernsey Tribunal exercised its discretion to make the appropriate order for substitution, meaning that the respondent's argument for the complaint having no reasonable prospect fell away, and its applications were dismissed. It is clear that such applications will not be accepted automatically by the Guernsey Tribunal, which is notably also prepared to use its existing powers in a novel way to achieve the result it considers to be most just.

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Resignation or constructive dismissal?

Two unsatisfactory visits from an Environmental Health Officer were the genesis of a total breakdown in relations between a store manager and the retailer which employed him, leading to Guernsey Tribunal proceedings in which both parties represented themselves.

In *Craig William Mellon v Sandpiper CI Limited*, the applicant was employed as the respondent's Store Manager at the L'Islet branch of Morrisons supermarket. He alleged that he was constructively unfairly dismissed. The respondent claimed that the applicant had simply resigned, firstly by notice and then again without notice.

The applicant had been away on holiday during an internal store audit and the first inspection by the Environmental Health Officer. Following a second visit from the health inspector, and unsatisfactory findings, the respondent began an investigation. It stated that this was a fact-finding investigation and not disciplinary, but the applicant disagreed. He alleged that he had been bullied and victimised. He admitted that he had resigned twice (he returned to work after the first resignation then resigned a second time). The applicant presented detailed allegations about issues which he said converted his resignations into constructive dismissal. He alleged that the respondent failed to follow the correct process during its investigation into the Environmental Health Officer's findings and lacked support from senior management. He further alleged general understaffing, excessively long hours, and workplace bullying from senior management.

Both parties were not represented by advocates or other legal professionals. As such, the Guernsey Tribunal noted that additional steps were required to ensure that a fair hearing took place. The decision in *Reynard v Fox* confirms that the fact that a litigant is acting in person does not mean that procedural rules, orders or directions can be disapplied or noncompliance excused generally, except where a rule is hard to find, difficult to understand or ambiguous. In this case, certain allegations were not included in the applicant's ET1 form and he may have benefitted from further witnesses and corroborating evidence. The applicant complained that he did not trust the respondent to retrieve internal emails that would have corroborated his allegations. A legal adviser may have been able to assist the applicant in understanding his rights of disclosure.

The applicant cited personal circumstances in respect of his initial resignation. In explaining his subsequent resignation, he alleged that the ongoing investigation made him uncomfortable, and was carried out unprofessionally. He alleged that his performance would never satisfy the new retail director and a witch hunt had been organised against him. He claimed that these circumstances amounted overall to a breach of his contract by his employer.

Unable to find a clear breach of contract, the Guernsey Tribunal dismissed the constructive dismissal claim. The investigation was found not to be punitive in nature, but rather an attempt to identify issues to be remedied. It also held that the applicant's allegations of bullying could not be substantiated due to the issues with producing evidence (an issue that official legal representation might have remedied). The Guernsey Tribunal noted that it had some sympathy with the applicant, but that it appeared he had overreacted to a non-disciplinary investigation and may have mistakenly perceived that investigation as targeted and unjustified criticism which amounted to bullying. It was satisfied that the investigation process was carried out broadly in accordance with company policy, and fairly.

The applicant also failed to satisfy the final two requirements (the employee's departure must be due to the breach and it must not be delayed for too long) due to lack of evidence that the later accusations were the source of his resignation, and the fact he continued to work for some time after his initial formal resignation.

This judgment reiterates the importance of soliciting legal advice at an early stage, and certainly before proceedings are issued in the Guernsey Tribunal. The decision also noted the importance of employers having, and adhering to, a robust investigation procedure. The Guernsey Tribunal noted that there were several "matters of concern" and, had the applicant been able to produce more compelling evidence, this may have been pivotal.

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Update on the incoming Discrimination Law in Guernsey

Currently there are few anti-discrimination laws in Guernsey, other than statutory protections afforded to employees on the grounds of sex, marriage, gender reassignment, pregnancy and maternity leave. While these particular protections are well-established in the island's employment sector, there has to date been no general prohibition on discrimination comparable to, for example, the UK's Equality Act 2010.

This is all set to change with the introduction of a new Discrimination Ordinance in Guernsey which will make discrimination unlawful on a broad list of grounds including race, religious belief, sexual orientation, disability, age and carer status. That change in the law is expected to have a significant impact – not only in the employment sphere, but in every walk of life, including public and private goods and services provision, education, accommodation and membership of clubs and associations.

The legislation will be introduced in a phased approach – phase one concerning the grounds of race, disability, sexuality, religion and carer status and phase two dealing with age-based discrimination and the "modernisation" of existing sex discrimination laws, including the right to "equal pay for work of equal value".

According to a recent update by the States of Guernsey, the draft Discrimination Ordinance is in a technical consultation period – not an obligatory step, but one which Guernsey's Committee for Employment and Social Security consider "will add value to, and assurance around" the final draft of the law. It had been thought that the initial phase of the legislation would be implemented this year, but that timeline has just been revised – it is now anticipated that the first tranche will be brought to the States for approval in the third quarter of 2022, with an expectation that it will come into force "no sooner than six months after it has been approved by the States to allow time for businesses to prepare". Currently, it is considered that implementation will be in April or May 2023.

There is good reason for the government to take a "belt and braces" approach to consultation and drafting. An illustration of the complex issues associated with such legislation is the debate which arose in the States late last year around religious beliefs as one of the intended grounds of protection under the Discrimination Ordinance. Employment and Social Security had proposed that senior roles across three Guernsey Catholic schools, which had historically only been reserved for

teachers of the Catholic faith, be opened up to candidates of any or no faith, as part of the new anti-discrimination laws. The proposal faced heavy opposition and ultimately the majority vote went in favour of an exemption in the Discrimination Ordinance to allow for lawful discrimination in appointments to senior leadership positions in religious schools for an initial five-year period.

This is an interesting case study which raises the question of what other exemptions may be created in the development and application of the Discrimination Ordinance. While religious beliefs are due to form part of the grounds of protection, secular beliefs such as atheism or agnosticism will, as matters stand, remain unprotected.

While businesses, community organisations and indeed the general population wait with interest to see the final form of the new Ordinance, there are several measures that can be taken by employers now to prepare for likely new requirements and "health check" compliance with existing ones. These include reviewing policies and procedures to ensure they are not discriminatory, taking an access audit of facilities, training staff to understand what discrimination is and what their rights and duties are and likely will be in the future, and preparing to offer reasonable adjustments for common access needs.

Indeed, while certain forms of discrimination are not yet explicitly prohibited in Guernsey law, there is a cross-over with existing duties such as health and safety obligations. Equally, many Guernsey businesses may consider wider ranging anti-discrimination policies best practice even if they are not yet mandatory.

We will continue to monitor the progress of the incoming Discrimination Ordinance and issue further updates.

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[1] https://www.jerseylaw.je/judgments/tribunal/Pages/%5B2021%5DTRE021.aspx

[2] https://www.jerseylaw.je/judgments/tribunal/Pages/[2020]TRE136A.aspx

[3] https://www.jerseylaw.je/judgments/tribunal/Pages/[2021]TRE041.aspx

[4] https://www.jerseylaw.je/judgments/tribunal/Pages/%5B2021%5DTRE048.aspx

[5] https://www.jerseylaw.je/judgments/tribunal/Pages/[2021]TRE081.aspx

[6] https://www.gov.je/TaxesMoney/Businesses/Pages/CombinedEmployerReturn.aspx

[7] http://www.jerseyemploymenttribunal.org/media/1247/compensation-guidelines.pdf

[8] https://www.gov.je/News/2021/Pages/ExtendedImmigrationPermits.aspx

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