



States Greffe

Solicitor General  
**BY EMAIL**

9 June 2020

Dear Solicitor General,

**Jersey Property Holdings' Response to PAC on the public estate and relevant disability compliance legislation**

You may be aware that the PAC is conducting an [Estate Management Review](#), and as part of that review, requested clarification from the Director of Estates regarding Jersey Property Holdings' (the division of Infrastructure, Housing Environment Department responsible for, amongst other things, the public estate's property maintenance) understanding of, and responsibilities under the [Discrimination \(Jersey\) Law 2013](#) ("the Law"), as amended by the [Discrimination \(Disability\) \(Jersey\) Regulations 2018](#).

I am writing to request your advice relating to the response the PAC received from the Director of Estates. The PAC wish to know whether the Director of Estates' understanding of the relevant Law is correct and whether his interpretation of meeting "best endeavours" is sufficient or compatible to satisfy the requirements of that Law? I append to this letter, both the PAC's initial enquiry and his response, in full.

The PAC is due to hold a public hearing on 12 July with, amongst others, the Director of Estates and would be grateful for some clarity on the matter before then. Cognisant that you are extremely busy, would be grateful for a response by 7<sup>th</sup> July 2021. We will, of course, receive your legal advice in confidence, and not disclose it publicly, however, it will form the basis on which to ask questions of the Director of Estates in a public forum.

Yours sincerely,

**Deputy Inna Gardiner, Chair, Public Accounts Committee**

**PAC Query (12 May, 2021, by email to Director of Estates)**

I have been requested to clarify the following matter with you by the Chair of the Public Accounts Committee, as part of the Committee's [Estate Management Review](#):

During the Public Accounts Committee's [public hearing with the Director General for Infrastructure, Housing and Environment on the 29th June 2020](#), you informed the PAC that the requirement of the [Discrimination \(Jersey\) Law 2013](#) ("the Law"), as amended by the [Discrimination \(Disability\) \(Jersey\) Regulations 2018](#) ("the Regulations") was to "show best endeavours to complete compliance" ([page 19](#)).

Upon examination of the legislation, we note that Schedule 2 Part 1 Article 2G of the Law, which considers genuine occupational requirements, outlines that:

A person (the "relevant person") does not commit an act of discrimination to which this paragraph applies by applying in relation to work, "a requirement for a person to have a protected characteristic, if the relevant person can show that, having regard to the nature or context of the work":

- a) it is an occupational requirement;
- b) the application of the requirement is a proportionate means of achieving a legitimate aim; and
- c) the person to whom the relevant person applies the requirement, does not meet it (or the relevant person has reasonable grounds for not being satisfied that the person meets it).

Article 23 of the Law provides that a person "shall not discriminate against another person" in any of the following areas:

- a) by refusing to allow the subject access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not);
- b) in the terms or conditions on which the person is prepared to allow the subject access to, or the use of, any such premises;
- c) in relation to the provision of means of access to such premises;
- d) by refusing to allow the subject the use of any facilities in or on such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not);
- e) in the terms or conditions on which the person is prepared to allow the subject the use of any such facilities; or
- f) by requiring the subject to leave such premises or cease to use such facilities.

In tandem, Article 24 of the Law requires that "a person who manages premises must not discriminate against a subject who occupies the premises":

- a) by denying the subject access or otherwise limiting his or her access to a benefit or facility;
- b) by evicting the subject (or taking steps for the purpose of securing the subject's eviction);
- c) by causing the subject to suffer any other detriment.

Please could you advise the PAC whether you have received legal or other

advice from an external third party, that your understanding of meeting “best endeavours” (as outlined above) is sufficient or compatible to satisfy the requirements of the Discrimination Law? The PAC would be grateful for your response by close of business on Wednesday 19th May 2021.

**Response by Tim Daniels, Director of Estates, (19 May 2021 via email)**

Thank you for your note. I am unable to confirm whether I have received, “legal or other advice from an external third party”.

It is not clear from your email whether PAC has concerns in relation to Jersey Property Holdings management and disposal of premises per Article 24 of the Discrimination (Jersey) Law 2013 (the “**Law**”) or whether it has concerns in relation to other actions taken by Jersey Property Holdings to which the Article 2G exception at Schedule 2 of the Law applies. My understanding, however, is that Article 2G at Schedule 2 of the Law does not apply to the management and disposal of premises.

The Law stipulates that reasonable steps must be taken by a person to avoid a person who is disabled being put to a substantial disadvantage. The Law further sets out a list of factors which shall be taken into account when determining whether or not a person has taken reasonable steps. I am comfortable that my use of the term “best endeavours” during the hearing reflects Jersey Property Holding’s requirement to take reasonable steps and is indicative of Jersey Property Holdings acting in accordance with the spirit of the Law.