

2025.02.25

3.3 Deputy M.B. Andrews of St Helier North of H.M. Attorney General regarding the Social Security (Overlapping Benefits) (Jersey) Order 1975 (OQ.36/2025):

Will the Solicitor General advise whether the Social Security (Overlapping Benefits) (Jersey) Order 1975, preventing carers in receipt of a States pension from receiving a home carers allowance could be considered discriminatory?

Mr. M. Jowitt, H.M. Solicitor General (rapporteur):

I am grateful. The answer is no, the order is not capable as a matter of law of being considered discriminatory. Discrimination as a matter of law can only arise in specified factual contexts, which are set out in the Discrimination (Jersey) Law 2013; for example, employment, charity work, education, club membership. Then it can only arise in respect of the protected personal characteristics which are listed in schedule 1 to the law. The personal characteristics, which the law protects from discrimination, do not include the fact of a person being in receipt of a States pension. Indeed being in receipt of a States pension is not a personal characteristic at all. It is a financial benefit enjoyed by the person who receives it. It is not possible in law therefore to say that a reduction in a person's entitlement to a home carers allowance to take account of the fact that they are already receiving a States pension is discriminatory because, under the Discrimination Law, it is not. Even if it could somehow be argued that it was, and in my view it firmly cannot, the Discrimination Law expressly provides that acts done pursuant to legislative authority are excluded from the operation of the law. The 1975 Order and the Social Security Law pursuant to which it was issued are examples of authority for the system to be operated as it is. The Act in question here is that of operating a scheme to regulate how much money individuals can receive in publicly-funded financial benefits. That is an Act done pursuant to legislative authority and it is therefore excluded from the operation of the Discrimination Law.