

Group Briefing

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Refusal to supply “Support Gay Marriage” cake not discriminatory

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Best National Firm for Minority Women Lawyers 2018
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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

The UK Supreme Court has held that a Belfast bakery did not discriminate against a gay man when it refused to provide him with a cake bearing a message of support for same-sex marriage on the grounds of sexual orientation, religious belief and political opinion.

The Court held that the bakery’s objection was the requirement to promote the message on the cake rather than an objection to the customer because of his sexual orientation.

BACKGROUND

In May 2014, Mr Lee placed an order with Ashers Bakery Company Limited for a cake to be iced with his design: a coloured picture of Sesame Street characters Bert and Ernie, the logo for an LGBT voluntary organisation and the headline “Support Gay Marriage”.

Mrs McArthur, a director of Ashers Bakery together with her husband, initially accepted the order but subsequently telephoned Mr Lee and explained that his order could not be fulfilled because they were a Christian business and could not print the message requested. She apologised and gave him a full refund.

Mr Lee complained to the Equality Commission for Northern Ireland. The Commission supported him in

bringing a claim for direct and indirect discrimination on the grounds of sexual orientation, religious belief and political opinion under the legislation prohibiting such discrimination in Northern Ireland.

Mr Lee succeeded in the District Court, where Judge Brownlie held that refusing to complete the order was direct discrimination on all three grounds. The McArthurs appealed to the Court of Appeal of Northern Ireland.

The Court of Appeal held this was a case of associative direct discrimination on the ground of sexual orientation, finding that the protected personal characteristic was the sexual orientation of the LGBT community. The McArthurs appealed to the UK Supreme Court.

SUPREME COURT DECISION

Sexual Orientation

The Court rejected the District Court’s finding that support for same sex marriage is indissociable from sexual orientation. The Court found that

"indissociability" was not applicable in this case because people of all sexual orientations can and do support gay marriage. It held that support for gay marriage is not a proxy for any particular sexual orientation.

The Court accepted that in principle one person may be treated less favourably because of another person's sexual orientation. (This is the concept of associative discrimination, which exists under Irish equality law). However, this did not give rise to less favourable treatment on the ground of sexual orientation merely because the treatment had something to do with the sexual orientation of some people.

The Court did not define the closeness of the association that would justify a finding of associative discrimination.

Rather, it concluded that the association in this case was not sufficiently close as the objection here was to the message on the cake, rather than to any particular person or persons.

Political Opinion/Religious Beliefs

The Court accepted that a belief in access to marriage for same sex couples could be a political opinion. However, it found there was no less favourable treatment on this ground, as a person of any sexual orientation ordering the cake would have been treated in the same way. The objection of the McArthurs was the requirement to promote the message on the cake; in short their objection was to the message, not to the man. The evidence was that the McArthurs were prepared to serve Mr Lee in other ways.

The Court found that Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the European Convention on Human Rights could not allow Ashers Bakery to refuse to provide services to Mr Lee on the ground of his sexual orientation or because he supported gay marriage. However, this did not mean that the bakery was obliged to supply a cake iced with a message with which they profoundly disagreed. Whereas the Court did not hold that a company has rights under the Convention, it did uphold the rights of the McArthurs as individuals under Article 9.

It remains to be seen what the lasting implications of this case will be in Northern Ireland and beyond.

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