

Catholic adoption agency ruling 'kicks a hole through Equality Act', warns NSS

Posted: Mon, 3rd Feb 2014

The National Secular Society has warned that a decision by the Scottish Charities Appeal Panel (SCAP) about a Catholic adoption agency that discriminates against gay couples "kicks a hole right through the middle of the Equality Act".

The decision concerns Glasgow-based St Margaret's Children and Family Care Society, which operates a selection system that gives preference to heterosexual couples who have been married for at least two years and are Catholic. Well down the list of qualifying preference are couples in civil partnerships. St Margaret's claims to "allow a same sex couple in a civil partnership to adopt on the same basis as any other married couple", yet the Church gave evidence that "adoption of children by homosexuals is not consistent with Catholic Teaching".

The Office of the Scottish Charity Regulator (OSCR) reviewed the practices of the charity in January last year, after a complaint from the National Secular Society and, in a report, found it was breaking the Equality Act 2010 and charities legislation by not acting in children's best interests.

The OSCR ruled that marriage was not available to same-sex couples and that the charity's policy constituted direct discrimination. The OSCR then reviewed its decision at St Margaret's request, but reached the same conclusion.

St Margaret's then went to the Scottish Charity Appeals Panel which has come to the conclusion that although the charity does indirectly discriminate against gay people, it is a justifiable and "proportionate means of achieving a legitimate aim." It said that St Margaret's Catholic connections meant it was a religious charity, although it had been argued at the hearing that it was an adoption agency, not a church.

The panel argued that St Margaret's was bound, through its articles, by the teaching of the Catholic Church and although it received the bulk of its funding from local authorities, without its financial support from the Catholic Church it would be forced to close. If the charity had carried out the demands of the charity regulator and removed its discrimination against gay people it would have been in contravention of canon law and the Church would no longer be able to support it, so it was proportionate for the Charity to be allowed to discriminate.

The Panel also decided that St Margaret's qualified for protection under Article 9 of the Human Rights Act. Arguments that a corporate body is not an individual and therefore cannot qualify for a human right were not accepted.

The appeals panel decision relating to St Margaret's is in contrast to unsuccessful English appeal cases brought by Roman Catholic adoption agencies, principally by Catholic Care (Diocese of Leeds). The appeals panel pointed out that they were not bound by these precedents, but in any case St Margaret's was not, as Catholic Care had done, banning homosexuals altogether as adoptive parents.

Terry Sanderson, president of the National Secular Society, said: "This ruling makes some highly dubious claims that need to be tested. Unfortunately it kicks a hole right through the Equality Act. It appears to widen the grounds of which religious groups can discriminate against gay people and make it possible to argue that because an organisation has a religious affiliation — even if the primary purposes of the organisation itself are not religious — it can still qualify for charitable status even if it doesn't comply with the Equality Act."

Mr Sanderson said the implications of this ruling are wider than this particular case and could permit religious charities to increase their discrimination against gay people without risking the tax advantages that come with charitable status.

"In effect," said Mr Sanderson, "charities will be able to use taxpayers' money to discriminate against gay people and perhaps others they don't approve of. This ruling potentially gives religious charities significantly greater exemptions from the law that other charities are bound by, so needs to be challenged."

[The full ruling of the Scottish Charity Appeals Panel is available here.](#)

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