

28 January 2013

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Dear Mr Russell

### **OSCR decision in the case of St Margaret's**

We were surprised and disappointed to read the comments in the media, attributed to you, regarding the decision by the Office of the Scottish Charity Regulator (OSCR) in the case of St Margaret's Children and Family Care Society. The OSCR's report, prepared under section 33 of the Charities and Trustee Investment (Scotland) Act 2005 is balanced and cogently argued.

It seems to us that when an independent regulator, after careful deliberation and extensive meetings with the body concerned, finds that an organisation is in breach of both equality law and charity law, that this should be cause for Government to be reassured that the law is being upheld and institutions held accountable to it. This is all the more pertinent where the institution concerned is largely funded from the public purse. It is neither right nor acceptable that central government passes charity and equality legislation, only to express disappointment and reservation when local government is found to be an accessory, through providing taxpayers' money, to breaking both. We sincerely hope that no adoption agency would discriminate against prospective parents who were Catholics purely on the grounds of their religion under equality law, nor restrict the pool of prospective parents by excluding Catholics, thereby breaching the public benefit charity test. We would certainly not expect you to express disappointment with such a finding. Therefore, we do not understand why you would choose to do so when LGBT people are the victims (and indirectly the children), and when the law is clear and unequivocal.

By way of empirical evidence and a wider context to support OSCR's correct decision in both charity and equality law, we draw your attention to the following.

Another Catholic adoption charity, St Andrew's Children's Society in Edinburgh, has changed its constitution and now accepts as prospective parents same-sex couples living together in a committed and enduring relationship. We understand that in doing so, Cardinal Keith O'Brien stood down as the Society's president and the Society severed any formal link with the Catholic Church. St Andrew's director Stephen Small has made the following statement:

*"We still think of ourselves as offering the Catholic community an adoption service because any prospective adopters who are Catholic, and who have that (...) as an important part of what they offer, will still be assessed by us. We have found many people of other faiths also want to come to an organisation which values their faith background because they feel some social work organisations view it as a negative rather than a positive. But what we've realised is the kinds of children who need adoption now are usually those with very poor early life experiences and that the kinds of families that will help them recover and grow have to be of a lot of different make-*

*ups and hues. I think we have seen that it's about the quality of the parenting skills that people offer and not about their sexuality or their marital status."*<sup>1</sup>

We are aware of 13 Catholic adoption charities in total across the UK, of which ten have changed their constitution in order to comply with equality law and continue to provide this very valuable public service free of discriminatory practices, although they have in the process severed formal ties with the Catholic Church. As far as our research can confirm, only one has decided to close rather than comply. We find this a regrettable decision in this one organisation which has chosen to place religious dogma before the best interests of children. Of the remaining two, one is St Margaret's and the other is Catholic Care, based in Leeds.

Catholic Care has lost at every legal hurdle in the past five years in its case to permit it to exclude same-sex parents. The case has been fought by the Charity Commission in England in a consistent fashion, which has argued that that the charity's stance is "divisive, capricious and arbitrary" and "demeaning" to the dignity of homosexual couples whose parenting abilities are "beyond question". Catholic Care has spent hundreds of thousands of pounds trying to defy equality law and charity law, regardless of what is in the best interests of the children.

In arguing its case, Catholic Care and various Catholic commentators have suggested that children would suffer if it lost its case as they would be left unadopted.<sup>2</sup> This scaremongering has long been a feature of Catholic opposition to reform. In the Catholic Care example, such scaremongering was refuted by no less than six local authorities who told the courts that they did not support the Charity's contention to this effect. That the majority of Catholic adoption agencies remain in business, having adopted equality legislation and adapted their practices accordingly, confirms such threats have no basis in fact.

The Archbishop of Westminster, Vincent Nichols, has admitted that his Church in the past has accepted many gay people as adoptive parents, but only if they were single, and not if they were in, or formed legally recognised, loving same-sex relationships. Yet non-Catholic adoption agencies usually consider couples in relationships to be better placed to provide a more stable background, and therefore normally this in the best interests of the child. We find it odd that single gay people should have been accepted by Catholic adoption agencies, but those in committed and loving relationships are rejected by St Margaret's and not by ten others.

In November 2011, the Archbishop addressed a bishops' conference with these words:

*"We would want to emphasise that civil partnerships actually provide a structure in which people of the same sex who want a lifelong relationship [and] a lifelong partnership can find their place and protection and legal provision... As a Church we are very committed to the notion of equality so that people are treated the same across all the activities of life. The Church holds great store by the value of commitment in relationships and undertakings that people give."*<sup>3</sup>

You will be aware that primary legislation on equality now includes civil partnership and the right to adopt within the definition of "all the activities of life", and will shortly include same-sex marriage in accordance with the stated objectives of the Scottish and Westminster Governments and opposition parties. You will also be aware that the Adoption and Children (Scotland) Act 2007 enables same-sex couples to adopt jointly. We therefore are minded to interpret the Archbishop's remarks as supportive of same-sex couples having the legal right to adopt from an equality standpoint, if not as yet in a relationship classified as 'marriage'. We also

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<sup>1</sup> <http://www.scotsman.com/lifestyle/features/family-values-same-sex-couples-and-the-catholic-adoption-agency-1-2761323>

<sup>2</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/catholic-care-charity-commission-judgment-02112012.pdf>

<sup>3</sup> <http://www.catholicherald.co.uk/commentandblogs/2011/11/30/archbishop-nichols-says-he-is-in-favour-of-gay-civil-unions-but-that-legally-includes-the-right-to-adopt-so-why-did-we-close-down-our-adoption-agencies/>

note that ten years earlier, the Catholic Church was totally opposed to civil partnerships, but now appears to uphold them as part of its own commitment to equality.

The head of the non-Catholic charity Scottish Adoption, Margaret Moyes, is on record as stating in 2010 that Scotland's acute adoption crisis should be resolved by allowing more children to be placed with same sex couples and has called for a recruitment drive within the gay and lesbian community to give children the opportunity of a life in a new family:

*"There is a growing awareness that same sex couples do make good adoptive parents and children can benefit from it."*<sup>4</sup>

In addition, in the Catholic Care case in the diocese of Leeds, the six local authorities which rejected the notion that children would go unplaced if Catholic Care were to close, added in their submissions to the court that in their opinion and in conjunction with other research, same sex couples could provide a good source of adopters of "hard to place" children. This was duly noted by OSCR in its judgement on the St Margaret's case.

Given how few adoptions there are relative to the number of children in care, it is illogical as well as illegal to arbitrarily rule out any sector of the community, far less one that there is growing evidence could be even more effective with harder to place children.

In the light of these comments and taking into account the OSCR decision, we hope you will accept that the best interests of the children seeking adoption are to be served by widening the pool of prospective parents to include same-sex couples, in full compliance with the laws of Scotland.

We request that you do not put pressure on the independent Regulator, and if you do meet them, we would welcome the opportunity to meet with you to discuss this important case, with the sole and best interests of the children as our only and joint priority.

We are considering this an open letter.

Yours sincerely,

Keith Porteous Wood  
Executive Director

Alistair McBay  
NSS Spokesperson for Scotland

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<sup>4</sup> <http://www.express.co.uk/posts/view/184840/Adoption-agency-wants-more-gay-parents>