

Charity regulator upholds decision against Catholic adoption agency

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The National Secular Society has welcomed the decision by the Office of the Scottish Charity Regulator (OSCR) to uphold its original ruling over the charitable status of a Catholic adoption agency.

Following a complaint about the charity from the National Secular Society in 2012, OSCR ruled in January 2013 that St Margaret's Children and Family Care Society failed the charity test because it did not act in the children's best interests by restricting the pool of prospective parents by excluding same-sex couples, and also breached equality legislation on grounds of sexual orientation and religion & belief. OCSR issued a Direction to St Margaret's instructing it to amend its procedures and assessment criteria to bring them into line – or face its possible removal from the charity register.

In an updated report, published yesterday, the OSCR confirmed its original view that St Margaret's failed the charity test because it discriminated unlawfully on grounds of religion or belief and sexual orientation, and was in breach of the Equality Act 2010.

The report states:

"OSCR found that the charity does not provide public benefit because the way it provides benefit involves unlawful discrimination, which causes detriment to the public and to particular groups of people, the effect of which outweighs the other, positive effects of the charity's work," the report says.

"OSCR also found that access to the benefits the charity provides is unduly restricted. OSCR therefore found that the charity fails the charity test and confirmed the decision to direct the charity to meet the charity test."

The OSCR said that St Margaret's must amend its guidance and procedures by 22 April or face removal from the Scottish charity register.

Alistair McBay, NSS Spokesman for Scotland, welcomed the OSCR's decision to uphold its original finding.

"The original decision was the only one the Regulator could have made in the circumstances, to require St Margaret's to follow well-established equality law and charity law – opening up the pool of prospective parents to gay couples being in the best interests of children awaiting adoption."

"We hope St Margaret's will now put the best interests of children first, as many other Catholic adoption agencies have done, and comply with the law by widening the pool of prospective parents to include same-sex couples," he said.

"We hope that St Margaret's will look to St Andrews Children's Society in Edinburgh, which did change its criteria to comply with the law. Following Cardinal O'Brien stepping down as President,

that society wisely decided to follow the law and is now flourishing, still accepting Catholic parents as prospective adopters but also accepting same sex parents, and valuing the contribution that they make.

"We call on the Scottish Government to reassess its position of support for St Margaret's in its attempts to circumvent the law. Such an approach only undermines the independent statutory regulator in its attempt to enforce the rule of law. We know that the Scottish Government has been supporting St Margaret's, with one former Cabinet Minister recorded as stating she was 'comfortable' with St Margaret's redirecting same-sex couples to other adoption agencies.

"At the same time, the Government declares that it wishes St Margaret's would comply with the law, but following numerous appeals in England on this UK law, it is beyond reasonable doubt that the law does not permit same-sex couples to be excluded. St Margaret's is determined to exclude same-sex couples, but we advise it against being so encouraged by the Scottish Government's unstatesman-like "disappointment" with the Regulator's ruling that it embarks on a potentially ruinous legal action. Almost inevitably, this would result in the Regulator's ruling being upheld by the court, because it so clearly reflects the law."

A spokesman for St Margaret's told *Third Sector* magazine: "We are disappointed at the decision. We will consult our lawyers before considering what course of action to pursue. In the meantime, St Margaret's remains open for business."

The charity has the right to appeal the decision to the Scottish Charity Appeals Panel.

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