

High Court victory for religious freedom

Key changes:

(See inside for more)

- Harassment, which threatened free speech, has been deleted.
- Regulations do not apply to the curriculum or to teaching.
- Effect on publicly-funded faith-based projects has been narrowed.
- Article 9 rights to religious liberty can block the Regulations.
- Courts should consider a Canadian judgment (Brockie) which said Christians should not be forced to act against their core religious beliefs.
- It was established as a finding of fact that the orthodox Christian belief is that the practice of homosexuality is sinful.

Christians throughout the UK have been given more protections from 'gay rights' regulations because of a ruling given in the Belfast High Court in September.

In a significant victory for religious liberty, Mr Justice Weatherup narrowed aspects of Northern Ireland's Sexual Orientation Regulations. This will have some direct implications for Christians in the rest of the UK.

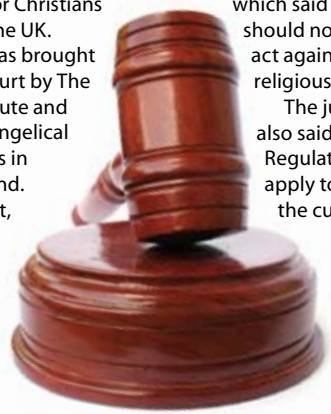
The case was brought to the High Court by The Christian Institute and a group of evangelical denominations in Northern Ireland.

Harassment, which threatened free speech, has been deleted from the Northern

Ireland Regulations. The Regulations for Great Britain do not contain a harassment law, but the Government is actively considering one for its forthcoming Single Equality Bill. This ruling has damaged these plans.

The court also ruled that the Regulations do affect religious liberty and lower courts should consider a Canadian judgment which said Christians should not be forced to act against their core religious beliefs.

The judgment also said that the Regulations did not apply to teaching or to the curriculum.



More details inside

Please support our Legal Defence Fund which financed the case

The legal action was financed by The Christian Institute's Legal Defence Fund. The Institute's lawyers are seeking to recover costs from the Government but even if this is successful there will still be hefty bills which we must pay.

In addition, it is clear from the judgment that Mr Justice Weatherup believes there will be instances when religious freedom is interfered with by the Sexual Orientation Regulations. He has given strong legal rulings which can be deployed in County Courts to defend Christians – but they can only be used if Christians are ready and willing to defend themselves.

Such action can be expensive. But religious liberty is precious and valuable. When one

Christian's liberty is defended in the courts, the liberty of all Christians is defended. We believe that Gospel freedom is worth defending.

Therefore we want to replenish our Legal Defence Fund to help finance the cost of such legal actions, and others like them, to protect religious liberty.



The fund is used to intervene in strategic court cases where precedents could be set which may affect Christian religious liberty. It is also used to fund the associated campaign work in cases of national importance for religious liberty.

If you would like to make a donation to the Legal Defence Fund, please telephone 0191 281 5664 or visit our website christian.org.uk/ldf

Removal of ‘harassment’ will protect free speech

The most dangerous element of Northern Ireland’s Sexual Orientation Regulations – the harassment law – has been deleted by the High Court.

It was dangerous because it was very loosely worded and threatened free speech. A homosexual simply had to show that he felt offended whilst receiving a good, facility or service in order to sue for harassment. There were no protections for religious freedom.

Critics were rightly concerned that a Christian who expressed his religious belief that homosexual practice is morally wrong could face crippling lawsuits in the courts.

In addition to these concerns, Christians felt they had been misled over the inclusion of such laws in these Regulations. During the public consultation process the Government specifically said it was not intending to include a harassment law in its plans because of concerns about free speech. Indeed, in the rest of the UK, such a law has not been introduced. But Peter Hain, then Minister of State for Northern Ireland, included one in the Regulations using direct rule powers.

In deleting harassment from the Northern Ireland Regulations, the High Court judge, Mr Justice

Weatherup, acknowledged all these points. He said he was getting rid of harassment because of “an absence of proper consultation”, “the extended reach of the harassment provisions beyond that of discrimination and statutory harassment” and the concerns regarding free speech and religious liberty (paragraphs 42 and 43 of the written judgment).

The removal of this harassment law from the Northern Ireland Regulations makes Christians in the Province very much safer. It will also be very helpful in arguing against a similar law planned in the Single Equality Bill (see article below).

Harassment in the Single Equality Bill

The removal of harassment from the Northern Ireland Sexual Orientation Regulations because of free speech concerns will be helpful in resisting attempts to introduce a similar law for Great Britain in the forthcoming Single Equality Bill.

The Government has said it is considering outlawing harassment on grounds of sexual orientation in the provision of goods, facilities and services in England, Scotland and Wales.

It was expected that the wording of such a law would have followed the Northern Ireland Regulations.

Now that a High Court judge has quashed harassment because of, amongst other things, concerns over free speech, it will be very much harder for the Government to use the same wording in the forthcoming Single Equality Bill.

Following the ruling in Belfast, Britain’s leading homosexual lobby group – Stonewall – reaffirmed its view that such a law is unnecessary.

The Regulations do not apply to school lessons

The Sexual Orientation Regulations do not apply to the curriculum or to teaching, the High Court judge ruled.

The wording of the Regulations in Great Britain is identical on this point to the Regulations in Northern Ireland. There is therefore a direct read-across from the Belfast judgment which applies to all of the UK.

This means that homosexual campaigners cannot insist that the Regulations require the use of pro-homosexual story books in primary schools. Nor can they sue schools over the content of lessons.

Some diversity trainers have already quoted the Regulations in an attempt to force teachers to promote homosexuality in the classroom. They can no longer do so.

Confusion over how the Regulations affect

schools arose because similar regulations covering religious discrimination specifically exempted the curriculum to avoid legal clashes over the religious content of lessons.

When the Regulations covering sexual orientation discrimination were published there was no such exemption. Understandably, this led many to infer that the Government intended the Regulations to apply to lessons.

Under pressure, a Government minister admitted in the House of Lords that how the curriculum is taught “is caught by the regulations”.

But during the Belfast court case, Government lawyers tried to back-pedal on that point.

We are therefore delighted that the judge clearly ruled that the Regulations do not apply to the curriculum or to teaching. This ruling applies to all of the UK.



Faith-based groups that receive grants

The Regulations have been narrowed in the way they affect faith-based groups which receive public funding for some of their activities.

The Regulations say that when public money is involved, a faith-based group cannot make use of any religious liberty exemptions.

But it was unclear whether that applied to all the activities of such a group, or just the activities for which the group receives public funding. The judge ruled in favour of the latter interpretation.

This will be helpful in some situations, but Christian old people's homes and adoption agencies will still face difficulties under the Regulations unless a legal precedent can be established to protect their liberty.

Belief that homosexual practice is sinful is "worthy of recognition"

During the court hearing, lawyers for Northern Ireland's Human Rights Commission (a public body tasked with safeguarding human rights for all citizens, including Christians) argued that the religious belief that homosexual practice is morally wrong is "not a belief of value".

But the judge ruled that "The belief in question is the orthodox Christian belief that the practice of homosexuality is sinful...

The belief is a long established part of the belief system of the world's major religions. This is not a belief that is unworthy of recognition. I am satisfied that Article 9 [the right to freedom of religion] is engaged in the present case." (paragraph 50 of the written judgment)

Regulations do interfere with religious freedom

Mr Justice Weatherup ruled that Northern Ireland's Sexual Orientation Regulations do indeed interfere with people's rights to religious freedom. But he said that County Courts will have to resolve those matters on a case-by-case basis.

In his judgment he said, "I am satisfied that the introduction of the Regulations will result in instances of material interference, that is interference to an extent which is

significant in practice, with the applicant's freedom to manifest the religious belief in question." (paragraph 69 of the written judgment)

This is important because the Government's lawyers were arguing that the Regulations did not interfere with religious freedom as set out in Article 9 of the European Convention on Human Rights. The judge clearly rejected that.

It means that if

a Christian, acting according to his religious beliefs, is sued under the Regulations he can use Article 9 as part of his defence without having to first establish that his Article 9 rights are relevant.

The judge also ruled that County Courts should consider the principles set out in the Brockie judgment from Canada, the importance of which is set out in the article below.

Christians shouldn't be forced to act against their 'core beliefs'

The High Court judge, Mr Justice Weatherup, ruled that County Courts should consider the principles of the Brockie judgment from Canada when resolving disputes between religious liberty and the Sexual Orientation Regulations.

In that case a court ruled that a Christian printer, Mr Brockie, should not be forced to print material which goes against his core religious beliefs, but that he must be willing to print other material, such as letterhead, for homosexual customers.

Applying that principle to a Christian photographer, it could be argued that he should not be forced to cover a civil partnership ceremony (because that would go against his core religious beliefs), but he must be willing to take portrait photos of a homosexual individual.

We believe that this principle will be helpful to Christians who may find themselves on the

receiving end of a lawsuit simply because they acted upon their religious beliefs regarding sexual ethics.

This principle recognises the distinction between serving someone who happens to be homosexual (which a Christian should do) and being asked to actively promote, endorse or facilitate homosexual practice (which a Christian should never do).

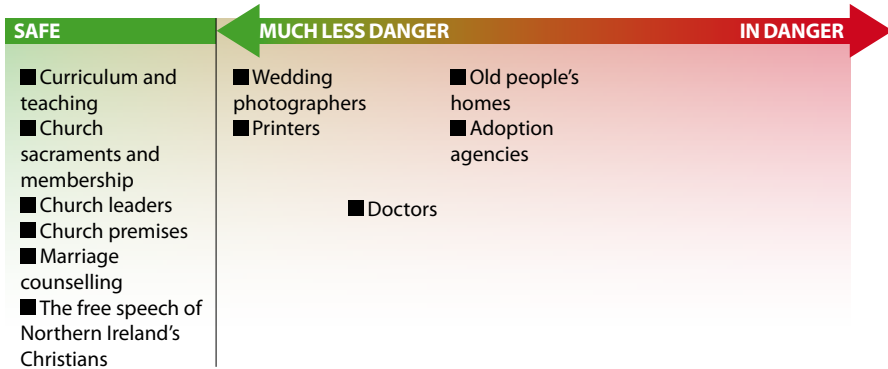
We are pleased that the Brockie case has been so clearly referred to in this High Court judgment. It will be a very helpful tool in defending religious liberty from these Regulations.



Before the court action:



After the court action:



Explanation:

The curriculum and teaching has moved into the “safe” zone because the judge ruled that the Regulations do not affect them. This does not mean that there will be no *attempts* to use the Regulations to influence schools. But the ruling should prevent those attempts succeeding in court in these two areas.

Of the remaining areas of concern, everyone is generally safer because the judge said that County Courts should consider the principles of the Brockie case from Canada. The judgment in that case was that a Christian printer should not be forced to act against his core religious beliefs. We believe this will be extremely helpful in defending Christians who may be sued under the Regulations.

Although the judge narrowed the effect of the Regulations in situations where public money is being spent, this remains the most exposed territory for Christians. A Christian old people's home or adoption agency which receives public funding cannot make use of religious liberty exemptions for those activities for which they received the money. They may still have rights under Article 9 and the situation is better than before the legal action, but they still remain at risk. A successful defence in court could establish a precedent which will protect their religious freedoms.

We will provide more information on the position of Christian bed & breakfast establishments in the future.

This leaflet cannot be a definitive statement on the law and specific advice should always be sought on individual circumstances.