

# Statement on Christian Foster Case

A Christian couple who faced difficulties in their application to Derby City Council to become foster carers because of their views on homosexuality, have been refused permission by the High Court to challenge the Council's approach.

In a concerning judgment handed down yesterday, Lord Justice Munby and Mr Justice Beatson said they were not prepared to grant Eunice and Owen Johns permission for judicial review.

## The law and Parliament

Although the judges were unsympathetic to the Johns' case, their judgment does not ban Christians with orthodox beliefs on homosexual conduct from fostering children; local authorities are free to take on Christians as before.

As the judges pointed out, Parliament has enacted equality laws containing competing legal rights such as those based on sexual orientation and those based on religious beliefs.

It is very clear that equality laws are leaving Christians at the bottom of the pile. The Christian Institute calls on Parliament to act urgently to protect the rights of Christians and sort out this obvious injustice.

Once again the taxpayer-funded Equality Commission has taken advantage and weighed in, urging the courts to rule against Christians. It is high time Parliament put a stop to the Commission's bias against Christians.

## The Council had not made a decision

In deciding not to grant a judicial review, the judges pointed to the fact that Derby City Council had not actually taken any decision to turn down Mr and Mrs Johns as foster carers when the case was brought to court and so there was no decision to be reviewed.

Significantly, the High Court has not made a ruling based on a specific set of facts or evidence, as is ordinarily the case in any judicial review. It was asked to consider the issue in the abstract. Yet the judges concluded "there is likely to be a broad range of factual contexts for reaching a particular decision, the legality of which will be highly fact sensitive". So in future cases the High Court could still rule in favour of Christians who have been turned down as foster carers on the basis of their beliefs.

## The judges' guidance

In effect, the judges were asked to rule on a question of public policy, rather than a point of law applying to an individual or group. The question was: should local councils consider applicants' views on sexual ethics when deciding whether or not to approve them as foster carers?

In response the judges have provided guidance, but said that they had misgivings about considering this case and that to do so was "at the very outer limit of what could be an appropriate exercise of our jurisdiction".

The guidance given by the court is worrying in several respects. Whilst the judges accepted that Mr and Mrs Johns' religious beliefs are worthy of respect, the judges concluded that "the attitudes of potential foster carers to sexuality are relevant when considering an application for approval".

## Indirect discrimination

Much of the court's reasoning was based on existing decisions of the Court of Appeal, which have permitted public authorities to use equality policies covering sexual orientation to justify discrimination against religious believers.

Neither this case law nor the comments of the judges in the Johns' case require local authorities to turn down potential foster carers on the basis of their religious or moral beliefs. Crucially, the judgment does not impose a ban on Christians with orthodox biblical beliefs about homosexuality (or any other matter) from fostering children.

However, there is clearly a problem in one area. The courts are effectively ruling that Christians are not protected by indirect discrimination laws. When an organisation or person applies a rule to everyone which will always disproportionately affect Christians, court rulings consistently find ways of justifying the discrimination against Christians, particularly where there is a conflict of rights.

## Equality Commission

The taxpayer-funded Equality and Human Rights Commission intervened in the case. The Commission argued that views opposed to, and disapproving of, same-sex relationships and lifestyles have a harmful impact on the wellbeing of children and young people. In December, the Commission backed a homosexual couple in suing Peter and Hazelmary Bull, a Christian couple from Cornwall who operate a 'married couples only' policy for double rooms at their guest house.

## Background

Eunice and Owen Johns, who had previously fostered 15 children, brought a judicial review of Derby City Council's treatment of their application to be approved as short term, respite, foster carers.

The Johns, who as Christians believe that sex outside marriage is morally wrong, were told by social workers at Derby City Council that they would have difficulty in being approved for fostering in the light of their views on homosexuality. The social workers accepted that the Johns are caring people who "would always do their best to make a child welcome and comfortable".

Derby City Council's Fostering Panel was to have considered Mr and Mrs Johns' application in March 2009 but decided to defer its decision. Following this, Mr and Mrs Johns commenced judicial review proceedings in the High Court. The hearing took place in November 2010.

The Johns' case was supported by The Christian Legal Centre, an entirely separate organisation to The Christian Institute.

*1 March 2011*