

APPENDIX J

**RCB LEGAL ADVICE REGARDING
CIVIL PARTNERSHIP CEREMONIES AND CELEBRATIONS**

The Honorary Secretaries have requested the advices of the Legal Department in relation to the following:

‘In the case of a rector and select vestry who would find it difficult to grant the use of a hall to a same sex couple who wish to celebrate their union, where do they stand in civil law (both North and South), and if a civil action were to be taken against the rector and select vestry, would the rector and select vestry be able to avail of the offices of the RCB Legal Department to defend them on the grounds that refusal was on the basis of the fact that granting the use of the hall would have compromised their conscientious objection to same sex marriages in principle?’

There is a distinction between the holding of a civil partnership ceremony on premises belonging to the parish and the holding of a reception to celebrate a civil partnership. For completeness, both issues have been dealt with.

Northern Ireland Position

A civil partnership may only be solemnised in a Registration Office or another place approved by the local registration authority. In order to become an approved place under the Civil Partnership Act 2004 (‘the 2004 Act’) the consent of the owner of the property is required. It would therefore not be possible for persons entering into a civil partnership to hold the civil partnership ceremony on parish property without the consent of the vestry first being obtained. The vestry is not legally obliged to issue its consent to becoming an approved place under the 2004 Act. The 2004 Act also provides that no religious service is to be used while the registrar is officiating at the signing of the civil partnership schedule and it would therefore not be possible for persons entering into a civil partnership to argue they are entitled to hold their ceremony in a consecrated church with a minister officiating at the ceremony.

In relation to the holding of a reception to celebrate the civil partnership, the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (‘the 2006 Regulations’) states it is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person because, among other grounds, of their sexual orientation. Discrimination may take the form of refusing or deliberately omitting to provide a person with goods, facilities or services or by refusing or deliberately omitting to provide a person with goods, facilities or services of the same quality, in the same manner and on the same terms as would be offered to heterosexuals.

The following are examples of the facilities and services referred to in the 2006 Regulations:

- (a) Access to and use of any place which members of the public are permitted to enter;
- (b) Facilities for education;

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- (c) Facilities for entertainment, recreation or refreshment;
- (d) Facilities for transport or travel;
- (e) The services of any profession or trade.

It should also be noted that it is unlawful for a person with the power to dispose of any premises to discriminate against another in the terms on which he offers them those premises or by refusing his application for those premises. This would include the terms and conditions on which a parish leases or sells property.

There is an exemption set out in the 2006 Regulations which states that it shall not be unlawful for an organisation or for anyone acting on behalf of, or under the auspices of such an organisation, to restrict the provision of goods, facilities and services in the course of activities undertaken by the organisation if the restriction is necessary to comply with the doctrine of the organisation or so as to avoid conflicting with the strongly held religious convictions of a significant number of the organisation's members. This exemption also applies to letting or sale of premises owned and controlled by the organisation. An organisation for the purpose of the 2006 Regulations is one whose purpose is:

- (a) to practice a religion or belief;
- (b) to advance a religion or belief;
- (c) to teach the practice or principles of a religion or belief;
- (d) to enable persons of a religion or belief to receive any benefit or to engage in any activity within the framework of that religion or belief.

It would be a matter for a parish to invoke the exemption as a defence to proceedings issued by a person who felt he had been discriminated against. The parish would bear the burden of proof which would mean that the parish would have to provide evidence which would justify the denial of the provision of the goods, facilities, services, on the grounds that the denial was necessary to comply with the doctrine of the Church or so as to avoid conflicting with strongly held religious convictions of a significant number of the members of the Church of Ireland. The invocation of the exemption is not a clear cut defence and the facts of each case will be examined on its merits. The cost implications of defending an action would also have to be considered. In proceedings issued under the 2006 Regulations, the court would be involved in a balancing exercise between the right of a religious organisation to manifest its beliefs and the individual's human right to be treated equally. The Court would question whether the denial of the goods or services was really necessary to comply with the doctrine of the organisation or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's members.

It is considered that if the parish is offering the facilities of a parish hall for couples to hold a wedding reception then the refusal to allow civil partners to similarly celebrate their union in the parish hall *may* amount to an actionable claim of discrimination. In order to be in a position to defend any refusal, a parish would have to prove that it had to refuse the goods or services in order to comply with the doctrine of the Church or so as to avoid conflicting with

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the strongly held religious convictions of a significant number of Church of Ireland members. It is considered that this defence *may* be severely weakened by the fact that it is not the civil partnership ceremony itself which the parish is refusing to allow on parish property but rather a reception for a civil partnership.

If it is the case parish property is not offered as a venue at all to any members of the public, regardless of their sexual orientation, then this would be simply pointed out to persons seeking to hold a reception for their civil partnership in the same way it would be pointed out to any other members of the public.

Republic of Ireland

As is the situation in Northern Ireland, a civil partnership as proposed under the Civil Partnership Bill 2009 (which has not yet been enacted into law) may only be solemnised in a Registration Office or other place approved by the local registration authority. In order to become an approved place, the consent of the owner of the property is required and thus it would not be possible for persons entering into a civil partnership to hold the ceremony on parish property without the consent of the parish first being obtained and this consent would not have to be forthcoming.

Under the Equal Status Acts 2000 to 2008, it is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person because, among other grounds, of their sexual orientation. This is the same as the position in Northern Ireland.

A *service* is a facility or service (of any nature) including facilities for entertainment, recreation or refreshment; cultural activity; transport or travel; or a professional trade or service. This list is not exhaustive and a broad view of what constitutes a service is taken by the Equality Tribunal. Unlike Northern Ireland, there is no defence that discrimination was necessary in order to comply with the doctrine of the Church or so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's members. There is an exemption in relation to providing religious goods and services but this would not be applicable here as the premises belonging to the parish would not be provided to the public for a religious purpose in connection with a civil partnership.

The Equal Status Acts 2000 – 2008 also state that there can be no discrimination in relation to leasing or selling a property and the position is similar to that in Northern Ireland. There is an exemption where premises or accommodation are reserved for religious purposes but this exemption would not be of relevance in circumstances where a property is offered to or used by members of the public for a purpose other than a religious one.

If a vestry did refuse to allow a couple to use parish premises solely on the basis of their sexual orientation, then it would be open to that couple to bring a claim of discrimination before the Equality Officer. It *may* be difficult to defend such a claim as there are no exemptions set out in the Equal Status Acts 2000 – 2008 permitting such discrimination. The

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legal costs associated with defending such a case, together with the costs which may be awarded to the party claiming discrimination, could be substantial. The Equality Officer has no power to make an order for costs so even in circumstances where a parish were successful the parish will probably have to pay its own costs.

In the event that a parish is contacted by a couple wishing to celebrate a civil partnership in a property vested in the Representative Church Body, the Legal Department would be available, if requested, to assist the parish when dealing with the query.

Legal Department, February 2010