



LOCAL AUTHORITIES AND REDEFINING MARRIAGE

GUIDANCE FOR ENGLAND AND WALES

At least one political party has claimed that redefining marriage is nothing to do with local councillors.¹ Of course it's true that the decision to redefine marriage will be taken at Westminster. But any change in the law will have to be implemented locally and will inevitably involve major functions of local councils.

SCHOOLS

We are deeply concerned about what will be taught in schools if marriage is redefined.

The law says that children must be taught about the nature and importance of marriage.² But if marriage is redefined, the nature of marriage in law will be completely changed. Schools, most of which are under the remit of local authorities, will have to teach this new definition.

Parents should not be criticised by schools for refusing to allow their children to take part in lessons that promote same-sex marriage.

Parents only have the right to withdraw their children from sex and relationships education. That does not apply to teaching in other subjects in the curriculum.³ In the US, after the redefinition of marriage in some states, parents seeking to ensure their children were educated in accordance with their beliefs have been undermined by teachers and blocked by the courts.⁴

EMPLOYEES

Teachers and other council workers should not face discrimination at work because they support traditional marriage.

Councils employ local people across a range of professions, including teachers. If a teacher objected to teaching the new definition of marriage, how would they be treated? Would they be compelled to do such teaching, following the precedent set in the Ladele case?⁵

Employment lawyer John Bowers QC has concluded that teachers may well face disciplinary measures if they object to teaching about gay marriage.

A primary school teacher in London was told by her head teacher that it was against the law to refuse to use materials promoting same-sex marriage after she stopped reading a book endorsing same-sex relationships to her class. The teacher was also told she would not be allowed to have her own class in the new school year.⁶

A secondary school teacher was told by his school that he would have to teach about same-sex relationships “without exemptions or safeguards” and not state his own views after he objected to stating that opposite and same sex relationships are the same.⁷

What if any other council employee expressed reservations about the redefinition of marriage? There are already examples of people being penalised in their careers for their views on similar issues. Trafford Housing Trust demoted one of its employees, cutting his salary by 40%, for saying on his Facebook page that civil partnerships in churches were “an equality too far”.⁸

FOSTERING AND ADOPTION

Married couples shouldn't be turned away from fostering or adoption just for upholding traditional marriage.

Local authorities are heavily involved in fostering and adoption. Many foster carers are registered with and contracted to local authorities.⁹ Most adoption agencies are part of local authorities' children's services.¹⁰ Married couples have already been barred from fostering or adoption because of their beliefs about sexual ethics and marriage.¹¹ If marriage is redefined this problem will escalate dramatically.

COUNCIL SERVICES

Churches and those of other faiths must retain their freedom to speak and act according to their religious beliefs. Those that refuse to support same-sex marriage should not be punished by local authorities through denying them access to its services. Neither should local authorities withhold the right for religious bodies to hold services of traditional marriage.

Local councils are responsible for allocating funding and controlling the use of public facilities and services. The Public Sector Equality Duty under the Equality Act 2010 requires them to have due regard to the need to eliminate discrimination when exercising their functions.¹² This could mean that if a body or group like a church expressed its disagreement with same-sex marriage, a council could refuse funding or the hire of public premises to that group, using the duty as its justification. An analogous situation arose with a care home in 2007, which was not deemed to be LGBT-friendly enough for Brighton Council's liking – the Council pulled a £13,000 grant that was being used to fund a warden.¹³

In England and Wales registrars of marriage are employed by the local authority. They license all the places where weddings are held outside the Church of England and Church in Wales. In ten or twenty years' time, if marriage is redefined, would churches still be able to hold weddings if they do not support same-sex marriage – or will councils refuse to allow registrars to conduct weddings at those churches? There is already a precedent for such action. In 2008 Devon County Council said they had "no option" but to revoke the Earl of Devon's licence to hold civil weddings at Powderham Castle because he would not host civil partnerships at the premises.¹⁴ The combination of redefining marriage itself and the powerful public sector equality duty would make a council ban on certain churches holding weddings a real possibility in the future.

REFERENCES

- ¹ See, for example, *The Herald*, 19 April 2012 and *The Sunday Herald*, 22 April 2012
- ² Section 403, Education Act 1996
- ³ Section 405, Education Act 1996
- ⁴ In two separate incidents at the same school, the children of David and Tonia Parker and Rob and Robin Wirthlin were taught about same-sex couples (*The Boston Globe*, 4 May 2006) The Parkers and Wirthlins sued their children's school over their request to be notified of any lessons involving teaching about same-sex relationships, but lost in federal court (*The Boston Globe*, 24 February 2007; *The Patriot Ledger*, 7 October 2008).
- ⁵ When registrar Lillian Ladele sought to be excused from registering civil partnerships because of her personal convictions, she was effectively sacked by Islington Council. The Court of Appeal ruled that she was not discriminated against. See *Ladele v London Borough of Islington* [2009] EWCA Civ 1357
- ⁶ Memorandum from Samuel Webster, House of Commons Public Bill Committee on the Marriage (Same Sex Couples) Bill, Session 2012-13, MB 97, March 2013, paras 5-11
- ⁷ Memorandum from Samuel Webster, House of Commons Public Bill Committee on the Marriage (Same Sex Couples) Bill, Session 2012-13, MB 97, March 2013, paras 14-19
- ⁸ *Daily Mail*, 24 October 2011. Although Trafford Housing Trust is independent of the council, it is publicly-funded.
- ⁹ See <http://www.baaf.org.uk/info/fostering> as at 26 April 2012
- ¹⁰ See <http://www.baaf.org.uk/info/adoption> as at 26 April 2012
- ¹¹ *Johns v Derby City Council and Equality and Human Rights Commission* (intervening) [2011] EWHC 375 (Admin)
- ¹² Section 149, Equality Act 2010
- ¹³ *The Mail on Sunday*, 28 December 2008
- ¹⁴ BBC News Online, 30 May 2008, see <http://news.bbc.co.uk/1/hi/england/devon/7427585.stm> as at 30 April 2012