

Re Northern Ireland Human Rights Commission

Northern Ireland High Court, Queen's Bench Division, 18 October 2012
Adoption – House of Lords' judgment – implementation – Articles 8 & 14 ECHR

The Adoption (Northern Ireland) Order 1987 imposes a blanket ban on unmarried couples (whether same-sex, opposite sex or in a civil partnership) applying to adopt as a couple. In 2008, in *P & Ors, Re (Northern Ireland)* [2008] UKHL 38, the House of Lords reversed the Northern Ireland Court of Appeal and granted a declaration that it was unlawful for the Family Division of the High Court to reject prospective adoptive parents on the ground only that they were not married. However, the law was not changed to take account of the judgment in *Re P* and the Northern Ireland Human Rights Commission sought to challenge the executive's failure in that regard, arguing unjustifiable discrimination contrary to Article 8 (private and family life) and Article 14 (discrimination) of the ECHR. Treacy J allowed the application for judicial review and at a subsequent remedies hearing made a declaration that, notwithstanding Articles 14 and 15, the 1987 Order did not prevent unmarried couples or civil partners from applying to adopt and that all individuals and couples, regardless of marital status or sexual orientation, were eligible to be considered as adoptive parents. He further concluded that any guidance had to accord with that declaration. [Frank Cranmer]

doi:10.1017/S0956618X13000598

Smith v Trafford Housing Trust

High Court, Chancery Division: Briggs J, 16 November 2012
Employment – social media – freedom of expression and belief

Mr Smith, a housing manager employed by the Housing Trust, was demoted to a non-managerial position with a 40 per cent reduction in salary for posting comments on his personal Facebook page critical of the possibility of same-sex marriages being conducted in church. The Trust argued, inter alia, that posting such comments on Facebook could prejudice its reputation and that promoting religious views to colleagues and customers amounted to gross misconduct. The court determined that, although Mr Smith had given his occupation as a manager at the Trust on his Facebook page, no reasonable reader would have concluded that he was posting on the Trust's behalf. Nor was there any realistic damage to the Trust's reputation by association with those comments, given that they were made by an employee in a private capacity, outside working hours and in a moderate way. The court further concluded that the claimant had a right to promote his religious views in his own time, which right extended to his Facebook page,

because colleagues and customers had the option of whether or not to subscribe to it. Extending a code of conduct so far into an employee's private life as to fetter his religious expression outside work would infringe his rights of freedom of expression and belief and was unsustainable – though Briggs J did note that in the present case convention rights were not at issue since the Trust was not a public authority. He concluded that Mr Smith had been wrongfully dismissed from his original role; but because he had accepted a lesser role under a new contract of employment the court was severely constrained in the damages that it could award him. [Andrew Hambler]

doi:10.1017/S0956618X13000604

Re St Michael, Coxwold

York Consistory Court: Collier Ch, 3 January 2013

Reordering – box pews – Georgian Group

The petitioners sought a faculty to build disabled toilets, a kitchen area, an upper-floor meeting room and a drainage system in this Grade I listed church. This would require removing a step from the font and four box pews from the west end of the nave. The proposed works had taken ten years of planning by the parochial church council. English Heritage, the Society for the Protection of Ancient Buildings and the Diocesan Advisory Committee had no objections to the proposals. However, the Georgian Group did not believe that the box pews should be removed, arguing that toilet facilities could be located in the churchyard. Following a site visit it was found that the churchyard did not provide an appropriate location for toilets. Alternative suggestions of locating the facilities in the boiler room were also impractical because of cost and the consequential need to re-locate the boiler. There was no dispute that the church's mission and wider public benefit required the installation of accessible facilities both for congregants and for wider community use. It was found that the essential features of the church would be unaffected by the scheme. The impact on the architectural heritage would be small and the scheme might even provide the benefit of a less cluttered appearance. The disputed pews were not in their original condition in any event, owing to adaptations that pre-dated the modern faculty jurisdiction. The small loss to the architectural heritage was outweighed by the public benefit provided both by the toilet facilities and by the other proposed works. Accordingly the faculty was granted. [Catherine Shelley]

doi:10.1017/S0956618X13000616