

Ashers Bakery v. Lee (UK)

Factual Background

1. The Plaintiff is a gay man, who supports same-sex marriage. He volunteers for QS, an organisation for the LGBT community. QS is not a campaign group, but it has supported same-sex marriage.
2. KM and CM (D2 and D3) run a family business, ABC Ltd (D1) in Belfast, Northern Ireland. D1 operate bakery shops. One of the services they offer is a build-a-cake service, whereby they make a cake to the specification of the customer.
3. D2 and D3 have genuine and deeply-held Christian religious beliefs, attend church regularly and seek to run D1 in accordance with those beliefs. According to their beliefs, the only form of marriage consistent with Biblical teaching (and therefore acceptable to God) is that between a man and a woman.
4. The Plaintiff had been an occasional customer of D1. However, he was not personally known to the staff of D1 or to D3; nor did he know anything about the Christian beliefs of any of the Defendants.
5. The Plaintiff visited the shop to place an order for a cake for an event organised by QS. D3 took the Plaintiff's order. The Plaintiff paid for the cake and provided the details of his order. It was a single photograph colour image and bore the Slogan "Support Gay Marriage" ("the slogan").
6. At the time the Plaintiff placed the order for the cake, D3 had an objection to producing the cake, namely that she disagreed with the Slogan on the basis of her Christian beliefs. She did not raise this immediately with the Plaintiff, since she wished to consider how that should be explained and did not want to cause any embarrassment.
7. In the two days after receiving the order D3 and D2 discussed the cake. They decided that producing the cake with the Slogan would be contrary to their Christian beliefs, and indeed something that they could not in good conscience do, and that the Defendants should therefore not fulfil the Plaintiff's order.

8. D3 telephoned the Plaintiff and informed him. She told him that D1 would not fulfil his order because D1 was a “*Christian business*” and explained to him the Defendants’ disagreement with the Slogan. D3 offered the Plaintiff a full refund and apologised.
9. The Plaintiff then made alternative arrangements with another service provider to have a similar cake bearing the Slogan make in time for the event.
10. The Plaintiff made a complaint to the Equality Commission for Northern Ireland about the cancellation of the order by D1. The ECNI wrote a letter of claim to D1, which started the legal process leading to the proceedings below and the present appeal.
11. At first instance, the judge held in favour of the Plaintiff. The Defendant now appeals by way of case stated to the Court of Appeal.

Points Raised on Appeal

This case is an appeal from the County Court in Northern Ireland, finding that the Defendants, who operate a family business, had both directly and indirectly unlawfully discriminated against the Plaintiff by refusing to provide a cake with the message “Support Gay Marriage.” In refusing to provide the cake, the Defendants cited their religious beliefs.

According to the County Court, in doing so, the Defendants had discriminated on the basis of sexual orientation under the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (the “Sexual Orientation Regulations”) and on the basis of religious belief and political opinion under the “Fair Employment and Treatment (Northern Ireland Order) 1998 (the “FETO”). The Defendants have appealed this decision and the Attorney General has filed a brief supporting the Defendants. On appeal, the Defendants present the following arguments:

First, the Defendants argue that there is no direct discrimination because they did not refuse to make the cake because of the sexual orientation of the Plaintiffs, but because of the content of the message. The Defendants assert that they would have refused to make a cake with the slogan, regardless of the sexual orientation of the party requesting it.

Second, the Defendants argue that there was no indirect discrimination because there was no evidence as to how their practice burdened a protected group and, in any event, any burden would be proportionally met by the legitimate aim of the protection of the Defendants' religious beliefs.

Third, the Defendants argue that, under the Human Rights Act 1998, section 3, courts have an obligation to interpret legislation so as not to conflict with the European Convention on Human Rights. Finding the defendants liable would be in direct conflict with Article 10 of the Convention, which guarantees the Defendants the freedom of expression. Forcing the Defendants to provide a cake with the slogan would be compelled speech. The Defendants also argue that their right to freedom of religion would also be violated.

Finally, the Defendants argue that the Acts in question, as interpreted by the County Court brings it into tension with established Northern Irish constitutional law, which bars discrimination based on religious belief or political opinion. This tension would be avoided if the Defendants position were to be adopted.