

Summary of the Aidan O'Neill legal opinion on gay marriage and liberty of conscience

Concerns about gay marriage and freedom of conscience have largely centred on places of worship and ministers of religion who conduct weddings. But the impact in the workplace, in schools and in other areas of everyday life has been overlooked.

Those details are contained in a legal opinion written by leading human rights lawyer, Aidan O'Neill QC. Mr O'Neill was asked to give his expert advice on a series of scenarios related to legalising gay marriage.

■ NHS CHAPLAIN

A Church of England minister is also the chaplain at an NHS hospital. While conducting a wedding service in his parish church he preaches that marriage is only for one man and one woman. His NHS bosses find out, and he is later disciplined for breaching the NHS diversity policy.

Aidan O'Neill QC advises that under the Equality Act 2010 the NHS managers would have proper grounds for justifying their action, even if the chaplain was preaching in his own church outside work time.

The situation would be the same for any chaplain employed within the public sector, such as armed forces chaplains or university chaplains.

■ TEACHER

A primary school teacher is asked to use a storybook about gay marriage called "King & King". It is recommended by the local authority and by a gay rights charity. The teacher says using the book would conflict with her religious beliefs about marriage. She is told that she faces dismissal unless she backs down.

O'Neill says "yes", the school would be within its legal rights to dismiss the teacher if she refuses to use the material.

■ PARENTS

Parents ask for their child to be withdrawn from school lessons on the history of gay marriage, for deeply-held religious reasons. The parents say they have a right to withdraw their child under European Convention on Human Rights. But the school refuses, saying it is under a legal duty to promote equality.

O'Neill says the parents do not ultimately have a right to insist that their child be withdrawn from such history lessons, and the parents "will have little prospects of success in challenging the schools insistence that their child attend" the lessons.

■ FAITH SCHOOLS

Aidan O'Neill was asked about the above scenario in relation to faith schools or religious-ethos State schools.

He said: "If the school in question were a faith school or otherwise one with a religious ethos within the State sector in England and Wales this would make no difference to my answer."

■ FOSTER COUPLE

A couple applies to be foster carers. They tell social workers they are motivated to care for children because of their

Christian faith. On hearing this, the social workers ask them whether they support gay marriage. The couple says they do not, and the social workers halt the application because of equality and discrimination policies.

O'Neill says "yes", a local authority fostering agency would have legitimate legal grounds for acting this way.

■ PUBLIC FACILITIES

A church hires a council-owned community centre each week for its youth club. The church website states that it will only conduct opposite-sex marriages. Someone complains to the council, and while the church can't be forced to conduct gay weddings, it is stopped from hiring the community centre.

Aidan O'Neill says "yes", the council would be within its legal rights to do this.

■ MARRIAGE REGISTRAR

A local authority decides to accommodate the religious beliefs of one of its registrars by not designating her to be a 'civil partnership registrar'. Other registrars within the local authority's team are sufficient to provide the service to the public.

Aidan O'Neill says that if gay marriage becomes law, "that kind of adjustment to accommodate a registrar's particular beliefs would no longer be an option for any employing authority because there would then be only be one system of marriage (rather than, as at present, a distinct civil partnership regime for same sex couples)."

■ RELIGIOUS GAY WEDDINGS

The O'Neill legal opinion also addresses whether religious marriage celebrants could be forced to conduct gay weddings against their will. The legal opinion suggests that an outright ban on religious gay weddings could be overturned under European human rights laws.

If a law is passed which allows religious gay weddings for those who wish to conduct them, but doesn't compel anyone to act against their conscience, that could be challenged under domestic equality laws. O'Neill says that churches, in general, would be better protected from hostile litigation if they stopped holding weddings altogether.

■ ESTABLISHED CHURCH

O'Neill advises on the position of the Church of England. As the established church, it is under a legal obligation to marry any persons who are eligible to marry in England. Even if Parliament passes a law which allows (but does not oblige) churches to host gay weddings, O'Neill advises that the UK Government could be in breach of European human rights laws if it allows the C of E to refuse gay weddings. This is because of the C of E's unique status as the established State church. O'Neill says the church would be in a safer position if it was disestablished.

■ SEX EDUCATION

The O'Neill opinion also considers the impact of redefining marriage on teaching within schools. It says that the law will require that children learn about gay marriage in sex education lessons. This is because Section 403(1A)(a) of the Education Act 1996 imposes a duty on the Secretary of State "to issue guidance" ensuring that pupils "learn the nature of marriage and its importance for family life and the bringing up of children". If gay marriage becomes law then "its importance for family life and the bringing up of children" must be taught as part of sex education.