

'View from the Chair' article published in the Business Newsletter, 8 November 2016 by Dr Michael Wardlow, Chief Commissioner, Equality Commission NI

Ashers ruling not a defeat for religious or any other freedoms

The Court of Appeal decision in the case of Lee v Ashers Baking Company Ltd has generated a lot of discussion, including questions being raised about the level of advice and guidance which the Commission can offer to service providers. We recognise that the judgement has created some concerns for the business community and it is therefore important that the Commission offers clarity on the judgment and its impact on service providers.

There has been a prevalent view that the Appeal Court's ruling creates new law. It does not. It confirms and clarifies what anti-discrimination law in Northern Ireland has provided to date - that discrimination in the provision of services on the ground of sexual orientation, of religious belief or political opinion, is prohibited. As the judgement stated, "it is for the supplier of services to cease distinguishing, on prohibited grounds, between those who may or may not receive the service."

There is the opinion that the judgement diminishes the rights of faith communities. To the contrary, the right of people to hold religious beliefs remains protected in absolute terms. However, the right to manifest those beliefs can be limited by law, "for the protection of the rights and freedoms of others". So religious belief cannot be manifested in the commercial sphere in a way which infringes certain rights of others.

When drawing up the Sexual Orientation Regulations 2006, the concerns raised by religious organisations and churches were recognised by the legislators, who responded by introducing limited exemptions for them.

A point much repeated is that the ruling would force a business to provide a service endorsing views which it opposes. In this case, the Appeal Court affirmed that asking the company to place the customer's message on the face of the cake did not require them to promote or support gay marriage any more than "the fact that a baker provides a cake for a particular team or portrays witches on a Halloween cake does not indicate any support for either". In addition, it remains open to all service providers to limit their offer in order to protect them from providing a service which they feel might compromise

their faith. Choosing not to sell lottery tickets might be one example of this in practice.

Questions have also been raised as to why the Commission does not provide advice and assistance to service providers, who may have difficulties with the law because of their deeply held religious beliefs. The answer has two elements to it.

Under the anti-discrimination legislation, the Commission has a specific role to support complainants or prospective claimants but not the power to support the respondents in discrimination cases.

However, this role does not preclude the Commission providing advice and guidance to any businesses on all these matters - indeed we do provide advice on equality law and how to ensure businesses comply with it. This support comes in a variety of forms including training sessions, seminars, and in direct, one to one engagement with businesses seeking bespoke advice.