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**Blog article by Dr Michael Wardlow, Chief Commissioner, Equality Commission NI**

## **Reflections on Lee v Ashers Baking Company Judgment**

Discrimination remains a significant issue within our society and during the course of any year, the Commission responds to about 3,500 requests from people across Northern Ireland who believe that they may have suffered discrimination in their workplaces or when receiving goods, facilities or services. All of those who contact us are offered advice about their rights and how they might progress addressing their concerns. For most people this initial conversation and advice is sufficient for their needs.

That said, every year about 10% of these individuals come back to the Commission after the initial conversation, seeking our assistance with their potential discrimination claim. Gareth Lee was one of these individuals; he was concerned that the refusal by Ashers Baking Co Ltd to bake and ice a cake with the message Support Gay Marriage was discriminatory. The refusal had made him feel 'like a second class citizen'. The Commission supported his claim, as we considered that the refusal was contrary to equality legislation in NI on grounds of sexual orientation and also on grounds of political opinion and religious belief. Readers will know that this so called "Gay cake case" made headlines around the world and generated considerable discussion and debate over the period since the case was first heard in the Belfast County Court in May 2015.

The judgments of the County Court and the NI Court of Appeal in our view were clear in confirming the scope of anti-discrimination law in Northern Ireland – that when commercial business are providing services to the public, they cannot discriminate against their customers or clients on grounds protected by equality law. The Bakery appealed against the decisions of the lower courts that its refusal of service in this instance was unlawful discrimination.

In its judgment, the Supreme Court disagreed with the judgments of the lower courts, including on their findings of sexual orientation discrimination and political beliefs discrimination. It decided that the refusal to make a cake with the slogan supporting same sex marriage was not discriminatory on the grounds alleged, on the basis that it was **the message** he wanted iced on the cake that the owners objected to and **not the person**. The Court further decided that commercial businesses can refuse to provide a service if

that service requires them to express a message with which the business owners profoundly disagree, in line with the protections provided for the rights to freedom of thought, conscience and religion and freedom of expression.

The Court reaffirmed that businesses cannot refuse to serve someone because of their sexual orientation or because they support a cause with which the service provider disagrees. If the service does not involve the business itself having to give expression to, or endorse, a particular view with which they profoundly disagree then a refusal could still constitute unlawful discrimination.

The Commission did express disappointment with the judgment at the time, as we considered the lower courts had considered and applied the law and case law developed over the years effectively. In the same way, other observers expressed surprise or concern, as they believed that the judgment did not affirm what had been a wider interpretation of Northern Ireland's anti-discrimination laws.

That said, we appreciate that for others it represented a victory for religious freedom.

For us, the Supreme Court has now ruled on the specific issues raised in the Lee case. To be clear, this was a judgement which examined a particular set of circumstances in a particular context. It does not create a general exemption from equality law on the grounds of religious conscience. ---

We have been reviewing our advice to service providers in light of the judgement and revised guidance will issue shortly.

The financial implications, for both sides, have been substantial. Ashers Baking Co Ltd made an application for costs to the Supreme Court that would have required the Commission to carry all costs. The basis of the application was queried by the Commission as it had been made clear throughout the process that the Company was supported by the Christian Institute through its Legal Defence Fund. The matter was resolved on agreed terms which resulted in both sides bearing their own costs.

We appreciate that there was much debate generally about the case and the Commission's role in supporting Mr Lee. We support individuals to take cases so that people are aware of the rights and responsibilities flowing from equality laws and can avail of the protections these laws provide. It is important that the Commission can do so without political or other influence – that is our role as an independent public body established under the anti-discrimination laws here.

The Supreme Court judgment highlighted the very real problem of discrimination against gay people and it is important that we all acknowledge the significant barriers that there

are to equality of opportunity for the LGB community in Northern Ireland. We will continue to advocate for equality on grounds of sexual orientation here. However we realise that the case highlighted that there is a wide range of opinions about the interplay between freedom of religious conscience and equality and human rights legislation.

There is too much at stake for us to simply “agree to disagree” on such an important matter.

So, in order that we might better understand and address these differences, we will continue to engage with representatives of faith communities, in an open and honest way, where all of us might better understand the views and concerns of the other, and through this process, move to a more productive public engagement in areas of difference. It is only when we engage in such open and honest discussions that we can begin to create better and more productive, lasting relationships.

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