



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	United Kingdom
<b>Title:</b>	The "gay cake" case; Lee v Ashers & Ors
<b>Date:</b>	4 November 2016
<b>Expert:</b>	Lucy Vickers
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Discrimination in the field of access to goods and services
<b>Ground of discrimination:</b>	Sexual orientation, religious belief, other (political opinion)
<b>Source:</b>	National Court Decision: Court of Appeal in Northern Ireland 24 October 2016
<b>Field:</b>	Access to goods and services
<b>Applicable law:</b>	Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 Regs 2, 3, 5, 16; Fair Employment and Treatment Order 1998 Arts 2, 3, 28, 31

### Content

**Case:** The case concerned an appeal from the County Court in Northern Ireland which had ruled that the bakery (Ashers) had discriminated on grounds of sexual orientation, religious belief and political opinion when it refused to bake a cake at the request of the Claimant, Gareth Lee, because the cake was to bear the slogan "Support Gay Marriage".

**Decision of the Court:** The Court of Appeal in Northern Ireland (CANI) upheld the ruling of the County Court that Ashers had discriminated on grounds of sexual orientation in refusing to bake the cake bearing the slogan in support of gay marriage. The Court found that the bakery had discriminated unlawfully against Lee for reasons of association with homosexuality. Even though both homosexual and heterosexual people can support gay marriage, support for gay marriage is indissociable from sexual orientation, and so discrimination on this ground is covered by the non-discrimination regulations. The Court found that such a holding was not incompatible with freedom of expression rights under the ECHR because the speech was not coerced or forced, and in any event, the non-discrimination rules would provide a proportionate limitation on freedom of expression.

**Key points of analysis:** This decision accepted that both heterosexuals and homosexuals can support for gay marriage, so this may not be discrimination on grounds of the sexual orientation of the service user; but it held that the discrimination in this case was for reasons of association with sexual orientation.

In relation to the freedom of expression aspects of the case, the CANI agreed with the trial judge that the bakery was not required to promote or support gay marriage, just as the fact that a baker provides a cake for a particular football team or portrays witches on a Halloween cake does not indicate any support for either. Thus this was not forced speech. In any event, even if an interference with free expression were to be found, the legislative non-discrimination provisions provide a proportionate limitation on freedom of expression.

The Court held that the baker's freedom of religion is adequately protected by Regulation 16 Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 which allows limits to the provision of services by religious organisations in the non-commercial sphere. In the commercial sphere, the balance has been struck by Parliament in providing the protection against discrimination on grounds of sexual orientation.

**Internet link source:**

<http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Pages/default.aspx>.