



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

NEWS REPORT

Country:	United Kingdom
Title:	Supreme Court ruling on discrimination in the field of access to goods and services under Equality Act 2010
Date:	24 October 2018
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Update of news report nr:	UK-100- The "gay cake" case; Lee v Ashers & Ors ¹
<u>Context</u>	
Issue at stake:	Discrimination in the field of access to goods and services
Ground of discrimination:	Sexual orientation, religious belief, other (political opinion)
Source:	National court decision, Lee (Respondent) v Ashers Baking Company Ltd and others (Appellants) (Northern Ireland) [2018] UKSC 49
Field:	Access to goods and services
Applicable law:	Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 Regs 2, 3, 5, 16; Fair Employment and Treatment Order (FETO) 1998 Arts 2, 3, 28, 31

Content

Case: The case concerned an appeal from the Court of Appeal in Northern Ireland (CANI) which had ruled that a 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". The CANI had found that the bakery had discriminated unlawfully against Lee for reasons associated with homosexuality. The Court additionally held that this finding was not incompatible with bakers' freedom of expression rights under the ECHR. Ashers Baking Company appealed, and the Supreme Court overturned the decision of the CANI: there was no sexual orientation discrimination when the order was refused as the bakers' objection was to the message to be printed on the cake, rather than to the customer.

Decision of the Court: In relation to the sexual orientation claim, the Supreme Court held that the refusal of service was not because of Mr Lee's actual or perceived sexual orientation but was due to an objection as to the message on the cake. It also held that the message was not indissociable from the sexual orientation of the customer, as gay marriage could be supported by those of any sexual orientation. Moreover, the benefits of any legal change regarding marriage would be felt not only by gay and bisexual people, but by their families, friends and the wider community. As the bakers' objection was not to Mr Lee's sexuality, but to being required to promote the message on the cake,

¹ European Equality Law Network, Flash report available at: <https://www.equalitylaw.eu/downloads/3934-united-kingdom-the-gay-cake-case-lee-v-ashers-ors-pdf-130-kb>.

the situation was not comparable with people being refused jobs or services simply because of their sexual orientation or their religious faith.

In relation to discrimination on grounds of religious belief or political opinion (which is constitutionally protected in Northern Ireland), the discrimination cannot be based on the religion or belief of the alleged discriminator.

The bakery could not refuse to provide the cake to Mr Lee because he was a gay man or because he supported gay marriage (which in the view of the Supreme Court had not happened in this case), but equally the bakery was not legally obliged to supply a cake iced with a message with which they profoundly disagreed. The protection against discrimination on grounds of political opinion contained in FETO did not have the effect of compelling them to do so unless justification was shown, and it had not been in this case.

Key points of analysis: The decision overturned the decision of the lower courts that discrimination on the basis of support for gay marriage was discrimination for reasons of association with sexual orientation. Instead the Supreme Court found that the discrimination was not related to the sexual orientation of the customer.

In relation to the freedom of expression aspects of the case, the Supreme Court referred to the case law of the European Court of Human Rights and held that the bakery could not be required to promote or support a view with which it did not agree. Freedom of speech also includes freedom not to speak in support of a view to which a person does not hold.

Internet link source: <http://www.bailii.org/uk/cases/UKSC/2018/49.html> accessed 18 October 2018.