

CHARITY COMMISSION FOR ENGLAND AND WALES

CATHOLIC CARE (DIOCESE OF LEEDS)

DECISION MADE ON 21 JULY 2010

**APPLICATION FOR CONSENT TO A CHANGE OF OBJECTS UNDER
SECTION 64 OF THE CHARITIES ACT 1993**

Summary

This is a summary of the decision of the Charity Commission made on 21 July 2010. Please see that decision for an analysis of the issues which the application raised, the relevant law, and the full grounds for the decision.

The Charity

Catholic Care (Diocese of Leeds) (“the charity”) is a charity with a wide social remit. The charity is based in Leeds. Its activities include residential care for children, supported living for adults with learning disabilities, supported living for adults with mental health issues, advice support and counselling in schools, support to vulnerable and marginalised people through community development work, support for older people in the community and an adoption service. The adoption service (absorbing some 5 per cent of the charity’s budget) provides assessment and preparation of people to act as adoptive parents for the placement of children by local authorities. On average it provides parents for about 10 children a year.

The current objects of the charity are:

- *“To promote, in the Roman Catholic Diocese of Leeds the relief of poverty and distress among children and all those who through economic or family circumstances or physical or mental affliction are in need of such relief.*
- *To promote and organise co-operation among Roman Catholics and others in the achievement of the above object.”*

The Application

The charity is a charitable company and applied to the Commission for consent to change its objects under section 64 of the Charities Act 1993. In particular, it wished to adopt the following clause:

“The Charity shall only provide assistance to persons seeking to act as adoptive parents if they are heterosexuals and such

services to heterosexuals shall only be provided in accordance with the tenets of the Church. For the avoidance of doubt the Roman Catholic Bishop of Leeds from time to time shall be the arbiter of whether such services and the manner of their provision fall within the tenets of the Church.”

The History

On 17 March 2010 the High Court allowed an appeal from the charity against a decision of the Charity Tribunal (“the Tribunal”) dated 1 June 2009. The Tribunal had upheld a decision of the Commission to refuse consent to the proposed change of objects of the charity under section 64 of the 1993 Act. The High Court remitted the case back to the Commission to consider the application of the charity in accordance with the principles set out in the approved judgment of Mr Justice Briggs dated 17 March 2010 (“the Approved Judgment”).

The Approach of the Commission

In accordance with the Approved Judgment the Commission considers that it is necessary for it to decide whether the proposed discrimination is a proportionate means of achieving a legitimate aim. If the proposed discrimination is not justified under Article 14 of the European Convention, the Commission considers that the proposed objects would not be for the public benefit because of “*the large public dis-benefit likely to flow from any unjustified, and therefore discriminatory, differential treatment.*”¹

In addition, the High Court indicated that for the proposed discrimination to be within Article 14 “*particularly convincing and weighty reasons*” would be required.

The charity’s submissions

The charity’s submissions on the weighty reasons justifying the discrimination are in summary:

- There is an excess of children waiting to be adopted and not enough adoptive parents to be matched with them;
- Many of these children are hard to place and the charity has particular expertise in this area;
- To be able to provide its adoption service, the charity depends on its connection with the Roman Catholic Church;
- If the charity has to provide its adoption service to gay or lesbian couples, it will lose its connection with the Church and the income flowing from that;

¹ Mr Justice Briggs in paragraph 99 of the Approved Judgment

- Accordingly, the charity will close its adoption service rather than lose that connection;
- If the charity has to close its adoption service, there are no other alternatives for the children who are matched with parents approved by the charity;
- There would be no dis-benefit to gay or lesbian couples as they can go to other adoption agencies.

The Commission's decision

The Commission considers that the evidence does not support the charity's case. The Commission sought evidence from the local authorities with which the charity worked, and through whom all children are placed for adoption. Six of them responded. From their responses it was clear that the charity was not the only agency providing prospective parents for children who were hard to place.

The Commission notes that the charity based its wish to only consider heterosexual couples on the principle of the Nazarene family. However, the charity has on one occasion made an exception to this principle and advertises that it considered applications from single persons.

In any event, the Approved Judgment in the High Court case indicated that respect for the religious beliefs motivating faith-based adoption agencies would not be likely to constitute a justification of differential treatment in favour of heterosexual couples under Article 14 of the European Convention on Human Rights because of the essentially public nature of the adoption services they provide.

The Commission does not consider that in this case the charity has established that there are particularly convincing and weighty reasons justifying the proposed discrimination. The principal reasons for this are as follows:

- a) The interests of the children are paramount - the courts have found that it is in the interests of children waiting to be adopted that the pool from which prospective parents are drawn is as wide as possible.
- b) Discrimination on the ground of sexual orientation is a serious matter because it departs from the principle of treating people with equal respect.
- c) The evidence of the local authorities is that, if the charity were to close its adoption service, children who would have been placed with prospective parents supported by the charity are likely to be placed with prospective parents through other channels. The numbers involved are small as the charity has on average provided parents for 10 children per year.

- d) The evidence of the local authorities is also that they consider gay and lesbian people as suitable prospective parents for hard to place children and that adoptions made have been successful.
- e) The High Court indicated respect for religious views is not a justification for discrimination on the ground of sexual orientation in the circumstances of this case.

It follows from the fact that the proposed discrimination would not be justified under Article 14 of the European Convention on Human Rights that the proposed changes would not be for the public benefit.

Accordingly, the Commission does not give consent to the proposed change of the charity's statement of objects.