

BETWEEN:-

MARTIN HALL and STEVEN PREDDY Claimants

And

PETER BULL and HAZEL MARY BULL Defendants

**This judgment is being released to the parties and their legal advisers in accordance with the provisions of paragraph 2.1 of Practice Direction 40E. Until it is handed down it remains confidential and its contents should not be communicated to anyone else.**

**The Cases will be listed at 10.00 am on Tuesday 18 January 2011 when the judgment will be handed down. The parties having agreed the appropriate orders in each case there is no need for any attendance**

#### JUDGMENT

1. In 1882 Her Majesty Queen Victoria opened a new court building. It is in the Strand just at the entrance to the City of London. It was built to house the superior courts of this land with the exception of the House of Lords. No one who enters can fail to be struck by the similarity of the Great Hall with the interior of those gothic cathedrals with which this kingdom is so richly endowed. But if, before entering, you gaze upon the façade of the building you will notice 4 statues.
2. There you will find King Alfred who made such a notable contribution to Saxon England by codifying the laws of his day. You will find Moses to whom was given the ten commandments and to whom, by tradition, is ascribed authorship of the first 5 books of the Bible in which you will find in great detail the laws governing the children of Israel. Also there on the façade is King Solomon whose wisdom has become a legend and who displayed outstanding qualities as a judge when sitting in the Family Division in the only reported case of which we have details. And the 4<sup>th</sup> statue is that of Jesus Christ who, I imagine, needs no introduction to those involved in this case.
3. Why are those statues there? Perhaps there were many reasons for them but I venture to suggest that one was to emphasise the Judaeo-Christian roots from which the common law of England was derived.
4. A great deal has however happened since King Alfred and his Saxon laws, and even more has changed since Moses, King Solomon and Jesus Christ walked

upon this earth. Those Judaeo-Christian principles, standards and beliefs which were accepted as normal in times past are no longer so accepted. Things have radically changed since the days of Queen Victoria or even, for that matter, since the days of her grandson King George V.

5. All this has happened in a very short space of time. Much has happened in my lifetime (and I was born a mere 47 years after the death of Queen Victoria). Many of the most significant changes have taken place in the last half century.
6. One significant change has been the enormous growth of statutory legislation. The English common law, developed and interpreted by the judges over the centuries, has been largely superseded.
7. We live today in a parliamentary democracy. Our laws are made by the Queen in Parliament (leaving aside any European dimension). It is inevitable that such laws will from time to time cut across deeply held beliefs of individuals and sections of society for they reflect the social attitudes and morals prevailing at the time that they are made. In the last 50 years there have been many such instances – the abolition of capital punishment; the abolition of corporal punishment in schools; the decriminalisation of homosexuality and of suicide; and on a more mundane level the ban on hunting and on smoking in public places. All of these (and they are only examples) have offended sections of the population and in some cases cut across traditional religious beliefs. These laws have come into being because of changes in social attitudes. The standards and principles governing our behaviour which were unquestioningly accepted in one generation may not be so accepted in the next.
8. In our parliamentary democracy it is for parliament to frame laws which reflect these changes in attitude or which give a lead to such changes. Whatever may have been the position in past centuries it is no longer the case that our laws must, or should, automatically reflect the Judaeo- Christian position. I will not lengthen this judgment by repeating the very interesting analysis of Laws LJ in McFarlane v Relate Avon Ltd [2010] IRLR 872 beginning at paragraph 20. One quotation will suffice:- *“The general law may of course protect a particular social or moral position which is espoused by Christianity, not because of its religious imprimatur, but on the footing that in reason its merits commend themselves.”* So it is that laws have been passed, examples of some of which I have given above, which do not follow the traditional religious position and this case is about one such area, namely that of sexual orientation and equality.

#### **What is this case about?**

9. The facts are not really in dispute. There was a time when I thought that they might be, not least from some of the press reports prior to the hearing, but as the case progressed it became clear that there was no real dispute. In one sense it was a pleasure to try this case because I formed the view that none of the 5 witnesses was trying to deliberately mislead the court. So it will be convenient

here to set out the facts as I find them to be.

10. The claimants are two men who have entered into a Civil Partnership. They live in Bristol but in September 2008 they fancied a short break in Cornwall. They did some research on the internet and liked the look of the Chymorvah Private Hotel. On 4 September 2008 one of them, Mr Preddy, made a booking by telephone of a double bedroom for 2 nights, namely 5/6 September 2008.
11. The defendants are a married couple. They are also devout Christians and believe that the only divinely ordained sexual relationship is that between a man and a woman within the bonds of matrimony. They own and run the hotel together with their cousin, Mr Quinn. They seek to run it on Christian principles. They make no secret of their Christianity as anyone visiting the hotel would realise from the text set in mosaic around the reception desk and the texts on some of the walls. In 2008 their on line booking form stated:-

*Here at Chymorvah we have few rules, but please note, that out of a deep regard for marriage we prefer to let double accommodation to heterosexual married couples only – thank you.*

The hotel has 7 bedrooms for guests which are 3 doubles, a family room, two twin bedded rooms and one single.

12. The claimants, as I have already said, booked by telephone and so did not see this clause. The telephone call was taken by Mrs Bull who was not well at the time and she did not follow her usual practice of saying to the caller that double rooms were only for married couples. It would appear that there had been an earlier telephone call taken by Mr Quinn from someone he thought was a Mrs Preddy. I accept the evidence of the claimants that no such call was made on their behalf and counsel for the defendants, rightly in my view, did not seek to pursue this but accepted that there was some confusion here.
13. On 5 September 2008 the claimants duly drove from Bristol to Cornwall and presented themselves at the hotel to be met by Mr Quinn who informed them of the hotel's policy with regard to double rooms. The claimants explained that they were in a civil partnership but were told by Mr Quinn that only mixed sex married couples could have double rooms. The claimants left the hotel and went to the police who helped them to find alternative accommodation at another hotel. A few days later the defendants refunded the £32 deposit the claimants had paid.
14. There was a suggestion in the course of the case, and indeed in some newspaper reports prior to the case, that the defendants were "set up" by the claimants with the assistance of an organisation such as Stonewall. If this were true then while it would not of itself defeat a discrimination claim it would very materially affect the issue of damages. I can see why the defendants might have thought that this was so but I am quite satisfied on the evidence of the claimants that this is not the case and, in fairness to the Defendants, let me make it clear that their counsel, Mr James Dingemans QC, did not seek to run

the case on this basis.

15. As I have said already the defendants are devout Christians who hold the belief that *“monogamous heterosexual marriage is the form of partnership uniquely intended for full sexual relations between persons and that homosexual sexual relations (as opposed to homosexual orientation), and heterosexual sexual relations outside marriage, are sinful”* See paragraph 13 of the amended defence.
16. In the course of their evidence the defendants and Mr Quinn were not wholly clear as to the position if the claimants had booked a twin bedded room. However the amended defence does clearly set out their position as does paragraph 23 of Mrs Bull’s statement (page 36 of the bundle) and resolves, at least for me, any uncertainty in the evidence.
17. Paragraphs 4 and 14 the Amended Defence clearly state that while the supply of a double bedroom would involve the defendants in the promotion of what they regard as a sin, the supply of a single or twin bedded room would not and they would have been willing to supply such rooms had they been available, which they were not. Paragraph 23 of Mrs Bull’s statement says *“Twin-bedded rooms and single-bedded rooms are let to any person regardless of their marital status or sexual orientation and this has always been the case”*.
18. I am quite satisfied as to the genuineness of the defendants’ beliefs and it is, I have no doubt, one which others also hold. It is a very clear example of how social attitudes have changed over the years for it is not so very long ago that these beliefs of the defendants would have been those accepted as normal by society at large. Now it is the other way around.

### **The Claim**

19. The two claimants bring their claim under the Equality Act (Sexual Orientation) Regulations 2007. They maintain that the defendants directly or indirectly discriminated against them on the ground of their sexual orientation. They seek a declaration to this effect and damages.

### **The Defence**

20. The defendants deny direct or indirect discrimination on the basis that the restriction on having a double room has nothing to do with sexual orientation but, as their counsel put it, everything to do with “sex”. They make the point that the restriction applies equally to heterosexual couples who are not married. In case anyone should think that this is simply a clever defence let me say straight away that this is, without doubt, the genuine policy of the defendants. The trial bundle contains newspaper reports back in 1996 (eg page 61) which deal back then with their refusal to allow unmarried couples to share the same room. The issue of homosexual couples does not even get a mention.

21. Furthermore, say the defendants, if we have indirectly discriminated that is justified by our right to manifest our religion and to live and work according to our religious beliefs. They pray in aid the Human Rights Act 1998 and the European Convention on Human Rights. They say, quite rightly, that articles 8, 9 and 14 are engaged. The claimants for their part equally rely upon articles 8 and 14.
22. I should say at this point that I have no doubt, and the point was not seriously pursued by the claimants, that the defendants genuinely hold a perfectly orthodox Christian belief in the sanctity of marriage and the sinfulness of homosexuality. Such a belief in my view reaches the threshold set out in R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246 and therefore does fall within Article 9 of the European Convention.

### **The Law**

23. It is common ground between the parties that my task is to interpret Regulation 3 of The Equality Act (Sexual Orientation) Regulations 2007 and to apply that regulation to the facts as I have found them. The regulation divides into two parts and deals with direct and indirect discrimination separately.

#### Direct Discrimination

Regulation 3(1) provides:-

*For the purposes of these Regulations, a person (“A”) discriminates against another (“B”) if, on the grounds of the sexual orientation of B or any other person except A, A treats B less favourably than he treats or would treat others (in cases where there is no material difference in the relevant circumstances).*

#### Indirect Discrimination

Regulation 3(3) in so far as it is relevant to this case provides:-

*For the purpose of these Regulations, a person (“A”) discriminates against another (“B”) if A applies to B a provision, criterion or practice-*

*(a) which he applies or would apply equally to persons not of B’s sexual orientation*

*(b) which puts persons of B’s sexual orientation at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances)*

*(c) which puts B at a disadvantage compared to some or all persons who are not of his sexual orientation (where there is no material difference in the relevant circumstances) and*

*(d) which A cannot reasonably justify by reference to matters other than B's sexual orientation.*

24. Regulation 3(4) applies to both direct and indirect discrimination and is as follows:-

*For the purposes of paragraphs (1) and (3) the fact that one of the persons (whether or not B) is a civil partner while the other is married shall not be treated as a material difference in the relevant circumstances.*

It seems to me that this is a crucial part of the case.

25. In seeking to interpret and apply the regulations it seems to me that the following applies:-

a. the Regulations must be read and given effect in a way which is compatible with the European Convention rights.

b. if it is impossible to interpret them in a way which is compatible then the regulations still apply and I must apply them. A judge of the High Court could make a declaration of incompatibility but that luxury is not given to the County Court.

c. if I find that this is a case of direct discrimination then the claimants are bound to succeed.

d. if I find that this is not direct discrimination but that it is prima facie indirect discrimination then the defendants can avoid liability if they (and the burden falls upon them) can *reasonably justify* (their practice) *by reference to matters other than to B's sexual orientation*. There is no similar "let out" for direct discrimination.

### **The Decision**

26. I have found this a very difficult case not least because the application of these regulations is an area of the law with which I have not previously had to grapple.

27. I am also acutely aware of the importance of this case to both sides and the deeply held views on both sides. Both can legitimately claim the right (Article 8) to have their private and family life (and in the case of the defendants their home) respected. The claimants are a family in the eyes of the law just as much as are the married defendants. Both are entitled not to be discriminated against (article 14) and the defendants have the right (article 9) to manifest their religion or beliefs. At one point in the case I queried whether the running of an hotel along Christian principles could be described as manifesting one's religion but I have come to the conclusion (and counsel for the claimants did not seriously try to argue otherwise) that it can so be regarded.

28. And it is clearly in my view the case that each side hold perfectly honourable and respectable, albeit wholly contrary, views.

### **Direct Discrimination**

29. Have the defendants in this case discriminated against the claimants contrary to Regulation 3(1)? If they have then I must ask myself “does the Regulation of itself breach their human rights?”. If the answer to that question is “yes” then I must go on to ask myself “can I interpret that regulation in a way that protects their human rights?”

30. I think that these are the questions for me to answer. Whether I have got them in the right order I know not but it seems to me to be not illogical. If Regulation 3(1) does not apply then there is no more to be said about it. If it does then the human rights aspects must be considered.

### Are they in breach of the Regulation?

31. The key to whether or not the defendants are in breach of this regulation is the basis upon which they refused a double room to the claimants. They clearly did treat them less favourably than they would have treated a married couple but did they do this on the basis of sexual orientation? The defendants say “no”. We have no objection to homosexuals. Our objection is to sex outside marriage. We refused them the double room on that basis.

32. But is this a correct analysis of the defendants’ position. I think not. The defence makes it clear that the policy is that double rooms for joint occupation are only let to married persons.

33. So two persons of the same sex, whether male or female, who are just good friends back packing around Cornwall with no sexual relationship between them cannot have the double room ( and how many students over the years must have shared a double room in such circumstances?).

34. Conversely two persons of the same sex, whether male or female, who are in a sexual relationship and who have come to Cornwall intent on a sexually fulfilling weekend may enjoy that weekend to the full in a twin bedded room. Putting it bluntly the hotel policy allows them so to do albeit in the confines of a smaller bed.

35. It seems to me that a correct analysis of the position of the defendants is that they discriminate on the basis of marital status. Indeed as I have already quoted at paragraph 30 above, the amended defence says as much. If that is the correct analysis then Regulation 3(4) comes into play. There is no material difference (for the purpose of this regulation) between marriage and a civil partnership. If that is right then upon what basis do the defendants draw a distinction if it is not on sexual orientation?

36. It is important to note that Regulation 3(4) only deals with civil partnerships. I say nothing about what would have been the position if the claimants had not

entered into such a legal relationship or indeed if they were a heterosexual unmarried couple.

37. I have reached the clear conclusion that on a proper analysis of the defendants' position on the facts of this particular case the only conclusion which can be drawn is that the refusal to allow them to occupy the double room which they had booked was because of their sexual orientation and that prima facie the treatment falls within the provisions of regulation 3(1) and that this is direct discrimination.

Are Regulations 3(1) and (4) incompatible with the European Convention?

38. I think that the answer to this question must be "no". The Regulations recognise the article 8 right of the claimants to respect for their private and family life. The defendants' right to have their private and family life and their home respected is inevitably circumscribed by their decision to use their home in part as an hotel. The regulations do not require them to take into their home (that is the private part of the hotel which they occupy) persons such as the claimants and arguably therefore do not affect the article 8 rights of the defendants. If I am wrong about that then the regulations are necessary to protect the convention rights of the claimants and are a proportionate response to achieve that end.
39. The regulations do affect the right of the defendants to manifest their religion which is a right protected under article 9.2. This right however is not absolute and can be limited to protect the rights and freedoms of the claimants. It seems to me that in so far as the regulations do affect this right they are, as I have said above, a necessary and proportionate intervention by the state to protect the rights of others.
40. The regulations give effect to Article 14, namely the prohibition of discrimination.

Can the Regulations be read in a way that is compatible with the Convention?

41. I can deal with this very shortly. It only arises if I am wrong in my view that the regulations are not incompatible. If I am wrong then it seems to me that there is no way of construing the regulations in a way which would make them compatible and I, as a judge in the County Court, have no alternative but to apply them.
42. It therefore follows that I find that the defendants have breached Regulation 4(1) and therefore acted unlawfully. Indeed it was accepted that if I found discrimination under Regulation 3 (whether direct or indirect) then this would be inevitable and there was no argument addressed to me in respect of Regulation 4 during the trial.

**Indirect Discrimination**

43. In view of my finding that this was direct discrimination it is not necessary for me to consider the alternative of indirect discrimination. However if it should turn out that I am wrong it is I think appropriate, albeit briefly, to consider what the position would be under Regulation 3(3).
44. The defendants accept, (see the skeleton argument of Mr James Dingemans QC), “*that the defendants applied the restriction, which is a provision, criterion or practice within the meaning of Regulation 3(3), and has applied it equally to persons not of B’s sexual orientation*”. They therefore accept that the case falls within Regulation 3(3(a)).
45. The defendants deny however that Regulation 3(3)(b) applies and if they are right then that is fatal to a claim. That Regulation provides:-

*(b) which puts persons of B’s sexual orientation at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances)*

I confess that I do not follow this argument. Regulation 3(4) says that there is no material difference between those who are married and those who are in a civil partnership. It seems to me that the restriction does put homosexuals in at a disadvantage when compared with married persons and for the purpose of 3(3)(b) there is no material difference between the two legal forms of relationship. It does not matter that it puts them in the same position as unmarried heterosexuals.

46. But, say the defendants, in order for Regulation 3(3)(b) to apply the claimants must adduce some evidence that other persons of the same sexual orientation as the claimants have actually suffered a disadvantage in being denied the use of a double room. And say the defendants there is no such evidence of this.
47. For this proposition the defendants rely upon the case of Eweida v British Airways PLC [2010] IRLR 322. This was a case brought under the Employment Equality (Religion or Belief) Regulations 2003 but Regulation 3(3)(b) of those is in the same terms as the Regulation 3(3)(b) that applies in the present case. The Court of Appeal observed that the regulation requires that the practice adopted by the claimants puts persons (note the plural) at a disadvantage. There must be some evidence of a group disadvantage. That case however was very different from this one. That case concerned the right of a committed Christian to wear in her workplace the Christian symbol of the Cross. It was alleged that this discriminated against Christians compared with persons of other faiths. But the evidence before the first instance tribunal was that the wearing of the cross was not a requirement of the Christian faith and that out of a workforce of some 30k no other such complaints had been received. Indeed the complainant herself accepted that the wearing of a cross was not a requirement of the Christian faith.
48. I can well understand why on the facts of the Eweida case evidence was needed that the provision created a barrier for persons other than just the claimant when all the evidence was to the contrary and that in the absence of

such evidence the tribunal could not accept that persons such as Ms Eweida (Christians) were at a disadvantage. But the present case is wholly different. It is clear that homosexuals as a group are disadvantaged by the practice adopted by the defendants and I cannot see that there is any burden imposed upon the claimants to adduce evidence that others of the same sexual orientation have actually sought to book, and been denied, a double room at this hotel.

49. It seems to me that the claimants have established both Regulation 3(3)(a) and (b). There remains however the all important Regulation 3(3)(d) which enables the defendants to avoid the charge of indirect discrimination if they can reasonably justify their practice by reference to matters other than B's sexual orientation. Can they so do?
50. The defendants answer that question in the affirmative and the basis for so doing is to be found in paragraphs 4 and 20 – 22 of the skeleton argument submitted by their counsel. I will not lengthen this judgment by setting that out in full but in summary they say that their religious beliefs are worthy of recognition (which I accept) and that to supply a double room to the claimants would require the defendants to promote what they regard as a sin. A reasonable balance between the competing rights of the claimants and the defendants can be struck by not requiring the latter to promote what they believe to be sinful and can be reasonably justified by the fact that it is required to enable the defendants to live and work in their own hotel and home as practising Christians holding the relevant religious belief.
51. The defendants rely upon the Canadian case of Ontario Human Rights Commission v Brockie [2002] 22 DLR(4<sup>th</sup>) 174 and the Northern Ireland case of An Application for Judicial Review by the Christian Institute and others [2007] NIQB 66 for the proposition that it is not an answer to say that those who hold the views of the defendants should not be free to offer services to sections of the public unless they are prepared to act inconsistently with their religious beliefs. Such an approach would lead to the withdrawal of persons holding such a belief from society and it would be unfortunate to replace past legal oppression of one community (same sex couples) with current legal oppression of another (persons holding the same beliefs as the defendants).
52. I have already found that, on a proper analysis of the defendants' practice, the prohibition on a double room for those in a civil partnership is founded on sexual orientation. What is meant by the wording of Regulation 3(3)(d). The defendants have got to show that a practice which I have found to be based on sexual orientation can nevertheless be reasonably justified by reference to some other matters. I do not find this easy to interpret. At face value it seems to me that you have got to be able to explain your practice irrespective of sexual orientation. Is there some reason to justify it which has nothing to do with sexual orientation? In the sphere of religious discrimination it is easy to imagine examples of such cases. The Sikh who would have been required to wear a crash helmet when riding a motorbicycle if a specific exemption had not been created by the Road traffic act 1998.. This would have discriminated against his religion but could arguably be justified on the grounds of road safety. The requirement to wear a particular uniform at work may cut across a

person's religious beliefs but may be justified again on health and safety grounds or to promote a particular corporate identity.

53. But does the regulation permit a wider interpretation? Does it enable a person to discriminate on the grounds of sexual orientation because it would otherwise be inconsistent with his beliefs? If it does then it creates a class of persons (namely those who hold the views of the defendants) who are exempt from the discrimination legislation. If it does then I adopt the submissions of counsel for the claimants as set out in her skeleton argument at paragraphs 35 – 43. I shall not repeat them here.
54. I am satisfied that the defendants cannot rely upon Regulation 3(3)(d) to justify their practice and accordingly if I had not found direct discrimination then I would have found indirect discrimination.

### **Remedy**

55. The claimants each seek:-

(a) a declaration that the defendants have unlawfully discriminated against them contrary to the Equality Act (Sexual Orientation) Regulations 2007, Regulation 4(1), and

(b) Damages including damages for injury to feelings not exceeding £5000 and interest.

56. There is a claim for special damages in the joint sum of £92 being the extra expense they incurred at the hotel to which they had to go.
57. It is of course obvious from this judgment that the defendants have discriminated and acted unlawfully. I am not sure that a declaration adds anything but if, as counsel for the claimants said, it is the normal form in such cases as these then I have no objection to making it.

### **Damages**

58. The principles are set out in the Claimants' Counsel's skeleton argument beginning at paragraph 70. I do not think that there was any dispute between the parties over these principles and I gratefully adopt counsel's summary of them and of the relevant case law. It is common ground that this case falls within the lowest band as laid down by the Court of Appeal in Chief Constable of West Yorkshire v Vento No 2 [2002] IRLR 177. This gives a bracket at today's figures of around £750 - £6000. The claimants have, of course, limited themselves to £5000.
59. I am satisfied that the refusal to give the claimants the room they had booked was very hurtful to them. Mr Preddy speaks of being "*annoyed and upset*" while Mr Hall says that he "*was embarrassed, angry and felt humiliated*". Also, although this somewhat minor, it did result in the £46 loss to each of them. I accept also that the refusal and the reason for it was communicated in

the public reception area of the hotel when there was at least another couple of guests present which must have added to the feelings experienced by the claimants.

60. On the other hand the claimants did not lose their weekend break in Cornwall. I can also properly take into account that this discrimination by the defendants was due to a genuinely held belief of theirs and that, as Mr Preddy said in evidence, "*it is fair to say that Mr Quinn did not do it in a demeaning manner*".

61. I do not propose to deal with the £46 loss and the minimal interest thereon as a separate head of damage but to include this in my global figure. I have come to the conclusion that a fair figure for compensation for each of the claimants is one of £1800.

### **Permission to Appeal**

62. I am conscious of the fact that my decision turns on:-

a.the way in which I have interpreted the position of the defendants (see paragraphs 32 onwards),

b. the way in which I have interpreted and given effect to Regulation 3(4),

and that

c. this decision does affect the human rights of the defendants to manifest their religion and forces them to act in a manner contrary to their deeply and genuinely held beliefs

d. there is little or no direct authority on the issues I have had to decide.

63. I therefore propose to depart from my normal practice and, assuming that the defendants are so advised, I give permission to appeal.

4 January 2011

Andrew Rutherford