**LSE-Featherstone Sexual Orientation & Gender Identity Moot 2023**

1. Amy Smith and Anna Grady (**‘the Appellants’**) are in a same-sex monogamous relationship and have been since on or around 12 May 2010. They have lived together since 7 March 2012. They have had a joint bank account since 18 June 2012. They are neither married nor civil partnered.
2. The Appellants identify as committed Christians. They attend church weekly. Anna is training to be a vicar.
3. On 10 August 2017, the Appellants applied to be ‘members’ of Oxingham Cares (**‘the Respondent’**), a charity based in England that facilitates adoption and fostering. Membership is a pre-requisite to being allowed to adopt. The Respondent describes itself as “*a Christian charity that promotes Christian values”*. It does not specify a denomination of Christianity.
4. The Respondent has a requirement that only couples that have been married for at least five years can become members but that there is discretion in “exceptional circumstances” to consider couples that had been married for a shorter period if they can demonstrate that they are committed and share the Respondent’s “*traditional Christian values”*. To qualify to be considered under the “exceptional circumstances”, applicants needed to tick a box which stated that they held the following belief from Corinthians:

“*But because of immoralities, each man is to have his own wife, and each woman is to have her own husband. The husband must fulfill his duty to his wife, and likewise also the wife to her husband. The wife does not have authority over her own body, but the husband does; and likewise also the husband does not have authority over his own body, but the wife does.”*

1. Same-sex couples have only been able to marry since 13 March 2014, and as such the Appellants would not have been able to satisfy the ordinary membership requirements, even if they had married at the first opportunity.
2. The Appellants did not tick the exceptional circumstances box as they are not married and were opposed to the Corinthians quote. Instead, the Appellants explained on the application form that they were committed Christians but opposed to the institution of marriage as they consider it to be patriarchal and heteronormative, which was typified by the Corinthians quote.
3. On 12 September 2017, the Appellants’ application was rejected on the basis that they were not married and that they “did not share” the Respondent’s “Chrisitan values”.

County Court Claim

1. On 8 February 2018, the Appellants issued a claim in the County Court on the basis that the refusal of their membership constituted:
   1. Direct sexual orientation discrimination in breach of s13 Equality Act 2010) and/or
   2. Indirect sexual orientation discrimination in breach of s19 Equality Act 2010)
2. Her Honour Judge Whitehouse dismissed the claim for the following reasons:

*“I find that there was no direct discrimination here. The evidence from the charity indicates that they would have been prepared to consider an application for someone who had only married after same-sex marriage had come into force on 13 March 2014 under their ‘exceptional circumstances’ policy. As such, there was not an absolute bar on Ms Smith and Ms Grady obtaining membership due to them not being able to be married.*

*I also consider the question of whether there was direct discrimination here to be academic as the Claimants have chosen not to get married for several years after being allowed to do so. If I am wrong that there was not direct discrimination, I consider any direct discrimination to be justified as a proportionate means of achieving a legitimate aim under section 193(2) Equality Act 2010 (on which, see below).*

*I accept that there was a prima facie case of indirect discrimination in breach of s19 Equality Act 2010. First, the charity had a provision, criterion or practice (PCP) of requiring individuals to be married for five years before they could obtain membership. I accept that this puts same-sex couples at particular disadvantage as they are either excluded from eligibility or have to tick the “exceptional circumstances” box. The obvious comparator here is a heterosexual/opposite sex couple so the requirement under section 23 Equality Act 2010 is met.*

*However, I consider any indirect discrimination to be justified under s19(2) Equality Act 2010 on the basis that marriage is a core part of Christian identity and that a five-year marriage is indicative of a stable relationship that constitutes a safe space for foster children, who I accept are at particular need of stability that marriage provides. As such, the five-year requirement is a proportionate means of achieving a legitimate aim.*

*I consider that s193(5) Equality Act 2010 provides a complete defence to the charity requiring potential applicants to agree with the statement in the exceptional circumstances box. If it had not done so, I would consider the requirement to tick the box to be unjustified sexual orientation discrimination as I accept that it provides that marriage should only be between a man and a woman and that a same-sex couple is less likely to be able to agree to that statement.”*

Appeal

Permission to appeal to the Court of Appeal was granted by Ware LJ on 8 March 2022 (after some delay) on the following grounds:

**Ground 1: There was prima facie direct discrimination**

**Ground 2: A five-year marriage requirement is not a proportionate means of achieving a legitimate aim under section 19(2) or s193(2) Equality Act 2010**

**Ground 3: s193(5), when interpreted in compliance with section 3 Human Rights Act 1998, does not provide a complete defence to the requirement to agree to the statement in the exceptional circumstances box**