



27 November 2013

PRESS SUMMARY

Bull and another v Hall and another [2013] UKSC 73 *On appeal from [2012] EWCA Civ 83*

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEALS

This appeal concerns the law on discrimination. Mr and Mrs Bull, the Appellants, own a private hotel in Cornwall. They are committed Christians, who sincerely believe that sexual intercourse outside traditional marriage is sinful. They operate a policy at their hotel, stated on their on-line booking form, that double bedrooms are available only to “heterosexual married couples”.

The Respondents, Mr Hall and Mr Preddy, are a homosexual couple in a civil partnership. On 4 September 2008 Mr Preddy booked, by telephone, a double room at the Appellants’ hotel for the nights of 5 and 6 September. By an oversight, Mrs Bull did not inform him of the Appellants’ policy. On arrival at the hotel, Mr Hall and Mr Preddy were informed that they could not stay in a double bedroom. They found this “very hurtful”, protested, and left to find alternative accommodation.

In March 2009 the Respondents, supported by the Equality and Human Rights Commission, brought proceedings against the Appellants under the Equality Act (Sexual Orientation) Regulations 2007 (“EASOR”). Regulation 4 EASOR makes direct or unjustified indirect discrimination on the grounds of sexual orientation unlawful. Regulation 3 EASOR defines discrimination. Regulation 3(1) states that direct discrimination exists where person A treats person B less favourably than others on the ground of B’s sexual orientation. Regulation 3(3) states that indirect discrimination exists when person A applies a general policy or practice to person B and others not of B’s sexual orientation, which puts B at a particular disadvantage compared to those others, and the policy or practice is not reasonably justified by reference to matters other than B’s sexual orientation. Regulation 3(4) provides that for Regulations 3(1) and 3(3), civil partnership and marriage are not to be treated as materially different.

The Respondents argued that the refusal to provide them with a double bedroom was unlawful under Regulation 4 EASOR. The Appellants contended that their actions did not constitute discrimination under either Regulation 3(1) or 3(3) EASOR since they differentiated not on the basis of sexual orientation, but on marital status. They also suggested that EASOR should be applied compatibly with their right to manifest their religious beliefs under Article 9 of the European Convention on Human Rights (“ECHR”).

In the Bristol County Court, the judge held that the Appellants’ actions directly discriminated against the Respondents under Regulation 3(1). The Court of Appeal unanimously dismissed the appeal against the judge’s decision.

Mr and Mrs Bull appealed to the Supreme Court. They argued that (i) their policy did not constitute direct discrimination under Regulation 3(1) (“direct discrimination”); (ii) that their policy did constitute indirect discrimination, but that that indirect discrimination was justified (“indirect discrimination”); and (iii) that if their policy did contravene EASOR, EASOR should be read and given effect compatibly with their Article 9 ECHR right of freedom to manifest their religion (“the ECHR issue”).

JUDGMENT

The Supreme Court unanimously dismisses the appeal. The leading judgment is given by Lady Hale, with supplementary judgments from all other members of the Court. On point (i) direct discrimination, Lady Hale, Lord Kerr and Lord Toulson hold that the Appellants' policy constituted direct discrimination on grounds of sexual orientation. On point (ii) indirect discrimination the Court unanimously holds that if (as Lord Neuberger and Lord Hughes consider) the Appellants' policy constitutes indirect discrimination, it is not justified. On point (iii) the ECHR issue, the Court unanimously holds that EASOR engages Article 9 ECHR, but is a justified and proportionate protection of the rights of others. There is therefore no breach of Article 9 ECHR which would require EASOR to be read down in the way the Appellants suggest.

REASONS FOR THE JUDGMENT

- (i) Direct discrimination. According to Lady Hale and Lord Toulson: the Appellants' concept of marriage was the Christian concept of the union of one man and one woman [25]. Civil partnership is a status akin to marriage, and the criteria of marriage and civil partnership are indissociable from the sexual orientation of those qualifying for the particular statuses [29, 67]. All married couples would be permitted a double bedroom by the Appellants, while no civilly partnered couples would be [29]. Regulation 3(4) reinforces this conclusion [26, 70]. The Court's judgment does not favour sexual orientation over religious belief: had the Respondents refused hotel rooms to the Appellants because of the Appellants' Christian beliefs, the Appellants would equally have been protected by the law's prohibition of discrimination [54]. According to Lord Kerr: but for Regulation 3(4), the discrimination would have been indirect. The relevance of Regulation 3(4) is that the Respondents were to be treated as not materially different from a married couple [57-59]. Given that, the only remaining reason for the Respondents' treatment by the Appellants was their sexual orientation [60].
- Lord Neuberger and Lord Hughes reach a different conclusion. It is correct that, had the case concerned only discrimination against the unmarried, the Appellants would have discriminated only indirectly [74]. However, the Respondents' civil partnership does not convert this into direct discrimination [75, 87]. The Appellants would have treated an unmarried heterosexual couple in precisely the same way that they treated the Respondents [77, 90-91]. Regulation 3(4) does not provide the answer to the question whether the Appellants' treatment of the Respondents was on grounds of their sexual orientation [78, 92].
- (ii) Indirect discrimination. The Appellants accepted that their policy constituted indirect discrimination [33]. The question was whether it was justified. It was difficult to see how A's belief that sexual intercourse between civil partners is sinful could be justified by reference to matters other than B's sexual orientation, since definitionally such intercourse was between those of the same sexual orientation [35]. Moreover, it is in the public interest to encourage stable, committed, long-term relationships, whether homosexual or heterosexual [36]. The purpose of EASOR was to secure that those of homosexual orientation were treated equally. There was a carefully-tailored exemption for religious organisations in Regulation 14 EASOR, which did not extend to the Appellants [38].
- (iii) The ECHR issue. The Appellants' rights under Article 9(1), which protects the manifestation of religious belief, are engaged [44]. However, EASOR's interference with those rights is justified as a proportional means of achieving a legitimate aim: the protection of the rights and freedoms of people such as the Respondents [51]. There was therefore no need to read down EASOR [42].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

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