



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Advice of the Northern Ireland Human  
Rights Commission to the Northern Ireland  
Office in respect of the NI (Executive  
Formation etc.) Act 2019**

**Same sex marriage, opposite sex civil  
partnerships and protection of  
manifestation of religious beliefs**

**September 2019**

# Table of Contents

<b>1.0 Introduction.....</b>	<b>3</b>
<b>2.0 Same sex marriage and opposite sex civil partnership .....</b>	<b>6</b>
<b>3.0 Protection of manifestation of religious beliefs.....</b>	<b>10</b>
Freedom of thought, conscience and religion .....	11
Applicability to Religious Institutions .....	12
Employees .....	13
<b>4.0 Additional Issues .....</b>	<b>16</b>

## Summary of Recommendations

- 2.14** As the NIHRC has previously advised, there is currently no compulsion under international human rights standards for States to make legal provision for same sex marriages. Nevertheless, the NIHRC has equally expressed concern that NI was the only jurisdiction of the UK retaining a statutory bar on same sex couples from accessing civil marriage and has noted that there is nothing to prevent a State from going beyond the minimum human rights protections.
- 2.15** In line with this position, the NIHRC welcomes the provision for the introduction of same sex marriage to NI under the Act.
- 2.20** In light of the Supreme Court's judgment, the NIHRC recommends that opposite sex civil partnerships are introduced with the necessary amendments in other legislation to facilitate this in circumstances where provision is also made for same sex marriage. As a result, the NIHRC welcomes the extension of civil partnerships to opposite sex couples in NI and the move towards the protection of rights of those in relationships not defined by marriage.
- 3.16** Although there is no human rights obligation on the State to make provision for same sex marriage, Article 9 ECHR or Article 12 ECHR do not prohibit the State from choosing to provide for same sex marriages.
- 3.17** The NIHRC advises that Article 9 ECHR requires that religious institutions, on behalf of their members and employees, have autonomy to define and solemnise marriage, as they understand it to be, free from State interference.
- 3.18** Where there is a credible concern that changes to the law regarding civil marriage in NI will interfere with Article 9 ECHR and the autonomy of religious institutions in this regard, the NIHRC recommends that protections must be introduced to safeguard this, to the extent that they do not already exist. The NIHRC notes the safeguards present in England and Wales in this vein.<sup>1</sup>

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<sup>1</sup> Section 2 of Marriage (Same Sex Couples) Act 2013.

- 3.27 The NIHRC would highlight that the same standard of service should be provided to all seeking to marry or enter into a civil partnership, regardless of sexual orientation. Where the Secretary of State is considering what provisions to make in this context, the NIHRC recommends that the arrangements introduced ensure that same sex couples in NI are not arbitrarily denied or delayed access to same sex marriage procedures, administrative or otherwise, on the grounds of their sexual orientation.**
- 3.28 The NIHRC notes that in the case of Eweida and Others v. the United Kingdom,<sup>2</sup> an issue was created due to the differing positions adopted by local councils regarding their employees and an opt-out from performing same sex registrations. To avoid any such issue in NI, the NIHRC recommends that a consistent approach is adopted by all relevant authorities.**
- 4.2 The NIHRC recommends that adequate, timely and accessible guidance is provided to transgender persons and relevant civil society groups regarding any requirements or alterations to current policy that they should be aware of. Particular guidance should be given to those who were previously required to divorce and who may wish to convert their civil partnership into a civil marriage again.**

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<sup>2</sup> Application no. 48420/10, 59842/10, 51671/10 and 36516/10.

## 1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights. The NIHRC also has a role, under section 69(3), to advise the Secretary of State and the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights. In accordance with these functions, the following advice is submitted to the Northern Ireland Office in respect of the duties placed on it by the Northern Ireland (Executive Formation etc.) Act 2019.
- 1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
- European Convention on Human Rights 1950 (ECHR);<sup>3</sup>
  - International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);<sup>4</sup>
  - International Covenant on Civil and Political Rights 1966 (ICCPR);<sup>5</sup>
  - UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (UN CEDAW);<sup>6</sup>
  - UN Convention against Torture 1987 (UN CAT);<sup>7</sup>
  - UN Convention on the Rights of the Child 1989 (UN CRC);<sup>8</sup>
  - Charter of Fundamental Rights of the European Union 2000 (CFR);<sup>9</sup>
  - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);<sup>10</sup>
- 1.3 The UK Government is subject to the obligations contained within these international treaties by virtue of its ratification of these instruments.<sup>11</sup>

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<sup>3</sup> Ratified by the UK in 1951. Further guidance is also taken from the body of case law from the European Court of Human Rights (ECtHR).

<sup>4</sup> Ratified by the UK in 1976.

<sup>5</sup> Ratified by the UK in 1976.

<sup>6</sup> Ratified by the UK in 1981.

<sup>7</sup> Ratified by the UK in 1988.

<sup>8</sup> Ratified by the UK in 1991.

<sup>9</sup> Ratified by the UK in 2000.

<sup>10</sup> Ratified by the UK in 2009.

<sup>11</sup> The UK Mission at Geneva has stated, 'The UK's approach to signing international treaties is that we only give our signature where we are fully prepared to follow up with ratification in a short time thereafter.' See, UK Mission at Geneva, 'Universal Periodic Review Mid-term Progress Update by the United Kingdom on its Implementation of Recommendations agreed in June 2008' (March 2010) on recommendation 22 (France).

- 1.4 In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the UN and the CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas of human rights law. The relevant standards in this context include:
- The Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity;
- 1.5 The present advice will cover the issue of same sex marriage and opposite sex civil partnerships pursuant to section 8 of the Northern Ireland (Executive Formation etc.) Act 2019. It was produced in the absence of any legislative draft for scrutiny. The NIHRC is content to provide any further or specific advice on issues arising from this paper, and may make further comment once the consultation phase has commenced or further details of the proposed legislative frameworks become clear.

## 2.0 Same sex marriage and opposite sex civil partnership

### Access to civil marriage for same sex couples – human rights standards

- 2.1 The right to marry is protected in international law by a number of treaties, including Article 23(2) ICCPR, Article 12 ECHR and Article 9 the CFR.
- 2.2 In addition, the Yogyakarta Principles notes that States shall:
- “Take all necessary legislative, administrative and other measures to ensure that in a State that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners.”<sup>12</sup>*
- 2.3 The ECtHR first considered the issue of whether a same sex couple can have a right to marry under Article 12 ECHR in the case of *Schalk and Kopf v. Austria*.<sup>13</sup> The Court took account of the difference in language between Article 12 ECHR and Article 9 CFR in that the Charter does not make any reference to gender.
- 2.4 The Court went on to hold that:

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<sup>12</sup> Principle 24E of the Yogyakarta Principles.

<sup>13</sup> Application no. 30141/04 (22 November 2010).

*“Regard being had to Article 9 of the Charter, therefore, the Court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of opposite sex. Consequently, it cannot be said that Article 12 is inapplicable to the applicants’ complaint. However, as matters stand, the question whether or not to allow same sex marriage is left to regulation by the national law of the Contracting States.”<sup>14</sup>*

- 2.5 The ECtHR also considered the application of Article 8, in conjunction with Article 14 ECHR. The Court considered that *“States enjoy a certain margin of appreciation as regards the exact status conferred by alternative means of recognition”<sup>15</sup>* and did not find a violation.
- 2.6 The ECtHR has gone on to consider the issue of same sex marriage in a number of other related cases; however, it has relied upon the conclusions that it reached in *Schalk and Kopf*. In both *Hämäläinen v. Finland* and *Chapin & Charpentier v. France*, it was reiterated that Articles 8 and 12 ECHR could not be interpreted as imposing an obligation on States to grant same sex couples access to marriage.<sup>16</sup>
- 2.7 In the case of *Oliari v. Italy*, the ECtHR again considered whether there was a European consensus. It noted that:
- “...despite the gradual evolution of States on the matter (today there are eleven CoE states that have recognised same sex marriage) the findings reached in the cases mentioned above remain pertinent. In consequence the Court reiterates that Article 12 of the Convention does not impose an obligation on the respondent Government to grant a same sex couple like the applicants access to marriage.”<sup>17</sup>*
- 2.8 In *Oliari*, the Court also considered the fact that the applicants were not able to register a civil union for the most part in Italy (noting the 2% of municipalities that permitted registration was merely symbolic). The Court found a violation of Article 8 ECHR, noting that the provision of civil partnerships would ensure legal recognition was given to same sex couples.<sup>18</sup>
- 2.9 The Council of Europe has published recommendations on the issue of combating discrimination on the basis of sexual orientation. While

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<sup>14</sup> *Schalk and Kopf v. Austria*, Application no. 30141/04 (22 November 2010), para 61.

<sup>15</sup> *Schalk and Kopf v. Austria*, Application no. 30141/04 (22 November 2010), para 108.

<sup>16</sup> *Hämäläinen v. Finland*, Application no. 37359/09 (16 July 2014), paras 38 & 71; *Chapin and Charpentier v. France*, Application no. 40183/07 (9 September 2016).

<sup>17</sup> *Oliari and Others v. Italy*, Application nos. 18766/11 and 36030/11 (21 October 2015), para 192.

<sup>18</sup> *Oliari and Others v. Italy*, Application nos. 18766/11 and 36030/11 (21 October 2015), para 174.

it has not gone so far as to require the provision of same sex marriage, the Parliamentary Assembly has recommended that member states “*adopt legislation which makes provision for registered partnerships*”.<sup>19</sup> In 2017, the Council of Europe’s Commissioner for Human Rights noted that States should continue working towards the elimination of discrimination based on sexual orientation in the area of family rights and that States should ensure that the rights available to same sex couples and opposite sex couples are truly equal, particularly in terms of registered partnerships<sup>20</sup>.

2.10 The UN Human Rights Committee has also had to consider the issue of whether the failure of a State to provide for same sex marriage constituted a breach of the right to marry, under Article 23 ICCPR. In the individual communication of *Joslin v. New Zealand* in 1999, the applicants contended that legislation that determined marriage between a man and a woman was discriminatory on the basis of sexual orientation.<sup>21</sup>

2.11 The Committee noted the language of Article 23(3) as being on the only provision of the ICCPR using “men and women” rather than “everyone” or “all persons”.<sup>22</sup> The conclusion of the Committee was that:

*“Use of the term “men and women”, rather than the general terms used elsewhere in Part III of the Covenant, has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other.”<sup>23</sup>*

2.12 However, it is important to note that there were two concurring individual opinions arising from this communication. Committee members Rajsoomer Lallah and Martin Scheinin, identify that Article 23(2) does not limit a State from recognising other forms of marriage. They further comment that the conclusion of the Committee that there was no violation of Article 26 (discrimination) “*should not be read as a general statement that differential treatment between married couples and same-sex couples not*

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<sup>19</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1474(2000) Situation of lesbians and gays in Council of Member States (26 September 2000), 11.3a.

<sup>20</sup> Council of Europe, Human Rights Comment, Access to registered same-sex partnerships: it’s a question of equality, Nils Muižnieks, 21/02/2017.

<sup>21</sup> *Joslin v. New Zealand* (902/1999), CCPR/C/75/D/902/1999, 3.1.

<sup>22</sup> *Joslin v. New Zealand* (902/1999), CCPR/C/75/D/902/1999, 8.2.

<sup>23</sup> *Joslin v. New Zealand* (902/1999), CCPR/C/75/D/902/1999, 8.2.



*allowed under the law to marry would never amount to a violation of article 26".<sup>24</sup>*

- 2.13 In 2013, the UN Committee on Economic, Social and Cultural Rights noted with appreciation the decision by Argentina to legalise same sex marriage. This adds to the growing number of states, which permit same sex marriage within their domestic legal system.<sup>25</sup>

### **The NIHRC's position on same sex marriage**

**2.14 As the NIHRC has previously advised, there is currently no compulsion under international human rights standards for States to make legal provision for same sex marriages. Nevertheless, the NIHRC has equally expressed concern that NI was the only jurisdiction of the UK retaining a statutory bar on same sex couples from accessing civil marriage and has noted that there is nothing to prevent a State from going beyond the minimum human rights protections.**

**2.15 In line with this position, the NIHRC welcomes the provision for the introduction of same sex marriage to NI under the Act.**

### **Access to civil partnerships for opposite sex couples – human rights standards**

2.16 In 2019, the Supreme Court of the United Kingdom examined the issue of access to civil partnerships for opposite sex couples in England and Wales in light of the requirements under the ECHR.<sup>26</sup>

2.17 The Court found that the issue of access to civil partnerships for opposite sex couples fell within the ambit of the right to private and family life under Article 8 ECHR and that, as there was at that time a difference in treatment between opposite sex and same sex couples,<sup>27</sup> the anti-discrimination provisions of Article 14 ECHR.<sup>28</sup>

2.18 Noting the analogy between the exclusion of opposite sex couples from civil partnerships and the exclusion of same sex couples from

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<sup>24</sup> *Joslin v. New Zealand* (902/1999), CCPR/C/75/D/902/1999, Individual Opinion by Mr. Rajsoomer Lallah and Mr. Martin Scheinin (concurring) at [Appendix].

<sup>25</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations on Argentina (2 December 2011) UN Doc. E/C.12/ARG/CO/3, para 5.

<sup>26</sup> *R (on the application of Steinfeld and Keidan) (Appellants) v Secretary of State for International Development* (in substitution for the Home Secretary and the Education Secretary) (Respondent), [2018] UKSC 32.

<sup>27</sup> In that same sex couples could access civil partnerships and opposite sex couples could not.

<sup>28</sup> *Ibid*, para 19.

civil marriage<sup>29</sup> and the fact that in England and Wales, the UK Government had chosen to extend civil marriage to same sex couples, the Court noted the restriction on the former did not pursue a legitimate aim and consequently issued a declaration of incompatibility between the relevant legislation and the ECHR.<sup>30</sup>

### **The NIHRC's position on opposite sex civil partnerships**

2.19 The NIHRC notes the example from England and Wales wherein an inequality was created between same sex and opposite sex couples by the inability of both to enter into either civil marriage or civil partnership. The NIHRC further notes the recognition by the Supreme Court that opposite sex couples may have sincerely held beliefs opposing marriage but should nevertheless have the ability to gain legal recognition for their relationship. As with England and Wales, these beliefs may be genuinely held by individuals in NI. It has also previously been noted that cohabiting couples in NI have significantly fewer rights than those who are married or in a civil partnership.<sup>31</sup>

**2.20 In light of the Supreme Court's judgment, the NIHRC recommends that opposite sex civil partnerships are introduced with the necessary amendments in other legislation to facilitate this in circumstances where provision is also made for same sex marriage. As a result, the NIHRC welcomes the extension of civil partnerships to opposite sex couples in NI and the move towards the protection of rights of those in relationships not defined by marriage.**

## **3.0 Protection of manifestation of religious beliefs**

3.1 Section 8(6) of the Act provides for the Secretary of State to make provision for the protection of the ability to act in accordance with religious belief or other belief or opinion in relation to same sex marriage, civil partnership and the conversion of marriage into civil partnership and vice versa.

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<sup>29</sup> Ibid, para 55.

<sup>30</sup> Ibid, para 62.

<sup>31</sup> House of Commons Library, Briefing Paper 'Common Law Marriage and Cohabitation', Number 03372, 13 August 2019, pg 27.

3.2 The NIHRC's advice in this section will set out the human rights standards in respect of religious belief or other opinion, relevant case law in relation to same sex marriage and its applicability to individuals, churches and the employment context.

### **Freedom of thought, conscience and religion**

3.3 Freedom of thought, conscience and religion is protected by Article 9 ECHR, Article 18 ICCPR, Article 14 UNCRC and Article 10 CFR.

3.4 Additionally, the anti-discrimination provisions under Article 14 ECHR may be engaged in respect of religious beliefs.

3.5 Under the ECHR and CFR, the right to freedom of thought, conscience and belief contains the following elements:

- Freedom to hold a belief;
- Freedom to not hold a belief;
- Freedom to change religion or belief;
- Freedom to practise alone or with a community;
- Freedom to practise in private or in public;
- Freedom to manifest religion or belief, in worship, teaching, practice and observance.

3.6 Under the ECHR, the right to hold and change belief is an absolute right. The right to manifest a belief is qualified and may be restricted where this is prescribed by law, necessary in a democratic society, done for a legitimate aim and where the restriction is proportionate to that aim. The ECtHR has noted that the reason behind the qualification of the right to manifest a belief is the possibility for an individual's practise of their beliefs to impact on others.<sup>32</sup>

3.7 There is no definition of religion in the text of the ECHR or the case law of the ECtHR although for any personal conviction to attract protection by this right, it must have attained a certain level of cogency, seriousness, cohesion and importance.<sup>33</sup>

3.8 The State has a duty of neutrality in respect of religion and must refrain from attempting to assess the legitimacy of religious beliefs or the manner in which those beliefs are expressed.<sup>34</sup>

3.9 Although not every act inspired by belief will reach the level of a 'manifestation', the ECtHR has previously ruled that the belief that

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<sup>32</sup> *Eweida and Others v. the United Kingdom*, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, para 80.

<sup>33</sup> *Bayatyan v. Armenia* [GC], Application no. 23459/03, § 110, ECHR 2011.

<sup>34</sup> *Eweida and Others v. the United Kingdom*, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, para 81.

marriage is union between a man and a woman, and therefore the rejection of same sex marriages, is a manifestation of belief which will engage Article 9 ECHR.<sup>35</sup>

### **Applicability to Religious Institutions**

3.10 The text of Article 9 ECHR makes clear that there is a collective aspect to the right, in that there is a freedom to practise as part of a community, either in public or private spaces.

3.11 Where there is a conflict between the individual manifestation of belief and the view of the institution, it is the view of the institution which will prevail under Article 9 ECHR.<sup>36</sup> In this context, the ECtHR has noted that the rights under Article 9 ECHR will apply to a religious institution *itself* as it is "*protected in its rights to manifest its religion, to organise and carry out worship, teaching, practice and observance, and it is free to act out and enforce uniformity in these matters.*"<sup>37</sup>

3.12 The European Commission has also noted the interplay between Article 9 ECHR and the protection of Article 11 ECHR – freedom of association and assembly:

*"...since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords."*<sup>38</sup>

3.13 In line with the applicability of Article 9 ECHR to religious institutions and the importance placed on the autonomy of those institutions, religious institutions are capable of establishing 'victim status' for the purposes of Article 34 ECHR, thereby satisfying the admissibility criteria to bring a case before the ECtHR collectively on behalf of its members.<sup>39</sup>

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<sup>35</sup> *Eweida and Others v. the United Kingdom*, Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, para 103.

<sup>36</sup> *X v. Denmark*, Application no. 7374/76.

<sup>37</sup> *Ibid*, at para 158.

<sup>38</sup> *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, para 118.

<sup>39</sup> *X. and Church of Scientology v. Sweden*, Application no. 7805/77.

3.14 As with individuals, the ECtHR recognises the belief that marriage is between a man and a woman as a manifestation of a religious institution's beliefs:

*"The Court notes, firstly, as regards Article 9, that the provisions do not purport to regulate marriage in any religious sense and that it depends on each particular religion the extent to which they permit same-sex unions."*<sup>40</sup>

3.15 Following on from this, the ECtHR noted the difference between the legal, state recognition of marriage, where Article 12 ECHR will apply and religious unions, where Article 12 ECHR will not.<sup>41</sup>

**3.16 Although there is no human rights obligation on the State to make provision for same sex marriage, Article 9 ECHR or Article 12 ECHR do not prohibit the State from choosing to provide for same sex marriages.**

**3.17 The NIHRC advises that Article 9 ECHR requires that religious institutions, on behalf of their members and employees, have autonomy to define and solemnise marriage, as they understand it to be, free from State interference.**

**3.18 Where there is a credible concern that changes to the law regarding civil marriage in NI will interfere with Article 9 ECHR and the autonomy of religious institutions in this regard, the NIHRC recommends that protections must be introduced to safeguard this, to the extent that they do not already exist. The NIHRC notes the safeguards present in England and Wales in this vein.**<sup>42</sup>

## **Employees**

3.19 Following on from the extension of civil marriage to same sex couples, the NIHRC is aware there may be queries regarding the rights of employees with contrary views participating in, administering or otherwise being involved in same sex marriage ceremonies or relevant events.

3.20 The applicability and extent of the protection of Article 9 ECHR in this context has been considered by the ECtHR in previous jurisprudence concerning same sex relationships.

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<sup>40</sup> Parry v. the United Kingdom, Application no. 42971/05.

<sup>41</sup> Ibid.

<sup>42</sup> Section 2 of Marriage (Same Sex Couples) Act 2013.

- 3.21 In *Eweida and Others v. the United Kingdom*,<sup>43</sup> the ECtHR considered the case of an individual who did not wish to undertake same sex civil partnerships, as part of her employment by the local authority as a registrar, on the grounds of her Christian beliefs.<sup>44</sup> The individual was working as a registrar when the law in England and Wales changed to make provision for same sex civil partnerships.<sup>45</sup> Following this, the relevant local authority designated all registrars to be civil partnership registrars.
- 3.22 It is of note that the local authority had not been required by law to do so:
- "...the legislation simply required it to ensure that there was a sufficient number of civil partnership registrars for the area to carry out that function. Some other United Kingdom local authorities took a different approach, and allowed registrars with a sincerely held religious objection to the formation of civil partnerships to opt out of designation as civil partnership registrars."*<sup>46</sup>
- 3.23 As a result of disputes arising from workforce capacity issues in accommodating a registrar who would not perform same sex civil partnerships and whether it was in line with the local authority's equality and diversity policy, the matter came before the UK domestic courts and eventually the ECtHR. The Court of Appeal of England and Wales found no violation of the individual's rights under Article 9 ECHR and the Supreme Court of the United Kingdom refused leave to appeal.<sup>47</sup>
- 3.24 The ECtHR considered that the events in the case fell within the ambit of Articles 9 and 14 ECHR. It noted that the decision of the local authority to designate all registrars to perform same sex civil partnerships had a particularly detrimental result in the case of the applicant, as a result of her religious beliefs.<sup>48</sup> The ECtHR went on to consider if the decision of the local authority was in pursuit of a legitimate aim and proportionate to that aim.
- 3.25 Noting the aim of the policy to be to prevent differences in treatment towards persons of different sexual orientation and its further aim to secure the rights of others under the ECHR,<sup>49</sup> the ECtHR ultimately found that the decision fell within the margin of appreciation afforded to States when balancing competing rights

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<sup>43</sup> Application no. 48420/10, 59842/10, 51671/10 and 36516/10.

<sup>44</sup> Ibid, para 23.

<sup>45</sup> Ibid, para 25.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid, paras 29 and 30.

<sup>48</sup> Ibid, para 104.

<sup>49</sup> Ibid, para 105.

under the ECHR. There was therefore no violation of the individual's rights under Articles 9 and 14 ECHR.<sup>50</sup>

3.26 Considering the above case, the NIHRC notes the following:

- Article 9 ECHR and Article 14 ECHR are not absolute rights and may be restricted where the restriction pursues a legitimate aim and is proportionate to that aim;
- As a general rule, where rights are to be restricted, States should pursue the least intrusive restriction possible;
- There is a wide margin of appreciation for the State in deciding how to balance competing rights;
- When same sex civil partnerships in the UK were introduced, some local authorities allowed individuals with sincerely held religious beliefs to opt out of administering or participating in these;
- However, there is no particular requirement to provide this 'opt out' under human rights standards – where a local authority can demonstrate that staff decisions were taken or policies devised with the aim of preventing discrimination against persons of different sexual orientation, this will suffice.

**3.27 The NIHRC would highlight that the same standard of service should be provided to all seeking to marry or enter into a civil partnership, regardless of sexual orientation. Where the Secretary of State is considering what provisions to make in this context, the NIHRC recommends that the arrangements introduced ensure that same sex couples in NI are not arbitrarily denied or delayed access to same sex marriage procedures, administrative or otherwise, on the grounds of their sexual orientation.**

**3.28 The NIHRC notes that in the case of *Eweida and Others v. the United Kingdom*,<sup>51</sup> an issue was created due to the differing positions adopted by local councils regarding their employees and an opt-out from performing same sex registrations. To avoid any such issue in NI, the NIHRC recommends that a consistent approach is adopted by all relevant authorities.**

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<sup>50</sup> Ibid, para 106.

<sup>51</sup> Application no. 48420/10, 59842/10, 51671/10 and 36516/10.

## 4.0 Additional Issues

- 4.1 The NIHRC is aware of the large number of legislative provisions which the change in law to provide for same sex marriage will affect. In particular, the NIHRC is aware that there may be particular considerations for transgender persons who are presently in receipt of an interim gender recognition certificate or otherwise engaging with the courts in NI regarding divorce.
- 4.2 In light of this, the NIHRC recommends that adequate, timely and accessible guidance is provided to transgender persons and relevant civil society groups regarding any requirements or alterations to current policy that they should be aware of. Particular guidance should be given to those who were previously required to divorce and who may wish to convert their civil partnership into a civil marriage again.**