



Corporate Services Scrutiny Panel

Draft Marriage and Civil Status (Jersey) Law Review

Witness: Jersey Evangelical Alliance

THURSDAY, 7th DECEMBER 2017

Panel:

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman)

Deputy S.M. Brée of St. Clement

Deputy K.C. Lewis of St. Saviour

Senator S.C. Ferguson

Witnesses:

The Reverend M. Shea, Chair, Jersey Evangelical Alliance

Reverend D. Waller, Pastor, Jersey Baptist Church

Reverend Canon P. Brooks, Vicar, St. Paul's Church and Vice Dean of Jersey

[14:02]

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman):

Welcome, everybody, to the Corporate Services Scrutiny Panel hearing on the Draft Marriage Law. There is a little bit of formality we will go through. As I suspect this is probably for most people the first time or one of the few times in front of us, we will go through the full rigmarole. So, firstly, there is a notice in front of you, which I will read out but if I can just draw your attention to it, which sets out that you are covered in this hearing by parliamentary privilege. So, for the record, the proceedings of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, P.A.C. (Public Accounts Committee) and P.P.C. (Privileges and Procedures Committee)) (Jersey) Regulations 2006. Witnesses are protected from being sued or prosecuted for anything said during

hearings unless they say something that they know to be untrue. This protection is given to witnesses to ensure they can speak freely and openly to the panel when giving evidence without fear of legal action, although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel always like you to bear this in mind when answering questions. Also, we do expect members of the public and the media in the public seating, who are all very welcome, to remain quiet at all times while the hearing carries on. I do not know if there are any cameras being done, but cameras are permitted to film for the first 5 minutes of the hearing for accredited media, after which they must stop and, if that is the case, we will remind you when your 5 minutes are up. As we proceed through the questions, we may stop you if we feel that you have answered the question sufficiently because we do need you to be as reasonably concise as possible, and I will do that by raising my hand. I will just wait for another chair to come through. Okay. I would like to make it clear at the start of the hearing that by undertaking this review we are fulfilling a well-established and important parliamentary process of legislative scrutiny. Our review is focused on the detailed Articles of the Draft Marriage Law and our questions will hopefully reflect this. This review is not about the policy decision to implement same-sex marriage. The States has already agreed to introduce same-sex marriage and our review does not seek to reopen that debate. The legislative scrutiny we are carrying out is to ensure the law is fit for purpose and that it effectively implements the decision made by the Assembly. That extends beyond the proposal for same-sex marriage to cover open air marriage, obtaining a license to marry, the role of the parish registrar, protections against sham and forced marriages, and the ability of the States to increase the age of marriage by regulations. Any comments that may be made may be because we are exploring an argument that has been put to us rather than expressing any view, so it should not be interpreted as expressing either a personal view or a view of the panel. So, that is the formalities. We are saying this to every hearing that we go through. So, for the benefit of the tape, I will start going round. I am Deputy John Le Fondré, Chairman of the panel.

Deputy S.M. Brée of St. Clement:

Deputy Simon Brée, Vice-Chairman of the panel.

Deputy K.C. Lewis of St. Saviour:

Deputy Kevin Lewis, panel member.

Senator S.C. Ferguson:

Senator Sarah Ferguson, panel member.

Deputy J.A.N. Le Fondré:

So if you could introduce yourselves and your roles, that would be helpful.

Chair, Jersey Evangelical Alliance:

I am the Reverend Martyn Shea, the chair of the J.E.A. (Jersey Evangelical Alliance).

Pastor, Jersey Baptist Church:

I am Reverend Drew Waller, pastor of Jersey Baptist Church.

Vicar, St. Paul's Church:

I am Reverend Paul Brooks, vicar of St. Paul's Church.

Deputy J.A.N. Le Fondré:

Excellent. Once again, thank you very much for giving us your time today and for coming along. So, to an extent you have covered that, you have confirmed who you are representing for the purposes of this hearing. Could you also briefly outline in 5 or so minutes your written submission and the key points you wish to make or any clarifications you might wish to make? Also, we are looking at the content of the draft law as much as we can.

Chair, Jersey Evangelical Alliance:

I think the first thing we wanted to say to the Scrutiny Panel was just how much we love, care and respect all those who are same-sex attracted in our churches and in our Island community. We stand with them against discrimination of all kinds based on age, gender, sexuality and on faith. The Scrutiny Panel received a number of submissions from the public with the majority of submissions calling for a live and let live doctrine and called for provisions to be made that protect individuals from being compelled to celebrate, promote or consecrate same-sex marriages. While the J.E.A. joined that consultation and made our submission, we would love it to be noted, too, that St. Mark's Church, St. Paul's Church, the Christian Portuguese Mission, the Roman Catholic Church, Jersey Baptist Church, Les Quennevais Evangelical Church, the Town Church, Freedom Church and Lighthouse Church, just to name a few, all made individual submissions for the Scrutiny Panel expressing a desire for this provision of a limited and contained conscience clause to be included in the legislation. Added to that, the Dean of Jersey made his submission, in which he said: "It is clear from the above and other submissions that I have received and the ongoing cases of litigation in the U.K. (United Kingdom) that a limited conscience clause, properly and robustly drafted, would be the best solution to protect those out of religious conviction who are unable to support same-sex marriage and whose professional livelihoods and careers might be in danger as a result, as well as those who in conversation with others expound the traditional biblical view of morals or ethics on this subject, only to find themselves prosecuted for so doing because of a lack of protection." It is clear that this would be a challenging task. However, there is an option that is worth exploring and it is not dependent on the progress of the Draft Marriage Law. There has been a significant lack of

political will to address this in other jurisdictions, but we strongly urge the States of Jersey to work to find a clause that protects people of faith in their daily expression of it where it may come into conflict with the views of others. Giving freedom and rights to one group at the expense of another does not make for a just society. We would love to add to that the comments made by famed equalities campaigner Peter Tatchell when the Ashers Bakery case was decided. In a way he changed his view in the papers and he said this: "This judgment opens a can of worms. It means that a Muslim printer could be obliged to publish cartoons of Mohammed and a Jewish printer could be required to publish a book that propagates holocaust denial. What the court has decided here sets a dangerous, authoritarian precedent that is open to serious debate." He goes on to contend for a limited conscience clause. Lastly, we would like to commend the statement by Vic Tanner Davy, the C.E.O. (chief executive officer) of Liberate here in Jersey, who wrote on Liberate's website on 28th May this year: "Using political correctness as a stick to hit people with is just as bad as using religion for the same purposes. There are fundamentalists on both sides of this debate. Interestingly, studies have shown ultra-liberals and ultra-conservatives are equally as prejudiced and biased on both sides and was largely driven by seeing the opposing group as limiting one's personal freedom." With all this said, our aim is not to stand in the way of this legislation and never has been, nor to prevent individuals from exercising their personal freedom, but to assure that in this process there is a balance of rights so that individuals are not compelled to speak or act in a way that would violate their conscience or their faith. So, our primary aim is for a narrow exclusion to be provided for individuals who would choose not to celebrate, promote or consecrate same-sex marriage. This exclusion is already given to religious officials in this legislation and we would like to see that extended to all good and respectful people of faith. In this debate, no Christian group or leader on the Island has called for a number of things which have been reported in the press. No one has stood in the way of the passage of this legislation. No one has advocated for the homophobic bullying of L.G.B.T. (lesbian, gay, bisexual, transgender) people. In fact, the J.E.A. would condemn any form of bullying or homophobia particularly against minority groups who in the past have endured such unfair treatment. No one has argued for a rolling back of employment discrimination protections afforded to L.G.B.T. people. We are asking for a limited protection for faith-based organisations to terminate someone's employment contract if that contravenes the agreed moral framework of that organisation. No one has argued for the rolling back of housing discrimination protections afforded to L.G.B.T. people. We are only asking for a limited conscience clause which means that churches and faith-based organisations would not be forced to hire out their premises for activities not in line with their moral and faith-based ethos. No one has suggested any form of conscience exclusion would allow discrimination against same-sex people in the provision of general services. What we are seeking is a narrow provision to allow individuals to be exempt from the celebration, promotion or consecration of same-sex marriages. Our desire is not to discriminate against individuals but to seek reasonable accommodation which assures that people of faith are not compelled to participate in activities or speech that runs contrary to their faith. So, in

conclusion, we think that discrimination that could result in legislation being suggested on all sides, it is worth noting that there is no evidence that a conscience clause would or has created any material barrier for gay people celebrating, promoting or consecrating their unions in jurisdictions where the definition of marriage has been changed to provide for same-sex union. But there is a great deal of evidence that people who in good faith are against same-sex marriage are being fined, sued and harassed as a result of the passage of some same-sex laws in other jurisdictions where the rights of conscientious objectors has not been considered. So, in conclusion, our position would be that no one is standing in the way of L.G.B.T. people living, working and relating in our society. We live in a free and pluralistic and tolerant society where we do not want to compel speech, thought or action. We are very much for the principle of tolerance and reasonable accommodation. With that in mind, we are requesting a narrow exclusion for all people with regards to celebration, promotion or consecration of marriages as an amendment to the Discrimination Act.

Deputy J.A.N. Le Fondré:

Thank you very much. It might be helpful, although we will obviously get that as a transcript in due course, whether you could send a copy of that statement to our officers, if that could be fairly soon, because then that just allows us to absorb it more carefully during our deliberations. Right, we will go on to the questions, I think.

Deputy S.M. Brée:

Okay. Looking now at the actual draft legislation itself as lodged, the main aim of this draft law is to enable same-sex couples to get married. Have you any reason to believe that there will be any impact whatsoever as a direct result of the proposed laws on the legal status of married heterosexual couples?

Chair, Jersey Evangelical Alliance:

No, absolutely not.

Deputy S.M. Brée:

Absolutely not?

Chair, Jersey Evangelical Alliance:

We think the legislation is well written.

Deputy S.M. Brée:

Thank you.

[14:15]

Senator S.C. Ferguson:

Are you satisfied ... good afternoon, gentlemen, I am sorry. Are you satisfied that the draft law contains adequate protections in the form of the quadruple lock for religious officials and institutions?

Chair, Jersey Evangelical Alliance:

We are very thankful for that quadruple lock. I think it is, again, well written. It protects members of the clergy or ministers from legal proceedings against them, and we are very thankful for that quadruple lock. It also gives options to opt in or out as well where there is a spectrum of opinion, too. I think that quadruple lock is well written. Our view is that unfortunately it still leaves many people who provide services around a marriage unprotected under the Discrimination Act. So, it protects ministers, it protects leaders of churches, but it does not protect under the Discrimination Act some respectful, fair-minded people of faith.

Deputy J.A.N. Le Fondré:

We will come on to that in a second, I suspect. Okay, anything at the moment? Right. Do we have another chair somewhere? Your last comment leads us quite nicely on to the next question. In your submission, you said that the draft law leaves many people who provide services around a marriage unprotected under the Discrimination Act if they in good faith and conscience cannot provide that service. So, essentially, we have some other questions that follow on from this, but how could the draft law - probably building on your statement a little bit - and/or the Discrimination Act be amended to protect the people you identify, do you think?

Chair, Jersey Evangelical Alliance:

Our view at the end of our submission suggests certain amendments to the Discrimination Act to include people of faith. I think many have recognised that under the Discrimination Act there is protection for the aged and sexuality and gender and race, but in a way it has left out so far the legislation necessary for people of faith. We believe that needs looking at. Seeing there are 31 different laws that need changing as a result of this legislation, we also believe that it would be a good moment to put a well-written and limited conscience clause or mutual accommodation law into the Discrimination Act at the same time as this marriage legislation gets put in place. So, as we are changing major aspects of the law, this would be an amendment to the Discrimination Act to include a conscience clause. We have made suggestions about the provision, and the very narrow provision, of services that are around marriage, some of the hiring and firing issues around employment, and those are written in our submission. So, we are suggesting for a very limited and contained amendment to the Discrimination Act as per our submission.

Deputy J.A.N. Le Fondré:

Okay. It has been put to us that a conscience clause would just enable people to discriminate on the grounds of sexuality. How would you like to respond on that?

Chair, Jersey Evangelical Alliance:

I think absolutely not and that is where we would want to say that the legislation needs to be written extremely carefully so that this is not a cover for homophobia in any way. That is why, I suppose, we liken it to something like the legislation put in place for a conscientious objector where in a way the default position in the law was this was cowardice. I think the default position in the law could be that this is a homophobic act as it is written at the moment, but with provision that if that person in good faith and that organisation has held a clear stance as a person of faith and as an organisation of faith, where there is a clear moral code, that they could be given freedom to uphold their faith and to not promote same-sex marriage in the way that they are being called to conduct themselves. Is that a helpful answer? Can I turn to some of my panel if I have not explained it?

Pastor, Jersey Baptist Church:

I think probably what we would say is that there was likely a distinction between protected people groups and then speech and activity. So what we would be aiming for is we would be both against discrimination against protected classes but we would also be against compelled speech and action so that people cannot be compelled to speak or act in a way that goes against their conscience. So we would make a distinction between someone's identity and also the activities that they are involved in. So, in the same way that many Christians are against Halloween and do not participate in Halloween, what they are against there is not any form of religion like, say, Wiccan or Harry Potter or any of the rest. What they are against is just that one activity. So, they would not participate in that. So, we would make a distinction between protected classes of people and speech and activity. We would be against the discrimination of groups but we would also be against compelled speech or action.

Deputy J.A.N. Le Fondré:

Just to make sure we have that right in your analogy on Halloween, Halloween carries on but you do not compel people who do not want to participate in it to participate in it?

Pastor, Jersey Baptist Church:

To participate in it, yes. There are a number of folks that close their doors and do not give out candy and do not participate in Halloween, and we would not want to compel them to be forced to participate in Halloween just because everyone else is. We might think them odd, but we let them go about their business.

Deputy J.A.N. Le Fondré:

Okay. Do you want to come in now? I was just going to ...

Chair, Jersey Evangelical Alliance:

I think that is where it also comes to us over our aspect for letting and hiring our premises that are owned by Christian charities or faith-based organisations is that occasionally we do need to make those kind of limited but certain decisions based on our faith and the longstanding moral framework in which that tradition stands.

Deputy S.M. Brée:

Could I ask a question at this point? Would you agree that a person of faith does not have to belong to a religious organisation?

Chair, Jersey Evangelical Alliance:

Yes, absolutely.

Deputy S.M. Brée:

So how are you going to define whether somebody ... under your proposed amendment to do with the conscience clause, somebody says: "I am a person of faith." How are you going to define what their faith is other than what they tell you if they do not belong to a recognised religious organisation who have a certain number of doctrine under which they operate? It just seems to me you have a bit of a problem there that if you do not belong to a recognised religious organisation but still say: "I am a person of faith" ... you have a real problem there.

Vicar, St. Paul's Church:

I think you have to give ... I do not think you can define it exclusively as a faith-based right. I think that there are atheists who would have a particular moral view.

Deputy S.M. Brée:

But that is discrimination.

Vicar, St. Paul's Church:

Well, indeed.

Deputy S.M. Brée:

Because you are arguing that on religious grounds we should see a conscience clause. The question is: what religious grounds? What definition of religious belief? You are then saying somebody who is an atheist, who has no religious belief whatsoever, does not obviously, therefore, belong to any recognised religious organisation to which doctrines are there, whether it be canon

law or whatever, papal bills, edicts. You are actually quite happy that an atheist says: "On moral grounds, I claim the conscience clause." That is discrimination.

Vicar, St. Paul's Church:

But I think all people are moral people.

Deputy S.M. Brée:

One would hope so.

Vicar, St. Paul's Church:

Yes, but the morals, we may not agree with their morals but they have a moral compass of one sort or another. We may not agree with it, but they have one sort or another.

Deputy S.M. Brée:

So within the amendment you are proposing or would like to see, and we are talking about the amendment to the Discrimination Law, how would you define the conscience clause in respect of same-sex marriage?

Chair, Jersey Evangelical Alliance:

I think we have been very clear in our submission and we do recognise all the wonderfully well-paid lawyers, and there are many Christian lawyers, who would be willing to participate in that. We have been clear on the amendment to the conscience clause that we have suggested. Again, I think it is limited. It is contained. We would also be very happy if it does say to be for mainstream religious organisations so that this does not act as a cover for homophobia for certain individuals who just ...

Deputy S.M. Brée:

What you are saying goes against what you were saying.

Pastor, Jersey Baptist Church:

I think what I might say is that ...

Deputy S.M. Brée:

I am just trying to understand how it might work.

Pastor, Jersey Baptist Church:

Yes, I understand. There is a tricky situation in that I think that you are going to have to ... this is the question before the States: how do we balance 2 opposing rights? I think that if we had a narrow exclusion for all people with regards to the celebration, promotion or consecration of marriage, then

that allows people to opt in or opt out with regards to marriage, recognising that marriage is viewed by many, many people as an act of worship. So, obviously, that is not for all people but marriages are public events and public events of worship. Christians view marriage as a public event of worship. So, what you would be doing is essentially compelling that person to worship in a way that they do not see fit. So, I think that we ...

Deputy S.M. Brée:

I was more talking about ... rather than the principle, I was trying to understand how you would seek to define who would be protected by, as you see it, the conscience clause should the Discrimination Act be amended. As we can see, it is a very, very difficult thing to achieve because you cannot clearly define.

Pastor, Jersey Baptist Church:

I think that we can define the activity that folks would be protected from.

Deputy S.M. Brée:

No, we are not talking about the activity.

Pastor, Jersey Baptist Church:

Yes, I understand.

Deputy S.M. Brée:

We are talking about the conscience clause in an amended Draft Discrimination Law, not any activities, but who has the right under your proposal to claim the conscience clause in the refusal of the provision of whether it be goods or services relating to a marriage. I was just trying to understand your definition of a person of faith versus a religious organisation, and now you have thrown into the mix the idea that an atheist could on moral grounds, therefore, be covered, which seems to be a new idea coming in. I just wanted to understand your definition.

Pastor, Jersey Baptist Church:

I think the key thing would be that we would not look for compelled speech or action. It would be around the celebration, promotion or consecration of a wedding or marriage. So it would be that a person would be protected from either having to celebrate, promote or consecrate any type of union that is against their conscience. In terms of could someone bring up a suit for discrimination, sure they could and the courts would decide whether it is discrimination or not. I guess in terms of how you draft the law, that really is up to the States, is it not? We recognise that that would have to be carefully drafted to avoid the type of discrimination that obviously no one wants to happen.

Deputy J.A.N. Le Fondré:

That is useful, I think. It has also been suggested that a conscience clause could be used in reverse, effectively, to enable people to legitimately challenge people's religious beliefs. Is that a concern to yourselves?

Chair, Jersey Evangelical Alliance:

I think that some great wisdom in writing this legislation is needed and I think all of us recognise that it is a complex and difficult task. I think we have considered that but I think the protections that this would afford, that a limited conscience clause would afford, to people of faith I think would be healthy in a pluralistic and tolerant and liberal society. There is possibilities it could be used in reverse, but we have not seen any examples of it. What we have seen is examples of the Discrimination Act being used to potentially discriminate against people of faith, and I think that is what we are bringing to the attention of the Scrutiny Panel is the growing number of examples in the way this legislation is operating in different jurisdictions. It is causing a number of cases where people are either being sacked from their jobs for expressing a traditional view of marriage. It has been brought to attention that a young man, Felix, on his social work course was kicked off his course in the U.K. because of him speaking on social media about a traditional view of marriage. So there are these examples, and a growing number of them, of people of good faith who respectfully hold it and are not treating others in a derogatory or a discriminatory way. Those examples give us concern that the Discrimination Act in the way that it is operating in the U.K. and other jurisdictions is causing the discrimination against some good and reasonable people of faith. That is why we have brought it to your attention to try and avoid that unnecessary litigation here in this Island community.

[14:30]

Deputy J.A.N. Le Fondré:

Okay, thank you. You have referred to it already but I think it is worth just again getting it on record, effectively, properly. Are there any examples pertaining to - if we want to use the word - conscience clause issues either from other jurisdictions or other legislation which you feel could be drawn upon to inform the amendments that you are talking about?

Chair, Jersey Evangelical Alliance:

I think there are multiple examples and I think some of the submissions that have been made are alluding to those. There are a number of examples. In America at the moment there is one going up to the Supreme Court at this very moment, again of a ... they always seem to be about cake bakers, but a cake baker, a Christian cake baker, and he is an artist. He produces the most magnificent and beautiful cakes, and he as a Christian and as a Christian artist felt unable to make a cake for someone's same-sex wedding celebration. That has been taken to court. It is going up

to the Supreme Court and it is being considered there. That seems a lot of effort and a lot of unnecessary pain to go through. Again, there are examples of ... in Colorado there is an example of a cake baker, again, who has been asked to bake one with satanic symbols on it. I mean, which of us would want a Christian baker to bake a cake with satanic upside-down crosses on it? Surely that is offensive to some and there is then this balancing of rights, is it not? Does someone have to be compelled to produce this cake that is against their faith, against their conscience? Are they compelled as an artist to do something or do they have a right to refuse to provide that service in these very limited and unusual cases?

Deputy J.A.N. Le Fondré:

Just to be clear, the last example that you just used, is that actually a court case in Colorado you said?

Chair, Jersey Evangelical Alliance:

In Colorado.

Deputy J.A.N. Le Fondré:

So, the person ...?

Chair, Jersey Evangelical Alliance:

The local satanic temple group, which is a religious group, have asked them to bake a cake with satanic symbols. None of us would want that to happen, would we, and I think none of us would want a Jewish printer to have to print something that was fascist or neo-Nazi. That is where the ... I would not want to go to a Muslim printer if I have written a book and it was against their faith or they felt it denigrated the Prophet in any way. I would not see it as discrimination against me if I was turned down. There is this mutual accommodation and balancing of rights that needs to happen between different groups here and that is what we are asking for.

Deputy J.A.N. Le Fondré:

Okay. Just before we move on from that, you have made reference to conscientious objectors at some point earlier. More from an interest point of view than anything else, is there a reference you could send through perhaps to the officers on things like that? That would be quite helpful, I think, just to understand the context of that.

Chair, Jersey Evangelical Alliance:

Yes. We can certainly send something. Interestingly, the law for conscientious objectors was not enacted here in Jersey. I think it was enacted in British law. It is enacted in Swiss law at present.

We think there is a good framework in that law to give people permission to stand up for a faith that they have held for many years.

Deputy J.A.N. Le Fondré:

Okay. Now, obviously the report that accompanies the draft law does highlight some of the challenges. I think you have touched on them.

Chair, Jersey Evangelical Alliance:

Yes.

Deputy J.A.N. Le Fondré:

I think we have probably covered that enough, actually. The question we were going to ask is what are the key things or attributes that would need to be included in the conscience clause from that point of view. But would I be right in saying if we just rely on your submission on that front, unless you wish to expand on that in any shape?

Chair, Jersey Evangelical Alliance:

We feel this is only a provisional suggestion as we have put and I do think it needs some very good lawyers, very well-paid Jersey lawyers, to look at it, but I am sure it could be shaped in a way that looks after the rights of both and provides that mutual accommodation that we are after.

Deputy J.A.N. Le Fondré:

Okay. I think I can skip that one, to be honest. Right. You have referred to the reasonable accommodation idea which is proposed in a paper by ResPublica, a Green Paper entitled "Beyond Belief". I am presuming you are suggesting there might be some merit in exploring that idea.

Chair, Jersey Evangelical Alliance:

I think Dr. James Orr's paper "Beyond Belief" is ... I know others have submitted that and sent that through. I think there is some great work that has gone on within that. We hope the Scrutiny Panel will look at that. Certainly, the area of reasonable accommodation within the Human Rights Act we would be wholly supportive of that, but I think we also believe that there is still a need within the Discrimination Act, an amendment to it, to add that additional protection for faith-based groups.

Deputy J.A.N. Le Fondré:

Okay. Anybody have questions at this stage? One?

Deputy S.M. Brée:

One. Obviously, should the conscience clause be extended in the manner to which you allude, it may give rise to cases whereby somebody claims their religious beliefs prevent them from providing services or goods. That belief will be challenged by someone and it could result in the whole issue of somebody's religious beliefs being challenged in a court of law. Are you quite prepared for that to happen?

Pastor, Jersey Baptist Church:

I think that that is already taking place. So, in another jurisdictions where they have not put in a conscience clause, people are indeed being taken to court. So that is already happening. What we are looking for is clarity in the law.

Deputy S.M. Brée:

No, no, no, I am talking about if you put a conscience clause in, somebody claims the right to refuse under the conscience clause, and they are then taken to court because there is a belief on the other party's part that this is not about religious belief, this is about pure prejudice. Therefore, the defendant will be the person with the religious belief. Are you prepared in Jersey to see that happen?

Pastor, Jersey Baptist Church:

I think that is already taking place in other jurisdictions.

Deputy S.M. Brée:

No, I did say in Jersey. I am not saying somebody is being taken to court because of the current cases. I am saying if you had the conscience clause you are looking at in Jersey, it could result in court cases where somebody is questioned and challenged on their own religious faith and beliefs. I am merely saying are you prepared if that came to pass, so to speak.

Chair, Jersey Evangelical Alliance:

We are very aware that that has happened and is likely to happen in Jersey. Certainly, again on the mutual accommodation clauses, it is often decided by a judge. I do think ... we do want to make sure that any amendment to the Discrimination Act does protect homosexual people from prejudice and from discrimination in our society. That is already in the law and I think it does need testing. I think that is why we alluded to the conscientious objection clause that often it did sometimes get brought to court and their faith was examined, their life and the integrity of their life was looked at. I think in the case where it was a longstanding held faith position, that was upheld in the courts and they were able to provide a service in our society but not be compelled to do something against their conscience and against their faith.

Deputy S.M. Brée:

So you are prepared for that to happen should it arise, okay.

Chair, Jersey Evangelical Alliance:

We are happy on both sides. We want to make sure that no one is prejudiced against.

Deputy J.A.N. Le Fondré:

Okay, right, Kevin.

Deputy K.C. Lewis:

Protections for religious buildings. You have touched on this but just for clarity, as part of the quadruple lock the draft law makes provision to protect religious buildings and places which are routinely used for religious worship. Are you satisfied that the law provides adequate protection for these buildings?

Chair, Jersey Evangelical Alliance:

Not totally, especially when you read the paper by the Jersey Advisory Conciliation Service on the Discrimination Act. They do allude to church halls and different premises that if that was turned down for a reception, let us say, after a same-sex marriage celebration, if someone chose to turn that down, on page 7 there is a worked example which says that would be considered as discrimination. So, we are unsure whether faith-based organisations are or are not protected in the law as it is written.

Deputy K.C. Lewis:

What would you say needs to happen to ensure adequate protection?

Chair, Jersey Evangelical Alliance:

That is why, again, we asked as our second thing or our third thing to make decisions relating to the letting or occupation of any property under trusteeship of a faith-based organisation to be able to make decisions consistent with its sincerely and longstanding held religious or moral belief. That is why we think there potentially needs to be an amendment to the Discrimination Act so that faith-based organisations who do sometimes need to make difficult decisions about who to hire their premises out to, that that would give limited and contained protection.

Deputy K.C. Lewis:

Obviously, this is not just the religious building but also church halls in a compound, which may be adjacent or even may be slightly further apart?

Chair, Jersey Evangelical Alliance:

Absolutely, because they are often held in a trust, held in a charitable trust, and there is a clear legal framework to that trust to uphold the Christian faith and to uphold the religious and moral values of that organisation. So, sometimes we do turn down maybe a Halloween party or a new-age healing group. There is a spectrum. One might turn down a band that has derogatory lyrics to what they sing, or we might have to in certain cases turn down a ... I would not want a racist group to speak either in a parish hall or particularly in a faith-based owned hall. Again, there will be a spectrum of opinions here and there will be a spectrum of charitable trusts, but we are asking that those charitable trusts that do have a moral code and a moral framework, that they are able to not be asked to ... or to be able to not let out their premises based on their faith.

Deputy S.M. Brée:

What is your view, though, on the use of private chapels? The example could be St. Ouen's Manor has a private chapel. Samarès Manor has a crypt. What is your view on the use of those for the ceremony surrounding a same-sex marriage? They do not belong to any recognised church. They are privately owned. You would still seek to have them excluded, would you?

Chair, Jersey Evangelical Alliance:

I think it is not something that we have included in our submission. I think these, again, need to be for longstanding, clear buildings that have been held in a charitable trust ...

Deputy S.M. Brée:

Yes, but what is your view on the use of private chapels in various manor houses for conducting of the ceremony?

Chair, Jersey Evangelical Alliance:

We have expressed no view and I think if it is not held in a Christian trust with a clear framework, then people have absolute ...

Deputy S.M. Brée:

So you would not object to them being used?

Chair, Jersey Evangelical Alliance:

We have not expressed any opinion in our submission.

Deputy J.A.N. Le Fondré:

Sorry, I was just thinking through something. I think I know where we are now. Right, changing tack slightly, which is going to the law as a whole, it will allow for greater use of religious content during civil weddings. Do you think the law is clear enough about who decides what content is appropriate

and how they should arrive at that decision? I can give you a legal reference and an article reference if you really want me to but ...

Chair, Jersey Evangelical Alliance:

Again, I think it is something that we have not included in our submission and it is something that we have not clearly formed a mind on or a view on. Certainly, in the U.K. a civil registrar cannot include religious prayers or religious hymns and that there is a clear distinction between civil marriage and religious marriage ceremonies. So, to some degree we might say we would prefer clarity, but it is up to you as the States Members to bring that clarity for us.

[14:45]

Deputy J.A.N. Le Fondré:

Okay. I will just press you slightly, I think, because the Article we are looking at at the moment, for future reference, is Article 17, parts 8 and 9. Basically, what they say is that: "A civil marriage celebrant must not permit any marriage solemnised by him or her to include any religious ritual or symbol or permit prayers or any religious worship or service to be conducted during a marriage ceremony." Sorry, they do not seem to allow punctuation in these. But the following paragraph then states: "A civil marriage celebrant, if satisfied that the content of the marriage ceremony does not contravene ..." - what I have just read - "... must permit any marriage solemnised by him or her to contain any of the following." Various parts, which include hymns, songs or chants, whether or not they contain any references of a religious nature, readings from the Bible or other holy books, vows or statements of commitment by a person to each that make any reference of a religious nature, and that is probably where I will stop. So, I suppose from your perspective ... obviously, I accept it is not directly in your submission. Yes, I do not think it was in your submission ... either of your submissions, actually. If you cannot pass a comment today I think we would welcome any observations on that which would come back essentially as to who should determine what constitutes religious content, for example, and do you think there is sufficient clarity?

Chair, Jersey Evangelical Alliance:

I think we would say that it has not formed part of our submission so I do not think we can really comment on it here, but we would be willing in the future to consider that. It is slightly clearer in the way that is handled in the U.K. Having been recently to a civil wedding of a wonderful member of our family, I was quite surprised as a clergyman, because I had been asked to pray at it, that the civil registrar said: "I would have to leave the building before you are involved." Sometimes I think that clarity and that clear difference between a civil celebration and a religious celebration, I think that clarity could ... certainly is handled more clearly in the U.K. than is presented here in this legislation.

Deputy J.A.N. Le Fondré:

Just for clarification ... when I say for clarification, does that mean the service had effectively finished before you could say anything?

Chair, Jersey Evangelical Alliance:

Absolutely.

Deputy J.A.N. Le Fondré:

Right, okay. A minor observation: you have made reference to J.A.C.S. (Jersey Advisory Conciliation Service) and the comment on use of buildings and discrimination. Presumably, our officer can track that paper down but, if not, could you send it in a link? That would be helpful.

Chair, Jersey Evangelical Alliance:

Yes.

Deputy J.A.N. Le Fondré:

My final question at the moment is hopefully a lot easier. In terms of the ... the legislation has taken about 2 years to come together. What consultation have you either individually or collectively participated in over the last 2 years as the law has evolved? What involvement have you had?

Chair, Jersey Evangelical Alliance:

I know Monsignor Nick France was involved at a very early stage and I know the Dean was on behalf of all of us. We were only involved back in November, so we have had limited ... do I mean November? Perhaps September.

Pastor, Jersey Baptist Church:

About a week before the law was released we were invited to have a conversation with I think a civil servant in conjunction with the Chief Minister. It has been about 6 weeks that we have tackled the law, so some of the imprecise language in our submissions is partially due to the fact that we are looking at this for the first time.

Deputy J.A.N. Le Fondré:

Right, okay.

Deputy S.M. Brée:

So that was the first you had actually been contacted to discuss this, really?

Chair, Jersey Evangelical Alliance:

Yes. About 6 weeks ago.

Deputy J.A.N. Le Fondré:

Right, okay.

Chair, Jersey Evangelical Alliance:

So we feel that, one, there are quite a lot of errors in the legislation when we started to look at it and that the process to some degree feels relatively rushed and maybe there has been a slight lack of consultation with major parties for whom this is going to impact. Therefore, I think our suggestion would be that we could do with taking a bit more time over this to get this right for all the faith-based groups and for all groups here in Jersey, particularly over this area of reasonable accommodation and mutual respect and possibly an amendment to the Discrimination Act.

Deputy J.A.N. Le Fondré:

Right. Any questions there? I think I will just say thank you very much. We have concluded on time. That has been very helpful. As I said, we have probed and we will be probing elsewhere and we are not expressing any views at this stage. Thank you very much for your time.

Chair, Jersey Evangelical Alliance:

Thank you for your time as well.

Deputy J.A.N. Le Fondré:

That concludes the hearing.

Deputy S.M. Brée:

Thank you.

[14:50]