



Corporate Services Scrutiny Panel

Draft Marriage and Civil Status (Jersey) Law Review

Witness: Liberate Jersey

THURSDAY, 7th DECEMBER 2017

Panel:

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

Deputy S.M. Brée of St. Clement (Vice-Chairman)

Deputy K.C. Lewis of St. Saviour

Senator S.C. Ferguson

Witnesses:

V. Tanner Davy, Honorary C.E.O, Liberate Jersey.

Reverend G. Halls, Board Member, Liberate Jersey

[15:32]

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

Welcome. Thank you very much for giving us your time. So, to everybody, welcome to the Corporate Services Scrutiny Panel hearing on the marriage legislation and, as you heard earlier, we will just run through the same spiel as we did before. I am assuming it is one of the first times, if not the first time, you have been in front of a scrutiny panel.

Vic Tanner Davy:

It certainly is the first time.

Deputy J.A.N. Le Fondré:

So, to kick off, can I draw your attention to the notice in front of you, which sets out that you are coming to this hearing by parliamentary privilege and of course for the record I shall read that notice out: "The proceedings of the Panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2004 and the States of Jersey Powers Privileges and Immunity 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 the 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 would like you to bear this in mind when answering questions." We do also expect members of the public and the media in the public seating to remain quiet at all times while the hearing carries on and cameras are permitted to film for the first 5 minutes for accredited media, 5 minutes of the hearing, after which they must stop, and I 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 reasonably as concise as possible and I will do that by raising my hand. We will obviously give you reasonable latitude. 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 hopefully will 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 decisions made by the Assembly and extends beyond the proposals of same-sex marriage to cover open-air marriage, obtaining a licence 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 should not be interpreted as expressing either a personal view or a view of a Panel. So, for the benefit of the tape, I will start going around, Deputy John Le Fondré, Chairman of the Panel.

Deputy S.M. Brée of St. Clement (Vice-Chairman):

Deputy Simon Brée, Vice-Chairman of the Panel.

Deputy K.C. Lewis:

Deputy Kevin Lewis, Panel member.

Senator S.C. Ferguson:

Senator Sarah Ferguson, Panel member.

Vic Tanner Davy:

Vic Tanner Davy, Honorary C.E.O. (chief executive officer) of Liberate.

Rev. Graeme Halls:

Reverend Graeme Halls, I am a board member of Liberate.

Deputy J.A.N. Le Fondré:

Once again, thank you very much for giving us your time today. I suppose, just to explain, you just confirm our understanding, confirm who you represent for the purposes of the hearing, perhaps just expand it a little more who Liberate represents?

Vic Tanner Davy:

Within my introduction I have covered that.

Deputy J.A.N. Le Fondré:

Then I was going to say, can you give us a 5-minute outline as well, give or take, we are not timing it too much, do not worry.

Vic Tanner Davy:

Liberate is the Channel Islands' equality and diversity charity. We have branches in Jersey and Guernsey, serving islanders in both Bailiwicks. Our mission is to support those who identify as part of a minority living in the Channel Islands by, among other things, campaigning to reform policies and laws to ensure that minorities can enjoy the same freedoms and rights as everyone else across the Channel Islands; questioning social attitudes and behaviours which discriminate against minorities in the Channel Islands; and working with government and other providers to ensure equal access to and equal quality of services, such as healthcare, housing and education, for minorities across the Channel Islands. It is these elements of our work that are directly relevant to the States of Jersey's desire to open up marriage to same-sex couples while at the same time not compelling those religious organisations and officials, who cannot in all conscience undertake a marriage service for same-sex couples, to do something that goes against their beliefs. It has been our main concern throughout the consultation process that the rights of L.G.B.T.+ (lesbian, gay, bisexual, transgender and other sexual orientations and gender identities that are not heterosexual and/or non-transgender) citizens and the rights of those of religious faith are not seen as mutually exclusive; that both are preserved by the introduction of a change to marriage legislation; and, that neither one is given more weight than the other under the law. One of the things that has struck me regarding

coverage of the conscience clauses by the local media recently has been the desire of some to set up the Christian community as diametrically opposed to the L.G.B.T.+ community. This is hugely unhelpful and does not reflect reality. There are large intersections and commonalities between the 2 groups, not least that both are minorities that experience discrimination within society. There is no such thing as a Christian view of marriage, just as there is no such thing as an L.G.B.T.+ view of marriage. Every individual within those 2 communities will have their own view of what marriage means to them. I come here today with my personal view of marriage, admittedly it is influenced and refined by everyone I have spoken to about it, but what I and the Liberate committee do not and cannot do is to come here today representing the L.G.B.T.+ community's view. The Christian community does not oppose same-sex marriage; some people within the Christian community oppose same-sex marriage. Some people within the non-Christian community oppose same-sex marriage and, yes, some people within the L.G.B.T.+ community oppose same-sex marriage. Reducing the multiplicity of views to "Christians anti/gays pro" panders to the basest tribal instincts inherent in all of us and does nothing to advance the debate. The Marriage Law needs to accommodate the polarity of views regarding same-sex marriage that exist, all of which need to be respected and given equal weight within any amendments to Jersey's Marriage Law. It is clear that numerous scenarios have been considered by the Chief Minister's Department to ensure that the maximum number of people's personal views on marriage have been accommodated. We support the exclusion from the Marriage Law and its consequential legislation of a so-called "spousal veto" that has had an adverse effect on the transgender population in England. We are also supportive of the expansion in venue choice, appointment of civil celebrants, ability to convert a civil partnership to a marriage and implementation of safeguards against forced and sham marriages, as introductions that recognise the diversity of the personal preferences of couples when it comes to the arrangements for their marriage ceremony and the importance of ensuring that those marriages are freely entered into.

Deputy J.A.N. Le Fondré:

Thank you very much. I think that is an opportune moment to suggest that is the 5 minutes. Thank you. Could we, just for ease, have a copy of that statement sent through to our officers. That would be helpful. It will also come out on the transcript.

Deputy K.C. Lewis:

The main aim of this Draft Law is to enable same-sex couples to get married. Is there anything in relation to the same-sex marriage that the Draft Law has missed out?

Vic Tanner Davy:

No, we are entirely satisfied that same-sex couples can marry under the provisions of the Law and that those currently in civil partnership can convert the civil partnership to marriage, and that it does

not affect the rights of people in opposite-sex marriages or opposite-sex couples to marry. There is nothing in the restrictions on marriage that is unreasonable or different materially from those restrictions that are already in place for the marriage of opposite-sex couples.

Deputy K.C. Lewis:

Do you believe that this Law adequately caters for people with an acquired gender?

Vic Tanner Davy:

Yes, we do. I think within our submission we included that it was something, the way that it has been drafted, the mechanism by which it will work, is entirely practical for those people who changed gender.

Senator S.C. Ferguson:

Are there any other groups that will benefit from the Draft Law?

Vic Tanner Davy:

Yes, looking at additional benefits, we support the provision of marriages in special circumstances that has been included in Article 24 as enabling marriages to be solemnised in an approved place outside permitted hours and in a shortened timeframe. Provision exists currently in canon law but not in marriage legislation for non-Anglican marriages. So in legalising same-sex marriage it is appropriate that marriage in special circumstances, such as one partner not having long to live, is also available to same-sex couples, which it would not be if those powers only resided with the Dean as at present. The provision also removes the barrier to marriage for members of the prison population who wish to marry outside the Anglican faith and those disabled persons who wish to marry outside the Anglican faith and who have, for example, a life-limiting condition that means they cannot access an approved location. So the expansion opens up marriage to some vulnerable minorities, of whom options regarding marriages were limited or non-existent before.

Senator S.C. Ferguson:

What do you define as a vulnerable minority? You talk about vulnerable minorities; do you have an example in general?

Vic Tanner Davy:

Yes, I think somebody who would be living in poverty would be considered a vulnerable person. A child who was being abused would be considered a vulnerable person. There are numerous examples within society of vulnerable people.

Senator S.C. Ferguson:

Yes, no, I was just curious as to the extension of this. Do you think there is adequate provision in the Draft Law to protect vulnerable parties from forced or sham marriages?

Vic Tanner Davy:

Yes, we do. We were extremely heartened to see the provisions that had been put into the Law by the Chief Minister's Department.

Deputy S.M. Brée:

At the back of the lodged Draft Marriage and Civil Status Amendment there is a whole range of amendments that need to be made to other Laws, I think there are 31 in total. The one that I would like to just ask you about is Article 7 of the Matrimonial Causes (Jersey) Law 1949. Now, the amendment changes this particular Law, Article 7(3) to be exact, to say: "For the purposes of this Article, only conduct between a respondent and a person of the opposite sex may constitute adultery." What are your views on this amendment?

Vic Tanner Davy:

We understand from the Chief Minister's Department that the whole question of adultery will be addressed in a separate piece of work that will happen subsequent to this piece of work happening. I believe that you are talking to the Chief Minister's Department at some point and I am sure they will expand on that more fully, but we are entirely comfortable that that piece of work will be done in the future and will be looked at in the future. But it is not an easy question, it is one that is very complex because at the moment, as adultery is defined, it can only happen in a particular way and, yes, it will need some looking at.

[15:45]

Deputy S.M. Brée:

I was merely exploring the area of whether or not you feel that, with this amendment clearly defining adultery, whether or not in some way this could be discriminatory against same-sex couples who marry.

Vic Tanner Davy:

I do not think there is any doubt that it is discriminatory; it is entirely discriminatory at the moment. You are taking one particular aspect of adultery, which can only be carried out in a particular circumstance by particular people, so, yes, there is no doubt that it is discriminatory at the moment, which is why it needs to be looked at.

Deputy S.M. Brée:

You are satisfied with your discussions with the Chief Minister's Department that they will reach some form of solution that will be acceptable and remove that area of discrimination?

Vic Tanner Davy:

Yes.

Deputy S.M. Brée:

Okay, we will have to talk to the Chief Minister's Department.

Deputy J.A.N. Le Fondré:

We have obviously spoken to them on at least 4 occasions so far, so more questions to come. Right, Kevin.

Deputy K.C. Lewis:

Do you believe that the Draft Law contains adequate protections in the form of the quadruple lock for religious officials and institutions?

Vic Tanner Davy:

So effectively the so-called quadruple lock is to create a law whereby those religious organisations that wish to solemnise same-sex marriages, such as the Quakers, have a means to be able to do so and those religious individuals and organisations that do not wish to do so are protected from doing so. It is our view that religious organisations and religious officials have been protected successfully under the Marriage Law from solemnising same-sex marriages where they cannot in all conscience undertake that service. There is no means available under the Marriage Law or other consequential legislation for a religious organisation or a religious official to be compelled to do something against their beliefs. There is however a means for a religious official not to do something that goes against their beliefs. So we would like to record our support for those religious officials, of which there are many within the various faith groups, who support same-sex marriage but whose organisations do not permit them to celebrate such unions. Their right to freedom of belief is currently being denied by those who oppose same-sex marriage. In our view this position is untenable and religious organisations need to find the means to allow both views to exist side by side within their organisations rather than permitting either view to dominate the other. The Marriage Law has had to reflect the current impasse by requiring that both the religious official and their religious organisation consent to the official conducting a same-sex marriage service. In other words, by not permitting a religious official who supports same-sex marriage to solemnise same-sex marriage, you are compelling them to act in a way that goes against their beliefs. But, until such time as religious organisations resolve their internal issues, we cannot see how Jersey's Law could have been drafted differently. As a result of this, we welcome the inclusion in the Marriage Law of

the ability for civil celebrants to incorporate hymns, chants, bible readings, candles, et cetera, into their ceremony, providing that in doing so it does not replicate an act of religious worship, which is quite rightly to remain the province of religious organisations and officials.

Deputy K.C. Lewis:

You have touched on this but do you think the Draft Law adequately accommodates religious organisations that want to opt-in for same-sex marriages?

Vic Tanner Davy:

Yes, as an organisation it does accommodate that.

Deputy K.C. Lewis:

Again, you have touched in this slightly, in your submission you suggested that religious organisations should allow religious officials who want to celebrate same-sex marriage to do so, even if the organisation disagrees. Do you think this issue should be a matter for the religious organisation or a matter for the Law?

Vic Tanner Davy:

No, I think that has to be a matter for the religious organisation, as I just said.

Deputy J.A.N. Le Fondré:

Yes, moving on to the subject that we covered quite extensively in the last hearing as well, would you accept a conscience clause extended beyond religious organisations and officials?

Vic Tanner Davy:

The conscience clause question, it is a huge job and there are no easy solutions. It has ramifications that will adversely affect sections of the population who have fought for decades and continue to fight for the basic human right to the same freedoms and opportunities as the rest of us enjoy, including the freedom to walk into a shop or request a service without having a degrading conversation about their sexuality followed by a refusal to serve them based on a personal characteristic that they can do nothing about. Maybe they should grow a thicker skin? Tough, you know, life is like that; we do not always get what we want. Yes, life can be like that quite often for those in a minority in Jersey. This is not an issue that can be lightly dismissed as common sense. For anyone who has been discriminated against in Jersey because of their sexual orientation the idea that their Government would even countenance a change to the Law to allow people to refuse to serve them legally must be deeply worrying. We have anti-discrimination legislation for very good reasons and I just want to go back a little bit in time with the Panel today to look at the history of why we have the Discrimination Law. So in 1948 a bruised and battered world said, "never again" and

the U.N. (United Nations) General Assembly adopted the Article that “all human beings are born free and equal in dignity and in rights”. When the atrocities committed by Nazi Germany became apparent after World War II the consensus within the world community was that a universal declaration that specified the rights of individuals was necessary to give effect to the U.N.’s provision on human rights and that has become the guiding principle of human rights law ever since. I have a little diagram I would just like to hand to the Panel. This diagram is something that is called Allport’s Scale of Prejudice and I will explain why it is relevant. It was devised by psychologist Gordon Allport in 1954 and it explains how prejudice develops within society and he suggested that the very worst outcomes of prejudice could be prevented if attention was paid to the lowest 2 levels. So anti-locution is the speaking against a group of people, so if we take the example that I have here in 1924 Hitler, released from prison, started speaking politically, targeting Jews and blaming them for Germany’s hyperinflation and the Wall Street crash of 1929. The next level, social distance - setting up a scenario where a group of people are shown to be different, not like us, and therefore not to be mixed with. So in 1933 Hitler Youth became the only youth organisation in Germany and demonstrated the ideals of the Aryan race. Discrimination - treating that group of people differently and unequally. In 1935 the Nuremburg laws stripped German Jews of their citizenship and forbade Jews to marry non-Jewish Germans. Physical attack - self explanatory but crucially it is not condemned by those in authority. In 1938 you saw Kristallnacht. Extermination - carried out by those in authority with the support of the majority and in 1941 Göring gave the order for a plan to be prepared for a “total solution”. That is why all modern democracies intervene and legislate to stop discrimination from happening because the consequences for society are far too costly if you do not. So refusing to bake a wedding cake for a same-sex couple, well it is not the same as the holocaust, is it? Or is it? Are you not treating a group of people differently and unequally? Then, if the State allows you to do it, what happens next? What Donald Trump does, what Gavin Ashenden does, when they speak out in the media about the otherness of the L.G.B.T. community is to hand validity to those who would attack that community. They provide the anti-locution, the media provides the social distance by setting the groups up against each other, and those who would go further than discrimination on Allport’s scale to conduct hate crime are emboldened in their actions because they can see that others think like them, others who see gay people as a group to be treated differently: they are not like us so it is okay to have a go at them. If you think that does not happen in Jersey because you are lucky enough not to have had it happen to you then you are mistaken and also very fortunate. In 2015 a Liberate supporter was punched for wearing a Pride wristband. His attacker thought he was gay; he was not and he still carries the scar on his forehead to this day. Last year Liberate dealt with a physical attack on a man walking along a street in St. Helier by a stranger who thought he knew the man’s sexual orientation because he was carrying a Pride flag. Again, the attacker was wrong. This year we dealt with a family who, on leaving their house one day, suffered homophobic verbal abuse on the street in front of their 6 year-old. Of course we have also had the Flanagan v. Hallmark Cards tribunal case in which 2 employees thought it was

acceptable to tell a gay employee that gay people should be napped from the roof - and no, that is not banter in anybody's book. Yes, it happens here in Jersey and it is very real and very distressing for those involved. The Discrimination Law protects everyone from being discriminated against. In the case of sexual orientation, whether you are straight, gay or any other sexuality, the reason the law appears to favour gay people is because you do not hear of tribunal cases where a heterosexual person has been the victim of discrimination. Why? Being heterosexual is the default position in society. You are deemed heterosexual until such time as you declare otherwise and our social structures were defined with this default position in mind, which has for centuries excluded those not wired to that default position. It is highly unlikely therefore that, as a heterosexual person, you will find barriers to your full participation in society and require the law to assist you to remove those barriers. But it does not mean to say that the provision is not there should you not require it. Even with anti-discrimination legislation in place, minority groups continue to receive unequal treatment. The disabled population is particularly badly affected by social barriers to their full inclusion in society. How much worse would the situation be if there were no legislation in place? We know how much worse. We only have to look back a lifetime, just one lifetime, to see elderly and disabled people behind bars in asylums, gay people behind bars in prison, women imprisoned in marriages with slim means to divorce, black and Asian people barred from pubs and clubs, to know what happens to minorities without the support of governments. Britain in the 1950s and 1960s was no idyll for those from a minority. Jersey is not perfect now and there is still work to do but I know what era I prefer to live in. Minorities need robust anti-discrimination law that is not watered down by clauses that allow select groups to opt-out of their obligation not to discriminate in the workplace. So my response to whether Jersey needs a conscience clause is Edmund Burke's observation, "the only thing necessary for the triumph of evil is for good men to do nothing". As a society, we have no need for a conscience clause if moderate voices within and outside of religious organisations stand up and say: "Discrimination has no place within any faith." Just as the solution to radical Islam will come from the Muslim community, so the solution to Christian fundamentalism or traditionalism that sees same-sex couples as "less than" will come from within the church community itself. I am absolutely confident that within a few years we will see the Methodist Church, and then the Church of England, admit same-sex marriage, at the very least in the form of blessing a couple after a civil ceremony. The solution to conscience clauses will therefore grow organically as church communities react to the world around them.

Deputy J.A.N. Le Fondré:

Sorry to interrupt, just while I still remember, does that mean at the moment that the Methodist Church as an organisation does not support same-sex marriage?

Rev. Graeme Halls:

It has not made a decision to allow same-sex marriage in its churches, for its clergy to take them now. It has allowed us to say prayers with a same-sex couple in a church following a legal ceremony, but it has not gone that way. Vic is right, in the next 2 or 3 years I suspect we will be allowed to do this.

Deputy J.A.N. Le Fondré:

Sorry to interrupt, I just wanted to clarify that.

Vic Tanner Davy:

I have almost finished. All the major religions teach us to love our neighbour with no opt-out for your neighbour's race, gender, sexual orientation, age, disability or religion. If you hold fast to that central belief you cannot possibly have any grounds for refusing to serve anybody or any need for a conscience clause.

Deputy J.A.N. Le Fondré:

Thank you very much. We are going to keep going with the question line that we have put together on this as we are exploring a view, shall we say. So therefore is it wrong to force someone with strong-held religious beliefs to do something against their will if it contravenes their belief?

Vic Tanner Davy:

I think there are some interesting examples from law in the U.K. (United Kingdom). So the 1967 Abortion Act conscience clause allows medical staff to abstain from abortion procedures for ethical reasons. However, it is subject to the next subsection, which maintains the duty to participate in treatment that is necessary to save the life or prevent grave permanent injury to the physical or mental health of a pregnant woman. Under the National Service Armed Forces Act in 1939 about 60,000 people were exempted or partially exempted from service in the Armed Forces during World War II if they could demonstrate they were opposed to using warfare as a means of settling international disputes, conscientious objectors were still required to serve of course, often in the most menial and dangerous roles. There are other clauses in U.K. law that permit, for example, Sikhs to dispense with crash helmets on motorbikes or hard hats on building sites and Jehovah's Witnesses to refuse a blood transfusion. The point about all these conscience clauses is that the exemption for the religious belief is not at the expense of someone else's wellbeing. The problem here is that you are not objecting to marriage as a concept; you are objecting to marriage when it is between 2 people who are gay; a personal characteristic the people concerned can do nothing about. The action driven by religious belief is then discriminatory because it does harm to someone else. A Jehovah's Witnesses does not refuse a blood transfusion from white people; they refuse a blood transfusion from everyone. A conscientious objector does not object to war between particular

countries, they object to all war. A Catholic doctor does not object to performing abortions for unmarried mothers, they object to performing abortions for all women. That is I think the difference.

[16:00]

Deputy J.A.N. Le Fondré:

Thank you. I will keep going. So many people's religious beliefs manifest themselves in their everyday lives, their volunteering and things like that. So why do you believe that these people should not be able to express their faith in their own way, which would include, for example, refusing some people goods and services?

Vic Tanner Davy:

I think really what I have said before because I think you have to draw a line and the line is where it impacts someone else's wellbeing.

Deputy J.A.N. Le Fondré:

Picking up on part of the submissions made to us, so in an article following the ruling against the Asher's Bakery in Belfast, Peter Tatchell stated: "In my view it is an infringement of freedom to require businesses to aid in the promotion of ideas to which they conscientiously object. Discrimination against people should be unlawful but not against ideas." I think the examples he used, which were elaborated on earlier, were should a Muslim printer be required to produce images of Mohamed or should a Jewish printer be required to produce something that denied the holocaust? So, just to expand on that, would you like to comment on that or do you believe that the legislation can be amended to reflect the kind of Peter Tatchell view?

Vic Tanner Davy:

I cannot comment on the Peter Tatchell view because I do not know it and I am not familiar with it, so I do not know the context in which he was talking.

Deputy J.A.N. Le Fondré:

We have gone back and it is an article in the paper, we have gone back and verified that those are genuine quotes.

Vic Tanner Davy:

I am sure they are, I do not doubt that, I am just not familiar with the circumstances around which he was speaking. I think one of the questions that came up before in the last scrutiny panel was this concept of reasonable adjustment and I think in order to respond to what you were just asking it might be helpful to move on to reasonable adjustment.

Deputy J.A.N. Le Fondré:

Yes, there is another question there. So essentially the other question that came on from that is, are you aware of the concept of reasonable accommodation? This is in a paper by ResPublica, I think it is, entitled *Beyond Belief*, and I suppose that follows on, I will take that as a yes, you nodded and referred to it, but do you think there is any merit in exploring that concept?

Vic Tanner Davy:

I think the reasonable accommodation thing is really interesting and, yes, when I spoke to Tom about coming on the Panel today he said: "Have a look at ResPublica's thing", and I think it was really interesting, so thank you for heading us in that direction. The idea of reasonable accommodation, it exists within United States law currently, they have it in their Civil Rights Act. Under that law an employer with 15 or more employees is required to provide reasonable accommodation for a sincerely held religious belief, and it is similar to the idea of reasonable adjustment that we are about to implement in the Discrimination Law for the characteristic of disability, which is an idea copied from the U.K. So ResPublica, the U.K. think tank, in its *Beyond Belief* report found there to be a clear rationale for establishing reasonable accommodation as a distinct duty for employers and service providers and the report made a number of key recommendations and the one that I picked up on was ensuring "the Equality and Human Rights Commission introduces a Religious Freedom Code of Practice: integrating a duty of reasonable accommodation into a legislative framework for protecting freedom of religion will not be possible if it is not also practicable. To that end a Religious Freedom Code of Practice should be devised by the E.H.R.C. (Equality and Human Rights Commission) to help employers and service providers resolve tensions between religious belief and other protected characteristics". The E.H.R.C. have yet to do that work and the U.K. has now shelved the introduction of the British Bill of Rights until after Brexit, so it is unclear how useful ResPublica's findings are going to be in practice. The report does however add to the body of scholarly work on the issue, work that includes arguments on both sides about how to balance the freedom of belief and the rights of individual citizens not to be discriminated against in employment and in the provision of goods and services. So in December 2016 the E.H.R.C. produced a report *Religion or Belief: is the law working?* looking at how well the law in Great Britain protects individuals with a religion or belief or lack religion of belief. It recommends specifically that no change be made to the broad definition of the protected characteristic of religion or belief in the Equality Act and crucially for the present discussion that a duty of reasonable accommodation should not be introduced. So in short it concludes that the Equality Act and the Human Rights Act 2008 provides sufficient protection for individuals with or without a religion or belief. Looking around the subject, Lucy Vickers, professional of law at Oxford Brooks University where she specialises in the protection of human rights in the workplace produced a book *Religious Freedom, Religious Discrimination and the Workplace* and she republished it in 2016. She considers the extent to which religious interests

are protected at work with particular reference to the protection against religious discrimination provided by the Equality Act 2010. In her book she addresses the question of reasonable accommodation and she suggests that, rather than enshrining within discrimination law the concept of reasonable accommodation, the concept is treated akin to flexible working within the employment law, i.e. an employee may request a reasonable accommodation on the grounds of belief and it will be up to the employer whether they grant it. So this would have the advantages of abolishing the need for comparators, as in discrimination law, each case could be assessed on its own merits and will be less confrontational for the employee. However, she sees a problem with this approach, including the difficulty for tribunals in achieving consistency. Her conclusion is that, unlike disability and reasonable adjustment, the creation of a separate and explicit duty of reasonable accommodation would not materially change the level of protection available for religion or belief in the workplace. So there are arguments on both sides and seemingly no readily available solution from the jurisdictions that have been struggling with these arguments for many more years than we have. The fundamental problem is that disability and belief are not comparable when you look at models for reasonable accommodation. Where a person's disability does not compel them to discriminate against another person, a religious or philosophical belief may compel a person to act in a discriminatory way towards another person. So, yes, it is right that a Christian should be able to wear a cross at work. Yes, it is right that Muslim women should be able to wear a hijab. Yes, it is right that someone of the Jewish faith should not be rostered to work on Saturdays. These are expressions of identity that do not deny another person their rights. However it is not acceptable for Christian employees to refuse to serve a gay couple or Muslim managers to refuse to promote women or Jewish-owned organisations to refuse to recruit Arabs, for example. Then there is the question of who decides what is a belief and whether it is sincerely held. The courts have done this in the U.S.A. (United States of America) but who wants to go before a tribunal to prove their identity? Disability campaigners are fighting it; transgender campaigners are fighting it, and it is easy to foresee that campaigners of belief would also fight the indignity of having their personal identity, rooted in a deeply-held belief, scrutinised and rubber stamped as valid by someone else. It is also questionable as to how relevant the discussion of reasonable accommodation is to Jersey law as it currently stands. The U.K. Equality Act is not the same as the Discrimination (Jersey) Law because it contains religion or belief as a protected characteristic. Jersey law does not have that protected characteristic and until and if Jersey law does protect religion or belief it is hard to see where a reasonable accommodation clause might sit. It is not clear why Jersey decided not to follow the U.K. model and implement protection for religion or belief within the Discrimination Law. We would certainly support such an addition. However, we would not support any delay to the implementation of the Marriage Law in order to undertake that addition to the Discrimination Law because we cannot foresee any circumstances in which it would be acceptable to pass legislation that permits one group of people to discriminate against another group of people. So this addition to the Discrimination Law would have no bearing on the Marriage Law, specifically same-sex marriage.

Deputy J.A.N. Le Fondré:

I just want to probe a little bit. Thank you, that has been rather useful. Picking up again and just following up from comments that were made last time around in the last hearing, so one that I found interesting, shall we say, was about another cake, apparently Colorado Satanists requiring a Christian couple to produce a cake, and apparently they are a religious group, which is interesting. Should one be able at that point to say no?

Vic Tanner Davy:

Yes, it goes to the question a little bit of producing cakes with swastikas on, et cetera. It goes to that same question. I do not know whether we have an adequate answer to that in Jersey legislation as it stands because we do not protect religion and belief under the Discrimination Law. So I think we are missing a plank somewhere.

Deputy J.A.N. Le Fondré:

The second comment I wanted to raise, I suppose it is exploring again a reference that we have had on a couple of occasions, which was I think a student, and I do not know the view precisely that was expressed, but effectively would have been in support of what is described as traditional marriage, and expressed a view on Facebook, supposedly in a private capacity as I have understood it, and then was removed off his course for expressing that view.

Vic Tanner Davy:

I am not familiar with that case. I do not know the details of that case. There may well have been some extra elements to it that mean that it was lawful to remove him from his employment because potentially he had fallen foul of their own, as an employer, internal policies and procedures, which explicitly said about the use of social media.

Deputy J.A.N. Le Fondré:

I think it was the university. There are 2 other points and then I am guessing Simon has a question. Jersey Canon Law does presently define a marriage is between a man and a woman, so how does one marry up an argument, shall we say, which is that people are expressing their view, which is in conjunction with Jersey statutory law, even though it is a different law to the one that is being proposed?

Vic Tanner Davy:

Yes, there is no easy answer to it.

Deputy J.A.N. Le Fondré:

I am just curious. And the final point I would like to just ask, which again was raised, is this issue around church-owned buildings rather than places of religious worship. Perhaps we do not go into the details, but do you think there is an issue there or not?

Vic Tanner Davy:

I need to go back and look at the Law because I was very surprised at that distinction because I thought that the Law had within its drafting the fact that church-owned property was exempt.

Deputy J.A.N. Le Fondré:

I will have to go back and check, it is here, I think it is one that is used for religious worship is the way it is defined.

Vic Tanner Davy:

I thought it was more than that; I thought it was wider than that.

Deputy J.A.N. Le Fondré:

Well that is what we are looking into. All right, so if you have any thoughts on those please come back to us because, as you say, it is a complicated and difficult area, I think would be the summary. Now, Simon, have you got a question?

Deputy S.M. Brée:

Yes, I would just like to question, if I may, a little bit more about your views on discrimination. Now, the diagram you have given us is very graphic and it is very clear. It has been put to us that the purpose of this Draft Law is to remove discrimination. But, in doing so, it could be said that it has introduced a new form of discrimination, which is discrimination on grounds of faith and religious belief. Now, we are all against discrimination of any kind and obviously you are probably much better researched than we are on the various issues of discrimination. But I would just like to ask the question, do you feel it right that a Draft Law, when seeking to remove discrimination, should in some people's minds introduce a new form of discrimination, which is long-held religious beliefs, somebody who has say been going to church from the age of 3, is an active member of their church and tried to live their life by the doctrines instilled by that church, one of which unfortunately is the traditional view of marriage? If there is no conscience clause, which allows them to, on the basis of their long-held beliefs, refuse to provide a service or goods to a couple who are in a same-sex marriage, surely that is discrimination, no matter how you look at it, it is the basis of their belief, long-held, and it has been put to us that is in itself, while you are quite right in saying they are discriminating against a same-sex couple as opposed to a heterosexual couple getting married, there still is the issue of is this introducing a form of discrimination against people's beliefs? How would you counter that?

Vic Tanner Davy:

There are numerous ways in which we are all discriminated against, not just on the basis of protected characteristics under the Discrimination Law. It is another way in which people potentially could be discriminated against. But should we enshrine that within law; that is the question I think.

Deputy S.M. Brée:

Well if you are satisfied that discrimination against faith or religious belief is wrong, then what is wrong in enshrining that in law?

[16:15]

Vic Tanner Davy:

Because I think it is what I said before, it is about there is a line that has to be drawn whereby you cannot cross it, which is where you do harm to someone else. That is the line in the sand. That is the line in the sand for me.

Deputy S.M. Brée:

It would be interesting, Reverend Halls, if we could obviously hear your view on it.

Rev. Graeme Halls:

I think that point is right, we are not asking them to change their views, you have to respect people's opinions and we know that in this debate there are all sorts of things, but if you are over whatever age it is, if you are the age of my nieces and nephews they say: "What is the problem?" So I think there is a whole sort of wall around this, but I think that we have to respect people's opinions and views on this and where they are. The question is what people do with that. We live in a free society, a democratic society where people are free, but you cannot hold views that, when you put them into practice, are illegal. I could hold a personal view that I am allowed to drive around the Island at 80 miles an hour come what may. In the end I will get caught. I think therefore we have to be clear that people are allowed to have their viewpoints but then to then discriminate against people is not right. It seems to me that teachers may have to teach all sorts of things in classes they do not necessarily agree with. You can imagine a music teacher who is rooted in Baroque, whatever it is, having to teach Elvis Presley. They do not like it but that is what they do and it is part of what they have brought in. So I think it is just a question of you cannot have a situation where people are free to discriminate against people who are coming to them for goods and services. I know how big this debate is, anyway, frankly, quite a bit of this stuff is coming from a particular place and it is well funded by certain legal organisations, so I think we ought to be a bit careful about taking some of these things hook, line and sinker but we are free to hold it for use.

Deputy S.M. Brée:

As long as they do not discriminate the exercise of those views, does not discriminate against the minority.

Rev. Graeme Halls:

Yes, they are fabulous. Yes, yes, the ethos of Christianity is about love and then all the kindness and the gentleness that goes with that. I think it is really important that the church, as in Christians, do not define themselves by what they are against. I think, as this church and as Christians, we are defined by what God is about; God is about love. That seems to me that that changes over the years and the generations. It is difficult for people who have been brought up in one generation to then find ways of adjusting and accommodation, it can be done. People do this, especially when it happens within the families. We have got situations here within the Methodist Church where people's grandchildren are now in civil partnerships and they have to make decisions. Do I say: "I never want to talk to you again or I love you anyway, so whatever your choices are, that is fine"?

Deputy S.M. Brée:

Just to get it right, you would be against any form of expansion of the conscience clause on the grounds of religious belief or faith, as opposed to the official or the organisation or the building from Reverend Halls ...

Rev. Graeme Halls:

Yes, yes, yes, yes. I think with the Methodists, the church ...

Deputy S.M. Brée:

Yes, okay. No, I just wanted to try and explore a bit more because to a lot of people who do hold very strong beliefs, religious beliefs, they feel they will be discriminated against, so it was just to understand ...

Rev. Graeme Halls:

I think you have to define between things like ... you have talked about conscience, it is a significant thing in civil life, is it not? We talk about the presence of conscience around the world and it is international. The question is, is it about conscience or is it about fear? My guess is that quite a lot of the cases you are talking about are people are afraid, afraid of what other people will think about them.

Deputy S.M. Brée:

If you take the recognised religions, the major ones, the Roman Catholic Church, the Anglican Church and possibly even the Methodist Church that ...

Rev. Graeme Halls:

Thank you so much.

Deputy K.C. Lewis:

Not in any particular order.

Rev. Graeme Halls:

I am certainly okay.

Deputy S.M. Brée:

All equally weighted, that there are doctrines, the Roman Catholic Church through papal bulls and edicts, Anglican Church through canon law and the Methodist Church, I believe you have ...

Rev. Graeme Halls:

Through its Conference, Methodist Conference, yes, thank you.

Deputy S.M. Brée:

Yes, the Methodist Conference, which lay out a series of belief structures, if you like, and try and direct people in the way they live their life as a Christian within that organised religion. If that organised religion is not willing to change to accept same-sex marriages, then somebody who does, say, is a photographer, we will use that example and has held the belief, lives his life according to the doctrines of his church, whatever church it is, some people would say by not allowing them a conscience clause, they are not, in their mind, being discriminatory. Right, that they are not attempting to be discriminatory, they just say: "I am afraid I just do not believe in it."

Rev. Graeme Halls:

That is fear, yes.

Deputy S.M. Brée:

It is not fear, it is their belief, it is their faith. It is not necessarily fear. I think it is wrong to say it is fear, in some instances it may be but I think it is more of a belief thing. It has been put to us that by not extending a conscience clause to cover people of a very clearly defined demonstrable and could be held up to in examination belief, that you are forcing them to do something against their belief. Is that discriminatory or not? You would argue, if I am correct, it can only not be discriminatory if they refuse to be a photographer at all weddings. Is that sort of the principle you are trying to get

across, that it becomes discriminatory when they refuse to provide goods and services to a minority, as opposed to the majority?

Vic Tanner Davy:

Yes, yes, yes.

Deputy S.M. Brée:

Okay. No, I was just trying to understand your ...

Vic Tanner Davy:

I think there are many things that we may believe that will never necessarily be protected under law. For example, we may have a deeply-held philosophical belief, we may believe in the scientific evidence of global warming. We may believe in kindness to animals and be a vegetarian and at work we may be asked to handle meat because we work in a supermarket. There may be many instances whereby we are asked to shelve our beliefs when we get to the workplace.

Deputy S.M. Brée:

I would say that long-held traditional religious belief is slightly different because they may have been brought up ...

Vic Tanner Davy:

Not for the person holding the belief.

Deputy S.M. Brée:

Okay.

Vic Tanner Davy:

If you have a fundamentally deeply-held belief in environmentalism and in green issues, you could hold that belief as deeply as somebody who has been brought up in a religious organisation and hold religious beliefs. I think there are instances whereby ... yes, unless and until Jersey looks at religion and all philosophical belief as a protected characteristic ...

Deputy S.M. Brée:

Do you think we should look at it as a protected characteristic or not?

Vic Tanner Davy:

I do, yes.

Deputy S.M. Brée:

You do.

Vic Tanner Davy:

Yes, I do think we should have that debate. I do think we should be looking at it and I do think it is something that ...

Deputy S.M. Brée:

Would you accept ...

Vic Tanner Davy:

I am not entirely sure why it was never included in the first place and that would an interesting starting point to discover why.

Deputy S.M. Brée:

If we had that debate and religious belief, as long as it could be quite clearly shown and demonstrated that you have held that belief for a long period of time, became a protected characteristic and, therefore, would be covered by a conscience clause ...

Vic Tanner Davy:

No, not necessarily. You could have protected characteristic of religion and philosophical belief but you would not necessarily have to bolt on a conscience clause.

Deputy S.M. Brée:

Okay.

Senator S.C. Ferguson:

Are you then really putting all these items on a sort of level where if somebody said that they had a particular point of view with regard to either same-sex marriage or climate change or digging up a grandmother ... I am sorry, I do not mean to make it ...

Vic Tanner Davy:

It is a slightly strange belief but, yes. **[Laughter]**

Senator S.C. Ferguson:

Okay. You say something which, effectively, you or somebody from the other point of view would either take offence or something like that, are you putting that into the sort of position where it is actionable if somebody says something like that? Am I getting this totally wrong?

Vic Tanner Davy:

If you look at the Equality Act, within the Equality Act religion and belief is protected, alongside of all the other protected characteristics, just exactly the same protected characteristics as we have got within discrimination. My question is, why have we opted to ditch that protected characteristic in Jersey? I do not know why, I do not know the answer to that. I do not know why, when we looked at the Discrimination Law, we did not include that because it is in the Equality Act, so that is what my question is. I think it would be interesting to find out the answer to that and why it is not included. If it were to be included, then there is multiple case law within the U.K. as to how it works and it does work and it does protect people who have a religious belief at work from being discriminated against. But it is not a conscience clause; it is not the same thing.

Deputy J.A.N. Le Fondré:

Okay. Have you anything? No. Kevin.

Deputy K.C. Lewis:

Just a quick one, Reverend Halls, you touched upon ... I am not sure if it is nieces and nephews, earlier on, do you believe that part of the problem is a generational one, obviously a question for both of you, that youngsters are more accepting of people generally and do not hold, obviously, long-standing beliefs because they have not been around that long?

Rev. Graeme Halls:

I think to have friends and your workmates and so on who are gay is quite usual, in schools and so on as well. I think there is a generational thing about ... church congregations, many of them are elderly and, therefore, have not lived their lives where homosexuality is a public thing, it has been hidden away. Yes, I think it largely is ... it explains a lot of things.

Vic Tanner Davy:

I disagree a little bit with Graeme on that one because I have done numerous talks now about being transgender and what that means and what that looks like in society to various groups. I have taught Highland students and I have taught the W.I. (Women's Institute). The W.I. group that I had the most enjoyment, fabulous evening, was with a group who none of whom, I think, were under 70 and they were fascinated. They came up with the most interesting questions and they genuinely were warm and interested and wanted to know more. I will have exactly the same response from a group that I speak to, of Highland students, for example. It is ...

Rev. Graeme Halls:

That does not surprise me but, in a sense, we are talking about church, the question was about church, I would agree with you, and I think if you go outside of the church you find much more acceptance, normally do and that is for all the sorts of reasons we understand.

Deputy J.A.N. Le Fondré:

Okay, right, moving on. I am afraid we are going to overrun here but that has been useful. Sarah, you are on question 7.

Senator S.C. Ferguson:

Yes, the draft law provides for civil celebrants to be authorised to solemnise civil marriages. Do you believe that the law continues to protect the solemnity and dignity of marriage in light of these changes?

Vic Tanner Davy:

Yes, and we are very pleased that the law permits anybody to apply to be an authorised marriage celebrant and the humanist community particularly are going to be able to solemnise marriages, which opens up the service of marriage to another group, which reflects the diversity of beliefs present in the Island. During the consultation period on the proposed changes to marriage, we received feedback from the humanist community that it was something that they really wanted to see enabled. We think the process with becoming a civil celebrant is not particularly onerous but sufficiently rigorous not to be undertaken lightly, including the training and swearing in at the Royal Court and the ability to deregister a celebrant if they do not act in accordance with the law. The Superintendent Registrar may also refuse a person if they are not suitable. Yes, we welcome that.

Senator S.C. Ferguson:

Yes, there was one question I asked the Superintendent Registrar yesterday, which was kind of a bit of a showstopper, should the Government be dictating the form of marriage? You do not need to answer but I do wonder if it should be a Government-dictated thing.

Vic Tanner Davy:

In terms of what? In terms of the actual words of the service or ...

[16:30]

Senator S.C. Ferguson:

There are certain things, the Superintendent Registrar will decide whether it is suitable for a ceremony or not or if she thinks it is unsuitable she will put her foot down and say: "No, you cannot use that." We had a long discussion ...

Vic Tanner Davy:

The practicalities around the arrangements for the service?

Senator S.C. Ferguson:

Yes. The distinction between having ...

Deputy J.A.N. Le Fondré:

We will come to that in a minute, I think. Yes. No, we are jumping ahead a bit.

Senator S.C. Ferguson:

I am just wondering, should it be the Government that is dictating the form of marriage?

Vic Tanner Davy:

Who would be the alternative?

Senator S.C. Ferguson:

Each of the denominations perhaps. I do not know, I am just asking.

Vic Tanner Davy:

Yes.

Senator S.C. Ferguson:

I am interested but perhaps it is slightly ...

Vic Tanner Davy:

Yes, I think that we are talking ...

Senator S.C. Ferguson:

I know it is slightly off the point but it did occur to me.

Vic Tanner Davy:

If we are talking about a civil ceremony, then I would have thought it is obvious it sits with the Superintendent Registrar's office to deal with it.

Rev. Graeme Halls:

Churches would do the same thing, they will say: "Yes, you can have Tom Jones singing Delilah or, no, you cannot have Tom Jones singing Delilah here."

Senator S.C. Ferguson:

Why are we letting the Government bring in legislation? I do not know, anyway, sorry.

Deputy J.A.N. Le Fondré:

Okay, question 8, Sarah.

Senator S.C. Ferguson:

Yes. In your submission you suggest that the States will not seek to levy a fee for converting the civil partnership to marriage for a period of 2 years after the introduction of the Marriage Law, could you clarify what in the draft law has caused you to reach this view?

Vic Tanner Davy:

I cannot clarify off the top of my head but I am sure I read it somewhere, otherwise I would not have put it ... it may not have been in the law, it may have been within the guidance notes that accompanied the law. But I know that I will have got it from there, I will not have got it by word of mouth.

Deputy J.A.N. Le Fondré:

Sorry, just to clarify, what guidance notes?

Vic Tanner Davy:

Those bits that came ahead of the law itself.

Senator S.C. Ferguson:

The report at the beginning, yes.

Vic Tanner Davy:

So the report, sorry.

Deputy S.M. Brée:

Sorry, right. Okay, the report that is attached to it.

Vic Tanner Davy:

Yes, report, yes.

Senator S.C. Ferguson:

Communication problem.

Vic Tanner Davy:

Thank you.

Deputy J.A.N. Le Fondré:

Yes. Do you mean the report attached to the law, as part of the proposition?

Vic Tanner Davy:

Yes, ahead of the front of the draft law, yes.

Deputy J.A.N. Le Fondré:

Yes, okay, fine.

Vic Tanner Davy:

Yes, I think it was in there, to answer the question.

Deputy J.A.N. Le Fondré:

Okay, if you would not mind just digging out where it came from because we have not picked it up yet ...

Vic Tanner Davy:

Yes.

Deputy J.A.N. Le Fondré:

Right, Kevin.

Deputy K.C. Lewis:

Senator Ferguson has touched on this but I am going to ask you anyway, the draft law will allow greater use of religious content in civil weddings. Do you think the law is clear about who decides what content is appropriate and how they should arrive at this decision?

Vic Tanner Davy:

Do you want to answer or not? **[Laughter]**

Rev. Graeme Halls:

Yes. What is interesting is if I could go to a different aspect of my work in terms of funerals, there are civil celebrants here conducting funerals. I would say to that a bit early, crematorium and they have just finished saying the Lord's Prayer and they are singing All Things Bright and Beautiful.

Clearly, the family have asked: "We do not want a religious service but we do want the Lord's Prayer and we do want All Things Bright and Beautiful." I think there is a muddle in that sense in that world. I know there is some anxiety in the church about civil celebrants being able to conduct what looks like a religious ... even if they do not have the formal religious version of perfecting it, for rich or for poor, in sickness and health, if those are not included because that is what I think you were talking about earlier, would make no difference at all. But if those words are sandwiched by two hymns or something, what does it look like? I know there is some anxiety about that but I think that a lot of this stuff is religious but it is also cultural. How do you draw distinctions? It has always seemed to be a bit mad that you cannot have some sort of religious music before a civil ceremony.

Deputy S.M. Brée:

We used the example of Jerusalem in a previous hearing.

Rev. Graeme Halls:

Yes, I know, W.I., a big W.I. hymn, yes.

Deputy S.M. Brée:

Some would say it is a religious hymn, others would say it is the unofficial English National Anthem, what is your view? What is it? Is it a hymn or is it a song?

Rev. Graeme Halls:

It is horrible. **[Laughter]** Yes, I think it is that muddle, is it not? It is both cultural and religious and I think it is difficult to untangle that and you cannot make laws for that sort of thing. I think you have got to have common sense. I know that funeral directors try to work this one out but sometimes it is difficult and it comes back to that other world, who sorts that one out? Is the Registrar going to say: "Are you going to have anything religious in your service? If not, you cannot go to ... you have got to go in that particular direction."? Because churches will allow a piece of music that is not religious; My Way, Frank Sinatra, that sort of thing, you could talk about the antithesis of religion. Faith is not about doing it my way. It is God's way you could argue. But these things are part of our culture. I know some are concerned and I think especially Catholic communities, I think, are concerned about this because they do set quite clear parameters, what is allowed and what is not? I cannot speak for all the churches and probably cannot even speak for most of the Methodist Church but I think it is an interesting debate. What I think is that we should welcome. The interesting thing about weddings is ... I have been around long enough now, 25 years ago or so when Anglicans began to be able to marry divorcees, our weddings just went through the floor because they did not have to go to the Parish Church, that is where they could not, it was that or a grotty Portakabin around the corner that was the Registry Office or it was the Methodist Church, the Methodist Church won. We engage with people who want to marry and want something rich and, therefore, it is ...

Vic Tanner Davy:

On Graeme's point there, I think what weddings provide as well for a lot of people is one of the very few opportunities to attend a church within what is quite a secular life and I think anything that opens up the idea of having slightly religious content within a civil ceremony could, potentially, then, therefore, open it up for people investigating religion a little bit more.

Rev. Graeme Halls:

People often, who have no faith, will say: "But it is only really proper if it is in a church." There is that whole debate going on, I welcome that. There are a lot of people who say: "No, I am religious but I do not want to go into church, I want something nice and simple. I want it to be in the next quarter here" or whatever, that is fine, that is people's choice. We ought to allow that choice to happen.

Deputy J.A.N. Le Fondré:

Just out of curiosity, how is the Lord's Prayer not religious?

Rev. Graeme Halls:

Say again, sorry?

Deputy J.A.N. Le Fondré:

How is the Lord's Prayer not religious?

Rev. Graeme Halls:

Is it the sort of thing that perhaps does not happen anymore? People have learnt it in school or people have learnt it in various ways that they do. It is like the Guide Me, O Thou Great Jehovah, Bread of Heaven on the terrace of the Welsh Rugby team.

Deputy J.A.N. Le Fondré:

I do not do rugby. [Laughter]

Rev. Graeme Halls:

There you go.

Senator S.C. Ferguson:

He is uncivilised.

Deputy J.A.N. Le Fondré:

I was using that as a very specific example because songs could be different, I accept that, yes.

Rev. Graeme Halls:

I accept that, yes. I think it is something that people know and say and they may say: “We do not want it.” But they may say: “Or granny wants it.” See, have that tension, those sort of things going on as well within families. I think there are all sorts of reasons why people do things. People often come into church for these sort of services because granny wants it.

Deputy J.A.N. Le Fondré:

Okay, right, let us move forward. Simon.

Deputy S.M. Brée:

All right. If we can drag ourselves back to the actual draft law, do you think that the draft law makes adequate provisions for same-sex couples currently in civil partnerships to convert to marriage?

Vic Tanner Davy:

Yes, the ability of those people in a civil partnership currently to convert that civil partnership into a marriage is important. But of equal importance is that those in civil partnerships are not compelled by the law to convert the partnership to a marriage. The conversion process is outlined in the Marriage Law, allows for an administrative conversion or a conversion ceremony and this, again, allows couples a choice in how they wish to convert. Some will feel that their original ceremony was a sufficient celebration of their union and that they consider themselves married from that day, irrespective of the law. Others may feel that it was a make-do ceremony until same-sex marriage was introduced in Jersey. We also support the ability for same-sex couples to continue to have civil partnerships after the Marriage Law comes in and for those civil partnerships to be able to convert to marriages at a later date. The Marriage Law acknowledges that same-sex couples may have opted and paid for a civil partnership ... That’s the point about the 2 year fee that we questioned earlier. Can I tell you where it came from? I cannot tell you where it came from actually. We recognise that an inequality currently exists whereby civil partnerships are not available to opposite-sex couples. However, we understand again that work to review the provisions of the Civil Partnership (Jersey) Law is ongoing and the passage of the Marriage Law is merely the first stage of a staged process.

Deputy S.M. Brée:

Let me ask you about that because it is a concern to some people that, effectively, should the States of Jersey, the States Assembly, vote into law this draft law? We are voting into law discrimination against heterosexual couples.

Vic Tanner Davy:

Yes.

Deputy S.M. Brée:

Because, as you rightly say, the provision of a civil partnership currently is only open to same-sex couples. Would you agree that that is wrong?

Vic Tanner Davy:

Yes, and we are going to be strongly advocating for the fact that civil partnerships should be opened up to heterosexual couples.

Deputy S.M. Brée:

Accepting that, one, it is wrong and, 2, that it creates discrimination, actively creates discrimination, should the States Assembly then be voting in this law?

Vic Tanner Davy:

Yes, you have to start somewhere and it is a staged process. We understand that it will continue to be worked on and there will be an equity that will be reached. We have been told that by the Chief Minister's Department; that it something that is going to come at a later stage, that there will be the next stage of the process.

Deputy S.M. Brée:

It does, however, create an issue in some people's minds; that the whole basis, as I was saying and you have explained at length, is that we need to try and abolish discrimination wherever we may find it. Should the change in the civil partnership legislation have been brought forward? Should it have been brought forward at the same time as this so as to avoid discrimination against heterosexual couples? What is your view on that?

Vic Tanner Davy:

Ideally, we would have liked to have seen the whole shebang altogether in one hit, that would have been the ideal but ...

Deputy S.M. Brée:

Yet, there are 31 laws that are in there, excluding the civil partnerships one.

Vic Tanner Davy:

Yes.

Deputy S.M. Brée:

Yet, you are still convinced by what the Chief Minister's Department has told you, that they will get around to it at some time in the future?

Vic Tanner Davy:

It is not "at some time in the future", I believe that there is a planned ...

Deputy S.M. Brée:

Have you been given a date?

Vic Tanner Davy:

I have not been given a date. I have not been given a date for when this is going to get through.

Deputy S.M. Brée:

It is of interest because the whole basis, as we are saying, is to try and abolish discrimination where we find it and yet we are voting in discrimination.

Vic Tanner Davy:

Yes, I hope it is a temporary position.

Rev. Graeme Halls:

I also wonder how long civil partnerships will last in terms of a legal ... does bringing in same sex, equal marriage in the end make civil partnerships redundant anyway?

Deputy S.M. Brée:

If you are of the view that for some people the concept or the tradition of marriage holds perhaps some very deep seated anxieties, fears, hatred, whatever it may be, and yet they do want to have a formal recognition of a relationship, partnership ...

Rev. Graeme Halls:

Legal side of it.

Deputy S.M. Brée:

There are certain legal protections that are provided under the Civil Partnership Law - not quite the same as marriage but reasonably good - that it would be wrong to stop civil partnerships being able to be entered into by either heterosexual couples or same sex couples. Do you agree with that or do you think civil partnerships should effectively ... the right to enter into one should cease when this comes into law?

Vic Tanner Davy:

I think Graeme is probably right that as marriage is equalised there will be a drop off in the number of people looking to have a civil partnership.

Rev. Graeme Halls:

The civil partnership bringing in was the temporary bit. It was really between.

Deputy S.M. Brée:

There are same sex couples, and I was speaking to somebody who lives relatively close to me the other day, who was saying they have no intention of converting, why should they? They are happy. It gives them what they want.

Vic Tanner Davy:

This is why I think I struggle to see that we will get rid of civil partnerships within law because there will be people who are very happy to have their civil partnership as is. So the only way then therefore, to make it equitable, is to open it up to opposite sex couples, which I hope we will see.

[16:45]

That they will get that option. Because we had a lot of submissions when this was first put out there for consultation. We had a lot of submissions from women who said: "We do not want marriage. Marriage to us is a patriarchal institution. We do not want to get married but we would love to have a civil partnership with our partner."

Rev. Graeme Halls:

Because they have no choice at one point. Before now there was no choice.

Vic Tanner Davy:

We will be giving voice to that.

Deputy S.M. Brée:

Continuing forwards, as you say, there are people who do not wish to go through marriage but they do wish to go through a civil partnership. So you would be against any changes being made to the Civil Partnership Law to prevent any further partnerships under that law being entered into, i.e. to stop the right to enter into a civil partnership?

Vic Tanner Davy:

Yes, we would like to see civil partnerships continue and to be opened up.

Deputy S.M. Brée:

You did touch on this earlier, Reverend Halls, and I am just wondering whether you could just expand a little bit more on the position of the Methodist Church, because, am I right, your title is superintendent in Jersey?

Rev. Graeme Halls:

Thank you, yes.

Deputy S.M. Brée:

I want to make sure I get it right. The Methodist Church obviously, from what you said earlier on, seems to be slightly more open to the concept of same sex marriages occurring in church, with the Methodist Church building. Yet you said that is a little way away. Could you just expand and explain to us the current position of the Methodist Church in Jersey and where you see, hopefully, that going?

Rev. Graeme Halls:

I think I need to widen it beyond Jersey because we have the British Methodist Conference and that is what governs us. So we do not operate locally in that sort of decision making. The Methodist Church has not said: "No, never." So we have not got down any sort of quadruple lock stuff, and we understand the reasons why that exists in terms of rectors being required to marry; we have not got that same requirement. We use our judgment on these things. I think the church has not said: "No, never." There is a working party working at it, and has been for a few years, and is continuing to ... obviously there are tensions between those ... well, you have heard today the debate, and I think there are tensions between those who say: "No, it should not happen" and those who say: "Yes, it should." It may not all be theological, there may be a lot of other reasons as well. I think the church is having to work through this one, but I think we have now ministers who are in marriages in the U.K., either with a non-minister or 2 ministers married to each within same sex marriages. That has been allowed within the church. It is not a disciplinary matter, which it would be in the Church of England. So theoretically it is against our rules but we are much more pragmatic and we have said it will not be a disciplinary thing. So I think that gives the hint there; the church at some point is ready to say: "We will allow situations" which is the same as your law here where the church says yes and the minister says yes, then we will allow that situation to take place. Those where churches say no and ministers say no, or there is a mix, and then it will not happen. So I think that will come down to the judgment of the minister of the local churches.

Deputy S.M. Brée:

At the moment, you, as a minister of a Methodist Church, would you be allowed to officiate at a same sex marriage outside of the church building?

Rev. Graeme Halls:

I think not because I would still be doing it in my capacity as a Methodist minister. I cannot step out of that. I think probably the answer is no to that.

Deputy S.M. Brée:

But do you see that changing positively? What are your views or hopes?

Rev. Graeme Halls:

Personally I hope it happens. When it will happen ... but then I have to say, 10 or 20 years ago none of us saw any of this happening, sort of David Cameron and other legal ... making it law. Never saw it happening in our lifetime. It has happened very fast. Not so fast here but I mean in ... Australia is just looking at it.

Deputy S.M. Brée:

Australia has just voted in principle.

Rev. Graeme Halls:

So the Western world are going on this route. I suspect in Australia perhaps they took longer is because there is big debate there in the church.

Deputy S.M. Brée:

As it stands today, you are not allowed to officiate or carry out same sex marriages in the church or outside?

Rev. Graeme Halls:

I understand no. I understand there are some churches here that can and they are mainly churches that govern themselves locally.

Deputy S.M. Brée:

Could you give us an example?

Rev. Graeme Halls:

I think the United Reform Church can, if they wish to, because they make these decisions that we make nationally. Even more for the Catholic Church; they make global decisions so we are not ... how on earth do they come to a view on this when they are operating globally. It is difficult enough

when you are a local or in an Island. So I suspect the Methodist Church in the end will make a pragmatic decision on this and allow some people to opt in or opt out ... churches to opt in or opt out. It is what we have done before with remarriage of divorcees and things like that.

Deputy J.A.N. Le Fondré:

I have got one question left on our list and then I do have a couple of follow-up ones just picking up some stuff that has been said. The question which we have asked everybody is: what consultation have you participated in over the last 2 years as the law has evolved?

Vic Tanner Davy:

I was trying to think because I heard you ask that question before and I was trying to think where our journey started with this. I know Liberate was formed in Guernsey in order to respond to the question of same sex marriage and we formed in Jersey in roundabout June 2014, although officially it was August 2014. I think our journey started by us responding to the public consultation process. That is, I think, where we got on board with it. I do not think we had an invitation from the Chief Minister's to specifically get involved. I think we got involved because we saw it out there and we responded. From that point onwards we have been kept in the loop as much as, I guess, anybody who has been on board from that point.

Deputy J.A.N. Le Fondré:

Does that mean you have relatively regular meetings with the Chief Minister's Department or ... when I say "or"; questions, emails or whatever it is, coming down?

Vic Tanner Davy:

No, I mean to be honest, I think meetings we have probably had 4 in total over the course of 2 years at key points where something has been about to happen. It may be the draft is about to be released or something like that. So, yes, maybe about 4 meetings, I think. I have had a few email conversations back and forth with Ruth Johnson where I have said: "Have you thought about this?" and she has come back with: "Yes, we have thought about it" mostly. I would say that is probably our ...

Deputy J.A.N. Le Fondré:

When did you first see a draft?

Vic Tanner Davy:

The same time that it was released to the public. So this one.

Deputy J.A.N. Le Fondré:

The one that has been lodged?

Vic Tanner Davy:

Yes, 3rd October.

Deputy J.A.N. Le Fondré:

So you did not see any earlier versions or anything like that?

Vic Tanner Davy:

No, we did not. I was told that we would see a draft in about April of this year, and I chased her and chased and chased the Chief Minister's and then it became apparent on the day of our Pride Dress Down Day that we were not going to see a draft at that early stage.

Deputy J.A.N. Le Fondré:

Two or 3 I wanted to ask; I think I want to ask one, I am not too sure actually. One is just a general one, which is: any observations on the time taken? Because obviously this is a 2015 ...

Vic Tanner Davy:

I entirely feel for the Chief Minister's Department in what they have undertaken here. It is massive the amount of work that this law has taken and I completely understand why they have only really addressed (a) of the promise that the States made. I think that it is really that complexity which had been underestimated probably by all politicians. I do not think necessarily just the Chief Minister. We understand and we have been very supportive of the work that they are doing because we know it is being done in good faith. We have no reason to believe that they have deliberately dragged their heels on any of this. That it has genuinely taken this amount of time.

Deputy J.A.N. Le Fondré:

Obviously for the record, the first time we saw a piece of the legislation was when it was lodged despite the earlier request, I think. I think we need to go and get some advice on this just to understand it, but you made reference to the spousal veto. Could you just elaborate on that a little bit?

Vic Tanner Davy:

The spousal veto is something ...

Deputy J.A.N. Le Fondré:

I was trying to find it in your submission but I could not find it.

Vic Tanner Davy:

It is something that is enshrined within England and Wales law. It is not in Scottish law. Which is where a transgender person is currently within a marriage and they wish to legally change their gender by having a gender recognition certificate. The spouse of that person has the ability to say no.

Deputy J.A.N. Le Fondré:

To change their ...?

Vic Tanner Davy:

To change their gender, by gender recognition. So the spouse of the person has the ability to say no because, for whatever reason, they do not want their husband or wife to change gender. That has been dispensed with in Scottish law and it is being fought vociferously by transgender groups within England and Wales to get it removed. Because it sets up a very inequitable position whereby somebody who is transgender wishes to change their gender legally, and cannot do so because their spouse is saying no, and usually the reason is because of the ... you cannot change your gender until you have been in transition for 2 years. You cannot do that legally. So you have to have been transitioning for 2 years, so the spouse knows that you are trans. They know that you have been transitioning for 2 years. The problem is that what is happening is that spouses are then being estranged because of the transition that is going on and are digging their heels in and saying: "No, I am not going to allow you to have your gender recognition certificate. We have been separated and estranged for 2 years, we are not divorced. I have the right of spousal veto over you, so I am not going to allow you to change your gender." That is the problem that it sets up. The reality of those marriages that are happy and wish to continue after transition, the reality of that is that because you know your partner is going through transition, and you know they have been going through transition for 2 years, there is no need of a spousal veto. I think the law came in because it was pushed by Back-Bench Tory M.P.s (Members of Parliament) the spousal veto bit. It was something that the Back-Bench M.P.s wanted to see within the legislation. I would say that it was fear-driven. That they were afraid of what happens if somebody in a marriage suddenly becomes transgender? The reality of somebody's transition and the reality of that journey is that it takes 2 years, so after 2 years' time you are not going to suddenly realise: "Oh, my partner's trans." No, they have been trans for 2 years. It is a mischaracterisation of what it means to transition and what it means to get a gender recognition certificate at the end of those 2 years. Yes, that is why the spousal veto is really not a good idea.

Deputy J.A.N. Le Fondré:

Just looking for some clarification, I suppose. My final question, which I heard from Rev. Halls, you made reference - I do not want to go too far back to where we were - but you made reference to the fear factor when we going through the quite interesting discussions on the conscience laws area. Is it just fear because there have been, it seems, or is it just ... or maybe the examples that we have given are just discrimination. But there have been a number of examples where things have ended up in court and people have been either very heavily fined or somebody has lost their job or whatever it is. It is more than fear, I would suspect. Fear is a little bit ... the implication was it is a fear that is not reality, if that makes sense. But the reality is people have ended up in court as a result of this, is it not?

Rev. Graeme Halls:

I agree. I think there is not just one story, is there, in this sort of thing? I think there are a number of issues that are around. I am not denying people have conscience or strong held views or faith or they read the Bible in a certain way whereas someone might read it in a different way. It is a complex picture. Fear of seeming to be disloyal to your parents or to your community or to your church because you take the particular view that they do not. I think fear plays a part in it. I just think that there are a number of things and one of them is the fear of people's perception ... people genuinely ... some might call it conscience. It might be conscience but I think people fear the sort of ...

Deputy J.A.N. Le Fondré:

We have overrun, so I do apologise for us talking a lot.

Vic Tanner Davy:

I think we did a lot of talking as well.

Deputy J.A.N. Le Fondré:

Hopefully you feel you have put your views across and seriously thank you very much for your time. It has been very useful and very interesting.

Vic Tanner Davy:

Thank you very much for inviting us to submit.

Deputy J.A.N. Le Fondré:

That is what we are here for.

Rev. Graeme Halls:

Thank you.

Deputy J.A.N. Le Fondré:

On that note that brings the hearing to a conclusion. Thank you all for your time.

[17:00]