

Summary of the Aidan O'Neill legal opinion on gay marriage and liberty of conscience in Scotland

THE far-reaching impact of redefining marriage is beginning to emerge, but the consequences go much further than has so far been reported.

Concerns about freedom of conscience have largely centred on places of worship, ministers of religion and marriage celebrants.

But details about the impact on freedom of conscience in the workplace, in schools and other areas of everyday life have been overlooked.

Those details are contained in the legal opinion written by leading human rights lawyer, Aidan O'Neill QC.

It confirms that amending the UK Equality Act will not be enough to stop people being penalised if they believe in traditional marriage.

Court cases could be brought under human rights laws which could leave Scottish Government protections in tatters. The cases could go all the way to the European Court of Human Rights.

In his legal opinion, Aidan O'Neill QC was asked to give his expert advice on a series of scenarios related to legalising gay marriage.

► NHS CHAPLAIN

A Church of Scotland minister is also the chaplain at an NHS hospital. On Sunday he preaches in his church that marriage is only for one man and one woman. His NHS bosses find out, and he is later disciplined for breaching the NHS equality policy.

Aidan O'Neill QC advises that the NHS managers would have a high chance of successfully justifying their action, even if the chaplain was preaching in his own church outside work time.

► TEACHER

A primary school teacher is asked to use a storybook about gay marriage called "King & King". It is recommended by the local authority and by a gay rights charity. The teacher says using the book would conflict with her religious beliefs about marriage. She is told that she faces dismissal unless she backs down.

O'Neill says the school would be within its legal rights to dismiss the teacher if she refuses to use the material.

► PARENTS

Parents ask for their child to be withdrawn from school lessons on the history of gay marriage, for deeply-held religious reasons. The parents say they

have a right to withdraw their child under the European Convention on Human Rights. But the school refuses, saying it is under a legal duty to promote equality.

O'Neill says the parents "will have little prospect of success in challenging the school's insistence that their child attend" the lessons.

► CATHOLIC SCHOOLS

Aidan O'Neill was asked about the impact of redefining marriage on denominational schools.

He said, "if it were made a requirement of the school curriculum that same sex marriage be presented as an equal and valid alternative to opposite sex marriage the Roman Catholic hierarchy would have no legal power to prevent such matters being taught within denominational schools in the State sector."

► FOSTER COUPLE

A couple apply to be foster carers. They tell social workers they are motivated to care for children because of their Christian faith. On hearing this, the social workers ask them whether they support gay marriage. The couple say they do not, and the social workers halt the application because of equality and discrimination policies.

O'Neil says it would be lawful for a local authority to refuse a couple's application to be foster carers on this basis.

► PUBLIC FACILITIES

A church hires a council-owned community centre each week for its youth club. The church website states that it will only conduct opposite-sex marriages. Someone complains to the council, and while the church can't be forced to conduct gay weddings, it is stopped from hiring the community centre.

Aidan O'Neill says the council would have "good grounds" for refusing the church access to the community centre.

► RELIGIOUS GAY WEDDINGS

The O'Neill legal opinion also addresses whether religious marriage celebrants could be forced to conduct gay weddings against their will.

The legal opinion suggests that an outright ban on religious gay weddings could be overturned under European human rights laws.

If a law is passed which allows religious gay weddings for those who wish to conduct them, but doesn't compel anyone to act against their conscience, that could be challenged under domestic equality laws. Those equality laws could only be amended by Westminster, not Holyrood.