



## PRESS SUMMARY

14 March 2022

### **Chantelle Day and another (Appellants) v The Governor of the Cayman Islands and another (Respondents) (Cayman Islands)** **[2022] UKPC 6**

*On appeal from the Court of Appeal of the Cayman Islands*

**JUSTICES:** Lord Reed, Lord Hodge, Lady Arden, Lord Sales, Dame Victoria Sharp

#### **BACKGROUND TO THE APPEAL**

This appeal concerns whether the Cayman Islands Constitution (“the Constitution”) confers a constitutional right to legal recognition of same-sex marriages.

The appellants are in a committed relationship and wish to enter into a same-sex marriage recognised in law in the Cayman Islands. When they applied for the appropriate licence at the Cayman Islands General Registry in April 2018 they were refused a licence on the grounds that the Marriage Law in Cayman Islands defines marriage as “*the union between a man and a woman as husband and wife*”.

The appellants commenced judicial review proceedings and filed a constitutional petition claiming that: (i) the Bill of Rights, Freedoms and Responsibilities (“the Bill of Rights”) within the Constitution conferred on them a constitutional right to legal recognition of same-sex marriage; (ii) that the Marriage Law infringed their rights under the Bill of Rights; and (iii) that therefore the Marriage Law should be read in such a way as to give effect to their constitutional right to legal recognition for same-sex marriage.

The Bill of Rights is modelled on the scheme and the provisions of the European Convention on Human Rights (“the ECHR”) [11]. The sections of the Bill of Rights which the appellants contend protect their right to marry are section 9 (“Private and family life”), section 10 (“Conscience and religion”), section 14 (“Marriage”) and section 16 (“Non-discrimination”). Section 14(1) states that “[g]overnment shall respect the right of every unmarried man and woman of marriageable age... freely to marry a person of the opposite sex”.

The appellants’ claims were successful at first-instance in the Grand Court, however the Court of Appeal allowed an appeal by the Government of the Cayman Islands. The Court of Appeal held that the Bill of Rights did not confer a right on same-sex couples to marry and have their marriage recognised in law. The appellants appeal to the Judicial Committee of the Privy Council.

## JUDGMENT

The Board dismisses the appeal. Lord Sales gives the judgment of the Board.

## REASONS FOR THE JUDGMENT

In the context of the Bill of Rights, section 14 is the right which specifically deals with marriage (in technical legal terminology, the “lex specialis” which governs that topic) and that right is confined to opposite sex couples. The other sections of the Bill of Rights have to be interpreted in light of section 14(1), meaning that none of them can be construed as including a right for a same-sex couple to marry [32].

The Bill of Rights is a specific legal instrument which must be interpreted in its particular context and as a coherent, internally consistent whole [33], [38]. The right to marry in section 14(1) has been drafted specifically to make it clear that it applies only to opposite-sex marriage [39]. Within the scheme of the Bill of Rights section 14(1), as the “lex specialis”, defines who has a constitutional right to marriage, and therefore other general provisions in sections 9, 10 and 16 cannot be interpreted to circumvent the express limits on the right to marry in section 14(1) [40]. To do so would be to undermine the coherence of the Bill of Rights [41].

The Board’s interpretation is supported by the case law regarding the interpretation of the ECHR [45]-[50]. In various cases, the European Court of Human Rights has found that article 12 of the ECHR (the equivalent “lex specialis” on marriage in the ECHR) was determinative of the scope of the right to marry and was limited to the traditional concept of marriage as being between a man and a woman. The other more general provisions in the ECHR, equivalent to those in the Bill of Rights, therefore had to be interpreted in the light of that and accordingly could not be read so as to extend to provide a right to same-sex marriage.

The Board points out that the interpretation given to the Bill of Rights in its judgment does not prevent the Cayman Islands’ Legislative Assembly from introducing legislation to recognise same-sex marriage. The effect of the Board’s interpretation is that this is a matter of choice for the Legislative Assembly rather than a right laid down in the Constitution [59].

*References in square brackets are to paragraphs in the judgment*

**NOTE: This summary is provided to assist in understanding the Committee’s decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at:**

[www.jcpc.uk/decided-cases/index.html](http://www.jcpc.uk/decided-cases/index.html)