



JUDICIARY OF
ENGLAND AND WALES

Steinfeld & Keidan v Secretary of State for Education:

SUMMARY

Court of Appeal upholds High Court judgment

Since the introduction of same-sex marriage on 29 March 2014, same-sex couples have had the choice of entering either into civil partnerships or into marriage. In contrast, the Civil Partnerships Act 2004 currently bars opposite-sex couples from entering into civil partnerships, and therefore the only status open to such couples wishing to formalise their relationship is marriage, although the Marriage (Same-Sex Couples) Act 2013 required a review of the operation and future of civil partnership.

The Court of Appeal has dismissed the appeal of Rebecca Steinfeld and Charles Keidan against an earlier High Court decision refusing them judicial review of the Secretary of State's decision not - at this stage - to propose any change to the bar on opposite-sex couples entering into a civil partnership. The decision was on one issue a majority decision.

In their judgment all the members of the Court consider that:

1. the bar constitutes a potential violation of the appellants' human rights under Article 14 (prohibition of discrimination) taken with Article 8 (right to respect for private and family life) of the European Convention on Human Rights; and
2. the Court should not make any declaration of incompatibility with the couple's human rights. There is in any event a Private Member's Bill proposing the removal of the bar, so that question is already before Parliament.

The Court's reasons on the final issue of justification differ:

- The majority, Lord Justices Beatson and Briggs, in agreement with the decision of the Judge in the High Court, consider that the difference of treatment of same-sex and opposite-sex couples is justified by the Secretary of State's policy of "wait and evaluate". While recognising that the focus of the review on the demand by same-sex couples for civil partnerships rather than the position of all couples is open to criticism, Lord Justices Beatson and Briggs consider it proportionate, and therefore lawful, for the Secretary of State to have further time to undertake a proper assessment of the best way forward on what is an important matter of social policy, when a number of options, including the extension of civil partnership to different-sex couples, or its phasing out, fall to be considered.
- Lady Justice Arden, dissenting on the justification issue, considers that the potential violation of the appellants' rights is not justified by the Secretary of State's current policy of "wait and see", though it is open to the Secretary of State to reformulate her policy.

The Secretary of State's current policy is that she will not propose any change to the Civil Partnerships Act 2004 until she has more statistical data about whether the number of same-sex couples choosing or remaining in civil partnerships rises or falls following the introduction of same-sex marriage. This policy is both open-ended in time and focused solely on the reduction in number of civil partnerships, and it does not address not the wider issues.

For the detailed reasons in the written judgments, now available, the Court dismisses the appeal.

This summary is issued to assist understanding of the Court's decision. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document.