

B&B owner discriminated when refused to allow homosexual couple to share a room

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[post_tags] In *Black v Wilkinson*, Mrs Wilkinson, a Christian, ran a B&B from her family home. Her policy provided that only heterosexual married couples were allowed to share a room and so in March 2010, she refused to accommodate a homosexual

couple. The Court of Appeal found that Mrs Wilkinson's decision was direct discrimination as she had not allowed the couple to share a room because they were homosexual. As direct discrimination cannot be justified in law, that was the end of the matter. However, the court went on to consider that Mrs Wilkinson had also indirectly discriminated against the homosexual couple because she applied a 'provision, criterion or practice' (i.e. only married couples can share a room) that applies to all couples but which puts homosexual couples at a disadvantage because heterosexual couples can marry whilst homosexual couples cannot [Note: with the introduction of the Marriage (Same Sex Couples) Act 2013, this is no longer the case]. Mrs Wilkinson tried to justify this policy on the grounds that it was a proportionate means of fulfilling her legitimate aim, namely exercising her right to manifest her religious beliefs under human rights law. However, the Court disagreed and said that neither religious belief nor sexual orientation trumps the other but what does trump both is the fact that Mrs Wilkinson's policy is contrary to the Regulations, i.e. that B&B's are not exempt from the law against discrimination when providing goods, facilities and services. This balanced with the fact that Mrs Wilkinson had failed to show that her business would suffer economic harm if she offered double bedrooms to homosexual couples led the Court to rule that she could not justify her policy on the grounds of religious belief. Following the logic of this case through to an employment context, employers who offer benefits to spouses but not registered civil partners would be guilty of direct discrimination. However, where benefits are offered to spouses they are routinely offered to registered civil partners these days so the situation is unlikely to arise. Even then, it may be argued that in practice a far smaller proportion of gay couples are registered civil partners or married as compared with heterosexual couples so the rule would still be indirectly discriminatory. This case does not cast light on that question but one suspects the argument would fail because it is probably reasonable and proportionate

to require legal commitment towards a partner before a scheme (such as a pension or private medical care) permits that person to benefit. [/et_pb_text][et_pb_column type="1_4"][et_pb_sidebar admin_label="Sidebar" orientation="right" area="sidebar-1" background_layout="light" remove_border="off"]
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