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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

Delivered:	**28/06/2018**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY LAURA SMYTH
FOR JUDICIAL REVIEW

IN THE MATTER OF A DECISION OF THE GENERAL REGISTER OFFICE
DATED 14 FEBRUARY 2017

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Before: Morgan LCJ, Weatherup LJ and O'Hara J

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MORGAN LCJ (delivering the judgment of the court)

[1] The respondent is a humanist as is her husband. She is a member of the British Humanist Association ("BHA"). She arranged to get married on 22 June 2017 in Northern Ireland. On 19 October 2016 she engaged Ms Isobel Russo, head of ceremonies at the BHA and also a BHA accredited wedding celebrant, to celebrate her wedding ceremony in Northern Ireland. On 12 December 2016 Ms Russo applied to the General Register Office ("GRO") for temporary authorisation to celebrate the marriage under Article 14 of the Marriage (Northern Ireland) Order 2003 ("the 2003 Order"). The application included the constitution of the BHA, confirmation of its charitable status, confirmation that the declaratory words required by Article 10(3) of the 2003 Order would be spoken and a letter from the Chief Executive of the BHA confirming Ms Russo's good character and standing as an accredited celebrant by the BHA. The respondent contended that the restriction on the right to apply for temporary authorisation to celebrate a marriage under Article 14 of the 2003 Order to those of a religious belief discriminated against those of a non-religious belief and that Article 14 should be read so as to remove that discrimination pursuant to section 3 of the Human Rights Act 1998.

[2] On 14 February 2017 the Departmental Solicitors Office ("DSO") replied on behalf of the Registrar General refusing the application. The respondent sent a pre-action protocol letter on 8 March 2017 and the DSO replied on 14 April 2017 maintaining its position. On 19 April 2017 the respondent submitted an application for leave to apply for judicial review of the Registrar General's decision. On 9 June 2017 the learned trial judge made an order of mandamus compelling the Department of Finance to direct the GRO to grant the application made by Isobel Russo for temporary authorisation under the 2003 Order so as to permit her to perform a legally valid and binding humanist wedding ceremony for the respondent on 22 June 2017.

[3] The Attorney General lodged a notice of appeal on the same day and that was followed by a notice of appeal on behalf of the Department of Finance and the GRO lodged on 15 June 2017. The case was listed before us on 19 June 2017 at which stage we made an interim Order that:

(i) the Order of Colton J be stayed; and

(ii) the Registrar General, pursuant to Article 31 of the Marriage (Northern Ireland) Order 2003, shall direct the local registration authority at Ballymena, County Antrim, to appoint Isobel Russo, humanist celebrant, for the purpose of solemnising the marriage of Laura Smyth and Eunan O'Kane on 22 June 2017 at Galgorm Manor, County Antrim.

We adjourned the proceedings to enable further affidavits to be filed by the parties and resumed the hearing on 15 January 2018. The Attorney General appeared with Ms McIlveen, Mr McGleenan QC and Mr McAteer appeared on behalf of the Department of Finance and the GRO and Ms Quinlivan QC and Mr McQuitty appeared on behalf of the respondent. We are grateful to all counsel for their helpful oral and written submissions.

The statutory background

[4] The 2003 Order provides for the solemnisation of marriages. There are different regimes for what are described as religious marriages and civil marriages. That may appear slightly anomalous since the recognition of marriage in this jurisdiction does not depend upon the holding of any religious belief but the distinction is made in the legislation to ensure that religious bodies can put forward persons who can be authorised to officiate at the solemnisation of a marriage whereas Article 31 of the 2003 Order provides that the local registration authority appoints the person officiating in all other cases.

[5] A religious body is defined as meaning an organised group of people meeting regularly for common religious worship. There are many such organisations recognised in this jurisdiction. Where such a body applies for a member to be registered, the Registrar General shall refuse the application if he considers that the body making it is not a religious body, that the marriage ceremony used by the body does not include or is inconsistent with an "appropriate declaration" or that the

person named in the application is not a fit and proper person to solemnise a marriage. The "appropriate declaration" means a declaration by the parties in the presence of each other, the officiant and two witnesses that they accept each other as husband and wife. There is provision for cancellation of registration and an appeal process.

[6] Article 14 of the 2003 Order provides that the Registrar General may grant to a member of a religious body temporary authorisation to solemnise one or more specified marriages or marriages during a specified period. In any event a marriage schedule in accordance with the requirements of the 2003 Order must be produced to the officiant and immediately after the solemnisation of a religious marriage both parties to the marriage, both witnesses to the marriage and the officiant must sign the marriage schedule.

[7] Article 31 of the 2003 Order provides for those who may solemnise marriages other than those solemnised by members of religious bodies.

> "31. - (1) A local registration authority shall, with the approval of the Registrar General, appoint-
>
> (a) a registrar of marriages; and
>
> (b) one or more deputy registrars of marriages.
>
> (2) A person holding an appointment under paragraph (1) may with the approval of, and shall at the direction of, the Registrar General be removed from his office of registrar or deputy registrar by the local registration authority.
>
> (3) A local registration authority shall, at the direction of the Registrar General, appoint additional persons to solemnise civil marriages and carry out other functions for the purposes of this Order….
>
> (6) A person holding an appointment under paragraph (1) shall, in exercising his functions under this Order or any other statutory provision, be subject to such instructions or directions as the Registrar General may give."

[8] By virtue of Article 19 a person shall not solemnise a civil marriage except in accordance with a form of ceremony which is of a secular nature and includes an "appropriate declaration" meaning a declaration by the parties in the presence of each other, the person solemnising the marriage and two witnesses that they accept each other as husband and wife. Both parties to the marriage, both witnesses to the marriage and the person who solemnised it must sign the marriage schedule immediately after the solemnisation of the civil marriage.

Convention rights

[9] The relevant Convention rights relied upon in this case are Article 9 concerning the right to manifest one's religion or beliefs and Article 14 prohibiting discrimination in the enjoyment of the rights and freedoms set out in the Convention.

> "**ARTICLE 9 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**
>
> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
>
> **ARTICLE 14 PROHIBITION OF DISCRIMINATION**
>
> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The learned trial judge's decision

[10] The BHA was founded in 1896 as the Union of Ethical Societies and is registered in England and Wales as a charity. It has 55,000 members and supporters and over 70 local and special-interest affiliates. It has trained and accredited celebrants conducting ceremonies, including weddings and funerals, attended by over one million people each year. The respondent summarised her values and beliefs as having been shaped by humanism.

[11] The learned trial judge set out the affidavit evidence indicating that humanism is a non-religious world view. Humanists trust to the scientific method when it comes to understanding how the universe works and reject the idea of the supernatural. They make their ethical decisions based on reason, empathy and a concern for human beings and other sentient animals. They believe that human

beings can act to give their own lives meaning by seeking happiness in this life and helping others to do the same.

[12] Colton J concluded that the respondent easily established that humanist beliefs had reached the level of cogency, seriousness, cohesion and importance to engage her Article 9 rights. He then went on to examine whether her wish to have a legally recognised humanist marriage ceremony conducted by a humanist celebrant was a manifestation of that belief. He concluded that the freedom to manifest a belief in practice encompasses a broad range of acts, including ceremonial acts, which give direct expression to belief. He accepted that the respondent's desire to have a wedding officiated by a humanist celebrant at a humanist ceremony was directly linked to her humanist belief. He found that humanist ceremonies were a manifestation of humanist beliefs in general and that the respondent's desire to have a humanist officiant at her wedding was a manifestation of her humanist beliefs so that Article 9 was engaged.

[13] The respondent submitted that Article 9 imposed an obligation on the State to afford legal recognition to a humanist marriage conducted by a BHA celebrant. Colton J accepted that there was interference with the respondent's Article 9 rights which he also described as discrimination and injustice. He indicated that the essence of the respondent's case was based on different treatment between religious bodies and humanists.

[14] At paragraph [96] of his judgment he indicated that in relation to the solemnisation of marriage the State had chosen to authorise the solemnisation of religious marriage ceremonies in recognition of those bodies' beliefs. Having done so, it should provide equal recognition to individuals who held humanist beliefs on the basis of the judge's findings that humanism did meet the test of a belief body and that a wedding ceremony conducted by a humanist constituted a manifestation of that belief. He accordingly concluded that there had been "a breach of the applicant's rights under Articles 9 and 14 of the ECHR".

[15] The judge then turned to whether the "breach or difference in treatment" was capable of objective justification. He rejected a floodgates argument. He noted that the registration of humanist officiants did not give rise to administrative chaos or difficulty in Scotland between 2005 and 2015. There was a significant public interest in controlling and regulating marriage but this could be achieved without discriminating against those who wished to manifest humanist beliefs. He concluded that there was no objective basis for the justification relied upon by the appellants.

[16] He then turned to the experience in other jurisdictions. In particular he noted the Scottish experience where on legislation that was almost identical to that applying in this jurisdiction the Scottish General Registrar eventually conceded in April 2005 that it would grant temporary authorisation to humanist celebrants under the equivalent of Article 14 of the 2003 Order. In England and Wales there is an ongoing debate about the entitlement of humanist celebrants to solemnise marriages

whereas in the Republic of Ireland legislation has already been put in place to provide for a change.

[17] The judge examined the case law in relation to the interpretive obligation imposed by section 3 of the Human Rights Act 1998. He noted the guiding principles for the marriage reforms set out in the report of the Law Reform Advisory Committee for Northern Ireland which preceded the making of the 2003 Order. Those included that equal and fair treatment was imperative for all irrespective of any particular religious belief or practice. He relied upon the observations of Lord Hoffmann in Re G (Adoption) (Unmarried Couple) [2008] UKHL 38 that Parliament was not entitled to discriminate in any case which can be described as social policy unless the discrimination has at least a rational basis.

[18] In light of the discrimination found by the judge he considered that he should read in the words "or belief" to those parts of the 2003 Order which referred to "religious body" in Articles 14, 15, 16 and 17 of the 2003 Order.

The submissions of the parties

[19] The Attorney General noted that the challenge was framed in terms of Article 9 and Article 14 of the Convention whereas the *lex specialis* within the Convention that deals with marriage was Article 12. Article 12 expressly provided for regulation of marriage by national law and nothing in Article 12 or national law required legal recognition to be given to humanist marriage ceremonies. The Convention must be read as a whole and interpreted in such a way as to promote internal consistency between its various provisions. Articles 9 and 14 cannot be used to establish rights related to marriage not provided for in Article 12.

[20] The Attorney placed considerable reliance on the decision of the ECtHR in Munoz Diaz v Spain (2010) 50 EHRR 49. In that case the applicant applied for a survivor's pension on the death of her husband. They had been married according to the rites of the Roma community. That marriage was not recognised by the Spanish state as a result of which the applicant had been denied the pension. She succeeded in establishing an Article 1 Protocol 1 claim on the basis of prior acceptance of her marital status for Social Security reasons but failed in her claim that the failure to recognise her Roma marriage contravened the principle of non-discrimination contrary to Article 14 taken together with Article 12.

[21] In rejecting that claim the court observed at paragraphs [79] and [80] that civil marriage in Spain was open to everyone and its regulation did not entail any discrimination on religious or other grounds. Certain religious forms of expression were accepted but those religious forms were recognised by virtue of agreements with the State and produced the same effects as civil marriage. Any distinction derived from religious affiliation was not pertinent in the case of the Roma community. That distinction did not impede or prohibit civil marriage which was open to the Roma under the same conditions of equality as to persons not belonging

to their community. Marriage according to the rites of the Roma community had no civil effect.

[22] In respect of Article 9 the Attorney agreed that the relevant test for manifestation of belief was that stated in paragraph [82] of Eweida v United Kingdom (2013) 57 EHRR 8. He submitted, however, that the judge's finding that there was a sufficiently close and direct nexus between the proposed ceremony and the respondent's underlying beliefs was flawed. He submitted that Enver Aydemir v Turkey (application no 26012/11) delivered on 7 June 2016 supported the proposition that it was for the court to examine the connection between the stated belief and the activity in question when determining whether the activity represented a manifestation of belief. Such an investigation did not involve any improper abandonment of the duty of neutrality and impartiality.

[23] The BHA does not exercise a marriage ministry and he argued that the judge was wrong, therefore, to rely upon its objectives for the purpose of establishing a nexus between the respondent's wish to have a particular form of marriage recognised by law and her underlying beliefs. Given the existence of civil marriage the learned judge ought to have enquired into what was, from the respondent's perspective, missing from a civil ceremony and asked whether what was missing had a sufficiently close nexus with her underlying belief.

[24] What was missing in this case was an officiant who shared the respondent's values but the choice of a wedding officiant is not protected by the Convention and does not come within the ambit of a manifestation of humanist belief so as to enable consideration of Article 14. The content of a civil ceremony is not mandated by law and accordingly if the respondent wished to have an effusive demonstration of humanism in her marriage that should be a matter of discussion and negotiation with the Registrar General's office. There is no doubt that humanist beliefs can be expressed at a civil ceremony.

[25] Even if Article 9 is engaged in this case the Attorney submitted that the learned trial judge erred in concluding that the respondent's proposed celebrant was in a relevantly comparable situation (see Khamtokhu and Absenchik v Russia (Apps no 60637/08 and 961/11)) to those who are capable of being granted temporary authorisation to solemnise marriages pursuant to Article 14 of the 2003 Order. Such an authorisation can only be issued to a member of a religious body as defined. By virtue of Article 2 of the 2003 Order "religious body" is defined as "an organised group of people meeting regularly for common religious worship". The evidence does not suggest that humanists meet regularly for purposes connected with the manifestation of humanist beliefs and having the solemnisation of marriage as a core activity. That error, it was submitted, also affected the solution adopted by the judge by way of reading in. The learned trial judge has expanded the belief system element but has made no adjustment either to activity or purpose. That is impermissible judicial legislation.

[26] In any event it was submitted that the learned judge erred in not finding that the refusal of temporary authorisation was justified. That justification arose from the need to protect the dignity of marriage by preventing the commercialisation of the solemnisation of marriages. The BHA does not itself celebrate humanist marriages but merely licenses others to do it. It was submitted that this merely provides a commercial platform for certain individuals to earn money. This is a matter in which the margin of appreciation for the state under the Convention is broad as there is no consensus as to the right of humanists to have a celebrant who shares that belief. The Strasbourg case law recognises that a modest measure of interference can readily be justified (see Cha' are Shalom ve Tsedek v France (2000) 9 BHRC 27).

[27] Finally it was submitted that the finding that Articles 9 and 14 ECHR required the state to provide legal recognition for humanist marriage will go far beyond anything currently decided in Strasbourg and go against the natural flow of existing Strasbourg case law. The Attorney relied upon the observations of Lord Browne in Rabone v Pennine Care NHS Trust [2012] UKSC 2 at [112] for the care that should be taken where a conclusion does not flow naturally from existing Strasbourg case law. He also relied upon the observations of the ECtHR in Nicklinson v UK (2015) 61 EHRR SE7) that when the Court concludes that an impugned legislative provision lies within the margin of appreciation it is, essentially, referring to Parliament's discretion to legislate as it sees fit. This, he submitted, was a political campaign and ought to be left to the legislature.

[28] The Department of Finance and the GRO supported the submissions of the Attorney that the only Convention rights in relation to marriage were those protected by Article 12. Articles 9 and 14 could not be used to imply a further right. This was not a case in which questions of freedom of thought, conscience and religion arose. The impugned provisions do not have any obvious bearing on the respondent's ability to manifest her beliefs in worship, teaching, practice or observance. These appellants also supported the submission that the relief granted by the learned trial judge went against the grain of the legislation. When the issue of humanist marriages had been considered in England and Wales the conclusion was that such a decision should only be made following review, consultation and report. Section 14 of the Marriage (Same-Sex Couples) Act 2013 reflected that conclusion. Finally it was important to recognise the subsidiary nature of the Convention and the margin of appreciation available to the state in its interpretation.

[29] The respondent supports the reasoning of the learned trial judge. In answer to the points made on appeal Ms Quinlivan relied in particular on Savez Crkava Zivota v Croatia (2012) 54 EHRR 36. Croatia allowed certain religious communities to provide religious education in public schools and recognised religious marriages performed by them. This was a challenge by a church which had not been allowed such facilities. The Court considered that the celebration of a religious marriage amounted to the observance of a religious rite and represented a manifestation of religion within the meaning of Article 9. Accordingly, Article 14 of the Convention,

read in conjunction with Article 9, was applicable. Like the present case this was a complaint about discrimination and not about the right to marry.

[30] The respondent noted a number of material differences between this case and Munoz Diaz. First, that was an attempt to obtain retrospective legal recognition for a Roma marriage more than 30 years after the event. Secondly, the applicant had not adhered to the formalities of a valid marriage and, thirdly, the Roma community had not sought to enter into any agreement with the Spanish authorities so as to give such marriages legal effect. The respondent submitted that if the Roma established that their beliefs and the manifestation of them in the marriage ceremony fell within Article 9 they would have been entitled to pursue agreements with the state for recognition of their marriages having the same effects of civil marriage.

[31] This case was different because it sought prospective authority and it was intended to comply with the statutory formalities in respect of the giving of consent. It is also of significance that in Munoz Diaz the availability of civil marriage did not preclude a violation of Article 14, within the ambit of Article 1 Protocol 1, based on the premise that the applicant had been treated as married for the purposes of the social security system. The respondent also relied on O'Donoghue v United Kingdom (2011) 53 EHRR 1 where immigration law provided that persons subject to immigration control were required to pay a fee in order to marry unless they were marrying in accordance with the rites of the Church of England. The ECtHR found that the case fell within the ambit of Article 9 and found a violation of Article 14 within that ambit. The Court also found that the essence of the right was impaired by the level of fee charged as a result of which there was a breach of Article 12.

[32] The respondent noted that the trial judge found that there was an interference with the manifestation of the respondent’s humanist belief under Article 9 but accepted that the substance of the case was under Article 14. The marriage ceremony was a ritual associated with certain states of life. The freedom to manifest a belief encompassed a broad range of acts and the conclusion that a humanist marriage was a manifestation of belief was unimpeachable. It was not the role of the state to analyse the respondent's beliefs and her particular philosophical understanding of the significance of marriage. A humanist marriage ceremony was a generally recognised custom and practice within the humanist tradition. The respondent did not want a civil marriage because that was not a humanist marriage. The respondent further contended that the civil marriage ceremony under the 2003 Order should be entirely neutral on the question of belief and should not endorse any Article 9 protected belief.

[33] The respondent submitted that she was the victim of discrimination in this case whereas the Attorney sought to compare the positions of a religious celebrant and her proposed celebrant, Ms Russo. There was no rational connection between meeting for worship and the solemnisation of marriage in the context of non-religious beliefs such as humanism. Accordingly, the learned trial judge was entitled to read in "belief body" using section 3 of the Human Rights Act 1998. The primary

ground of commercialisation was rejected by the learned trial judge and there was no error in his approach on that account.

Consideration

Manifestation of belief

[34] It is common case that the right to freedom of thought, conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance. There is no dispute that the respondent's humanist views are such as to deserve protection under Article 9 of the Convention. There is, however, a dispute as to whether the desire to have an officiant accredited by the BHA at her wedding is a manifestation of the respondent's humanist beliefs.

[35] The ECtHR recently considered the approach to manifestation of belief in Eweida v UK (2013) 57 EHRR 8 and set out the test at paragraph 82:

> "Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a "manifestation" of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of art.9(1). In order to count as a "manifestation" within the meaning of art.9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question."

[36] Religious bodies commonly manifest their beliefs as an organised group meeting regularly for common religious worship. The marriage ceremony generally forms part of the practice of a religion and often has a generally recognised form. Where a member of a religious body has been registered as an officiant by the Registrar General the ceremony conducted by that officiant will satisfy the test for a manifestation of belief.

[37] Those of humanist beliefs are generally not organised to meet regularly for the purpose of the manifestation of humanist beliefs. Ceremonies such as marriage

or funerals do, however, represent important milestones in the life-and-death of human beings and the respondent relies upon her expression of belief in connection with her marriage ceremony, including the belief of the officiant, as providing a sufficiently close and direct nexus to establish a manifestation in this case. There is no prescribed form for humanist marriages but the respondent points to the extensive experience in Scotland and the Republic of Ireland where such ceremonies provide a platform for the expression of belief at a point of change of status within society for those being married. It is submitted that such ceremonies are intimately connected with the belief of the participants.

[38] The appellants submit that the form of the service which the respondent may wish to enjoy in connection with her marriage is not prescribed by the statute. She can have an accredited humanist celebrant participate and it is no interference with the manifestation of belief that there must be present an officiant appointed by the Registrar General who will ensure that the formalities required by Article 19 of the 2003 Order are observed.

[39] In light of the flexibility of the service which is available to the respondent the appellants say that any prohibition on the appointment of an accredited humanist as an officiant does not constitute an interference with the freedom to manifest the respondent's views. In support of that submission the Attorney General relied on Cha'are Shalom Ve Tsedek v France (GC 27471/95). That was a case in which the applicant's application for access to a slaughterhouse for ritual slaughter was refused. In finding that there was no interference with the freedom to manifest their religion the court held:

> "there would be interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable"

[40] That conclusion was explained by the court in Eweida as a finding that the religious practice and observance at issue in that case was the consumption of meat only from animals that have been ritually slaughtered and certified to comply with religious dietary laws, rather than any personal involvement in the ritual slaughter and certification process itself.

[41] In any event the issue in this case is not whether there has been an interference with the freedom to manifest one's view but rather whether the conduct of a humanist wedding ceremony by a humanist officiant has a sufficiently close and direct nexus with humanist beliefs to be within the ambit of Article 9. It is not concerned with whether the BHA has espoused a particular view about the marriage ceremony as an expression of belief but rather whether the facts of this case demonstrate that the ceremony satisfies the necessary connection.

[42] We are inclined to agree with the learned trial judge that such a ceremonial act is a direct expression of the respondent's humanist beliefs and satisfies the test for manifestation of belief but we are entirely satisfied that the conduct of a humanist wedding ceremony by a humanist wedding officiant for a person holding humanist views is within the ambit of that Article. We consider that the test is best encapsulated in the context of this case by EB v France (2008) 47 EHRR 509 GC:

> "the prohibition of discrimination enshrined in Article 14… extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide."

In this case that principle applies to the state's decision to provide particular arrangements for religious bodies.

Article 14 ECHR

[43] The respondent's case is that if she is not permitted to have a humanist officiant at her wedding there will be a difference in treatment between her and those with religious beliefs. She contends that those are persons in analogous or relevantly similar situations and that the difference in treatment has no objective and reasonable justification. There is no dispute between the parties that this is the relevant test.

[44] The appellants submit that the respondent's proposed celebrant is not in a relevantly comparable situation to those who are capable of being granted temporary authorisation to solemnise a marriage pursuant to Article 14. Those who are granted temporary authorisation under Article 14 have to satisfy the religious body test set out above whereas a humanist celebrant is not part of an organised group of people meeting regularly in connection with humanism and marriage, it is submitted, is not a core activity in humanism.

[45] All of this may be material at a later stage but at this stage we are required to examine the position of the respondent as compared to the position of a person holding a religious belief. Each wishes to have a ceremony manifesting their belief. Each wishes to have an officiant who shares that belief. Although it may be said that to some extent the first of those objectives can be accommodated, in the case of the respondent she is denied the benefit of the second objective which is available to a person holding a religious view. The comparison between humanism and religious bodies does not affect the fact that the respondent and a member of such a body preparing for marriage are in an analogous or relatively similar situation.

Justification

[46] The appellants argued that the distinction between religious ceremonies and civil ceremonies achieves the aim of simplifying the law, regulating marriage and achieving equal treatment. Permitting the ceremonies to be officiated by any non-religious group could dilute the dignity and status of marriage in Northern Ireland. It is further contended that an amendment to equate humanism with religious bodies may lead to other organisations attempting to rely on such provisions to secure authorisation to conduct marriage ceremonies. This would introduce a greater risk of sham or forced marriages or inappropriate ceremonies and may ultimately result in greater commercialisation. In addition the administration of the more elaborate system could be considerable and those costs would have to be recouped.

[47] A detailed affidavit from Laura McPolin, the Deputy Director of the Civil Law Reform Division of the Department of Finance, submitted after the first instance hearing, described the steps which had been taken in other jurisdictions which have authorised humanist celebrants to conduct legally binding marriage ceremonies. We have examined the examples provided to establish the extent to which they support the appellants' submission.

[48] In Ireland the Civil Registration (Amendment) Act 2012 amended the Civil Registration Act 2004 to allow for marriages by secular bodies. The Humanist Association of Ireland is one of two authorised secular bodies under this legislation, the other being a network that seeks to promote a life rooted in Celtic traditions. There is no indication of any concerns with the operation of the legislation and the numbers opting for humanist ceremonies has increased substantially.

[49] In Australia there is an elaborate system for the registration of marriage celebrants who can undertake humanist ceremonies. Those wishing to become celebrants must submit an application form, answer a series of questions about marriage law and process, be assessed as fit and proper persons and undertake professional development activities. There are guidelines on conflicts of interest which must be reported to the Registrar. The position in New Zealand is considerably less bureaucratic. Celebrants must be of good character and show that they can conscientiously perform the duties. There is an annual renewal of appointments.

[50] In England and Wales the Law Commission produced a scoping paper on reform of marriage law in December 2015. The law of marriage in England and Wales is considerably different from that in Scotland or Northern Ireland. The principal restriction on the celebration of marriage is the location of the wedding whereas in our jurisdiction the validity of the marriage ceremony depends on the authorisation of the person who conducts it. That has inevitably given rise to considerable difficulties in extending the range of those who should be permitted to conduct wedding celebrations and it is unsurprising that extensive reform is being considered.

[51] The closest example for this jurisdiction of the authorisation of humanist celebrants is Scotland where the legislation is broadly similar to that here. Humanist celebrants have been permitted since 2005. The number of humanist marriages has considerably increased. In July 2014 the Scottish Government issued a consultation paper on qualifying requirements for religious and belief bodies to meet before the celebrants can solemnise marriage or register civil partnerships.

[52] The consultation paper recognised that celebrants will incur legitimate expenses which need to be met by considered options to ensure that the person carrying out a large number of ceremonies was not carrying on a business for profit or gain. The paper also noted the importance of local authority registrars liaising with the Home Office to tackle sham marriage and sham civil partnership applications. The Immigration Act 2014 contains various measures designed to address those. The paper also considered that those celebrating marriages in future should have an awareness of forced marriage.

[53] The consultation paper issued by the Scottish Government did not contain any evidence tending to suggest that the issues raised were adversely affected by the introduction of authorisation for humanist celebrants. It also noted the protections contained within the legislation itself. Article 3 of the 2003 Order requires that the parties to a marriage intended to be solemnised in Northern Ireland shall give the registrar a notice of intention to marry at least 14 days before the date of the intended marriage. There is provision for the registrar to require notice in person if the registrar is not satisfied that the marriage notice has been correctly completed or there is any doubt about the identity of the parties. The details of the notice are kept in the marriage notice book which is a public record and objections can be lodged. After he receives the marriage notice from both parties the registrar must complete a marriage schedule which prescribes the date and place at which the marriage is to occur.

[54] Scotland has utilised a series of temporary authorisations to humanist celebrants under the Marriage (Scotland) Act 1977 from June 2005 until 2014. Thereafter under the Marriage and Civil Partnership (Scotland) Act 2014 celebrants can now be registered from religious or belief bodies which are prescribed. The Humanist Society of Scotland has now been prescribed. The application in this case was for temporary authorisation for the purpose of this particular marriage. In light of the Scottish experience we agree with the learned trial judge that no justification has been established for the prevention of the appointment of accredited belief body marriage celebrants.

Article 12

[55] Both appellants contended that Article 12 ECHR was the *lex specialis* dealing with marriage and that the only relevant right which the applicant had was a right to marry. Clearly she was able to do so by way of civil marriage if she wished. This case was not, however, about the right to marry. The claim under Articles 9 and 14 was based on discrimination. The state provided particular arrangements for

religious belief bodies and the issue was whether there was discrimination against the respondent by failing to provide her with the option of having a humanist celebrant. The issue would have been exactly the same if this case had been based upon Article 12 and 14.

The legislation

[56] The 2003 Order provides for a series of steps by way of notice and application that must be taken by any persons seeking to go through a marriage ceremony. Article 9 of the 2003 Order provides that a marriage may be solemnised only by an officiant or a person appointed under Article 31. Particular arrangements are made in relation to the registration of members of religious bodies as officiants in Articles 10 to 13. Article 14 provides for temporary authorisation to be granted to a member of a religious body to solemnise one or more specified marriages or marriages during a specified period.

[57] As previously noted the definition of religious body means an organised group of people meeting regularly for common religious worship. The ordinary meaning of those words plainly does not include humanism because humanists are not an organised group of people meeting regularly and in any event when they do meet it is not for common manifestation of humanist belief. Unless, therefore, the legislation is read down in some way the provisions in relation to religious marriages do not assist the respondent.

[58] Civil marriages may be solemnised by persons appointed under Article 31 of the 2003 Order. The relevant terms of that Order are set out at paragraph [7] above. By virtue of Article 31(3) a local registration authority shall, at the direction of the Registrar General, appoint additional persons to solemnise civil marriages and carry out other functions for the purposes of the 2003 Order. The only constraint within the statute is that the person appointed should not be under the age of 21.

[59] It is undoubtedly the case that it was never contemplated that this power might be used in order to avoid discriminatory treatment in respect of the background of a marriage celebrant but in our view where such discriminatory treatment arises it is the responsibility of the Registrar General to act in a way which avoids the discrimination. If the Registrar General is satisfied that a couple want a humanist celebrant to officiate at their marriage or civil partnership in order to express their humanist beliefs he should accommodate that request if content that the proposed celebrant will carry out the solemnisation of the marriage according to law. Whether or not the authorisation should be for a single marriage or a period of time is a matter for the judgement of the Registrar General exercised lawfully.

[60] It was submitted that Article 19 of the 2003 Order which provids that a person shall not solemnise a civil marriage except in accordance with a form of ceremony which is of a secular nature would prevent readings supporting or promoting humanist beliefs. We do not accept that submission. The prohibitions in Article 19

should be narrowly construed and ought not to interfere in any way with non-religious material.

Conclusion

[61] We accept that the statutory prohibition of a humanist celebrant as the person solemnising the respondent's marriage would have constituted discrimination pursuant to Articles 9 and 14 ECHR in the case of this respondent. Having examined the statute we consider that Article 31 of the 2003 Order provides a basis for avoiding such discrimination by enabling the appointment of Ms Russo without having to utilise the interpretive tool provided by section 3 of the Human Rights Act 1998 to alter the wording of Article 14 of the 2003 Order. The fact that the person solemnising the marriage is appointed pursuant to Article 31 of the 2003 Order rather than Article 14 of the said Order does not in our view give rise to any difference of treatment. Accordingly, we allow the appeal, quash the mandatory Order made by Colton J and set aside his declaration but otherwise agree with his carefully reasoned judgment.