



Reforming Marriage Law: Is it time for a third type of ceremony?

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TRANSCRIPT

When the Marriage (Same Sex Couples) Act 2013 was passed, one of the lesser-known provisions was section 14 which required the Secretary of State to arrange a review of whether the current law on marriage should be modified to permit marriages to be solemnised according to the 'usages of belief organisations' (s14(1)(a)). A 'belief organisation' defined under s14(7) is one whose principal or sole purpose is 'the advancement of a system of non-religious beliefs which relate to morality or ethics'. One such belief organisation is the Humanists and under the current law, in England and Wales, the British Humanist Association cannot marry couples in a legally valid humanist ceremony. Members must, instead, marry in a civil ceremony and are accordingly not extended the recognition of their beliefs that other organisations enjoy under existing marriage law.

A public consultation followed which sought views on whether there was a substantial case for permitting legally valid marriage ceremonies for those who held non-religious beliefs as a third type of legal ceremony (alongside religious and civil ceremonies) and the response by December 2014 was overwhelmingly positive. However, the Government decided not to proceed with reform because a key feature of humanist weddings is that couples choose a location which is of personal significance to them and this did not fit easily with the current framework allowing couples to generally marry either in places of worship or buildings which have been registered for that purpose. Consequently, a straightforward extension of the current system was not possible. Instead, after some protracted delay, by June 2019 the Government announced that the Law Commission would conduct a fundamental review of the current law of marriage and the Law Commission confirmed that one of the principles underpinning their *Weddings Project* would be 'respecting individuals' wishes and beliefs'.¹

Against this backdrop in July 2020, six couples, all humanists, sought a legal declaration that the refusal of the current law of marriage to give legal recognition to humanist marriages was a breach of their human rights and this should be remedied. In *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin) the Claimants sought declaratory relief that the current law violates their rights not to be discriminated against under Article 14 of the European Convention on Human Rights (ECHR) along with a declaration under section 4 of the Human Rights Act 1998 that the current law is incompatible with their right to a private and family life and right to freedom of belief under Articles 8 and 9 of the ECHR. In defence, the Government

¹ See <https://www.lawcom.gov.uk/project/weddings/>

argued that any difference in treatment against other religious comparators were objectively and reasonably justified and it was argued that although a recognised belief system, humanism does not include a belief in marriage. This, it was argued, was in contrast to religious beliefs where marriage is said to be an 'inherent and obligatory part of the religion in question.'²

In ruling, Mrs Justice Eady DBE confirmed that the current law is discriminatory. Notably 'the discrimination suffered by the Claimants is real: the difference of treatment they experience in seeking to manifest their humanist beliefs through the ceremony of marriage is a matter of substance, not merely of form.'³ Mrs Justice Eady was also not persuaded that humanism does not include a belief in marriage stating, 'I am satisfied that ...for many who hold those beliefs, the ceremonies that mark significant life events, such as marriage, provide a close and direct link to the beliefs of the participants.'⁴ However, during the case the High Court was reminded by the Government that the law of marriage was currently subject to review and the Law Commission were about to consult on the matter as part of its ongoing *Weddings Project*.⁵ On this basis Mrs Justice Eady confirmed that any discriminatory treatment could be justified at the present time and 'Although I may deprecate the delay that has occurred since 2015, I cannot ignore the fact that there is currently an on-going review of the law of marriage in this country that will necessarily engage with the wider concerns that have been raised.'⁶ Consequently, the claim for declaratory relief was dismissed because '...at this time the Defendant has demonstrated that a fair balance has been struck between the individual rights of the Claimants and those of the broader community.'⁷

It is unclear from the judgment what were the interests of the broader community which justified continued discrimination, and as is noted in the case, there is no guarantee that the current system will be reformed once the Law Commission's project has been concluded. Andrew Copson, Chief Executive of Humanists UK, was hopeful though stating that 'thanks to this judgment, it is at least now not a matter of *if* humanist marriages will be legally recognised but *when*.'⁸

Subsequently in September 2020 the Law Commission announced their wide-ranging consultation which is asking for views on the choice of wedding venue, the form that any wedding ceremony might take and whether new rules will result in reducing the current costs of a wedding.⁹ It is not altogether clear that this consultation will include any expansion of the categories of people who can marry in accordance with their beliefs: such

² *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin), 23

³ *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin), 122

⁴ *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin), 90

⁵ See <https://www.lawcom.gov.uk/project/weddings/>

⁶ *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin), 128

⁷ *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin), 129

⁸ <https://humanism.org.uk/2020/07/31/humanist-marriage-case-outcome/>

⁹ <https://www.lawcom.gov.uk/project/weddings/>

as the humanists. The consultation is due to end in January 2021 with the final report, with recommendations for reform, due later in the year.

The late Stephen Cretney wrote back in 2003 that the fact the main structure of the Marriage Act 1836 remained intact after so long, in spite of a period of significant social change, was in itself a 'tribute to the skill with which it struck an acceptable balance between various competing interests.'¹⁰ The main structure of the Marriage Act 1836 which permits both religious and civil marriages is still, by 2020, in place but the case of *R (on the application of Kate Harrison and others) v Secretary of State for Justice and others* [2020] EWHC 2096 (Admin) demonstrates that the time has come for that structure to change, or to be at least modified. Perhaps a third type of marriage ceremony should be introduced or perhaps we should reform more extensively, as recommended recently by Mary Welstead¹¹, by following the example of some of our European neighbours, who require all couples to first register their partnerships at the local register office. Subsequently they are free to attend any marriage ceremony of their choosing, ensuring everyone is treated equally.

It will be interesting to see whether any far-reaching reform emerges from the Law Commission's consultation and whether an acceptable balance between various competing interests can once again be struck in the twenty-first century.

Thank you and stay safe.

¹⁰ Cretney, S. (2004) *Family Law in the Twentieth Century* (OUP, Oxford), p12

¹¹ Welstead, M. 'No right (as yet) to be married legally in a humanist ceremony: *R (on the application of Harrison and others) v Secretary of State for Justice* [2020] EWHC 2096 (Admin)' *Family Law*, November 2020