



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: CA-2023-000208 & CA-2023-000208-A



CA-2023-000208

**THE KING on the application of
ISHERWOOD & Ors**

–v– **The Welsh Ministers**

ORDER made by the Rt. Hon. Lord Justice Males

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: Refused

Reasons

1. The judge's decision that the common law does not provide a constitutional right for a parent to withdraw a child from relationships and sexuality education reflects the agreed issues on the basis of which the case was argued and is unquestionably correct, for the reasons which the judge gave. It is not appropriate for the applicant to complain that the judge focused on the wrong issue.
2. The applicants' various challenges to the Code and the Guidance all proceed on the basis that these documents mandate the teaching and promotion of particular sexual lifestyles in ways which amount to indoctrination. As the respondents point out, however, the fundamental difficulty with these challenges is that the Code and Guidance do no such thing.
3. The Code and Guidance do envisage pupils being taught about different sexualities and gender self identification, and that LGBTQ+ people should be treated equally and with respect. It is inconceivable that such teaching could be contrary to the common law or the Human Rights Act. On the contrary, diversity and inclusion (including as to the LGBTQ+ community) are fundamental values of British (including Welsh) society.
4. An appeal on the substantive issues would therefore have no real prospect of success.
5. The judge's costs order was within the wide ambit of her discretion.
6. I have considered whether to grant permission to appeal on the basis that there is "some other compelling reason" for an appeal to be heard. As the judge herself observed, the claim does raise matters of public interest. However, in a case where an appeal has no real prospect of success because the answer is clear, I do not think that this would be appropriate, not least as it would require substantial expenditure of public funds (the applicants themselves emphasise what they describe as "the complexity and number of issues requiring resolution") in a case where the applicants say that they are unable to pay the costs which have already been ordered against them.

Information for or directions to the parties

Mediation: Where permission has been granted or the application adjourned:

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)?

Yes/No (delete as appropriate)

Pilot categories:

- | | |
|---|---|
| <ul style="list-style-type: none"> • All cases involving a litigant in person (other than immigration and family appeals) • Personal injury and clinical negligence cases; • All other professional negligence cases; • Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual; | <ul style="list-style-type: none"> • Boundary disputes; • Inheritance disputes. • EAT Appeals • Residential landlord and tenant appeals |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot?

Yes/No (delete as appropriate)

If yes, please give reason:

Non-pilot cases: Do you wish to make a recommendation for mediation?

Yes/No (delete as appropriate)

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed: BY THE COURT

Date: 26th May 2023

Notes

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: Error! Reference source not found.