

## Government FAQ: *Bellinger v. Bellinger*

Frequently asked questions on the *Bellinger* case published by the Department for Constitutional Affairs (formerly the Lord Chancellor's Department)

2003

### Foreword

At the time when this case was before the Lords of Appeal, the Lord Chancellor's Department (later renamed the Dept for Constitutional Affairs) took the unusual step of publishing a series of questions-and-answers explaining the government's approach to the case.

Whatever the merits of the government's view of the case, the Department's openness in explaining its position was very welcome, which is why the document is reproduced here.

*Claire McNab, January 2004*



## Department For Constitutional Affairs

People's rights > Transsexual people

### Frequently Asked Questions on *Bellinger v Bellinger*

---

1. [What is the \*Bellinger\* case about?](#)
  2. [What has the House of Lords decided?](#)
  3. [What is the effect of the ruling?](#)
  4. [What is a Declaration of Incompatibility?](#)
  5. [Will the proposed legislation retrospectively validate marriages like the \*Bellingers\*'?](#)
- 

#### 1. What is the *Bellinger* case about?

- *Bellinger v Bellinger* is a case that was heard in the House of Lords on 20-21 January 2003, on appeal from the Court of Appeal and the High Court. The petitioner is a transsexual woman who went through a ceremony of marriage with a man in 1981. She asked the Courts to recognise that ceremony of marriage.

## **2. What has the House of Lords decided?**

- The House of Lords has found on 10 April 2003 that the marriage was not valid, because English law does not recognise any change of gender.

## **3. What is the effect of the ruling?**

- The Lords of Appeal were sympathetic to Mrs Bellinger's plight but their ruling confirms the Government's view that legislation will be necessary to enable transsexual people to marry in their new gender; they do not already have that right. A change in the law as sought by Mrs Bellinger must be a matter for deliberation and decision by Parliament.
- The Government aims to publish a draft Bill later this session to make it possible for transsexual people to be legally recognised in their acquired gender, and therefore to marry in that gender. Substantive legislation will follow when Parliamentary time allows. Legal recognition will also make it possible for transsexual people to obtain new birth certificates and claim the State pension at the appropriate age.
- The Lords of Appeal also made a Declaration of Incompatibility in relation to section 11(c) of the Matrimonial Causes Act 1973.

## **4. What is a Declaration of Incompatibility?**

- The Court cannot quash primary legislation. However, the Human Rights Act 1998 gives the Court the power to make a declaration of incompatibility when it finds a provision of primary legislation is incompatible with the Convention rights (in the European Convention of Human Rights). Specifically, the European Court's rulings in the cases of *Goodwin v The United Kingdom* and *"I" v The United Kingdom* on 11 July 2002 mean that section 11(c) of the Matrimonial Causes Act 1973 is not compatible with Article 8 and 12 rights.
- The Government is committed to taking seriously any Declaration of Incompatibility made by the Courts. In this case, it will examine the judgment carefully and consider how to respond. The Government is already committed, however, to publishing draft legislation as soon as possible.

## **5. Will the proposed legislation retrospectively validate marriages like the Bellingers'?**

- No; it will be necessary for transsexual people first to register in their acquired gender. Once registered, they will have the right to marry in that gender. The Government agrees with the judgment of the European Court of Human Rights in *Goodwin v The United Kingdom* and *"I" v The United Kingdom* that transsexual people who have taken decisive steps towards living fully and permanently in their acquired gender *should* be able to marry in that gender.

» by Claire McNab