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Statement on Privy Council Judgement of the Day and Bodden Bush Appeal

On 14 March 2022, the Judicial Committee of the UK Privy Council ("The Privy Council") delivered its decision on the issue of same sex marriage in the Cayman Islands.

The Privy Council dismissed the appeal, brought by Ms Chantelle Day and Ms Vickie Bodden Bush against the decision of the Cayman Islands Court of Appeal, and confirmed the Court of Appeal's interpretation of the Cayman Islands Bill of Rights as not including a right for same sex couples to marry.

The Privy Council's ruling was based on a specific point of law relating to the proper interpretation of the provisions of the Bill of Rights. The ruling confirmed that Section 14(1) is the specific provision in the Bill of Rights which deals with the right to marry and that this right is defined in limited terms which do not cover same-sex couples. The Privy Council held that this limitation, which it found represents the intention of the original drafters of the Constitution, cannot be circumvented by seeking to rely on other, general rights contained within the Bill of Rights, such as the right to family and private life (Section 9), the right to freedom of conscience (Section 10) and the right not to be treated in a discriminatory manner (section 16) which do not address the topic of marriage directly.

The issues relating to the proper interpretation of the interrelated rights provided for in the Bill of Rights are important constitutional matters and the Human Rights Commission welcomes guidance and clarification from the Privy Council on these issues.

However, the Human Rights Commission, recognizes that the decision carries with it significant implications particularly for members of the LGBTQ community in the Cayman Islands. Whilst the 2020 enactment of the Civil Partnership Act was welcomed as providing same sex couples with a functional equivalent to marriage in the Cayman Islands, the Human Rights Commission notes and welcomes the Privy Council's observations that the interpretation given to the Bill of Rights in the Privy Council's judgment does not prevent the Cayman Islands' Parliament from introducing legislation to recognize same sex marriage. This therefore remains an important policy consideration for the elected Government seeking to address inequality between same sex couples and heterosexual couples.

The Human Rights Commission recognizes that there are strongly held views in the Cayman Community on the subject of same sex marriage and the Commission continues to encourage the community to live and work together with acceptance, respect, and tolerance towards each other.

For more information on the Commission or to learn more about the Bill of Rights, Freedoms and Responsibilities, visit our website and LinkedIn and Facebook pages at www.humanrightscommission.ky, <https://www.linkedin.com/company/human-rights-commission> and <https://www.facebook.com/CIHRC/> or call 244-3685.

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