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MYSTERY OF THE DISCRIMINATION WHODUNNIT

When it comes to discrimination legislation, it isn't quite as simple as Prof Plum with the lead piping in the library. Here's a case which even Hercule Poirot would find perplexing.

An elderly lady suffering from a degree of senility goes into a residential care home, leaving her bungalow in the care of her extended family.

After a while, the family takes steps to let the bungalow, in order to bring in some income to help to pay for the residential care. However the family knows that their elderly relative would never agree to her home being occupied by a same-sex couple, and the tenancy is refused to such a pair.

Although the elderly lady has appointed her sister-in-law as her power of attorney, the actual decisions within the family are being taken by another member of the family, the sister-in-law's son-in-law. When tenants are eventually found, the sister-in-law signs the documents as landlord and power of attorney without ever having known that the son-in-law had previously rejected a same-sex couple as tenants.

The above circumstances would not be at all unusual, and allowing for some variations of detail, would be common to a great many evangelical family situations.

But when the rebuffed same-sex couple seeks to pursue a claim in law, who will the Commission for Equality and Human Rights target as the discrimination villain?

- Will it be the elderly lady, whose bungalow it is and who benefits from all the income derived from the tenancy?
- Will it be the sister-in-law, who as power of attorney is legally responsible for all financial transactions involving the bungalow and the elderly lady?
- Will it be the son-in-law, who is the only person who has done any discriminating, and who alone knew that any discrimination had taken place?

Or will the denouement be a little bit like the plot of *Murder on the Orient Express*?

According to the Equality Act, the offence of discrimination exists because 'it is unlawful for a person to discriminate against another person.' Amplifying this, the Act states: 'It is unlawful for a person concerned with the provision to the public or a section of the public of goods or services to discriminate against a person who seeks to obtain or use those goods, facilities or services.'

Unless it can be argued that 'to discriminate' means the *effect* of an action, rather than the *execution* of an action, then the elderly lady and the sister-in-law must be in the clear. Presumably it would be possible for the investigators to track down the son-in-law, because he must have told either the same-sex couple direct, or the agents contracted to let the bungalow, of his refusal of the same-sex couple as tenants. If he is guilty, this would show that the offence is meant to be the *execution* of an action. This would be in spite of the fact that he had no formal responsibility for the property.

If, however, the offence is meant to be constituted by the *effect* of an action, then it would be possible to pursue either the elderly lady or her power of attorney. Clearly, no-one is going to sue the elderly lady. *Alzheimer's victim sued for rejecting gay tenants* is not exactly a headline designed to increase public understanding and support for a regulatory body in pursuit of its duty. There's not a lot more mileage in suing the sister-in-law, though if this is intended to be an absolute offence, then this is the only remedy. The papers can still say *Gay couple banned from renting Alzheimer's victim's bungalow*. In the local context, there will be much more public sympathy for the elderly lady and her sister-in-law than for the gay couple and the Commission for Equality and Human Rights.

The conclusion from all this is not that injustice is a good thing, but that it makes sound sense to exempt main residences from the legislation altogether. If the government has the good sense to do that, then no-one will need Hercule Poirot at all.

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The above was published in The Bulletin [July 2006]

Salt and Light Papers is a series of occasional papers on contemporary issues of social concern. It is published online by the Affinity Social Issues Team. Its purpose is to help Christians to think through questions of relevance to our place in the world around us. The views expressed by contributors are not necessarily endorsed by the Affinity Social Issues Team.

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