

# Judicial Communications Office

Tuesday 22 March 2011

## **JUDGE QUASHES ADVERTISING STANDARDS AUTHORITY'S RULING ON FREE PRESBYTERIAN CHURCH ADVERTISEMENT**

### Summary of Judgment

Mr Justice Treacy, sitting today in the High Court, quashed a decision of the Council of the Advertising Standards Authority ("ASA") that an advertisement placed by the Kirk Session of Sandown Free Presbyterian Church ("the applicant") was homophobic.

The full page advertisement placed in the Newsletter on 1 August 2008 was headlined "The Word of God Against Sodomy". It was a response to the holding of a Gay Pride parade in Belfast and the advertisement invited members of the public to join an assembly in the car park adjacent to St Anne's Cathedral, Belfast for a gospel witness against the act of sodomy.

The ASA received seven complaints about the advertisement. It considered the complaints and held that the advertisement had breached Clause 5.1 of the British Code of Advertising Practice. The ASA concluded that some of the complainants were justified in believing that some of the text was homophobic, implying that homosexual people were perverted and an abomination. It told the advertiser to take more care in future to avoid causing any further serious offence when advertising its opposition to the Gay Pride March, or inviting readers to a gospel witness.

The applicant sought to challenge the ASA's decision on the grounds that it was procedurally unfair because they had not been given the opportunity to make representations directly to the ASA Council which was the final decision maker; it was a violation of the applicants' rights under Article 9 and/or Article 10 of the European Convention on Human Rights in that it represented an interference with those rights; and the ASA breached the applicants' legitimate expectation that the ASA should not "arbitrate between conflicting ideologies".

Mr Justice Treacy focussed on the claim that the adjudication was a breach of the applicant's Article 9 and/or 10 Convention rights. The parties agreed

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that whether the case was decided under Article 9 (freedom of thought, conscience and religion) or Article 10 (freedom of expression) was irrelevant as to the outcome. The judge said he therefore proposed to consider the matter in the context of Article 10.

Mr Justice Treacy accepted that there had clearly been an *interference* with the applicants' right to freedom of expression since the effect of the ASA's decision was to prevent the applicant advertising in similar terms in the future. He accepted, however, that the ASA had a legitimate aim of maintaining a system of self regulation in the advertising industry which provides adequate controls against the publication of material that would cause widespread or serious offence, including offence that interferes with the rights of readers of a particular sexual orientation to respect for their dignity and private life.

The judge then considered the issue of proportionality. In doing this he balanced the applicant's right to freedom of expression, and the extent and severity of any interference with that right, against the interest of the community in ensuring that gratuitous offence is not permitted. The ASA submitted that its adjudication was plainly a proportionate response to the advertisement and that it was proportionate for it to conclude that the advertisement should not appear again in its current form. It claimed that nothing in the adjudication would prevent the applicant from advertising its opposition to sodomy or the Gay Pride March in less strident and offensive language. The applicant asserted that the level of offence caused by the advertisement "is outweighed by the interest in the Church being able to express its religious views, as part of the manifestation of their beliefs, and to do so by Scriptural quotation".

Mr Justice Treacy considered that the context of the advertisement was important, namely the annual Gay Pride March in Belfast – a march in which in the previous year a participant carried a banner stating "Jesus is a fag". He found that the advertisement contained no exhortation to violence or other improper or illegal activity:

"The advertisement's call for a peaceful counter-demonstration for a gospel witness took place in the context I have already set out. It was placed by people whose deeply held religious views on the practice of homosexuality are probably well known. By the advertisement they were seeking to stand up for their beliefs and to encourage others to do so by bearing public witness."

He said it was unsurprising that they sought to stand up for what they believed in by quoting biblical scripture. One effect of the ASA's decision

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would materially interfere with and inhibit their use of certain biblical scripture. Mr Justice Treacy said that if the applicant is prohibited or inhibited from articulating their religious conviction and call to bear witness by reference to the very scripture that underpins it, that restriction can appear like a form of censorship.

Mr Justice Treacy concluded that the applicant's religious views and the biblical scripture which underpins those views no doubt cause offence, even serious offence, to those of a certain sexual orientation: "But Article 10 protects expressive rights which offend, shock or disturb. Moreover, Article 10 protects not only the content and substance of information but also the means of dissemination since any restriction on the means necessarily interferes with the right to receive and impart information."

He said that in this case the ASA had failed to convincingly establish the necessity for such a restriction which, in his view, disproportionately interferes with the applicants' freedom of expression:

"In making this assessment I have taken into account the very particular context in which the advertisement was placed, the fact that the advertisement did not condone and was not likely to provoke violence, contained no exhortation to other improper or illegal activity, constituted a genuine attempt to stand up for their religious beliefs and to encourage others to similarly bear witness and did so by citing well known portions of scripture which underpinned their religious faith and their call to bear witness. Whilst such views and scriptural references may be strongly disdained and considered seriously offensive by some, this does not justify the full scope of the restrictions contained in the [ASA's] determination."

Mr Justice Treacy quashed the ASA's adjudication on the grounds that it constituted a disproportionate interference with the applicants' rights under Article 10 of the ECHR.

## NOTES FOR EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

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2. Clause 5.1 of the British Code of Advertising Practice states that:  
  
“Marketing communications should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Code will be judged on the context, medium, audience, product and prevailing standards of decency.”
  
3. Mr Justice Treacy rejected the claim that the ASA’s adjudication was procedurally unfair. He said the applicant had been provided with the full recommendation of the Independent Reviewer and had the opportunity to comment. Its comments were placed before the ASA members and taken into account in their deliberations. He was also satisfied there was no evidential basis for the claim that the ASA had engaged in any adjudication between competing ideologies.

**ENDS**

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