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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Kirk Session of Sandown Free Presbyterian Church's Application [2011] NIQB 26

AN APPLICATION FOR JUDICIAL REVIEW BY THE KIRK SESSION OF SANDOWN FREE PRESBYTERIAN CHURCH

TREACY J

Introduction

1. By this application the Kirk Session of Sandown Free Presbyterian Church ("the applicant") seeks judicial review of an adjudication made by the Council of the Advertising Standards Authority ("the ASA") on 3 April 2009.

2. The ASA concluded that some of the text used in a full page advertisement placed by the applicant in the Belfast News Letter and its associated free sheet on 1 August 2008, and headlined "the Word of God Against Sodomy" was homophobic, implying that homosexual people were perverted and an abomination, and that the advertisement would be likely to cause, and had caused, serious offence. The advertisement accordingly breached clause 5.1 of the British Code of Advertising, Sales Promotion and Direct Marketing ("the Code").

3. The ASA rejected a further complaint that the advertisement could be read as an attempt to incite violence against members of the Lesbian, Gay, Bisexual and Transgender community or supporters of, or participants in, the Belfast Gay Pride March.

4. The ASA concluded that the advertisement should not appear again in its current form; told the applicant to take more care in future to avoid causing serious offence when advertising its opposition to the Gay Pride March, or inviting readers to a gospel witness; and advised the applicant to seek a view from the Committee of Advertising Practice Copy Advice team (which

provides free advice as to the likely compliance of advertising copy with the CAP Code) before publishing similar advertising in future.

Grounds of Challenge

5. The permitted grounds of the applicant's challenge are:

> **"(i) The Authority's decision was reached in a procedurally unfair manner in that the applicants were not provided with a copy of the Independent Reviewer's recommendation to the ASA Council, nor permitted to make representations in relation to it directly to the ASA Council, which was the final decision-maker in the process;**
>
> **(ii) The Authority's decision is a violation of the applicants' rights under Article 9 and/or Article 10 of the European Convention, contrary to section 6 of the Human Rights Act 1998, in that it represents an interference with those rights which is not for a legitimate aim and/or which is not proportionate; and**
>
> **(iii) The Authority breached the applicants' legitimate expectation, engendered by clause 1.4(i) of the Committee of Advertising Practice Code, that it would not adjudicate in a case such as this."**

6. Two further grounds of challenge were rejected at the leave stage including a challenge that the ASA misdirected itself and took into account an incorrect view of the applicant's position on homosexuality. Rejecting this ground Weatherup J at para.8 of his leave judgment, said:

> **"[8] The fourth ground concerns the misdirection, in that it is said that the ASA adopted an incorrect view of the applicants' position on homosexuality. The applicants seek to condemn the activity and not the individual. However the applicants contend that the ASA proceeded on the basis that the advertisement sought to attack the individuals. There was debate during the leave hearings as to whether or not the advert was directing its attack on individuals or whether it was directing its attack on the activity. It is not the intended meaning as such that is the issue but rather whether the text would be likely to occasion serious or widespread offence. I consider that the ASA properly directed**

> **itself to a reasonable interpretation of the text and a concern as to whether that reasonable interpretation would be likely to occasion serious or widespread offence. I am not satisfied that there is an arguable ground for misdirection."**

An appeal against the refusal of leave on this ground was refused by the Court of Appeal.

Factual Background

7. The Committee of Advertising Practice ("CAP") was established in 1961 and produced the British Code of Advertising Practice. The CAP is responsible for the current Code now in its twelfth edition. The eleventh edition was the operative edition at the time of the impugned decision.

8. The ASA is the independent body responsible for administering the Code. The ASA is a company limited by guarantee. The first of its objects in its Memorandum of Association is:

> **"The promotion and enforcement throughout the United Kingdom of the highest standards of advertising in all media so as to ensure in co-operation with all concerned that no advertising contravenes these standards, having regard *inter alia* to the British Code of Advertising Practice."**

9. The ASA's role and function is described in paras.60.4-60.5 of the Code in the following terms:

> **"The ASA was established in 1962 to provide independent scrutiny of the newly created self-regulatory system set up by the industry. Its chief tasks are to promote and enforce high standards in marketing communications, to investigate complaints, to identify and resolve problems through its own research, to ensure that the system operates in the public interest and to act as the channel for communications with those who have an interest in marketing communication standards."**

10. The status and aims of the Code are set out on its first page which states:

> **"By creating and following self-imposed rules, the marketing community produces marketing communications that are welcomed and trusted. By**

practicing self-regulation, it ensures the integrity of advertising, promotions and direct marketing."

11. According to Guy Parker, the Chief Executive of the ASA, the self-regulation of the marketing and advertising industry undertaken by the ASA pursuant to the Code recognises:

> **"… that readers of advertising have different expectations of advertising from their expectations of editorial, which is generally regulated with a lighter touch (including by the Press Complaints Commission). Readers are likely to be more tolerant of polemic material in the news and editorial columns of a newspaper than in advertising. People buy newspapers for their editorial content, not their advertising content, of which they are likely to have little or no knowledge in advance, and which (in a manner of speaking) come at them uninvited."**

12. The following provisions of the Code are relevant to this application:

> **"1.4 (a) the ASA Council's interpretation of the Code is final.**
> **1.4(b) conformity with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. This will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any additional material distributed to consumers.**
> **1.4(i) the ASA does not arbitrate between conflicting ideologies.**
>
> **2.1 All marketing communications should be legal, decent, honest and truthful.**
> **2.2 All marketing communications should be prepared with a sense of responsibility to consumers and society.**
>
> **5.1. 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."

13. The Independent Review procedure is set out at para.60.38 of the Code and provides:

"The Independent Review procedure

60.38 In exceptional circumstances, the ASA Council can be asked to reconsider its adjudication (including a Council decision not to investigate a complaint). Requests for a review should contain a full statement of the grounds, be in writing and be addressed to the Independent Reviewer of ASA Adjudications, 5th Floor, 21 Berners Street, London, W1T 3LP. They should be sent within 21 days of the date on the ASA's letter of notification of an adjudication. The Independent Reviewer may waive this 21 day time limit if he judges it fair and reasonable to do so.

Requests should come only from the complainant(s) or marketer. Those from the marketer or from an industry complainant should be signed by the Chairman, Chief Executive or equivalent; requests made only by their solicitor or agency will not be accepted. All dealings with the Independent Reviewer must be in writing.

There are two grounds on which such a request can be made:

- **Where additional relevant evidence becomes available (an explanation of why it was not submitted previously, in accordance with clause 3.1, will be required).**
- **Where there is a substantial flaw in the Council's adjudication or in the process by which that adjudication was made.**

No review will proceed if the point at issue is the subject of simultaneous or contemplated legal action between anyone directly involved. Requests for review should make plain that no such action is underway or is contemplated.
The ASA will not delay publication of the relevant adjudication pending the outcome of a review save in exceptional circumstances (on the authorisation

of the ASA Director General).

The Independent Reviewer will evaluate the substance of the request with advice from two Assessors (apart from requests about a Council decision not to investigate a complaint). The two Assessors are the Chairman of ASBOF[1] (or nominee) and the Chairman of the ASA.

If the Independent Reviewer decides not to accept the request (in whole or in part) because he considers that it does not meet either of the two grounds set out above he will inform the person making the request accordingly.
The Council's adjudication on reviewed cases is final."

14. The advertisement in question which led to the ASA's impugned decision of 3 April 2009 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 text included reference to the act of sodomy being "... a grave offence to every bible believer who, in accepting the pure message of God's precious Word, express the mind of God by declaring it to be an abomination. (Leviticus, ch 18 v22, *"Thou shalt not lie down with mankind as womankind; it is an abomination").* This unequivocal statement in the Bible clearly articulates God's judgment upon a sin that had been only made controversial by those who were attempting to either neutralise or remove the guilt of their wrongdoing."

15. The full text of the advert was in the following terms:

THE WORD OF GOD
AGAINST SODOMY

Last year in the "gay pride parade" a banner stating "Jesus is a Fag" was carried by one of the participants. The supporter of homosexuality was able to walk through the streets of Belfast displaying this offensive placard in spite of the presence of the PSNI, representatives from the Commission and the march organisers. The act of sodomy is a grave offence to every Bible believer who, in accepting the pure message of God's precious Word, express the mind of God by

[1] The Advertising Standards Board of Finance

declaring it to be an abomination. (*Leviticus, ch18 v22, 'Thou Shalt not lie down with mankind, as with womankind; it is an abomination.'*) This unequivocal statement clearly articulates God's judgement upon a sin that has been only made controversial by those who are attempting to either neutralise or remove the guilt of their wrongdoing. As a result, we are now witnessing a hostile spirit being exerted against the testimony of God's precious Word and those who adhere to its teachings. It is imperative that everyone whose faith is centred upon the authority of the divinely inspired scriptures maintain a strong and public stand for the ethical and moral standards that will ultimately exalt the nation. (*Proverbs, ch14 v34, 'Righteousness exalteth a nation; but sin is a reproach to any people.'*)

The issue of human rights is no longer a basis for this parade, as successive governments have legislated for the lowering of the age of consent, the authorisation of civil partnerships and the inheritance rights of a nominated partner. It is a cause for regret that a section of the community desire to be known for a perverted form of sexuality, which in certain incidences has provoked the unacceptable and totally unjustifiable response of violence. Such a response, however, must not intimidate the church into silence.

We are obligated under God to publicly challenge the vices of this generation with the divine assurance that the gospel of redeeming grace can change a person's life by making them a new creature in the beloved Lord Jesus Christ. (*1st Corinthians, ch6 vs9-11, 'know Ye not that the unrighteous shall not inherit the kingdom of God? Be not deceived: neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselves with mankind, Nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners, shall inherit the kingdom of God. And such were some of you; but ye are washed. But ye are sanctified, but ye are justified in the name of the Lord Jesus, and by the spirit of our God.'*)

The message of the gospel is purifying, positive and precious all because the Lord Jesus Christ shed

his sinless blood on the cross of Calvary to take away sin.

We invite you to join with us this Saturday at 1.30pm as we assemble in the park adjacent to Saint Anne's Cathedral for a gospel witness against the act of sodomy.

This parade is not a welcome addition to our city, neither is it a positive celebration of a profitable lifestyle flaunting a form of sexuality that generations of men and women have righteously resisted and by God's grace will continue to resist. Romans, ch1 v17.

Published by the Kirk Session of Sandown Free Presbyterian Church.

16. The ASA received seven complaints about the advertisement which included the following comments:

(i) "The advertisement is deeply offensive, it defines people in terms of a sexual act. It says that I and many other people are perverted. ... it is extremely upsetting to be on the receiving end of such comments, no one should open the paper to see this in an advertisement."

(ii) "I feel this advert causes grave offence on the grounds of sexual orientation ... I'm shocked the newspaper carried it. Its language is couched in homophobia and I feel it may incite hatred against lesbian and gay people";

(iii) "I find this advert totally offensive and am concerned that such a homophobic advert was allowed to be in the press");

(iv) "I believe that the advertisement ... was homophobic, dangerous and offensive, as it described homosexual people as perverts, and clearly breached advertising guidelines";

(v) "I object strongly to this free newspaper being put through my door with this sort of objectionable rubbish in it".

17. By letter dated 5 September 2008, the ASA informed the applicant of the complaints that had been received, identified the potentially relevant provisions of the Code, and invited the applicant to respond. The applicant responded by letter dated 8 September 2008. On 28 October 2008 the ASA informed the applicant that the ASA Investigations Executive intended to recommend to the ASA that the complaints should *not* be upheld. However, the ASA did not accept the recommendation and on 21 November 2008, upheld the complaints that the advertisement breached Clause 5.1 of the Code. By letter dated 9 December 2008, the applicant sought a review of the ASA decision and an oral hearing, explaining the grounds on which it sought to challenge the ASA's adjudication. A further letter was sent on 26 December 2008 amplifying the applicant's position.

18. The Independent Reviewer ("the IR"), Sir John Caines, informed the applicant on 19 December 2008 that he would determine whether the request for the review met the provisions of Clause 60.38 of the Code (set out above) and explained the procedure applicable to a review under the Code. On 9 February 2009 he confirmed that he intended to proceed to undertake a review, and bring the matter back before the ASA for reconsideration.

19. By letter dated 10 March 2009, the IR informed the applicant of the recommendation he was minded to make to the ASA, and invited the applicant to comment. The recommendation contained in this letter and its annexes was, in substance, the same, as the final recommendation given to the ASA. The letter stated:

> **"Further to my letter of 19 December 2008 I have now reached the point when I would like to let you know what I am minded to recommend to the Council at the conclusion of my work on the review request contained in your letter of 9 December 2008. I have had comments from some of the complainants upon your statement of case (see summary of these attached at Annex B to this letter.**
>
> **You believe that the ASA had no right to curb the freedom of an organisation answerable to God to publish material which is based on what is in the Bible and which in part consists of direct quotations from the Bible. In my view such reasoning fails to take account of the fact that the ASA has a duty to administer the CAP Code and to**

rule upon legitimate complaints made to it about possible breaches of that Code.

The main clause in the Code bearing on this particular case is clause 5.1 which states '(avoiding serious or widespread offence) 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.'

There can be no doubt that a press advertisement falls squarely within the scope of the Code. The only sort of campaigning advertisement expressly excluded by the Code is political election campaigning; there is no exception for advertisements about religious issues. And the Code applies to both paid for advertising and to free newspapers distributed to people's homes. The advertisement is not confined to quotations from the Bible. It also includes an eye-catching headline and several other strongly worded sentences of commentary based upon biblical references.

I consider that the ASA has a duty to weigh up the arguments and counter-arguments and decide whether the advertisement has, or is likely to have, caused serious or widespread offence. That decision must be taken with due regard to the context, medium, audience, product and prevailing standards of decency.

I am satisfied that the Council was right to consider and apply the provisions of clause 5.1 of the Code. There is nothing in the adjudication to warrant the charge that the Council has taken a position about the merits of the arguments advanced by those for or against the acceptability of homosexuality. All that the Council has done in this case is to take a view about the *extent* to which the freedom to express those arguments has been exercised with due care for the legitimate concerns rights and reputations of those who do not agree with them or are likely to be affected adversely by them.

As always in cases where taste and decency are at the core of the concerns, the judgement which the Council has to make is difficult. But it cannot shirk the task, however difficult, especially for a judgment about the seriousness of the perceived offence to readers who may not share the views of those who published the advertisement. It is accountable for the judgments which it makes and they must be fair and reasonable and the process by which they are reached must be seen to have been fair and reasonable. The Council agreed with the Executive that the advertisement did not condone and was not likely to provoke violence. But the Council disagreed with the Executive's recommendation in respect of offensiveness. That demonstrates to me not only that the issues were considered carefully but also shows that the process by which the decision was reached was fair and reasonable and in line with the ASA's normal and publicly stated practice.

Nevertheless in my opinion the wording of the adjudication on Point No 1 is unfortunate and inconsistent with the nature of the test which the Council sought to apply in this case in judging the offence. The Code contains two tests: 'widespread' or 'serious'. The use of the word 'majority' would be consistent with the test of 'widespread'. But it is my understanding that the test applied in this instance by the Council was 'serious'. The important point was not whether a majority or a minority of readers would be offended; it was whether readers would be likely to be caused serious offence. The adjudication concludes that the offence would be 'serious' but uses words which introduce the concept of 'widespread'. That confuses the verdict and it will be important for the Council, when reconsidering this adjudication, to reflect on this point and to decide what action to take.

The Council might conclude, having considered your statement of case and also the views of those complainants who have commented upon it, that it should reverse its original verdict and revert to that which had earlier been recommended by the ASA Executive. Or the Council might conclude that the published adjudication should remain unaltered. I

am at present minded to advise the Council that it should do neither.

I am at present minded to advise the Council that it should replace the Assessment of Point No 1 in the published adjudication with the text set out at Annex A to this letter. That text retains the 'upheld' verdict but bases it on a judgment about 'serious offence' and not one which says anything about 'widespread offence'.

It is my present opinion that it would be both fair and reasonable for the Council to conclude that the overall tone and much of the specific content of the advertisement, with its *selective quotations from the Bible*, would be seriously offensive to any homosexual, Christian or non-Christian. Despite the quotation from Corinthians, the message seems not to be encouragement to those with such a sexual orientation to share your firmly held belief that their way of life is sinful and that it would be to their advantage to change their ways. While stopping short of an incitement to violence the language used is hardly that of compassion, it depicts the homosexual community as an abomination and perverted against a background (as you acknowledge in the advertisement) of sometimes violent antagonism towards homosexuals in Northern Ireland. I note that the advertisement stops short of quoting that verse from Leviticus which calls for homosexuals to be put to death (20:13). *I think that it was reasonable for the Council to consider that codes of conduct and sanctions laid down in biblical works from several millennia ago cannot be communicated verbatim and indiscriminately in twenty first century advertising.* In my view the language used goes far further than would be necessary to call for a peaceful counter demonstration for a gospel witness. I have not detected any discrimination between how the ASA would consider advertising by SFPC under the Code and how it would consider advertising by any other faith group.

Please however bear in mind as I explained in my letter of 19 December 2008 that the Council is not bound to accept any conclusion and recommendation which I make to it.

> **I would be grateful for any comments which you care to offer on the contents of this letter and on the draft text at Annex A. I will ensure that such comments are included in the dossier of papers in front of the Council when it reconsiders its decision on the basis of your review request. That dossier will also include a copy of Annex B.**
>
> **I should be grateful if you could let me have any comments within 14 days of the date on this letter so that I can finalise my advice to the Council.**
>
> **I must ask that you should treat this letter as 'in confidence'. The review procedure is part of the overall ASA process and I support the ASA's strongly held view that this process should invariably be conducted 'in confidence' without the distraction of public debate in the media.**
>
> **I have written in similar terms to the complainants.**
>
> **Yours etc"**
> [Emphasis added]

20. On 23 March 2009 the applicant's solicitors responded stating:

> **"it would be inappropriate for our clients to seek to avail of your offer to comment on the matters raised in your letter dated 10 March 2009 at this stage".**

Having declined the invitation to make representations to the IR on the same date the applicant's solicitors wrote to the ASA and asked for sight of the IR's report and the right to make representations in relation to it directly to the ASA.

21. On 25 March 2009 the IR offered the applicant a further opportunity to make representations on his proposed recommendation that he would then place before the ASA. He stated that in the absence of any comment from the applicant, his final recommendation would reflect what he had said in his letter of 10 March 2009.

22. On 30 March 2009 the applicant presented comments on the IR's proposed recommendation as outlined in his letter of 10 March 2009. On 31 March 2009 the IR responded to the applicant's solicitors and confirmed that, having considered the comments made by the applicant, his recommendation to the

ASA would remain that set out in the letter of 10 March 2009. He also gave an assurance that the applicant's letters of 23 and 30 March would be presented to the ASA. On 3 April 2009, the ASA considered the IR's recommendation, together with other relevant materials, including the applicant's comments and correspondence. After discussion, summarised in the minutes, the ASA made the adjudication challenged in these proceedings.

23. The applicant was notified of the adjudication on the same day. The letter stated:

> **"Dear**
>
> **Sandown Free Presbyterian Church – A08-66355**
>
> **I am writing to you in my capacity as secretary to the Council to confirm the result of today's discussion.**
>
> **The ASA Council has now considered the above case following a request by the advertiser that point 1 of the adjudication should be reviewed on the grounds of substantial flaw. As you know, Point 2 of the adjudication, the challenge that the ad was likely to provoke hatred and violence against the lesbian, gay, bi-sexual and transgender community, was 'not upheld' by the Council.**
>
> **After careful consideration, including of a report from the Independent Reviewer and correspondence from the advertiser and its solicitor,** ***the Council concluded that the ad would be likely to and had caused serious offence on grounds of sexual orientation*** **but that the adjudication was flawed. It ought not to have stated that some of the ad's text 'went further than the majority of readers were likely to find acceptable'. Those words introduced the concept of widespread offence; it had intended to adjudicate only that the ad would be likely to and had caused serious offence.**
>
> **The Council noted the advertiser's arguments that freedom to advertise the content of the bible could not lawfully be found to be in breach of the CAP Code, particularly having regard to Articles 9 and 10 of the European Convention on Human Rights. In adjudicating whether the ad breached the Code, it weighed up those arguments against the rights of**

those readers of the newspaper who were likely to be seriously offended, particularly those whose sexual orientation were the subject of the ad.

The Council considered that ***the complainants were justified in believing that some of the text used in the ad was homophobic, implying that homosexual people were perverted and an abomination.*** **It told the advertiser to take more care in future to avoid causing serious offence when advertising its opposition to the Gay Pride parade or inviting readers to a gospel witness. It did not consider that its adjudication would have the effect of preventing the advertiser from advertising its opposition in future, but it did not think sufficient care had been taken to avoid causing serious offence in this particular case. It recommended that the advertiser seek assistance from the CAP Copy Advice team before publishing similar ads in future.**

I should add that the Council was aware of the views expressed by the advertiser's solicitor that the Council could not fairly adjudicate until the advertiser had been given an opportunity to see and comment on your recommendation. That matter had already been the subject of extensive correspondence and the Council was satisfied that the advertiser had been given ample information as to the likely recommendation and the opportunity to make its case. Copies of all correspondence between you (and myself) and the advertiser's solicitor were all placed before Council, specifically drawn to members' attention by the Chairman, and carefully considered in the course of their detailed discussion of the case.

The new adjudication, herewith attached, will be published on the ASA's website on Monday 6 April 2009, embargoed until Wednesday 8 April 2009. It remains confidential until later that date.

Yours etc"
[Emphasis added]

Parties Submissions

24. The applicant challenged the respondent's adjudication on the following grounds:

    (i) that the adjudication was procedurally unfair;

    (ii) that the adjudication constitutes a disproportionate interference with the applicant's rights under Arts 9 & 10 of the European Convention on Human Rights ("the Convention"); and

    (iii) that the adjudication breaches the applicant's legitimate expectation that the respondent should not "arbitrate between conflicting ideologies".

25. The respondent, on the other hand, contended as follows:

    (i) There was no procedural unfairness. The applicant was fully informed of the recommendation which the IR made to the respondent, was given an opportunity to comment and did comment on it. Its representations in response to the IR's recommendation were placed before the respondent and fully taken into account before it made its adjudication.

    (ii) There is no interference in this case with the applicant's rights under Arts 9 or 10 of the Convention. Alternatively, whether considered under Art 9 or Art 10, any interference was a proportionate means of meeting the legitimate aim of protecting the rights of others, including the right of readers of the newspapers in question not to suffer serious offence and an interference with their own right to respect for their private lives, including their dignity and sexuality: a right which the respondent, as a public authority, is itself under a positive obligation to protect, pursuant to Art 8 of the Convention.

    (iii) The respondent has not arbitrated or sought to arbitrate between conflicting ideologies in this case.

Ground (i) – Procedural Unfairness

26. The applicant's challenge under this heading has evolved considerably as the case has progressed without any amendment to the Order 53 Statement. The Order 53 Statement stated:

> **"The Authority's decision was reached in a procedurally unfair manner in that the applicants**

> **were not provided with a copy of the Independent Reviewer's recommendation to the ASA Council, nor permitted to make representations in relation to it directly to the ASA Council, which was the final decision-maker in the process;"**

27. I reject this ground of complaint. Contrary to the applicant's claim, the applicant was provided with the full recommendation of the IR on 10 March 2009, and was told on 31 March 2009 that the recommendation to be made to the ASA would be as set out in that letter. The applicant had the opportunity to comment on the recommendation, and did so. Its comments were placed before the ASA, were read by members, and were taken into account in their deliberations and decision-making process. The ASA was of course not bound by the recommendation which they were free to accept, reject or modify. In fact they did not accept the IR's recommendation in its entirety but amended it in various respects following debate and discussion as is apparent from the minutes.

28. The applicant also complains of the fact that the IR made a recommendation to the ASA which was "influential" and adverse to the Claimant.

29. A similar issue arose for consideration by the High Court in England and Wales in ***Buxton (t/a the Jewelry Vault)* v *The Advertising Standards Authority*** **[2002] EWHC 2433**. In that case the applicant sought to challenge the procedure whereby the Executive of the ASA, having considered a complaint, presents a recommendation to the ASA. That procedure permits the subject of the adjudication to receive a copy of the draft recommendation and to make comments upon it, prior to the Executive recommendation being submitted to the ASA. At paragraphs 16-18 Mr Justice Sullivan dismissed the challenge to the procedure as "hopeless" and addressed the issue in these terms:

> **"17. So far as the Executive is concerned, it makes recommendations to the Council. The Council is free to accept or reject them. The position is no different, in my judgment, from a recommendation made by a planning officer to a planning committee. Indeed, the format of the Report, although somewhat shorter than the usual reports one would expect to find from a planning officer, is in not dissimilar form. The nature of the complaint is set out. The representations made by the complainant and by the advertisers are set out and a provisional view is set out for consideration by the Committee. Since the Council is free to reject that recommendation, there is no force in the argument that it is not independent.**

> **18. Turning to the complaint that the written representations of the advertiser are summarised by the Executive, there might be some force in that complaint if it was suggested that the summary was in any way inaccurate or inadequate, but it is not. Moreover, the procedure allows the advertiser the opportunity to comment on the draft report. So the advertiser has the opportunity to say "You have not fairly represented my response to the complaints about my advertisement. I want you to include X, Y and Z". If, notwithstanding representations of that kind, the Executive fails to put the matter fairly before the Council, then there might be scope for a complaint. But that is simply not the position on the facts of the present case."**

30. However the applicant did not contend that there was any material misrepresentation of fact that stood uncorrected at the ASA meeting of 3 April 2009; its representations were placed before the ASA; the entirety of the relevant correspondence was provided to the ASA members, and time was set aside prior to discussion of the issue at the meeting to allow full consideration of it.

31. In light of the foregoing I therefore conclude that there is no substance to the applicant's complaint of procedural unfairness.

Ground (iii) – Legitimate Expectation

32. The applicant contended that the impugned decision of 3 April 2009 ought to be quashed because:

> **"The Authority breached the applicant's legitimate expectation, engendered by clause 1.4.(i) of the Committee of Advertising Practice Code, that it would not adjudicate in a case such as this."**

33. Clause 1.4(i) of the CAP Code provides:

> **"the ASA does not *arbitrate* between conflicting ideologies."** [Emphasis added]

34. In my judgment, there is no evidential basis for the claim that the ASA has adjudicated or arbitrated between conflicting ideologies. At para.60 of the grounding affidavit the applicant stated:

> **"We believe that it is obvious that, in this case, the Authority has arbitrated between conflicting ideologies (the orthodox Christian view on sexuality and those who do not accept that view). While it appears to be perfectly acceptable, on the Authority's approach, for members of the lesbian, gay, bisexual and transgender community (and others) to rubbish the orthodox Christian view on this issue, it appears to be no longer acceptable for those holding the orthodox Christian view to express it, particularly be reference to Biblical texts."**

35. The evidence is inconsistent with the claim that it would be "perfectly acceptable" from the ASA's perspective for members of the LGBT community to place advertisements that were deeply offensive to Christians. On the contrary, I am satisfied that the ASA has adjudicated on a number of occasions against advertising which is offensive to Christians, including advertising placed by members of the LGBT community.

36. Weatherup J dealt with this issue at para.[9] of his original leave judgment. He was sceptical of the contention that there were competing ideologies involved in this case at all. The judge approached the matter by considering whether the ASA had engaged in any adjudication between competing ideologies. He found, correctly, that the ASA had not performed such a role in this case.

Ground (ii) – Breach of Convention Rights

37. Art 9 of the Convention states:

> **"(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.**
>
> **(2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."**

38. As regards the importance of Art 9 rights the European Court in ***Kokkinakis v Greece*** **[1993] ECHR 20** said:

> **"… freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."** [para.31]

39. The applicant stated that it believes that speaking out against behaviour which is immoral (with a corresponding call to Christian repentance and redemption) is not merely a right but a Christian obligation. This notion of manifesting one's beliefs by bearing witness to them is well-known to the Convention:

> **"While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to 'manifest [one's] religion'. <u>Bearing witness in words</u> and deeds is bound up with the existence of religious convictions."** [para.31]

40. Art 10 of the Convention states:

> **(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.**
>
> **(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for**

> **preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.**

41. In ***Murphy* v *Ireland* [2004] 38 EHRR 13** the European Court held that the blanket ban on broadcasting religious advertising in the Republic of Ireland fell to be considered under Art 10 rather than Art 9 of the Convention. At para.61 the Court held:

> **"The Court considers that the matter essentially at issue in the present case is the applicant's exclusion from broadcasting an advertisement, an issue concerning primarily the regulation of his means of expression and not his profession or manifestation of his religion. It recalls that *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* (*Öztürk v. Turkey* [GC], no. 22479/93, § 49, ECHR 1999-VI). Accordingly, the Court is of the view that the applicant's complaint about the prohibition contained in section 10(3) of the 1988 Act falls to be examined under Article 10 of the Convention. Given the parties' submissions concerning the scope of that Article and the above-cited *Handyside* judgment (see, in particular, § 49), the Court reiterates that even expression which could be considered offensive, shocking or disturbing to the religious sensitivities of others falls within the scope of the protection of Article 10, the question for the Court being whether any restriction imposed on that expression complies with the provisions of that Article."** [Emphasis added]

The respondent submitted that the present application relates to the applicant's means of expression of his perspective on a moral issue rather than to the profession or manifestation of a religious belief. Accordingly, the applicant's complaint of breach of Convention rights ought more properly to be considered in the context of Art.10 rather than Art.9.

42. It was common ground between the parties that whether the case was decided under Art.9 or Art.10 was irrelevant as to the outcome and that the issues which arose under the qualification of the rights in 9(2) and 10(2) were identical (notwithstanding the different wording of each of those articles which was accepted as being immaterial at least in the present context). I

propose therefore to consider the matter in the context of Art 10 rather than Art 9.

43. The Art 10 right to freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Para.49 in ***Handyside v United Kingdom*** **(1976) 1 EHRR 737** stated:

> **"Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man.** *Subject to Article 10(2),* **it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued."** [Emphasis added]

44. In addition to permitting interferences with freedom of expression which are prescribed by law, pursue a legitimate aim and are necessary in a democratic society – the adjective "necessary" implying the existence of a "pressing social need" – the language of Art 10(2) itself emphasises the primary right to free expression carries with it certain responsibilities. Thus in ***Otto-Premmiger-Institut v Austria*** **[1995] 19 EHRR 34** a film portraying God, Jesus and Mary in a manner which could have been deeply offensive to Christians was confiscated by the authorities. The European Court held that the interference was justified and stressed the duty of those who exercise freedom of expression to avoid expression which does not contribute to public debate and is gratuitously offensive to others. At para.47 of its judgment the Court stated:

> **"...**
>
> **Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the** ***manner*** **in which**

religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them.

In the Kokkinakis judgment the Court held, in the context of Article 9, that a State may legitimately consider it necessary to take measures aimed at repressing certain forms of conduct, including the imparting of information and ideas, judged incompatible with the respect for the freedom of thought, conscience and religion of others. The respect for the religious feelings of believers as guaranteed in Article 9 can legitimately thought to have been violated by provocative portrayals of objects of religious veneration; and such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society. The Convention is to be read as a whole and therefore the interpretation and application of Article 10 in the present case must be in harmony with the logic of the Convention."

45. At para.49 of its judgment, the Court, having recited the ***Handyside*** principle stated:

"...

However, as is borne out by the wording itself of Article 10(2), whoever exercises the rights and freedoms enshrined in the first paragraph of that Article undertakes "duties and responsibilities". Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation *to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights,* and which do not therefore contribute to any form of public debate capable of furthering progress in human affairs.

> **This being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent *improper* attacks on objects of religious veneration, provided always that any 'formality', 'condition', 'restriction' or 'penalty' imposed be proportionate to the legitimate aim pursued".**
> [Emphasis added]

46. At para.50 the Court stated:

> **"As in the case of 'morals' – a concept linked to 'the rights of others' – it is not possible to discern throughout Europe a uniform conception of the significance of religion in society; even within a single country such conceptions may vary. For that reason it is not possible to arrive at a comprehensive definition of what constitutes a permissible interference with the exercise of the right to freedom of expression where such expression is directed against the religious feelings of others. A certain margin of appreciation is therefore to be left to the national authorities in assessing the existence and extent of the necessity of such interference.**
>
> **The authorities' margin of appreciation, however, is not unlimited. It goes hand in hand with Convention supervision the scope of which will vary according to the circumstances. In cases such as the present one, where there has been an interference with the exercise of the freedoms guaranteed in paragraph 1 of Article 10, the supervision must be *strict* because of the importance of the freedoms in question. The necessity for any restriction must be *convincingly established*."**
> [Emphasis added]

47. In the case of ***Gaunt* v *OFCOM* [2010] EWHC 1756**, the Claimant sought to challenge a finding by OFCOM that the broadcasting company which aired his show had breached Rules 2.1. and 2.3 of the Broadcasting Code. In the course of a live interview Mr Gaunt had described the interviewee, a local councillor, as a "Nazi", "a health Nazi" and an "ignorant pig." Talk Sport did not seek to challenge the OFCOM ruling that offensive material had been broadcast in breach of the Code. The Claimant contended that Art.10 had been breached.

48. At para.50 Blair J stated:

> **"In these circumstances, and taking full account of the claimant's Article 10 rights, we consider that OFCOM were justified in their conclusion, the terms of which we have quoted in paragraph 11 above. The broadcast was undoubtedly highly offensive to Mr Stark and was well capable of offending the broadcast audience. The essential point is that, the offensive and abusive nature of the broadcast was gratuitous, having no factual foundation or justification. In the result, we accept Mr Anderson's submission that the Amended Finding constituted *no material interference with the claimant's freedom of expression at all.* An inhibition from broadcasting shouted abuse which expresses no content does not inhibit, and should not deter, heated and even offensive dialogue which retains a degree of relevant content.**
>
> **51. No sanction or penalty was imposed on the broadcaster, let alone the claimant. This is relevant, though not decisive, to our consideration, because it bears on the proportionality of the interference. "** [Emphasis added]

Interference

49. Having regard to the fact that Art 10 protects the content and substance of information as well as the means of dissemination and since the effect of the impugned determination is to prevent the applicant advertising in similar terms in the future I accept that there has clearly been an *interference* with the applicant's right to freedom of expression.

Prescribed by Law

50. The parties did not dispute, and the Court considers it clear, that the prohibition applied to the applicant was set out in a clear and accessible manner and was *prescribed by law.*

Legitimate Aim

51. The ASA intervention in the present case is grounded upon a breach of clause 5.1 of the CAP Code which requires that marketing communications should not contain material that is likely to cause widespread or serious offence. The provision refers in particular to the need to avoid causing offence on grounds

of sexual orientation. The terms of clause 5.1. of the Code are consistent with the Convention protections described in ***Otto*** where the Strasbourg Court found that there was an obligation in Article 10(2) to avoid insofar as was possible expressions that are gratuitously offensive to others and which did not therefore contribute to any form of public debate capable of furthering progress in human affairs.

52. Clause 5.1 of the Code was promulgated, and is applied, in pursuit of the 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 in particular, offence that interferes with the rights of readers of a particular sexual orientation to respect for their dignity and private life. I accept that this aim is plainly legitimate.

53. Moreover, seriously offensive advertising attacking a particular sexual orientation may interfere with the right to dignity, and the right to respect for his or her private life, of the reader of the advertisement. This right is itself protected under Art.8 of the Convention, and the ASA, as a public authority, has a positive obligation to protect that right.

Proportionality

54. No restriction on freedom of expression, whether in the context of religious beliefs or in any other, can be compatible with Art 10 unless it satisfies, inter alia, the test of necessity. In this respect the parties were agreed that the Court's task is to decide for itself whether the impugned finding disproportionately infringed the applicant's Art 10 rights. In doing so the Court has due regard to the judgment of the ASA who, I accept, applied the correct legal principles. This was the succinctly summarised approach taken by the Court in ***Gaunt*** at para.42 following its review of the judgments in the ***Denbigh High School***[2] case, the ***Belfast City Council***[3] case and the ***Nasseri***[4] case.

55. The relevant legal test is set out in the cases of ***De Freitas*** **[1999] 1 AC 69** and ***Huang*** **[2007] UKHL 11 (see also the discussion in Lester & Pannick at para.3.10).** The applicant's right to freedom of expression, and the extent and severity of any interference with that right, is to be balanced against the interests of the community in ensuring that gratuitous offence is not permitted.

56. In ***Murphy v Ireland*** the European Court held that a ban prohibiting any form of religious advertising on radio did not violate Art 10. The scope of the

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[2] *R(SB) v governors of Denbigh High School* [2007] 1 AC 100
[3] *Belfast City Council v Miss Behavin' Ltd* [2007] 1 WLR 1420
[4] *R (Nasseri) v SSHD* [2010] 1 AC 1

prohibition is significant. It was enacted in S.10 of the Radio and Television Act 1988 which provided:

> **"No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute."**

57. At para.67, the Court stated:

> **"there is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate of questions of public interest. However, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion…… By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements with regard to the rights of others as well as on the "necessity" of a "restriction" intended to protect from such material those whose deepest feelings and convictions would be seriously offended."**

58. At para.72 the Court stated:

> **"The Court agrees that the concepts of pluralism, tolerance and broadmindedness on which any democratic society is based mean that Article 10 does not, as such, envisage that an individual is to be protected from exposure to a religious view simply because it is not his or her own. However, the Court observes that it is not to be excluded that an expression, which is not on its face offensive, could have an offensive impact in certain circumstances. The question before the Court is therefore whether a prohibition of a certain type (advertising) of expression (religious) through a particular means (broadcasting) can be justifiably prohibited in the particular circumstances of the case."**

59. As the Court in ***Murphy***[5] noted, advertising tends to have a distinctly partial objective and the fact that it can be purchased could favour unbalanced usage by religious groups with larger resources. The CAP Code itself recognises the need to ensure that marketing communications are welcomed and trusted. The applicant does not seek to challenge the terms of the CAP Code as being contrary to Art.10. The principle that advertising which causes serious or widespread offence may legitimately be restricted is thus not in issue in this case. The challenge is confined to the application of the Code to the facts of the case.

60. The respondent submits that the ASA's adjudication was plainly a proportionate response to the advertisement. The ASA carefully considered whether the advertisement was limited to an expression of opposition to the act of sodomy, as the applicant had claimed, but reasonably concluded that expressions such as "it is a cause for regret that a section of the community desires to be known for a perverted form of sexuality", and the use of the term "abomination" went beyond that, and were homophobic, expressing rejection of a certain sexual orientation. Leave to seek judicial review of the ASA's interpretation of the advertisement was refused both by the High Court and the Court of Appeal. On the basis of that conclusion, the ASA was entitled to find that the advertisement was seriously offensive, particularly to members of the LGBT community.

61. Having reached that conclusion, the respondent submitted that it was proportionate for the ASA to conclude that the advertisement should not appear again "in its current form". The interference (if any) with the applicant's freedom of expression which this adjudication represents is very modest. Nothing in the adjudication prevents the applicant from advertising its opposition to sodomy or the Gay Pride March: it is simply required to use less strident and offensive language, which does not carry the same homophobic connotations as the language used in the advertisement. Indeed, the Action section of the adjudication makes this explicit, stating: "The ad should not appear again in its current form. We told SFPC to take more care in future to avoid causing serious offence when advertising their opposition to the Gay Pride parade or inviting readers to a gospel witness".

62. The respondent asserted that the adjudication had no bearing at all on the numerous forms of expression which are open to the applicant, and which do not involve non broadcast advertising (such as preaching, public speaking, publishing its own books or pamphlets, operating a website, giving interviews in the press or broadcast media, writing editorial articles).

63. The ASA's advice to the applicant to seek a view from the CAP Copy Advice team before publishing similar advertising in future is not binding on the

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[5] See para.74

applicant, but is intended to assist it in identifying in advance whether an advertisement it wishes to place may contravene the Code. This is a free service which is made available to the applicant if it wishes to use it.

64. 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". However, the respondent contended that nothing in the adjudication prevented the applicant from continuing to do any of these things.

65. The respondent also pointed out that the concept of "private life" in Art 8(1) of the Convention is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person and it can sometimes embrace aspects of an individual's physical and social identify. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Art 8 – see, for example, ***Pretty v UK*** **[2002] 35 EHRR 1** at para.61. At para.65 of the same case the Court reiterated that the very essence of the Convention is respect for human dignity and human freedom. Art 8 imposes positive obligations on the State to protect those rights and the regulatory framework which produced the impugned decision in this case may be viewed in that light.

Discussion

66. The nature, purpose and overall context of the expression which is restrained or interfered with by the State will determine the strength and cogency of the justification for the interference required by the Court – interference with political speech rather than commercial or artistic speech requiring the strongest reasons to justify impediments. The nature and purpose of the expression contained in the advertisement was religious, as opposed to commercial, notwithstanding that the applicant paid for the advertisement. The overall context is also an important consideration in any assessment of the proportionality of an impugned measure. Likewise, the extent of the interference and the bounds of the prohibition are an important consideration in the assessment (see ***Murphy*** at para.74). Thus, the respondent has emphasised that what they say was at issue here was *not* the expression of religious views against sodomy but rather *the way* in which those views were communicated causing serious offence to those of a sexual orientation whose practices did not conform with the religious beliefs of the applicants. The prohibition generated by the impugned decision, it was emphasised, related to *aspects* of the advertisement which are perceived as homophobic.

67. It is clear that the *manner* in which beliefs and doctrines are opposed (or propagated) may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of rights, not least because in extreme cases the effect of particular methods can be such as to inhibit those who hold particular beliefs from exercising their freedoms to hold and express them.

68. As previously observed the parties were agreed that the Court's task is to decide for itself whether the impugned decision disproportionately infringed the applicant's Art 10 rights. In doing so the Court has had due regard to the judgment of the ASA. As Lord Steyn observed "in law, context is everything". An important part of the context in the present case is that the ASA agreed that the advertisement did not condone and was not likely to provoke violence. ASA however concluded that the advertisement would be likely to and had caused serious offence on grounds of sexual orientation and considered that the complainants were justified in believing that some of the text used was homophobic, implying that homosexual people were perverted and an abomination.

69. The context of the impugned advertisement in the Newsletter is important, namely the annual Gay Pride March in Belfast – a march which the preceding year had been disfigured by a banner stating "Jesus is a fag" being carried, uninterrupted, by one of its participants. The opening paragraph of the advertisement recites this context. After, inter alia, reference to biblical scripture the advertisement concluded by inviting people to join with the applicant in assembling at the car park adjacent to St Anne's Cathedral "for a gospel witness against the act of sodomy". The advertisement contained no exhortation to violence or other improper or illegal activity. Indeed it referred to the sometimes violent antagonism displayed towards homosexuals which it describes as an "unacceptable and totally unjustifiable response". 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. The applicant believes that speaking out against behaviour which it considers immoral is not merely a right but a Christian obligation. They pointed to the fact that the notion of manifesting ones belief by bearing witness to them is well known to the Convention which, in the passage set out at para.39 above, recognises that bearing witness in words and deeds is bound up with the existence of religious convictions.

70. Since the essence of the applicant's religious belief is based on biblical scripture it is perhaps unsurprising that they sought to stand up for what they believed in by quoting such scripture. This scripture, after all, underpinned their deeply held religious faith and their call to bear witness.

71. One effect of the impugned decision is to materially interfere with and inhibit their use of certain biblical scripture, in the advertisement, in support of the call for a gospel witness (see, for example, the italicised portions of the IR's report set out at para.19 p12 hereof).

72. It is against this very specific context and purpose of the advertisement that the nature and scope of the impugned determination must be viewed. If the applicant is prohibited or materially inhibited, in the advertisement, from articulating their religious conviction and call to bear witness by reference to the very scripture that underpins it, that restriction, from their perspective, can appear like a form of censorship.

73. 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. Likewise, the practice of homosexuality may have a similar effect on those of a particular religious faith. But Art 10 protects expressive rights which offend shock or disturb. Moreover, Art 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. Whilst, in principle the manner in which beliefs and doctrines are opposed (or propagated) can engage the responsibility of the State and justify restriction under Art 10(2), the necessity for any restriction must be convincingly established. In the present case I consider that the respondent has failed to convincingly establish the necessity for such restriction which, in my view, disproportionately interferes with the applicant's 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 impugned determination.

Conclusion

74. Accordingly, for these reasons I hold that the adjudication constituted a disproportionate interference with the applicant's rights under Art 10 of the European Convention on Human Rights and must, on that basis, be quashed.