

LANCASHIRE FESTIVAL OF HOPE WITH FRANKLIN GRAHAM (Claimant)
- and -
BLACKPOOL BOROUGH COUNCIL (First Defendant)
BLACKPOOL TRANSPORT SERVICES LIMITED (Second Defendant)

Extracts from the Judgment of Her Honour Judge Claire Evans, 1 April 2021
(Numbers refer to paragraphs in the judgment)

The full judgment can be read [here](#).

3. Franklin Graham’s religious beliefs include that

- God’s plan for human sexuality is to be expressed only within the context of marriage
- Marriage is exclusively the union of one genetic male and one genetic female.

26. On 27th February 2018 Councillor Blackburn sent an email replying to someone within the First Defendant who had expressed concern about the event, copying in Alan Cavill, Andy Divall and others, which read “*We’re all very concerned about this, and we all find Franklin Graham, and his views, repulsive*”.

46. Jane Cole [Managing Director of Blackpool Transport Services] accepted in cross-examination that the decision was thus made to remove the advertisements and that it was a joint decision between her and Alan Cavill [Blackpool Borough Council’s Director of Transport and Environment].

47. She accepted that she did not consult the Second Defendant’s Board before making the decision. She accepted that she did not contact the Claimant either before or after the decision for comment, or to see whether a less offensive message could be negotiated. She accepted that she did not pay due or any regard to any equality impacts when making the decision. She accepted that she did not consider free speech or the right to freedom of expression when making the decision.

51. Later that day a press statement was released by the Second Defendant which read... “*Jane Cole, Managing Director at Blackpool Transport said “The removal of these adverts is as a result of us listening and acting on customer and public feedback which we aim to do at all times. Blackpool Transport is a proud ongoing supported of the Pride and LGBT+ communities and in no way did we intend to cause any distress or upset.”*”

62. The First Defendant’s legal department (to whom the Second Defendant outsources its legal services) replied on 16th August 2018 on behalf of the Second Defendant. It framed the decision in the context of the contractual provision relating to religious and political advertisements. It asserted “*The reason that BTSL does not wish to have political or religious advertisements displayed on its vehicles is that BTSL wishes to remain neutral in political or religious controversies.* “

64. I pause there to note that that is the first mention in any of the emails or press statements, draft or otherwise, of there being any contractual provision relating to religious advertising.

69. Because of the threat of legal action, Alan Cavill showed Councillor Blackburn's proposed statement to the legal department. He came back to Councillor Blackburn and others saying "*Counsel...has asked that we do not add anything new to the debate. They would rather we went with our statement that has been used previously. They had also asked that we do not fly flags or rainbow the tower...*"

70. The response from **Councillor Blackburn** was "*...I've already told people that I've asked for the rainbow flag to be flown from the Town Hall, which (aside from the fact that it's obviously just the right thing to do) makes it impossible, in my view, to change our minds. If we need to move a bit on the statement (or reissue the old, bland one), I can live with that, but I might say at Full Council something that'll make legal's knees tremble...*"

71. Ultimately the flag did fly over the Town Hall and the tower was indeed lit up with rainbow lights. Reverend Haskett [Director of Lancashire Festival of Hope] said in evidence that it felt as though it amounted to prejudice against and dismissal of the faith community. He felt as though the LGBT sector of the community, whom he accepted had a legitimate right to have their voice heard and live without being treated prejudicially or with homophobic treatment, were being treated favourably over and above the faith community.

72. Jane Cole's evidence as to why the advertisements were removed was varied and inconsistent.

84. She was asked about Pride, and support for the LGBTQI+ community. She said the Second Defendant does support Pride and the community. It supplies a private hire bus free of hire charges to its staff to use at the Pride parade (the staff have to provide a driver and pay for the fuel). There is no prohibition or policy on what they can display on the bus.

105. ...I reject the assertion that there existed and was applied a policy of neutrality. Jane Cole accepted such a policy did not exist within the Second Defendant. None of the contemporaneous documents refer to the First Defendant having such a policy. If anything, the evidence suggests the contrary. The press statement issued by the Second Defendant referred only to Pride and LGBT rather than to any effect the removal might have on Christians or others, and did not refer to a policy of neutrality nor give the impression of neutrality. The First Defendant demonstrated an aversion and opposition to the particular religious beliefs of Franklin Graham, and a partiality for the opposing view.
...

109. ...**Ms Monaghan on behalf of the Defendants** ...suggested that an appropriate comparator might be, for example, an "*extremist Muslim cleric*" and gave the example of Anjem Choudary.

110. I disagree. On the particular example of Anjem Choudary, no evidence has been adduced as to his religious views or as to whether he is (as I doubt) a cleric, but it is a matter of public record that he has a conviction for inviting support for a proscribed terrorist organisation for which he served a term of imprisonment. There is no evidence before me of Franklin Graham having been convicted of any offences, whether relating to his religious views or otherwise. Indeed although representations were made to the Home Office that he should be denied a visa on the basis that such denial would be conducive to the public good, he was permitted to enter the UK.

111. There is no evidence before me of Anjem Choudary's "*extremist*" views. There is evidence, and it is a matter of public knowledge, that the religious beliefs set out at paragraph 87(ii) are beliefs held by many religions, Christian and otherwise. They may be offensive to some people, but they cannot properly be characterised as "*extremist*".

112. One difficulty with Ms Monaghan's general submission is that it is the very unacceptability to some sectors of society of Franklin Graham's particular religious beliefs which is the alleged basis for the discrimination. To take into account in considering the s23 requirement something which goes to the heart of the protected characteristic cannot be right. It would be approaching the issue in a way which would defeat the purpose of the legislation to eliminate discrimination on the ground of a particular religion or belief...

113. The other difficulty with approaching the comparator in the manner suggested by Ms Monaghan is that it would require the court to involve itself in the relative acceptability to society of one religious view over another, in order to determine which religious views are so offensive as liable to lead to widespread offence or complaint and which are not. The role of the court is not to enquire into the validity of differing religious views, or to give preference to some over others. All religions and beliefs are characteristics protected by law. The domestic courts and the European Court of Human Rights have consistently affirmed that a pluralistic tolerant society allows for the expression of many different and sometimes diametrically opposed beliefs.

127. ...Alan Cavill has been silent within these proceedings. He has given neither written nor oral evidence. No reason whatsoever has been put forward as to why that is. Not only that, but rather than being absent he in fact attended at least the first two days of the trial (this being a remote trial being conducted by Microsoft Teams, he joined the hearing remotely on both days). His silence is deafening.

128. I draw from his silence the inference that he would have given evidence that showed that the religious beliefs were material to the decision.

131. This case is not a case where the Defendants refused to allow any religious advertisements regardless of who wished to place them. It is a case where they refused to allow the advertisement of this particular Claimant because of the Claimant's association with the religious beliefs of Franklin Graham. That is apparent from the Defendant's various emails and from the evidence of Jane Cole...

133. The suggestion that removal on the grounds of the offence caused to the public by the association of the Claimant with Franklin Graham and his religious beliefs would not be "because of" the religious beliefs but rather because of a response to public opinion or concern seems to me to be a distinction that cannot properly be drawn having regard to the intention behind the Equality Act of eliminating discrimination. If mainstream societal opinion were to change consequent on, say, a white supremacist rising, should we allow a situation where the Defendants may, without fear of an [Equality Act] claim, cancel advertisements for companies which are known to promote an anti-racist message because of pressure and complaint made by white supremacist groups? Should a hotelier be able to refuse a double room to a same-sex couple not because he objects to their sexual orientation but because all of the other guests in his hotel object to it and find it offensive? Rather than eliminate discrimination, to allow that reading of "because of" would be to give free rein to discrimination...

137. Taking all of that into account I am satisfied that the Defendants have failed to discharge the burden under s136(3), and that the Claimant was discriminated against because of the religious beliefs. I would find that even if it were not for the adverse inferences I draw in relation to Alan Cavill, but those adverse inferences make the Claimant's case overwhelming.

177. I remind myself of my finding that the Defendants in removing the advertisements allied themselves with the views on the religious beliefs which were expressed by the complainants, and against the Claimant and those holding the religious beliefs with whom the Claimant is associated. This is the antithesis of the manner in which a public authority should behave in a democratic society.

179. In itself, everyone agrees, this advertisement was inoffensive. It was not obviously religious, it contained nothing but factual information as to the Festival, it did not even identify that it was a Christian Festival. ...

182. Ms Monaghan says the Claimant's advertisement is one which whilst "*not on its face, offensive, could have an offensive impact in certain circumstances*" ...because of the religious beliefs of Franklin Graham and in particular the manner in which he has expressed them. When I pressed her on this issue in relation to the religious beliefs she asserted that it was the reference to "*Satan*" as the architect of same-sex marriage, when expressed in the public domain rather than in a church or similar environment, that made this advertisement offensive and rendered the expression of the religious beliefs so offensive as to be capable of being interfered with. She accepted, however, that the existence of Satan is part of the religious beliefs held by Franklin Graham. Plainly it is, as is the concept that Satan tempts man away from God and God's plans for the world and towards sin. Considered in that manner, the reference to Satan being the architect of same-sex marriage is itself no more than an expression of those religious beliefs, however offensive other people who do not share them may find it.

186. ... Yes, the Claimant was still able to advertise its event and yes, it was still a success. But "it turned out all right in the end" cannot be an answer to the question of whether the interference with a fundamental right to freedom of expression can be justified. The Defendants had a wholesale disregard for the right to freedom of expression possessed by the Claimant. It gave a preference to the rights and opinions of one part of the community without having any regard for the rights of the Claimant or those who shared its religious beliefs. It made no effort to consider whether any less intrusive interference than removing the advertisements altogether would meet its legitimate aim. Whilst of course the Defendants are to be afforded a margin of appreciation in considering any interference under Article 10, all of those factors taken together mean in my judgment that its actions fell well outside it.