



reparable. The public good to be achieved by their removal would outweigh the harm. The significance of the pews was assessed as moderate to high, and therefore not in the highest category; and the harm caused by their removal would likewise not be in the most serious category. There was, therefore, no additional exceptionality test. The same benefits could not be achieved by any proposal causing any less harm.

As far as the extensions were concerned, the local authority would have had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, when it granted planning permission. The court should, therefore, give considerable weight to that factor. The significance of the extensions was moderate to high, and the harm to the special character of the building by their construction was less than the removal of the pews; there was, therefore, no exceptionality test to be applied.

A faculty would therefore issue as prayed, subject to conditions. The court noted that it might be helpful if the Church Buildings Council's *Guidance Note* indicated to parishes and those advising them of the potential need for the assessment of harm. [Jack Stuart]

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Billy Graham Evangelistic Association v Scottish Event Campus Ltd

[2022] SC GLW 33

24 October 2022

Cancellation of letting – evangelistic meeting – religious discrimination – Equality Act 2010

The pursuer (BGEA) is a charity registered in England and Wales and a limited company: its objects include supporting and extending the worldwide evangelistic mission of the US-based Billy Graham Evangelistic Association and now headed by Franklin Graham, Dr Graham's son. The defender (SEC Ltd) is a private limited company incorporated in Scotland: it operates the Hydro and is 90 per cent owned by Glasgow City Council. In July 2019, BGEA and SEC Ltd contracted for BGEA to hire the SSE Hydro Arena and Box Office in May 2020 for what was to be known as the 'Franklin Graham Event' – the beginning of Graham's UK tour. Although the agreement described the event as 'private', it was known to and agreed by SEC Ltd that it would be non-ticketed with free entry to the public. The event was part of an evangelistic outreach tour to profess and promote religion or philosophical belief: Christianity derived from an interpretation of the bible. The intended

audience was the general public, irrespective of any religious belief or none, and irrespective of sexuality.

Subsequently, SEC Ltd became aware of opposition to the event in the mainstream press and social media. The objections were drawn to the attention of Peter Duthie, the defender's Chief Executive Officer and, after consulting Glasgow City Council, the SEC's board unilaterally cancelled the letting. In January 2020, the Chief Executive of Glasgow City Council wrote to the defender cancelling the booking. The BGEA sued.

In Glasgow Sheriff Court, Sheriff McCormick began the substantive part of his judgment as follows:

Mindful that this judgment may be quoted out of context I commence by stating the obvious: the Equality Act 2010 applies to all, equally. It is an Act designed to protect cornerstone rights and freedoms within a pluralist society. It applies to the LGBTQ+ community as it does to those of religion (including Christianity) and none. It follows that in relation to a protected characteristic (here: religion or philosophical belief) no section of society can discriminate against those with whom he, she or they disagree. The court was told, in terms, that it is no part of the defender's case that the activities of the pursuer were unlawful. The event on 30 May 2020 was a Christian evangelical outreach event. Whether others agree with, disagree with or even, as was submitted on behalf of the pursuer, find abhorrent the opinions of the pursuer or Franklin Graham is not relevant for the purposes of this decision. This applies even where, as I heard evidence, members within the Christian community may not agree with the pursuer. *The court does not adjudicate on the validity of religious or philosophical beliefs* [emphasis added].

SEC Ltd had argued that in terms of s.23 Equality Act 2010 a suitable comparator had to be identified and that the BGEA had 'led no evidence that an appropriate comparator would have been treated differently'. He rejected that argument: although there would be many circumstances where a suitable comparator could readily be identified, that was not the case here. A pursuer was not required to provide or construct a comparator and, although in many cases a comparator might be available, to construct a hypothetical comparator 'would be a distraction from the real issue'. Given that SEC Ltd was a service provider in terms of section 29 of the 2010 Act and 'must not discriminate against a person requiring the service by not providing the person with the service', no comparator was required.

He noted that in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, Lord Leggatt had said at paragraph [28] that 'it did not matter if the employer had acted for an unfair or discreditable reason provided that the reason had nothing to do with

the protected characteristic'. On the basis of Lord Leggatt's opinion in *Efobi*, SEC Ltd had been required to show that the reason for the decision had 'nothing to do with' a protected characteristic (here, religion or philosophical belief) of the BGEA—and it had not done so.

It was accepted that the event was a lawful evangelical outreach event. That being so, it followed 'that the decision to cancel was a breach of the Equality Act 2010 in that the event was cancelled as a commercial response to the views of objectors' and there was no business case defence in law. Accordingly, on that basis alone, SEC Ltd had breached the terms of s.29(2) Equality Act 2010 by terminating the provision of the service to the pursuer. Furthermore, although the concern of Glasgow City Council for people from the LGBTQ+ and Muslim communities might be understandable, that missed the point: 'The lawful opinions of others based here on religious or philosophical belief (whether mainstream or not) are not to be preferred one over another. All are protected.' SEC Ltd had discriminated against the BGEA on the basis of a protected characteristic for the purposes of the Equality Act 2010 and the Sheriff awarded the BGEA £97,000 plus expenses. [Frank Cranmer]

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Re All Saints, Pontefract

Leeds Consistory Court: Samuel Dep Ch, 28 October 2022

[2022] ECC Lee 6

Interment in closed churchyard

The new incumbent became aware of a re-interment in the churchyard, in 2015, of 14th century remains unearthed in nearby archaeological excavations, when the local archaeological society asked for permission to install a stone plaque to mark the re-interment. The churchyard had been closed by an Order in Council in 1857, so the interment was unlawful under s.3 Burial Act 1853. The re-interment had been conducted by the deacon and a Roman Catholic priest, without the knowledge or permission of the incumbent, the ordinary or the court; or of the local authority, which was responsible for the maintenance of the churchyard. Furthermore, the archaeological society had procured the re-interment contrary to their exhumation licence, which required them to ensure that any discovered human remains be re-interred in a burial ground in which interments may legally take place.

Following consultation, the court concluded that the position in law was that while the interment of cremated remains in a closed churchyard could be permitted by faculty under s.88 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, there was no power in the court to permit the