Neutral Citation Number: [2024] EWHC 1529 (KB)

Case No.: KB-2024-BHM-000127

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Date: 19th June 2024

Before:
MR JUSTICE RITCHIE

- -

BETWEEN

THE UNIVERSITY OF BIRMINGHAM

Claimant

- and –

PERSONS UNKNOWN [1]
MARIYAH ALI [2]

Defendants

Katherine Holland KC and **Michelle Caney**
(instructed by **Shakespeare Martineau LLP**) for the **Claimant**.
The 1st Defendant did not appear.
The 2nd Defendant appeared in person.

Hearing date: 14th June 2024

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APPROVED JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and released to The National Archives. The date and time for hand-down is deemed to be at 10:30 am on Wednesday 19th June 2024.

Mr Justice Ritchie:

The Parties

1. The Claimant is a University providing tertiary education to students.

2. The 1st Defendant is a group of people occupying or present upon two areas of grassed land owned by the University. The 1st is Green Heart (GH) and the second is Chancellor's Court (CC), both on the Edgbaston campus in Birmingham. The two together will be called the "Protest Camps". The University has three campuses: Edgbaston, Selly Oak and Exchange Building. The occupation of GH started on 9.5.2024 when the first protest camp was established. The second protest camp was set up on CC on 27.5.21024.

3. The 2nd Defendant stepped forwards at the hearing and handed in a letter on behalf of the students at the Protest Camps, so she became a named Defendant. She is not a lawyer and said very little at the hearing.

Bundles

4. For the hearing I was provided with: (1) a bundle of authorities; (2) a hearing bundle; (3) the Claimant's skeleton argument; (4) a last minute witness statement with video clips produced on the day of the hearing; (5) a letter from Hodge Jones and Allen.

Summary

5. On the 9th of May 2024 various students and perhaps staff set up a protest camp with some tents on GH. They were protesting to the University and presented a list of six demands to the University in relation to the killings and suffering in Gaza, Palestine. The University issued a claim form 4 weeks later, on the 10th of June 2024 and possession was sought against trespassers who were described as unknown persons. All three campuses were to be covered by the draft order. The application was made under CPR part 55, a section which focuses on possession claims against trespassers. In the Particulars of Claim the University pleaded that they believed the protesters were largely students who had "generally" been concealing their faces and that as a result the University did not know the identity of the protesters. The pleading sets out that the Protesters demanded the following:

> *"University of Birmingham Encampment Coalition for Palestine has launched!*
> *As the situation in Gaza escalates, so too does the global student movement towards establishing lasting peace and liberating Palestine*
> *BREAKING - UoB Students Establish Liberated Zone*
> *OUR DEMANDS*
>
> *DISCLOSE all of the University's investments by OPENING THE BOOKS to ensure transparency.*

DIVEST immediately from all companies complicit in the Israeli occupation, apartheid, and genocide of Palestinians.
TERMINATE all investments, research partnerships and promotion of arms manufacturers.
BOYCOTT all Israeli universities by ending research collaboration and study abroad programs.
PLEDGE to contribute to the reconstruction of universities and educational infrastructure in Gaza.
PROTECT students and staff's right to protest on campus and freedom of speech to express solidarity with Palestine."

6. The University issued notices to quit the GH protest camp the next day: on the 10th of May and subsequently on the 11th, 12th and 15th of May 2024. No application was made for any injunction. There was no pleading that any student had been identified during the passage of the four weeks between the start of the occupation and the issuing of the claim form. There was no pleading that any student had been disciplined for these protest activities.

Service

7. Under CPR r.55.5(2) service on alleged trespassers has to be completed at least 2 days before the hearing. Having seen the evidence of service from Mr Hines, I am satisfied that the Protest Camps were served by the delivery of many paper copies of the proceedings and the evidence on 11.6.2022.

The hearing

8. The Claimant asked for the hearing to be listed urgently and the Court complied with this request. The hearing took place on the 14th of June 2024. At the hearing approximately 20 students attended together with some members of the public. The second Defendant, named above, stepped forwards on behalf of the protesters and handed up a letter from a solicitors firm called Hodge, Jones and Alan, which asked for an adjournment so that the students and staff who were protesting could obtain legal advice and representation to be able to defend the possession proceedings. The Claimant asserted that there were no issues in this action and that the University was entitled to possession as the owners of the land. In her skeleton argument Miss Holland KC submitted, at paragraph 8, that there were no arguable defences to the claim. She asserted that the rights guaranteed by Section 1 (2) of the *Human Rights Act* [HRA] and Articles 10 and 11 of the *European Convention on Human Rights* [ECHR] did not assist trespassers on private property. Furthermore, she asserted the statutory duty on the University in section 43 (1) of *the Education Act 1986* did not require the University to allow students to occupy any part of the University's land because the students could exercise their freedom of speech effectively in many other ways. I have considered the submissions made by the Claimant and the case law and set out what I consider to be the issues below. Instead of giving an extemporary judgment I reserved judgment. I now set out my reasons for granting limited

possession orders relating to the Edgbaston campus only and relating to non-students only, save for the CC area from which I ordered possession against all persons unknown. I also give my reasons for adjourning the rest of the application to 25th June 2024. I have provided this judgment quickly, without the usual draft to the parties for corrections, so I beg forgiveness for any typing errors. The Claimant indicated a firm desire to appeal my order and that is another reason why I have provided this judgment quickly.

The Issues

9. At this early stage, without the benefit of any legal argument from the students or staff, pursuant to the Court's duty when considering claims against persons unknown, in my judgment the following issues arise or may arise from the facts put before me:

9.1 Are the protesters really persons unknown?

9.2 Do students at the University have a licence to use the University's land?

9.3 What are the express and implied terms of that licence?

(a) Do the terms incorporate and adequately enable the students' rights to freedom of assembly and to freedom of speech on University land under the *Human Rights Act 1998*?

(b) Do the terms properly incorporate and apply the University's statutory duties under S.43 of the *Education Act 1986* and Part A1 of the *Higher Education Act 2023* [the Education Acts]?

(c) Does the University procedural Code for protests comply with and enfranchise the students' rights under the *Human Rights Act 1998* and the University's duties under the *Education Acts* or unreasonably block and fetter those rights?

9.4 Were the students in breach of the student contract by setting up tents, inviting other students and staff to discuss their protest and making demands of the University?

9.5 Alongside the student's contractual rights, do the *Human Rights Act 1998* combined with *the Education Acts* provide the students and staff in the Protest Camps with a defence to the possession proceedings on the basis that the University is imposing an effective fetter on their rights to freedom of assembly and speech on University land?

The applications

10. The 2nd Defendant applied for an adjournment for legal advice for herself and the 1st Defendant. I granted it in relation to all students on the HG area.

11. The Claimant applied for permission to put into evidence a second witness statement from Doctor Blanco dated 14.6.2024, which had not been served on the Defendants and which contained video clips taken from the internet of three events to which I will refer below.

12. At the hearing I decided to consider the adjournment after I had heard submissions. I decided to read and see the unserved further evidence before deciding whether it would be fair to allow the Claimant rely upon it against the Defendants.

The lay witness evidence

13. I read evidence from the following witnesses. None were called.

13.1 Doctor Blanco, in two witness statements dated 10.6.2024 and 14.6.2024;

13.2 Mark Lawrence, statement dated 10.6.2024;

13.3 John Elsmore, statement dated 10.6.2024;

13.4 Scott Hines, statement dated 13.6.2024, re service.

14. I also read the bundle of documents produced by the witnesses by way of exhibits which included: the registers of title of the campus land; screenshots of social media issued by the protesters; an information sheet about the student contracts; the terms of Post Graduate and Direct Entry offers; S.s 4 & 9 of the University Regulations; the Code of Practice on Freedom of Speech; the Protesters' letter explaining their protest and setting out their demands (undated but probably delivered in early May 2024); the Vice Chancellor's reply message to students dated 17.5.2024; correspondence between the protesters and the University; photos of the Protester Camps; the notices to quit; the security logs.

Findings of fact

15. There are not many findings of fact which I can make on the balance of probability at this stage because the Defendants have only had 2 days notice of the proceedings. I am going to set out a summary of the evidence below but what I set out may change once the Defendants have obtained legal representation and put in evidence at the adjourned hearing.

16. Doctor Blanco is the director of legal services at the University. In her witness statement she gives evidence that the Protest Camps were established at the Edgbaston campus. She asserts that the occupiers are largely students. Their contracts with the University incorporated the University Regulations and University Code. She asserted that the students had the right to access University land under Regulation 4. She relied upon Regulation 4.1.1 which provides students and staff with the right to access all land and buildings "for any legitimate purpose connected with the work, business and social activities of the University". She relied on Regulation 9 which required staff and students to observe the Codes of Practice, Policies and Guidance issued by the University. She set out section 6.1 of the Code of Practice on Freedom of Speech under which the University, in writing, accepted responsibility to promote free speech including all demonstrations, protests and other events organised by a member of staff or student of the University. She relied on section 6.2 which required organisers of such events to follow the procedures set out in Appendix B which included requesting permission for protests and demonstrations (14 days in advance)

and set out that the University should not unreasonably refuse consent for lawful freedom of speech.

17. In her chronology of events Doctor Blanco recorded a demonstration by the Friends of Palestine Society on the 7th of February 2024 at the University. Her evidence omitted any mention of whether permission was requested or granted for that demonstration. On the 22nd of April 2024 a protester group sent a letter to the Vice Chancellor setting out the demands and their rationale. The demands are summarised in the pleading which I have set out above. The letter also informed the University of a demonstration planned on the 1st of May 2024. The witness statement does not mention whether that request was granted by the University, nor whether the demonstration event took place. On the 9th of May 2024 the GH camp was established and social media postings set out the protesters' intention to occupy the area to protest against Israel's actions in Gaza. Doctor Blanco set out the University's response to the protest camp. On the 17th of May 2024 the Vice Chancellor, Mr Tickle, posted a message to all students which included the following:

> "You may have seen that a group of tents has been set up on the Green Heart by individuals protesting in support of Palestine and I wanted to address this in this message. Firstly, I want to emphasise that we will support students who wish to take part in protests about
> issues that they care deeply about. There are many ways in which this can be done lawfully, including through authorised demonstrations and our staff have worked with students over recent weeks and months to encourage this wherever possible. However, this does not extend to setting up tents where there is no authority or permission to do so. Although the camp has been largely peaceful to date, the Green Heart is a space which is important for University activities, and the presence of the camp (which has also included those who are not members of the University community) causes disruption to current and planned University activities in and close to that area. This includes examinations, the summer programme activities, which take place from the start of June, and the July degree ceremonies. It is also true that camps at other universities have led to incidents that we do not want to see repeated here. **While I have informed the students involved that I am unable to meet with them whilst the camp is in place,** members of the University's senior team are visiting the camp daily for welfare checks. Once the encampment ends, I remain open to meeting with them. As I have said above, there are other ways in which protests can be done lawfully, and we are happy to discuss and facilitate these with the organisers so that those who wish to can continue to protest. One issue raised with me this week relates to transparency around the University's investments. We already publish detailed information on this online, and I thought it would be helpful to provide some links, for those who are interested in finding out more. **We publish the**

> **University's current investment portfolio which is up to date as at the end of April.** The University's investments are managed by an external investment manager, who is required to invest in line with the University's responsible Investment Policy. **This policy was revised in January 2024 and includes the clear exclusion of arms from our investment portfolio** (p5)." (My emboldening).

18. The assertion in the middle of this message that the University Vice Chancellor was "unable to meet" the protesters seems to me to be factually incorrect. I interpret those words as him being unwilling to meet the protesters to discuss the terms of their demands. No evidence was put forwards that he was in fact unable physically or mentally to meet with any of the protestors to discuss their demands. On the information provided in the Vice Chancellor's message the first and third demands of the Protest Camps had probably been partly satisfied already. The 6th demand is undermined by the University seeking possession.

19. Doctor Blanco then went on to complain that the protesters refused to engage further with University staff members and cancelled meetings, but it is apparent from the social media attached to Doctor Blanco's witness statement that the University were requiring a meeting solely for abolishing the camp and the protesters sought to discuss their concerns and "non-negotiable" demands. Hence the obvious impasse was reached. Doctor Blanco asserted that the encampment was disrupting the University and its students' activities. However, she did not set out in her witness statement any educational activity that had been disrupted up to the date of her witness statement. She asserted no allegations of violence. She included no allegation of breach of the peace or verbal abuse of staff or students, in particular there was no allegation of verbal abuse to Jewish students which I would have taken very seriously. At paragraph 39 Doctor Blanco asserted that senior staff members of the University had consistently offered to engage and meet with the protesters and asserted that the Vice Chancellor was not the highest authority in the University, that was vested in the University Council. However, this assertion needs to be seen in the context of the Vice Chancellor refusing to meet the students to discuss their demands until they had taken down their Protest Camps.

20. Doctor Blanco gave evidence that the students had threatened to "disrupt the routine of the University" in one social media post. She set out that the students had not sought the consent required in Appendix B to the Code on Freedom of Speech. She pointed out that the protesters invited people to meetings and that some of the groups involved in the protest were named "Revolutionary Communists". Another group was called "Crochet for Action". She set out that she was concerned that the camp had extended into Chancellors Court and that the camps would interfere with the University's summer programme which had already started because it was scheduled to take place between the 3rd and the 21st of June 2024. She informed the Court that the summer programme included academic elements, talks, challenges and social events on areas including CC and GH. She was also concerned that the Graduation

Ball which was to take place on the 13th of June 2024 would be affected (in the event, in her later witness statement dated 14.6.2024, there was no mention of it being disrupted). She was concerned that open days which are due to take place on the 21st and 22nd of June 2024 could be disrupted. Doctor Blanco pointed out that graduation will occur on the 9th and 19th of July 2024 at the Great Hall on the edge of Chancellors Court. She asserted that staff in the University library were concerned for their safety. She asserted there was a "substantial risk of public disturbance and serious harm to persons or property". She stated that the circumstances of the case were "exceptional". Taking judicial notice of the protest camps at many UK and USA universities I am unpersuaded that this protest is exceptional. She also asserted that the University would suffer financial and reputational loss but did not specify what that would be.

21. In his witness statement, Mark Lawrence, the head of safety and security at the University, stated that he believed there was a strong likelihood that if these students were removed from GH and CC they would relocate elsewhere on any of the three campuses. He did not rely on any evidence of any threat by the Defendants to make this assertion. He gave evidence of various events including a counter protest on the 9th of May 2024 by Israel supporters. He did not give any evidence of any vandalism, breach of the peace or crimes committed during the protest/counter protest at GH. Nor did he give evidence that consent was obtained for that counter protest. He stated that a noisy demonstration disrupted a University conference on epilepsy on the 11th of May 2024. On the 21st of May 2024 a group of protesters went to the Vice Chancellor's office to deliver their demands in writing. He gave evidence of the extension of the GH camp into the area of CC on the 27th of May 2024 and about banners being raised and then taken down. He stated that he personally found a group of 20 or 30 students intimidating when he sought to persuade them to take down a banner on the 4th of June 2024 and so he withdrew. He gave evidence that additional security had been hired by the University costing £1,000 per day to cover meetings and the Protester Camps. He also gave evidence that on the 27th of May 2024 the protesters called on the Vice Chancellor to meet and discuss their concerns with them. At that time they called themselves a "student/staff coalition of 1000 students and 200 faculty members". He exhibited his security records. Those records showed that on the 4th of June 2024 the protesters entered the Poynting Physics building. Otherwise, the records mostly showed regular prayer meetings and peaceful, welcoming protests.

22. John Elsmore gave evidence, as the director of student affairs, that the 5 organisations involved in the protests were: 1. BHM Liberated Zone; 2. UOB Friends of Palestine; 3. Midlands Pal Act; 4. UOB Communists; 5. Brum Action Palestine. He asserted that *"we have been unable to identify any individual"*. This assertion is perhaps remarkable. The students had been on the campus for four weeks by the time Mr Elsmore swore his witness statement. The social media photographs exhibited to Doctor Blanco's witness statement show quite a few students with no masks on. These are presumably students who are studying at Birmingham University. I do not

understand why the University has been unable to identify any student involved in the Protest Camps. At Court there were approximately 20 students, mixed with some members of the public, none of whom were wearing masks. Without some evidence of the efforts made by the University to identify the protesters by name I find this evidence less than convincing at this stage. Mr Elsmore asserted that on the 22nd of May 2024 masked students entered University buildings and in a hall outside a meeting room of the investment committee shouted, chanted loudly and banged on doors. He gave evidence that many staff were visibly shaken and that University security and police liaison intervened. He gave no evidence that any police charges were brought against any of these students for any criminal offences. He went on to say that Jewish staff and students say that the camp has created an "uncomfortable and hostile environment". However, he did not produce any emails or communications from any student or member of staff. He asserted that some of the protestors had shouted at staff and blocked staff movement but he only made general assertions of those matters and did not descend into specifics of which date, which member of staff or how any blocking movement occurred or the content of any shouting. More worryingly, Mr Elsmore gave evidence that on the 5th of June 2024 several buildings were vandalised when red paint was sprayed on them. These included the Aston Webb building. I asked during the hearing whether the paint was water washable and was informed by counsel that it was not and, although efforts have been made to remove the red paint, they have not fully succeeded. I take that sort of activity very seriously because it is a crime. Mr Elsmore also asserted that a sculpture had been damaged and that responsibility had been claimed for that by "Midlands Pal". Mr Elsmore explained that the summer programme of the University from the 3rd to the 21st of June was being disrupted and it had to be re-planned and relocated at an additional cost of £22,000 for a week of Heras fencing, in particular.

23. In Doctor Blanco's unserved second witness statement she referred to links to protesters' social media videos which showed: (1) the paint spraying vandalism at the classic building next to CC, (2) the delivery of the demand letter to the Vice Chancellor, and (3) the intimidation of the investment committee by loud students. I watched the videos in Court with the students and counsel.

Documents

24. I have not been provided with the following: I have no copy of the student contract; I do not have full copies of the Rules of the University or the Regulations or the Statutes; I do not have copies of any Code of Practice other than the excerpts listed above. I will set out the relevant excerpts provided to me below.

25. "Information on the student contract":

> "If you decide to accept this offer, a contract will be formed between you and the University. Your rights and obligations to the University and the University's obligations to you arising under

that contract are set out in the documents listed below, which form the terms and conditions of your student contract…The University's Royal Charter, Statutes, Ordinances, Regulations and Codes of Practice – these are regularly reviewed, with any changes normally taking effect at the start of the new academic year."

…

"Conduct and attendance

You must be aware of the University's Regulations and Codes of Practice relating to conduct, academic integrity and plagiarism, attendance and reasonable diligence (see: https://intranet.birmingham.ac.uk/as/registry/legislation/index.aspx). The University can impose penalties if you do not follow these requirements, and in serious cases the University can suspend or expel you from the University."

…

"When you may be asked to leave the University

You may be asked to leave the University if: … You are expelled from the University for

…

breach of the conduct, Fitness to Practise, attendance or reasonable diligence requirements;"

26. The Regulations S.4:

"Regulations of the University of Birmingham

Section 4. 2023-24

4.1 Rights of Access to the University

4.1.1 **All Staff and Registered Students of the University have the right of access to all land and buildings owned by the University for any legitimate purpose connected with the work, business and social activities of the University,** except:

4.1.1 (a) buildings or space within buildings properly allocated exclusively for the use of particular University employees or otherwise not designated for general access;

4.1.1 (b) any part of the University access to which is restricted or closed temporarily or otherwise on the authority of an authorised Officer of the University; or

4.1.1 (c) where an authorised Officer has, for good reason and acting within his or her authority, specifically barred an individual from general access to the University or from access to a specific part of it."

…

Section 9:

Codes of Practice: are mandatory and apply to all Staff and students. Breach of a Code of Practice may result in a disciplinary offence for both Staff and students. Policies: Staff and students are

expected to comply with policies, and their breach may result in a disciplinary offence for both Staff and students. Guidance and other advisory documents: may set out best practice in terms of procedures, but are
advisory only, whether for Staff or students." (My emboldening).

27. The Code of Practice on Freedom of Speech states as follows:

"Code of Practice Freedom of Speech
Purpose
1.1 This Code of Practice sets out the University of Birmingham's approach to freedom of speech on campus. The University has had a Code of Practice on Freedom of Speech for many years, with this fuller revision being undertaken in light of the Higher Education (Freedom of Speech) Act 2023. The Code includes the institution's values and expectations in relation to freedom of speech, explains the legislation that **the University must operate under in this area, and outlines responsibilities.** It sets out how the University's approach to freedom of speech operates in practice across the University's activities, including events with visiting speakers, and in teaching and research settings."
…
"2. **Our values and expectations**
2.1 The University of Birmingham is an academic community of staff and students, a place for open, critical thinking, and the creation, sharing and dissemination of knowledge. We are a University that teaches, researches, and applies knowledge in a comprehensive range of subjects. In this environment, academic freedom, and freedom of speech, are fundamental: **- the ability of all our members freely to challenge prevailing orthodoxies, query the positions and views of others, and to put forward ideas that may sometimes be radical or dissenting in their formulation. We are committed to securing freedom of speech within the law for all our members, staff, students and visiting speakers**. We are also committed to ensuring academic freedom for all academic staff and any visiting academics invited by the University, its staff or students."
…
"2.4 … It is not the role of the University to protect or shield people from ideas or opinions with which they disagree, or which make them feel uncomfortable. However, freedom of speech is not an unqualified right, and we set out in section 3 some of the wider legislation that we must consider in the context of freedom of speech. **The challenge for universities is to provide an**

environment which promotes and protects freedom of speech, whilst also identifying when the purported exercise of freedom of speech crosses a threshold and becomes unlawful. In practice, it is important to recognise that these are often complex matters requiring difficult judgements and that there may be a perception of
conflicting rights which need to be balanced."

…

"2.5 **In supporting freedom of speech, the University will take reasonably practicable steps to promote and protect the lawful speech rights of staff, students**, and visiting speakers of the University independently of the viewpoint being expressed. The University will not normally adopt an official institutional position on sensitive or politically contentious matters, and will not normally affiliate with organisations that would require the University to commit to a particular perspective on such matters. **This does not prevent members of our community from taking stances on such issues: we recognise that staff and students will often have very strong views and are free to express them lawfully."**

…

"3.1 … Freedom of speech means everyone has the right to express lawful views and opinions freely, in speech or in writing, without interference. …

3.2 Freedom of speech and academic freedom within the law are protected. This means that freedom of speech and academic freedom will not be protected if they contravene some other law.

3.3 Universities in England have a range of legislative and regulatory duties in relation to free speech, including:

• **The Higher Education (Freedom of Speech) Act 2023 requires that higher education institutions protect and promote the importance of freedom of speech within the law for staff, students, and visiting speakers, and academic freedom.** This includes in teaching and research settings. It requires that institutions have a Code of Practice (this document) setting out their approach to freedom of speech.

• The Education (No. 2) Act 1986 Section 43 places universities under a statutory duty to take reasonably practicable steps to ensure that freedom of speech within the law is secured for staff, students and visiting speakers.

• **The Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) in domestic legislation and includes the right to freedom of expression, which includes freedom of speech.**

• **The Office for Students (OfS), through its Regulatory Framework requires the University to comply with a set of public interest governance principles, two of which are freedom of speech and academic freedom**. The Framework also regulates free speech and academic freedom by means of Conditions E1 (public-interest governance) and E2 (management and governance).”

…

“3.5 It is important to note that the requirements on universities in relation to the above issues differ. **Specifically, for freedom of speech, the University 'must promote the importance of freedom of speech and academic freedom', and must 'take such steps as are reasonably practicable' to secure freedom of speech within the law. For other duties, including PSED and the Prevent duty, universities are required to 'have due regard' to the need to achieve the aims of these pieces of legislation.”**

…

“6. Application to meetings, events and demonstrations

6.1 The responsibility to promote and protect free speech covers all events, demonstrations, protests and other events organised by a member of staff or student of the University, including events organised by individuals or groups using the University name, funding, branding or facilities. It is particularly relevant to the following activities (although this list is not exhaustive):

• public meetings, arranged internally or externally, and held physically or virtually;

• **demonstrations, protests or marches on campus;**

• **other forms of freedom of speech.**

6.2 The procedures that must be followed by the organisers of these events are set out at Appendix B. This includes the process for requesting permission for such events and the potential mitigations that may be required to protect lawful free speech. The University shall not unreasonably refuse consent to those who are subject to the obligations of this Code (as per paragraph 1.2, above) who wish to hold an event, meeting or other activity for the expression of any views or beliefs held and lawfully expressed. Any conditions imposed on the holding of the meeting shall be kept to the minimum considered necessary in light of any risks identified in holding the meeting. Further details of how this will work in practice is set out in Appendix B.”

…

“**Appendix B**:

…

> **6. Application to hold a demonstration, protest or other similar event**
> 6.1 The full procedures in this Appendix also apply to the organisation of demonstrations, protests or similar events. Applications to hold such events should be made **with 14 days' notice,** using the application form at this link: https://intranet.birmingham.ac.uk/campusservices/ conferences-and-events/orqanisinq-events.aspx."
> …
> **"8. Other terms**
> 8.1 The University confirms that, apart from in exceptional circumstances, use of our premises by an individual or body will not be on terms that require the individual or body to bear some or all of the costs of security relating to their use of the premises. Exceptional circumstances may include very high-profile visits (for example, very senior politicians) or events with a speaker likely to attract very significant protest. The decision on this will be made by the Authorising Officer as part of the application process set out above, and the costs made clear to the organisers.
> **8.2 So far as is reasonably practicable, the University will not deny use of University premises to any individual or group on any grounds solely connected with the beliefs or views, or the policy or objectives, of that individual or group."** (The emboldening is mine).

I note that the summary of the *Higher Education Act 2023* does not mention the duty not to exclude students from University land due to their opinions. The summary of the *HRA* makes no mention of the right to freedom of assembly.

28. The HG protest looked like this, on the University's evidence:

29. The CC protest looked like this:

The Law

CPR

30. The procedure for possession actions against trespassers is set out in CPR Part 55. A trespasser is defined in rule 55.1(b) as a person who entered or remained on land without consent. Such applications for possession are to be issued in the County Court but they may be issued in the High Court if a certificate setting out specified reasons is provided. Doctor Blanco provided the certificate in this case. The specified reasons are set out in PD55A at paragraph 1.3, and these include: complicated disputes of fact; points of general important; or evidence that there is a substantial risk of public

disturbance or serious harm to persons or property which properly require determination. Paragraph 2.1 of the Practice Direction requires that the Particulars of Claim identify the land, the grounds for possession and give details of every person who, to the best of the Claimants knowledge, is in possession. There are other provisions about shortening of time limits, service on trespassers by putting stakes in the ground or attaching to front doors and dispensing with the need for responses from trespassers. By rule 55.8 the Court may order possession in a summary fashion or give directions and adjourn the hearing where the defendants genuinely dispute the claim on grounds which appear substantial. In which circumstances the Court will allocate the claim to a track and direct evidence to be given which may be in writing.

Statutes

31. The *Human Rights Act 1998* (HRA) enshrines the *European Convention on Human Rights* (ECHR) into UK Law. Section 6 imposes duties on public function bodies thus:

> **"6. Acts of public authorities.**
> (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
> (2) Subsection (1) does not apply to an act if—
> (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
> (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
> (3) In this section "public authority" includes—
> (a) a court or tribunal, and
> (b) any person certain of whose functions are functions of a public nature,
> but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament."
>
> **"8 Judicial remedies.**
> **(1)** In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate."

The ECHR provides as follows:

> **"Article 10 Freedom of expression**
> 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.

Article 11 Freedom of assembly and association
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

32. *The Education Act 1986* provides:

"43 Freedom of speech in universities, polytechnics and colleges.
(1) Every individual and body of persons concerned in the government of any establishment to which this section applies **shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for** members, **students** and employees of the establishment and for visiting speakers.
(2) The duty imposed by subsection (1) above includes (in particular) the **duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected** with—
(a) the **beliefs or views** of that individual or of any member of that body; or
(b) the policy or objectives of that body.
(3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by

Subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out—

(a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation—

(i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and

(ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and

(b) the conduct required of such persons in connection with any such meeting or activity;

and dealing with such other matters as the governing body consider appropriate." (My emboldening).

33. The *Higher Education (Freedom of Speech) Act 2023* provides thus:

"1 Duties of registered higher education providers In the Higher Education and Research Act 2017, before Part 1 insert—

"PART A1

PROTECTION OF FREEDOM OF SPEECH

Duties of registered higher education providers

A1 Duty to take steps to secure freedom of speech

(1) The governing body of a registered higher education provider **must take the steps** that, having particular regard to the importance of freedom of speech, **are reasonably practicable** for it to take in order to achieve the objective in subsection (2).

(2) That objective is securing freedom of speech within the law for —

(a) staff of the provider,

(b) members of the provider,

(c**) students of** the provider, and

(d) visiting speakers.

(3) The objective in subsection (2) includes **securing that—**

(a) the use of any premises of the provider is not denied to any individual or body on grounds specified in subsection (4), and

(b) the terms on which such premises are provided are not to any extent based on such grounds.

(4) The grounds referred to in subsection (3)(a) and (b) are—

(a) in relation to an individual, their ideas or opinions;

(b) in relation to a body, its policy or objectives or the ideas or opinions of any of its members.

(5) The objective in subsection (2), so far as relating to academic staff, includes securing their academic freedom.
(6) In this Part, "academic freedom", in relation to academic staff at a registered higher education provider, means their freedom within the law—

(a) to question and test received wisdom, and
(b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).

(7) Those ways are—

(a) loss of their jobs or privileges at the provider;
(b) the likelihood of their securing promotion or different jobs at the provider being reduced.

(8) The governing body of a registered higher education provider must take the steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to achieve the objective in subsection (9)."

…

"**A2 Code of practice**

(1) The governing body of a registered higher education provider must, with a view to facilitating the discharge of the duties in section A1(1) and (10), maintain a code of practice setting out the matters referred to in subsection (2).
(2) Those matters are—
(a) the provider's values relating to freedom of speech and an explanation of how those values uphold freedom of speech,
(b) the procedures to be followed by staff and students of the provider and any students' union for students at the provider in connection with the organisation of—

(i) meetings which are to be held on the provider's premises and which fall within any class of meeting specified in the code, and
(ii) other activities which are to take place on those premises and which fall within any class of activity so specified,

(c) the conduct required of such persons in connection with any such meeting or activity, and
(d) the criteria to be used by the provider in making decisions about whether to allow the use of premises and on what terms (which must include its criteria for determining whether there are exceptional circumstances for the purposes of section A1(10))."
(My emboldening).

34. I take away from these statutes that the University was under duties to protect and uphold the students' rights to freedom of speech and assembly and to take reasonably

practicable steps to ensure that University premises were not denied to the students for those purposes. As for the University's Code, it had to facilitate the discharge of those duties, not frustrate them.

Case Law

35. The University relied on the following cases:
    1. *McPhail v Persons Unknown* [1973] Ch 447 *(McPhail);*
    2. *University of Essex v Djemal* [1980] 1 W.L.R. 1301 *(Djemal);*
    3. *Appleby v United Kingdom* [2003] 37EHRR 38 *(Appleby).*
    4. *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780 *(Meier);*
    5. *School of Oriental and African Studies v Persons Unknown* [2010] EWHC 3977 (Ch) *(SOAS);*
    6. *University of Birmingham v Persons Unknown* [2015] EWHC 544 (Ch) *(UoB);*
    7. *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100 *(Ineos);*
    8. *Director of Public Prosecutions v Cuciurean* [2022] QB 888 *(Cuciurean);*

36. I do not need to summarise *McPhail,* save to say that this Court has no power to suspend a possession order against trespassers if one is required in law.

37. In *Appleby* the European Court of Human Rights [ECHR] was considering an application relating to private land by an environmental group protesting against plan to build on the only public playing field in the area. The protesters set up stands in a private shopping mall. They were prevented from doing so and applied under Article 10 and 11 of the ECHR asserting that the refusal breached those articles. The ECHR rejected the application holding that there was no violation of those rights and ruled thus:

> **"1. General principles**
> 39. The Court recalls the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals, 29 where the Turkish Government were found to be under a positive obligation to take investigative and protective measures where the "pro-PKK" newspaper and its journalists and staff had been victim to a campaign of violence and intimidation; also Fuentes Bobo v Spain , 30 concerning the obligation on the State to protect freedom of expression in the employment context.
> 40. **In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which is inherent**

throughout the Convention. The scope of this obligation will inevitably vary, having regard to the diversity of situations obtaining in Contracting States and the choices which must be made in terms of priorities and resources. Nor must such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities."

…

"43. The Court recalls that the applicants wished to draw attention of fellow citizens to their opposition to the plans of their locally elected representatives to develop playing fields and to deprive their children of green areas to play in. This was a topic of public interest and contributed to debate about the exercise of local government powers. However, while freedom of expression is an important right, it is not unlimited. Nor is it the only Convention right at stake. Regard must also be had to the property rights of the owner of the shopping centre under Art.1 of Protocol No.1 ."

…

47. That provision [Article 10], notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right. While it is true that demographic, social, economic and technological developments are changing the ways in which people move around and come into contact with each other, **the Court is not persuaded that this requires the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property (Government offices and ministries, for instance). Where however the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights.** The corporate town, where the entire municipality was controlled by a private body, might be an example.

48. In the present case, the restriction on the applicants' ability to communicate their views was limited to the entrance areas and passageways of the Galleries. It did not prevent them from obtaining individual permission from businesses within the Galleries (the manager of a hypermarket granted permission for a stand within his store on one occasion) or from distributing their leaflets on the public access paths into the area. It also remained open to them to campaign in the old town centre and to employ alternative means, such as calling door to door or seeking exposure in the local press, radio and television. The applicants do not deny

> that these other methods were available to them. Their argument, essentially, is that the easiest and most effective method of reaching people was in using the Galleries, as shown by the local authority's own information campaign. The Court does not consider however that the applicants can claim that they were, as a result of the refusal of the private company, Postel, effectively prevented from communicating their views to their fellow citizens. Some 3,200 people submitted letters in their support. Whether more would have done so if the stand had remained in the Galleries is speculation which is insufficient to support an argument that the applicants were unable otherwise to exercise their freedom of expression in a meaningful manner.
> 49. Balancing therefore the rights in issue and having regard to the nature and scope of the restriction in this case, the Court does not find that the Government failed in any positive obligation to protect the applicants' freedom of expression."

I take from this judgment that there is no general right for protesters to protest on private land to which they have no connection and for which they have no licence to enter and use, but there are exceptions. There is a balance to be struck. The nature of the protest, the persons who the protesters seek to persuade, the nature of the private land and the alternative means for protest, if any, and their effectiveness are all relevant to the balance. The facts are a little different to the case before me. In the current case the students have a licence to enter and use the land, so they are connected with it.

38. As for *Djemal,* students occupied buildings on University premises which were used as offices. When a possession order was made they went to other premises. The University sought possession of all of the campuses and the students left just before the hearing but threatened to re occupy after the hearing. Walton J. gave possession just of the part of the premises which the students had been occupying. On appeal the Court of Appeal granted possession of all of the campus. The ratio of the case was that the extent of the possession order depends on the evidence and the circumstances. The threat of reoccupation justified the order in relation to the whole of the land. The relevant part of the judgement of Buckley LJ is at P 1304 letters E to F:

> "The jurisdiction in question is a jurisdiction directed to protecting the right of the owner of property to the possession of the whole of his property, uninterfered with by unauthorised adverse possession. In my judgment the jurisdiction to make a possession order extends to the whole of the owner's property in respect of which his right of occupation has been interfered with, but the extent of the field of operation of any order for possession which the court

> may think fit to make will no doubt depend upon the circumstances of the particular case."
> …
> "If that is the position, the order which I would make, and which I think it was open to the judge to have made when the matter was before him, namely, a possession order extending to the whole property of the University and enforceable against the defendants or any other person who might be in unauthorised adverse possession of any part of g the University property, will not in fact incommode the students in any way because, through Miss Jones, they disavow any intention to pursue that policy in the future. I would allow the appeal." (P1305A).

39. In *Meier* travellers camped in woodlands owned by the Secretary of State who applied for possession of many sites, not just the one occupied by the travellers. The judge ordered possession of the occupied site but not the other sites. On appeal the ratio of the decision was that an order possession of land which was not occupied was not justified on the facts. An injunction could cover that. Lord Roger ruled as follows:

> "…The central issue in the present appeal is whether that case was rightly decided. In my view it was not.
> 6. Most basically, an action for recovery of land presupposes that the Claimant is not in possession of the relevant land: the defendant is in possession without the Claimant's permission. This remains the position even if, as the Court of Appeal held in *Manchester Airport plc v Dutton* [2000] QB 133, the Claimant no longer needs to have an estate in the land. See Megarry & Wade, The Law of Real Property, 7th ed (2008), para 4-026. To use the old terminology, the defendant has ejected the Claimant from the land; the Claimant says that he has a better right to possess it, and he wants to recover possession. That is reflected in the form of the order which the court grants: "that the Claimant do forthwith recover" the land or, more fully, "that the said AB do recover against the said CD possession" of the land: see Cole, The Law and Practice in Ejectment (1857), p 786, Form 262."
> …
> "8. The intention behind the relevant provisions of rule 55 remains the same as with Order 113: to provide a special fast procedure in cases which only involve trespassers and to allow the use of that procedure even when some or all of the trespassers cannot be identified."
> …
> "10. Saville J referred to the decision of the Court of Appeal in *University of Essex v Djemal* [1980] WLR 1301, which I have just mentioned. That decision is clearly distinguishable, however. The defendant students, who had previously taken over, and been removed

> from, certain administrative offices of the University of Essex, had been occupying another part of the University buildings known as "Level 6". The Court of Appeal made an order for possession extending to the whole property of the University in effect, the whole campus. This was justified because the University's right to possession of its campus was indivisible: "If it is violated by adverse occupation of any part of the premises, that violation affects the right of possession of the whole of the premises"
> …
> "15. Plainly, the idea of the Commission having to return to court time and again to obtain a fresh order for possession in respect of a series of new sites is unattractive. But the scenario presupposes that the defendants would, with impunity, disobey the injunction restraining them from entering the other parcels of land. So this point is linked to the contention that the injunction would not work.
> 16. I note in passing that there is actually no evidence that these defendants would fail to comply with the injunction in respect of the other parcels of land. So there is no particular reason to suppose that the Court of Appeal's injunction will prove an ineffective remedy in this case."

This ruling assists on the extent of the scope of an order for possession and the need for any such order to go beyond the land occupied by protesters.

40. In *SOAS* students took occupation of a floor in a University building, protesting about the Government's spending plans. The occupied floor was a conference centre. A conference had to be cancelled. University business was disrupted. Prospective bookings would have to be cancelled if the occupation continued, wasting £11,000 in fees. The lease under which SOAS occupied had clauses prohibiting activities causing nuisance. The without notice application for possession was put back for notice to be served. An interim injunction was granted. At the adjourned hearing, the next day, the Defendants were represented. The University refused to negotiate with the protesters but would negotiate with the student union. Henderson J. granted possession of the whole campus not just the occupied part of the building and ruled as follows:

> "5. Since the SOAS campus is private land, it follows, as a matter of basic English property law, that the only persons who may enter upon the campus are people who have the licence or consent of SOAS. For normal purposes, of course, the students who are enrolled at SOAS have the permission of SOAS to be on the campus for the purposes of their education in the broadest sense of that term."

> "7. … the basic ground upon which the possession order is sought is the property rights of SOAS to have occupation of its own premises and to prevent unlawful trespass. SOAS says that the students who are conducting the sit-in are trespassers, because they have no right or licence to occupy the Brunei Suite to the exclusion of the school, and they most certainly have no right to sleep there or to control who has access to the premises."
> "8. … the regulations for students at SOAS, which are exhibited to Mr Poulson's witness statement and which provide in paragraph 9.1 under the heading "Student discipline":
>
> > "No student of the School shall engage in activity likely to interfere in the broadest sense with the proper functioning or activities of the School or those who work or study in the School or undertake action which otherwise damages the School."
>
> It appears clear to me that conducting a sit-in on part of the school's premises is to engage in an activity which is likely to interfere in the broadest sense with the proper functioning and activities of the school, and with those who work or study there"

41. Henderson J. then considered the potential defences raised by the protesters and cited the ruling in para. 47 of *Appleby* thus:

> "24. …this paragraph appears to me to provide clear authority that Article 10 does not give any general freedom to exercise the relevant rights upon private land. The only exception which the court envisaged was where the prohibition on access might prevent any effective exercise at all of freedom of expression, or where it might be said that the underlying essence of the right had in some way been destroyed."
> …
> "25. On the facts of the present case, it seems to me entirely fanciful to argue that preventing the students of SOAS from exercising their Article 10 rights in the Brunei Suite would in any way impinge upon the effective exercise of their right of freedom of expression. There are many other places and ways in which that right can be exercised, and as the events of the last few days have shown there are indeed many ways in which it has been exercised. The proposition that Article 10 requires the law to override the property rights of SOAS in its own buildings is, in my view, unarguable and offers no prospects of success at trial.
> 26. Similar considerations apply to Article 11 which the court went on to deal with in paragraphs 51 and 52 of its judgment, because the court found that "largely identical considerations arise under

> this provision". So, for the same reasons, it would be equally fanciful to suppose that the Article 11 right to freedom of peaceful assembly required the court to override the property rights of SOAS in its own premises.
>
> 27. The case of *Appleby* appears to me to be plainly and squarely against the proposition which was advanced to me yesterday by Mrs Hamilton, and was further advanced to me today by Mr Slatter, to the effect that there may be an arguable defence based upon Articles 10 and 11. Mr Slatter had a further point, which was to say that SOAS is, at least arguably, a public authority, but I am not persuaded that that makes any relevant difference for present purposes. It is not in issue that, if there were a valid human rights argument, it could be relied upon by way of defence to the possession proceedings."

42. I note and take into account that the protest in *SOAS* was against the Government not the University, so protests outside Parliament or to MPs or Ministers would have been more direct and would have addressed the objective of the protest more effectively than disrupting University business. The students therefore had other effective means of protest.

43. Five years later, in *UoB* the University made an application to extend the validity of a writ of possession made the year before in relation to the campus. The year before a pattern of disruptive occupational protests of University buildings across the whole campus arose which interfered with University educational business. The protests were against Government cuts in fees. The Court made a possession order the previous year but the protests had continued at regular intervals and disbanded before bailiffs arrived. HHJ Purle QC granted the extension but summarised the practical issues with campus wide possession orders thus:

> " 6. … At one stage in July of last year the High Court bailiffs were asked to help, but by the time they arrived the protest was effectively over and they did not, as they have confirmed in a recent email, then effect repossession of the site. In fact, the practical reality may be that they never will effect repossession of the entire site. They are only called in as and when there is a protest that the police or University authorities themselves are not able to deal with effectively. The activities of the protestors move around the site and their occupation of parts of the campus for protest does not usually embrace all, so that any disruption would be ended by simply clearing the building or part of the site in question. In July 2014 the Strathcona Building was affected, and the protestors had in fact left that building by the time the bailiffs arrived. Even had the bailiffs effected possession of the Strathcona Building, it may be that this would not have amounted to possession of the remainder of the site as indicated on the plan

> attached to the Possession Order. I do not think that matters, and do not need to decide the point."

I note that this protest was against Government policy not the University.

44. I find little assistance in *Ineos* however, in *Cuciurean,* Lord Burnett of Maldon CJ dealt with protests on private land against the Government's HS2 project in the context of the rights in Arts. 10 and 11 of the ECHR thus:

> "45. We conclude that there is no basis in the Strasbourg jurisprudence to support the defendant's proposition that the freedom of expression linked to the freedom of assembly and association includes a right to protest on privately owned land or upon publicly owned land from which the public are generally excluded. The Strasbourg court has not made any statement to that effect. Instead, it has consistently said that articles 10 and 11 do not
> "bestow any freedom of forum" in the specific context of interference with property rights (see *Appleby* at paras 47 and 52). **There is no right of entry to private property or to any publicly owned property**. **The furthest that the Strasbourg court has been prepared to go is that where a bar on access to property has the effect of preventing any effective exercise of rights under articles 10 and 11, or of destroying the essence of those rights, then it would not exclude the possibility of a state being obliged to protect them by regulating property rights.**
> 46 The approach taken by the Strasbourg court should not come as any surprise. Articles 10, 11 and A1P1 are all qualified rights. The Convention does not give priority to any one of those provisions. We would expect the Convention to be read as a whole and harmoniously. Articles 10 and 11 are subject to limitations or restrictions which are prescribed by law and necessary in a democratic society. Those limitations and restrictions include the law of trespass, the object of which is to protect property rights in accordance with A1P1. On the other hand, property rights might have to yield to articles 10 and 11 if, for example, a law governing the exercise of those rights and use of land were to destroy the essence of the freedom to protest. That would be an extreme situation. It has never been suggested that it arises in the circumstances of the present case, nor more generally in relation to section 68 of the 1994 Act. It would be fallacious to suggest that, unless a person is free to enter upon private land to stop or impede the carrying on of a lawful activity on that land by the landowner or occupier, the essence of the freedoms of expression and

> assembly would be destroyed. Legitimate protest can take many other forms." (My emboldening).

I note here that the protest was against Government policy but the company who owned the land occupied was the creature set up by Government to put the policy into effect. There were many other methods and places in which the protesters could protest effectively.

Applying the law to the facts

45. **CPR 55.** I have touched on identification above. I am not satisfied on the evidence before me that the University has made reasonable efforts or provided any evidence of any efforts to identify the students who are in the protest camps. The CPR require details of every person who is, to the best of the Claimants, knowledge in possession. This does not mean the worst of the Claimant's knowledge. The University have only made general assertions that they have not been able to identify any individual. The University has not given any evidence that they have disciplined any students for being on GH and CC in the protest camps for the four weeks before the claim was issued. Maybe it does not consider the Protest Camps to be a disciplinary matter. So, I am concerned that the claim for possession against persons unknown is really a claim for possession against persons who are known or should be known but the Claimant has not sufficiently or adequately tried to identify them. This may also give rise to the difficulty in enforcement. Any possession order against persons unknown would arguably fail to bite on any current student who should or would be "known" to the University. Therefore, it is arguable that all students would have to do would be to show their student cards to defeat then enforcement of a possession order against persons unknown.

46. In relation to the GH camp I am not satisfied that the certificate provided by Doctor Blanco contains any sufficient evidence that there is a substantial risk of public disturbance or serious harm to persons or property which properly require determination by the High Court. By the time that she signed her witness statement and the Certificate these students had been on GH for four weeks. There had been a counter protest in support of Israel with no evidence of any public disturbance. There is not evidence of any damage to property at GH or injury to persons at GH let alone serious harm at GH.

47. In relation to CC and the vandalism there, the intimidation of the security officer there and the intimidation of the investment committee members who, as I understand matters, met near there, I do consider that these facts get closer to satisfying the criteria in the Practice Direction of a substantial risk of public disturbance or serious harm to property. Whether spraying indelible paint on classic buildings is serious harm or just harm is at least arguable. Intimidating the security staff or investment committee members is wholly improper, so I agreed to let the claim remain in the High Court on that evidence.

48. **HRA and the ECHR:** In my judgment, in carrying out tertiary education with state loans for UK students the University is arguably carrying out acts of a public nature. In any event it is at the least arguable that the *HRA* and the *ECHR* binds the University as a public authority. Many universities are registered with the OfS. The extracts of the Rules and Regulations put before me make no reference to the students' right to freedom of assembly. If this has been omitted from the contract, Rules and Codes then the University is overlooking a key *ECHR* right which is arguably operative in this claim as a potential defence. These protesters are assembling. However, the Rules do enshrine students' rights to protest and require the University to support those. What the students have done is assemble on the grass at GH and CC to raise the profile of their protest *against the University*. It is aimed at the University, not Government. So, when considering the balance inherent in the fettering of freedom of assembly and speech by issuing notices to quit, the person whom the protesters are trying to persuade is highly relevant. In this case that is the University. When considering whether the protesters have other "effective" methods of protest, different factors apply in this case to those in *SOAS* and *Djemal*. Arguably, marching in Birmingham High Street would be wholly ineffective to persuade the University, whereas concentrating on the University land and siting in protest near the Vice Chancellor is likely to be more effective use of the right to freedom of assembly and speech. In addition, when considering the balance inherent in *HRA* defences, the Court will take into account the nature of the land occupied and indeed whether it is actually exclusively occupied or just jointly used. In the current case the student protesters are not excluding anyone from GH or CC. On the contrary, they are welcoming staff and others to GH and CC. The larger tents are open, prayer meetings are being held and discussions taking place. People are wandering about in the land. The only exclusive occupation is under the small sleeping tents scattered about. Another factor in the balance under the *HRA* is the level of the effect on the University of the Protest Camps. There is a quantum difference between occupying a lecture hall, administrative building or conference centre (*SOAS* or *Djemal)* on the one hand and scattered camping on patches of grass on the other. The former directly interferes with lectures and teaching or administration. The latter is a noisy nuisance but does not prevent educational business. The University asserts that the Protester Camps on CC and GH are interfering with the summer programme held between 3rd and 21st June, but if that was a real concern the University could have applied long before it started. Instead, the University chose to apply mid-way through the summer programme. As for the asserted losses, the figure of £22,000 for Heras fencing is a very substantial cost which will weigh heavy in the balance, but it is currently put forwards without stating what the "but for" costs would have been. Until the University prove that these costs were caused by the protest alone, they remain potentially relevant figures instead of losses proven to have been caused by the protests. I take into account that a marquee for graduation is usually put on GH but that can probably be re-sited. These matters are all to be weighed in the balance

required under the *HRA.* I consider that there is an arguable defence here for the students for peaceful protest on GH.

49. **The Education Acts** required the University to take reasonably practicable steps to ensure that the protesting students were not excluded from University premises on the grounds of their opinions. I have not been provided with any evidence that just letting the students stay on GH is not reasonably practicable. All reasonable practicability tests involve an evidence based assessment of options and costs, the risks and benefits, the relative rights and then a balancing judgment. In this claim the University has only stressed what it sees as the downsides of the GH and the CC camps. There is no analysis of how the University can take steps to ensure the protesters are not excluded or how they can be supported. There is, in my judgment, a substantial difference between student protesters occupying lecture halls, buildings or administration offices and hence preventing or interfering with the business of education, and the protesters in this claim, who are using two patches of grass without excluding anyone else. The protesters are not stopping lectures. They are not stopping the administration of the University, save when the investment committee intimidation occurred and I shall return to that below. So arguably, in my judgment, at this stage the students have a defence based on the University's failure to comply with their duties under *the Education Acts* to "take steps" to protect their right to protest on University land.

50. **Licence to enter and use.** The University contract with the students requires the students to attend the campus and use it. The purposes for the use are wide. The University Rules enshrine the right to freedom of speech. They should enshrine the right to freedom of assembly but no such Rule has been put in evidence yet. So, when the protesters walked onto the GH and CC land, arguably they had licence to do so. They did not enter as trespassers. This leaves the assertion that remaining on the land is a trespass and that depends on whether the University was permitted, under its student contracts, Rules and Regulations, read in accordance with its statutory duties properly applied, to serve the notices to quit. The day the camp was established was 9.5.2024. The notice to quit was first served on the camp on 10.5.2024. The University may (or may not) have carried out a really rushed HRA and Education Acts analysis, balancing the various factors, in less than 24 hours, but no evidence of any such balancing exercise or of any note of the considerations taken into account was produced in the evidence before this Court. If the University did not carry out that balancing exercise, a defence of failure to comply with the *Education Acts* may be fortified. In my judgment, the Defendants have an arguable case that they have licence to remain on GH and are not trespassers. I shall deal with CC below.

51. **CC.** In my judgment different factors apply to the camp at CC. Once a protest turns into a base camp for criminal activity I have little doubt that the express or implied licence to use ceases to apply, the *HRA* provides no protection to criminals and those who encourage or cover up criminal activity and the *Education Acts* no longer assist

the protesters who assist or are criminals. Red paint was thrown onto a classic building facing the CC camp and this was recorded on video. I do grant permission for the videos showing that and the other key intimidation events in Doctor Blanco's unserved witness statement, to be put in evidence because they come from the Defendants and they evidence these crimes or potential crimes. The intimidation of the investment committee was close to threatening words and behaviour, although no police charges have yet been laid and no disciplinary proceedings started. I infer that those actions were carried out, and/or encouraged by the occupiers of the CC camp because the red paint vandalism was on buildings facing the CC camp. No protester reported the culprits to the University. Instead it was posted on social media. The intimidation of one security guard also occurred at CC. No protester has admitted to that behaviour and the protesters at the camp have not reported who the intimidators were. For those reasons I do not consider that the occupants of the camp at CC have any arguable defences and, at the hearing, I granted possession of that camp against persons unknown whether students or non-students.

52. **Non students.** At the hearing I granted possession of the whole campus at Edgbaston against all persons unknown who are non-students and are not staff of the University. Those persons unknown are trespassers and have no arguable defences.

53. **Geographical scope.** I do not need to decide the scope of the final possession orders in this judgment. The two orders I granted related to the whole of one campus for non-students and to CC for students and staff. I do not consider, on the evidence before me, at this early stage that there is justification for a possession order relating to the other two campuses on which no protests have taken place and over which no threat has been made for the protesters to relocate.

Conclusions

54. The Claimants have drawn up the possession orders, the adjournment order and the directions for the wider applications to be heard later and the order was issued on 17.6.2024.

55. For the reasons set out above I consider that the wider possession applications against students and staff should be heard at an adjourned hearing on 25.6.2024. I have not granted possession of the GH camp against any students. That area is the main issue. Possession is also sought for the other two campuses and that is the second issue.

56. This claim is allocated to the multi-track.

57. I urge the parties to negotiate or enter mediation before the hearing. If they do not I shall take that into account.

END