

IN THE HIGH COURT OF JUSTICE

Claim No.PT-2024-000893

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES (ChD)

PROPERTY, TRUSTS AND PROBATE LIST

B E T W E E N:-

THE UNIVERSITY OF LONDON

Claimant/Applicant

-and-

(1) ABEL HARVIE-CLARK

(2) TARA MANN

(3) HAYA ADAM

(4) PERSONS UNKNOWN WHO, IN CONNECTION WITH BOYCOTT, DIVESTMENT, AND SANCTIONS PROTESTS BY THE ‘SOAS LIBERATED ZONE FOR GAZA’ AND/OR ‘DEMOCRATISE EDUCATION’ MOVEMENTS, ENTER OR REMAIN WITHOUT THE CONSENT OF THE CLAIMANT UPON ANY PART OF THE LAND (DEFINED IN SCHEDULE 1)

(5) PERSONS UNKNOWN WHO, IN CONNECTION WITH BOYCOTT, DIVESTMENT, AND SANCTIONS PROTESTS BY THE ‘SOAS LIBERATED ZONE FOR GAZA’ AND/OR ‘DEMOCRATISE EDUCATION’ MOVEMENTS, OBSTRUCT OR OTHERWISE INTERFERE WITH ACCESS TO AND FROM ANY PART OF THE LAND (DEFINED IN SCHEDULE 1)

(6) PERSONS UNKNOWN WHO, IN CONNECTION WITH BOYCOTT, DIVESTMENT, AND SANCTIONS PROTESTS BY THE ‘SOAS LIBERATED ZONE FOR GAZA’ AND/OR ‘DEMOCRATISE EDUCATION’ MOVEMENTS, ERECT ANY TENT OR OTHER STRUCTURE, WHETHER PERMANENT OR TEMPORARY, ON ANY PART OF THE LAND (DEFINED IN SCHEDULE 1)

Defendants/Respondents

---

**SKELETON ARGUMENT  
ON BEHALF OF THE CLAIMANT/APPLICANT**  
*For hearing on 29 October 2024*

---

Unless otherwise stated, references in this skeleton to page numbers thus [p.●] are to page numbers in the e-bundle. The e-bundle is accompanied by videographic material stored on a USB stick labelled “USB1”.

Suggested pre-reading (time permitting):

(1) The Particulars of Claim (“PoC”)

[pp.11-25]

- |  |              |
|--|--------------|
| (2) The Application  | [pp.26-31]   |
| (3) The witness statement of Alastair Jarvis dated 25 July 2024 (“ <b>WS/AJ1</b> ”)      | [pp.251-270] |
| (4) The witness statement of Alastair Jarvis dated 11 October 2024 (“ <b>WS/AJ2</b> ”)   | [pp.63-87]   |
| (5) C’s draft interim injunction order (“ <b>the Draft Order</b> ”)                      | [pp.42-52]   |
| (6) The witness statement of Connor Merrifield dated 22 October 2024 (“ <b>WS/CM1</b> ”) | [pp.279-332] |

T/E: 2 hours

## **Introduction**

1. This is the hearing of the Claimant’s (“**C’s**”) application, on notice, for an interim precautionary injunction to restrain threatened ongoing acts of trespass on the Claimant’s land (“**the Land**” is defined in Schedule 1 to the Claim Form and in more detail below) by protestors (“**the Application**”). Two protestor encampments (or “sit ins”) have previously been established on C’s land (and a third has been established in the immediate vicinity), and other protest activity (such as disruptive marches and rallies) continue to take place on the Land. C urgently seeks the assistance and protection of the Court.

## **Background**

### **C and the Land**

2. C is a provider of higher education and is part of a collaborative federation of other, similar institutions (“**the Federation**”), of which there are 17, including Birkbeck, University of London (“**Birkbeck**”), the School of Oriental and African Studies (“**SOAS**”), and University College London (“**UCL**”). Each member of the Federation is its own distinct and separate legal entity: WS/AJ1, §6 [p.255].
3. C is the freeholder of various parcels of land registered under the following title numbers: 325806, LN91321, LN94166, NGL376460, and LN17951 (together, “**the Site**”). The Land is defined in Schedule 1 to the Claim Form and at PoC, §4 [p.13]. The Land refers to those parts of the Site which are shown shaded, hatched, and cross-hatched in yellow and cross-hatched in orange, aqua, blue, green, purple, and red on the plan at enclosure C1 to the Claim Form (“**the Yellow Land**”, “**the Orange Land**”, “**the Aqua Land**”, “**the Blue Land**”, “**the Green Land**”, “**the Purple Land**”, and “**the Red Land**” respectively).
4. Briefly, the Land denotes those parts of the Site in respect of which C has an immediate right to possession. Although there are various buildings on the Site, the Land – with

the exception of the Red Land (decommissioned, and currently vacant, student halls of residence) – does not consist of any buildings. Rather, for the most part, the parcels of land which comprise the Land are open areas of land (variously, pedestrianised precincts, grassy areas and gardens, and roadways), which are interspersed and/or adjacent to university buildings, occupied by (for example) C itself, Birkbeck, SOAS, and UCL.

5. The Land is not subject to any leases, occupational licences, or public rights of way: WS/AJ2, §§28-29 [pp.71]. The Land is visited by huge numbers (estimated to be in the thousands) of people daily, including not only students (of C and other institutions) but also clients of C (e.g., the Metropolitan Police) attending training and other events on the Site, as well as visitors to the Bloomsbury Farmers’ Market: see WS/AJ2, §§77-79 [pp.82-83].
6. Visitors to the Land are required to comply with regulations promulgated by C (“**the Visitor Regulations**”) [pp.128-132]. Reg 15.2 of the same stipulates that anyone proposing to demonstrate on any part of the Land should notify C’s Head of Hospitality and Conferencing Services at least 72 hours in advance. By virtue of Reg 15.3, C is entitled to impose conditions on demonstrations in the interests of safety, security, and other visitors’ enjoyment: see PoC, §11 [p.14].
7. Further, C has promulgated Ordinance 24, titled ‘Code of Practice on Meetings or Other Activities on University Premises’ and dated 15 February 2019 (and which, together with the annexes thereto, is referred to as “**the Code**”), in compliance with its duties under s.43 of the Education Act (No.2) Act 1986 as regards the taking of steps which are reasonably practicable to ensure that freedom of speech is secured for meetings and other activities on the Site [pp.120-127].
8. The Code applies to meetings and other activities in respect of which there is a real risk of C being unable, say, to secure participants’ safety and to avoid public disorder and other breaches of the peace. Where the Code applies, the procedure at Annex 1 thereto must be followed. This involves, briefly, the notification of the meeting/activity to one of the Claimant’s appointed officers (identified at §24 of WS/AJ2 [p.70]), who, having

carried out a risk assessment, will either grant or refuse permission for the meeting/activity (or grant permission subject to conditions).

Events leading to the Application: the protest activities of the Defendants

9. Since 6 May 2024, Ds have – under the banner of “SOAS Liberated Zone for Gaza” (“**SLZG**”) – organised and/or taken part in a series of protests on the Land, as well as on other parts of the Site and on adjacent land in separate ownership (“**the SLZG Protests**”). The SLZG Protests are directed at SOAS, not C, specifically the stance taken by SOAS in respect of investments and/or links which it may have to Israel or Israeli entities. The SLZG Protests appear to be part of the wider “Boycott, Divestment, and Sanctions” movement.
10. On 6 May 2024, without any prior notification or consent (specifically, without taking any steps in accordance with the Code to seek C’s consent, and in breach of Regulation 15.2 of the Visitor Regulations), some or all of Ds entered the Land, erected tents on part of the Yellow Land, and established an encampment (“**the Original Encampment**”). Thereafter, Ds proceeded to erect a number of structures on other parts of the Yellow Land and a series of SLZG Protests took place on the Yellow Land (none of which were notified to the Appointed Officer or C’s Head of Hospitality). The size of the Original Encampment fluctuated, with as many as 200 people in attendance at once.
11. The Original Encampment was a highly disruptive presence on the Land, as well as the Site more generally. While the Original Encampment was in situ, various instances of criminal damage and other, very concerning, anti-social behaviour occurred on the Site. For example:
  - a. On 17 May 2024, several protestors entered the North Block (one of the buildings on the Site which is demised by C to SOAS) to conduct a “leaflet drop”. The protestors obscured their faces and confronted staff: WS/AJ1, §34.1 [p.261].
  - b. On 22 and 23 May 2024, a number of protestors harassed Professor Adam Habib, the Vice-Chancellor of SOAS. Unfortunately, Professor Habib has

become one of the main “targets” of the SLZG Protests. The continuing protests conducted on the Orange Land typically involve shouting and chanting slogans aimed at Professor Habib: see WS/AJ2, §56 [p.268].

- c. On 24 May 2024, the Board of Trustees of SOAS had assembled in Senate House (another building on the Site), when a number of protestors “stormed” Senate House and disrupted that meeting: WS/AJ1, §34.3 [p.261] and WS/CM1, §11(b) [p.285] and Exhibit CM4 [USB1].
  - d. Likewise, on 28 May 2024, a number of protestors attempted – for a period of four hours – to try and occupy SOAS’ finance office, which is located in the North Block. Their attempts were eventually thwarted by security personnel: WS/AJ1, §34.4 [p.261] and WS/CM1, §11(c) [p.285] and Exhibits CM5 [USB1] and CM6 [USB1].
  - e. On 4 June 2024, an altercation took place between several protestors and a security guard, during which the security guard was assaulted: WS/AJ1, §34.5 [pp.262]. The perpetrators of that assault were wearing masks, which made it impossible to identify them: WS/AJ1, §36 [p.262].
  - f. Further, on a number of occasions, the walls of the North Block were vandalised with graffiti (WS/AJ1, §34.6 [p.262]), which cost C approximately £4,500 to remove (WS/AJ1, §44 [p.265]). The protestors even attempted to derail the cleaning efforts of C’s contractors by trying to barge them out of the way and stealing their cleaning supplies: WS/AJ1, §45 [pp.265-266].
12. These activities fostered a climate of fear and intimidation (WS/AJ1, §36 [pp.262-263]), something which was (and remains) of real concern to C, given that large numbers of students and staff (both of C and other higher education providers) who access the Land daily, as well as visiting members of the public, and C is understandably anxious to secure the safety of these persons. This climate also put (and puts) C at risk of reputational harm, especially as external events (such as training events) are routinely hosted in the buildings on the Site.

13. There were also various, and pressing, health and safety concerns in respect of the Original Encampment: see WS/AJ1, §39 [p.263].
14. On 25 July 2024, C issued proceedings against, amongst others, D1-D3 and Persons Unknown (“**PU**s”) under Claim No.PT-2024-000646 (“**the Earlier Proceedings**”), seeking possession of the Yellow Land and the Orange Land. Although the Original Encampment was situated on the Yellow Land only, C also sought possession of the Orange Land in view of its reasonable belief that, if Ds were ordered to vacate the Yellow Land, there was a real risk that they would relocate to the Orange Land.
15. At the hearing on 31 July 2024, Deputy Master Rhys gave C possession of the Yellow Land and the Orange Land forthwith (“**the Possession Orders**”) [pp.271-278].
16. On or around 4 August 2024, the Original Encampment dispersed. However, immediately thereafter, some or all of Ds relocated and established the Second Encampment on the Purple Land: WS/AJ2, §36 [p.72].
17. On or around 7 August 2024, C instructed enforcement agents to attend the Second Encampment, and this too dispersed. However, and again almost immediately, Ds (or some of them) then relocated their encampment for a second time and established the Third Encampment on nearby land owned by the local authority, Camden.
18. Since then, the SLZG Protests on the Land have continued. Specific instances of trespassory protests on 3-5, 24, and 27 September and 3, 5, 10, and 18 October 2024 are detailed at PoC, §24 [p.17], WS/AJ2, §§64-48 [pp.79-80], and WS/CM1, §§11-14 [pp. 285-287]. A video of what appears to be the mass protest on 27 September 2024, and which hopefully provides a sense of scale, can be found at Exhibit CM8 [USB1]. Further, and alarmingly, Ds have planned, and advertised, a ‘*week of action*’ for the week commencing 21 October 2024, the itinerary for which appears to consist of three separate “walk outs” or “rallies” on consecutive days, as well as a “banner drop”: WS/CM1, §24 [p.291].
19. A number of these protests have been advertised on social media, accompanied by “rallying cries” encouraging others to join Ds. There are two Instagram accounts associated with Ds’ protest activities (@soasliberatedzone and

@democratise.education), as well as a TikTok account @soas.liberated.zo. This is concerning of itself: the @soasliberatedzone account has over 10,000 followers, and first video posted by the TikTok account has been viewed over 23,200 times: WS/CM1, §10 [p.284]. Further, these protests appear to have been timed in such a way as to maximise disruption. For example, the protests between 3 and 5 September 2024 took place during, and immediately outside the building in which they were taking place, SOAS graduation ceremonies. Likewise, the protest on 27 September 2024 was timed to coincide with SOAS' Freshers' Fayre, which SOAS was eventually forced to cancel.

20. In addition to the “mass protests”, “rallies”, and/or “assemblies” which are advertised on social media (such as those described immediately above), trespassory protests occur very frequently, and often daily, on the Land: see WS/AJ2, §56 [p. 77] and WS/CM1, §8 [p.283]. To date, these transient protests have typically taken place on the Orange Land, outside premises occupied by SOAS. These protests can last up to one hour, during which time Ds tend to beat drums and shout slogans: WS/CM1, §8 [p.283].
21. It is noted that D1 has been expelled as a student of SOAS, and D2 and D3 have been suspended whilst an investigation conducted by SOAS is ongoing: see WS/AJ2, §15 [p.68].
22. Since in or around early October 2024, Ds have also begun protesting under the separate banner of “Democratise Education”. C believes this to be closely allied to the “Boycott, Divestment, and Sanctions” movement. The Democratise Education Protests are directed at SOAS' stance in relation to freedom of speech and its dismissal of student union representatives (of which D1 was one) and involve lobbying SOAS to drop its disciplinary action against students taking part in the SLZG Protests.
23. Ds are very active on social media. In addition to the “rallying cries” described above, Ds also post videos, both of, and advertising, their protests and their causes more generally. D1-3 are frequently featured in these videos, in which they can often be seen addressing crowds of PUs with megaphones. By their actions (namely, the relocations described above and the continuing trespassory protest activity) and their social media posts, Ds have made clear that they do not intend to cease their protest activities. C submits that the tone of these videos is defiant. For example:

- a. On 11 August 2024, @soasliberated zone posted a video (featuring D1 and D3) in which an unknown speaker can be heard saying ‘*we will not stop until they divest, and we will not stop until Palestine is liberated*’ and ‘*disclose, divest, we will not stop we will not rest*’: see WS/AJ2, §70.1 [pp.81] and the images at Exhibit AJ11 [pp.163-209]. The caption to this post reads: ‘*this is why we relocate and why we continue with the SOAS liberated zone for Gaza [...] We will continue to hold them accountable and escalate*’.
- b. On 18 August 2024, @soasliberatedzone published a video of a protest on 17 August 2024, in which D3 can be seen saying that ‘*we will stay until our demands are met...we will continue to organise and mobilise, specifically we are ready for the new academic year*’: see WS/AJ2, §70.2 [pp.81] and Exhibit AJ11 [pp.163-209].
- c. On 27 September 2024, @soasliberatedzone published a video of a mass protest which took place that day, accompanied by a caption which reads ‘*we will not stop until SOAS STOPS THE COMPLICITY. Come and join us*’: WS/AJ2, §70.3 [p.81] and Exhibit AJ12 [pp.210-240].
- d. On 12 October 2024, @soasliberatedzone published a collaborative post, co-authored by @democratise.education, which included the following text: ‘*it is naïve at best to believe that SOAS has or will meet our demands of their own will – the reality is that we must be the ones to force their hand*’.

24. Although the protest activity has, to a large degree, centred on the Orange Land (albeit that both the Yellow and Purple Lands have been the site of unlawful encampments), C is seeking injunctive relief in respect of the entirety of the Land. In this regard:

- a. C’s concern is that, if injunctive relief were sought in respect of (say) the Orange Land only (or even the Orange, Yellow, and Purple Lands), then Ds would simply start protesting on some of the other parcels of open land. For example, the Blue Land is a large grassy area which is proximate to the site of the Third Encampment at Byng Place.

- b. C submits that this fear is both understandable and well-founded. Ds have already evinced a willingness to evade the reach of Court Orders, as demonstrated by the establishment of the Second Encampment.
  - c. Further, each of the three encampments were established during the summer months. Moreover, C is concerned that, as the weather becomes increasingly inclement, the Red Land (being vacant halls of residence) may potentially become attractive as a site for a further encampment.
25. Further, the SZLG Protests appear to be increasing in frequency, the effect of which has been compounded by the start of the Democratise Education Protests. This increase appears to have coincided with the end of the summer vacation and the start of the academic year, a time when C's campus is often at its busiest. C is, it is submitted, rightly concerned about escalation. On 13 October 2024, the @democratise.education account published a collaborative post with @soasliberatedzone which reads: '*as [SOAS] escalate their repression, we must escalate our resistance [...] they don't want an academic year of action and escalation by students, workers and communities*': WS/CM1, §20 [p.289]. C is concerned that this escalation may be a deliberate attempt by Ds to exploit the increased footfall on the Land at the start of the academic year by seeking to persuade others to join them: see WS/CM1, §14(b) [p.288]. Further, Ds' protests have previously involved violence and other anti-social behaviour; C is concerned that any "escalation" may involve further instances of violence and/or anti-social behaviour: WS/CM1, §26 [pp.291-292].
26. The problems being experienced by C are not isolated events: student encampments have sprung up at various universities across the UK, including at other members of the Federation: see WS/AJ1, §§7-8 [p.255]. However, unusually, and as alluded to above, the SZLG Protests and the Democratise Education Protests are directed at SOAS, rather than C. C is therefore in a doubly invidious position: not only is C forced to contend with protestors trespassing on its land, but those protestors are not demanding anything of, or even seeking to engage with, C.
27. At §30 of WS/AJ1 [p.260], Mr Jarvis said that Ds to the Earlier Proceedings appeared to be labouring under the misapprehension that they were occupying land belonging to

SOAS. However, in view of the Earlier Proceedings, that can no longer be the case. WS/AJ1 was served on the Ds to the Earlier Proceedings on 30 July 2024 (together with various claim documents). Ds have known – since 30 July 2024 at the very latest – that their protests are taking place on land belonging to C, not SOAS. As they have never sought C’s consent, Ds must also be aware that their protests involve unlawful trespass. Ds simply do not appear to care; their stance, as advertised on their social media accounts, can best be described as defiant.

28. C has exhausted all reasonable alternative options open to it in trying to prevent and/or mitigate the effects of Ds’ continuing and recurring trespasses:

- a. C has already obtained the Possession Orders, the effect of which Ds have sought to evade.
- b. C has engaged additional security guards and instructed High Court Enforcement Officers to exercise the remedy of self-help on C’s behalf. As at 11 October 2024, C had incurred additional security costs in the sum of £156,863.70: WS/AJ2, §75 [p.82]. If the protests continue, this will inevitably have an impact on C’s available budget for student and/or staff services, something which is likely to have a knock-on effect on both the student experience and C’s reputation and standing: WS/AJ2, §87.5 [p.85].
- c. C has also erected fencing on certain parts of the Land; however, for the reasons explained at §55 of WS/AJ2 [p.77], it would be both practically impossible and prohibitively expensive to fence the entire perimeter of the Land and/or install a permanent security presence at all the entrances and exits to the Land.
- d. Neither the SLZG nor the Democratise Education Protests are directed at C; there is nothing C can do, meaningfully, to try and engage with Ds.

### **Submissions**

29. The Application is, in part, brought against PUs. In respect of PUs, the Court’s jurisdiction to grant so-called “newcomer” injunctions has been recently considered, and clarified, by the Supreme Court in *Wolverhampton CC v London Gypsies and Travellers and others* [2024] 2 WLR 45. The Supreme Court recognised (at [167]) that

there is ‘*no immovable obstacle*’, whether in terms of jurisdiction or principle, in the way of granting injunctions against “newcomers” on an essentially without notice basis, whether in form interim or final.

30. In *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB), Ritchie J explained that, following *Wolverhampton*, the guidance previously promulgated by the Court of Appeal in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (at [82]) remains good law, albeit that some further guiding principles have been added.
31. At [58] of *Valero Energy*, Ritchie J distilled the guidance promulgated in these cases into a mixture of 15 substantive and procedural requirements (as to which, see below). Although this guidance was expressed to apply to the ‘*summary judgment applications for a final injunction against unknown persons*’ (at [57]), subsequently, in *High Speed Two (HS2) Ltd v Persons Unknown* [2024] EWHC 1277 (KB), Ritchie J explained (at [35]) that precautionary injunctions against PUs, relating to private land owned or possessed by a claimant, are ‘*different beasts from old fashioned injunctions against known defendants which need to be taken to trial*’. Hence, Ritchie J described (at [40]) these 15 principles (enumerated below) as ‘*the requirements for granting and, where necessary, continuing an interim injunction*’.
32. In C’s submission, each and every one of the requirements (albeit that some are not strictly relevant, this being an application, on notice, for an interim injunction against both Named Defendants and PUs) enumerated by Ritchie J is met.

**a. Substantive requirements**

Cause of action

- i. C has a cause of action: trespass. C has an immediate right to possession of each and every part of the Land. C has the Code and Visitor Regulations in place to manage protest activity on the Land, and Ds have not sought to comply with either; they have no licence or consent to enter the Land to protest and/or to occupy it.

Full and frank disclosure

- ii. This application is made on notice, and so this requirement does not, strictly, arise. However, C has given consideration below – in relation to the conceptually linked requirement that there be ‘*no realistic defence*’ below – to what Ds might conceivably seek to argue in order to resist the grant of injunctive relief.

Sufficient evidence to prove the claim

- iii. C submits that there is sufficient evidence to prove not only that there is a serious issue to be tried, but also that C has a realistic prospect of success<sup>1</sup>.
- iv. The real and imminent risk of trespass is demonstrated by:
  - 1. The fact that, since May 2024, Ds have established three different encampments, relocating twice. If the Third Encampment were to be dispersed (and C does not know Camden’s plans in this respect), it is highly likely that Ds would, as they have before, relocate to part of the Land, given the proximity of various parts of the Land to the buildings occupied by SOAS. Ds have adopted the label “resistance by relocation” in the past: see PoC, §28(b) [p.19].
  - 2. The numerous incidents of highly disruptive trespassory protests which have already taken place (and continue to do so). These incidents do not show any sign of slowing down or stopping; rather, they appear to be increasing in frequency with the start of term.
  - 3. Ds’ statements on social media, which make clear that their avowed intention is to continue their protest activity until SOAS meets their demands and/or the resolution of the conflict in Gaza.

---

<sup>1</sup> C notes that the authorities do not speak with one voice as to the applicability of s.12(3) of the HRA 1998 in the context of trespassory protests.

Ds' social media posts are awash with antagonistic words such as "mobilising", "fighting", and "resistance".

- v. Hence, C submits that there is sufficient evidence to justify a finding that C's immediate fear of tortious conduct eventuating is proven.

No realistic defence

- vi. As the Application is on notice, it is not, strictly, incumbent upon C to put before the Court any and all potential defences upon which Ds might seek to rely. However, in the spirit of openness and in order to assist the Court, C has canvassed any potential defences below.
- vii. Aside from a Convention-based challenge (as to which, see below), it is hard to see what putative defence(s) to the trespass claim could be raised by Ds, given that:
  - 1. C has title to the Land and a right to immediate possession of it;
  - 2. Ds have no right to occupy the Land or to enter upon it, save in accordance with the Visitor Regulations and the Code; and
  - 3. Ds have no proprietary rights in the Land whatsoever.
- viii. Indeed, C is mindful that this is a well-trod path; albeit in the context of possession orders against encampments at other universities, Johnson J canvassed and dismissed all possible defences to such a claim substantively: see *University of Birmingham* [2024] EWHC 1770 (KB) and *University of Nottingham* [2024] EWHC 1771 (KB).
- ix. C anticipates that a Convention-based challenge *might* be raised, but submits that it is bound to fail. Such arguments were rejected "comfortably and confidently" on a summary application, by Johnson J in both *University of Birmingham* and *University of Nottingham* (at [65] to [75] and [37] to [40] respectively).
- x. Peaceful protest falls within the scope of the rights of freedom of speech and freedom of assembly, which are guaranteed by Arts 10(1) and 11(1)

of the ECHR respectively. However, these rights are not absolute; they are qualified. By virtue of Arts 10(2) and 11(2), interferences with rights to freedom of speech and assembly can be justified if they are prescribed by law and necessary in a democratic society in the proportionate pursuit of prescribed legitimate aims (including the protection of the rights and freedoms of others). In this vein, C’s right to peaceful enjoyment of its private property is itself a Convention right, enshrined in Art 1 of the First Protocol (“**A1P1**”).

- xi. Further, Arts 10 and 11 do not bestow any “freedom of forum” on Ds: *Appleby v UK* [2003] 37 EHRR 38 (and see also *DPP v Cuciurean* [2022] 3 WLR 446, in which the Divisional Court drew ‘*much assistance*’ from *Appleby*). These qualified Convention rights do not include any right to trespass on private property: *Boyd v Ineos Upstream Ltd* [2019] 4 WLR 100 at [36].
- xii. At [45], the Divisional Court in *Cuciurean* held that there was ‘*no basis*’ in the Strasbourg jurisprudence to support the respondent’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*’.
- xiii. Admittedly, in ‘*rather unusual or even extreme circumstances*’, it might be possible to show that the protection of a landowner’s property rights has the effect of preventing any effective exercise of the freedoms of expression and assembly. An example of this (employed by the Strasbourg Court itself in *Appleby*) would be a corporate town where the entire municipality is controlled by a private body. However, this is not such a case.
- xiv. Rather, in this case, as Johnson J put it at [72] of *University of Birmingham*: ‘*there are many other ways in which the defendants could exercise their Convention rights without usurping to themselves land that belongs to the University*’. See also *Sun Street Property Ltd v*

*Persons Unknown* [2011] EWHC 3432 and *City of London Corp v Samede* [2012] PTSR 1627.

- xv. Hence, in C's submission, any assertion that the grant of injunctive relief in the terms sought would constitute a breach of Ds' rights under either Art 10 or 11 would be bound to fail.

Balance of convenience

- xvi. In C's submission, the balance of convenience must weigh in favour of the grant of injunctive relief.
- xvii. The grant of an interim injunction will prevent any further disruption to C, its staff, its students, its visitors (including those paying for conferencing or training facilities) and those of its tenants (e.g., SOAS). It will prevent the perpetuation of an atmosphere of fear and intimidation and the ongoing negative impact on the student experience for thousands of students.
- xviii. By contrast, the prevention of Ds' ongoing trespasses in the short term (pending a final hearing) will cause little or no loss to Ds; they remain entitled and able to protest in a myriad of other ways, including online. Indeed, for now, their encampment occupying Camden's land will be unaffected by this order and, under its terms, it is open to them (as with everyone else) to comply with the Regulations and the Code should they wish to seek consent to a protest on C's Land.
- xix. Further, even if Ds were to suffer any loss, C has offered the usual cross-undertaking: WS/AJ2, §88 [p.86].

Balancing exercise – human rights consideration

- xx. If the PUs rights under the ECHR are engaged and restricted by the proposed injunction, then the Court must take into account the balancing exercise required by the Supreme Court in *DPP v Ziegler* [2021] 3 WLR 179.

- xxi. However, C submits that the injunctive relief sought would neither restrict nor otherwise impinge upon Ds' Convention rights; the *Ziegler* balancing exercise does not arise.
- xxii. However, even if *Ziegler* were engaged, C submits that the grant of an injunction in the terms sought would strike the correct balance between the competing rights of the individual protestors (on the one hand) and C's property rights (protected by A1P1) and the general interest of the community. Again, this is a well-trod path: see *Samede* (itself a protest encampment case). For the reasons set out above, C no longer has any sensible choice but to seek injunctive relief. C appreciates the importance of freedom of speech and peaceful protest, as reflected by the Visitor Regulations and the Code. C is not seeking to stifle Ds' protest activities. As explained above, the injunction sought would not prevent Ds from protesting elsewhere, nor would it prevent Ds from seeking C's consent to protest on the Land and/or promoting their cause(s) on social media.
- xxiii. More recently, in *Cuciurean*, Lord Burnett LCJ explained, at [46], that Arts 10, 11, and A1P1 are all qualified rights, and that the Convention does not give priority to any one of them. Although property rights might have to 'yield' to Arts 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*'. Lord Burnett LCJ said as follows: '*[i]t 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*'.

#### Inadequacy of damages

- xxiv. Most, if not all, of the harm suffered by C would be incapable of remedy by an award of damages. Ds' ongoing acts of trespass have caused and continue to cause serious damage to C, including especially the fear and

intimidation of its staff and students, and incalculable impact on the student experience of C's own students and that of other members of the Federation in the vicinity who are C's tenants (e.g., protests during exams and/or graduation ceremonies and/or the cancelling of the SOAS Freshers' Fayre). See also WS/AJ2, §87 [p.85].

- xxv. In any event, it is improbable that any of the Named Defendants or the PUs would have the means to compensate C for any financial harm which C is likely to suffer, such as the increased security costs. As a publicly funded higher education institution, C has limited resources which are being diverted to the provision of security in significant, and ever-increasing, sums.

**b. Procedural requirements**

Identifying PUs

- i. C submits that it has complied with the obligation that PUs must be '*clearly and plainly identified*' by reference to (a) the tortious conduct to be prohibited; and (b) clearly defined geographical boundaries, if possible.

The terms of the injunction

- ii. In accordance with the guidance distilled in *Valero*, C submits that the prohibited conduct is set out in clear, non-technical wording which is readily understandable and accessible. C submits that the wording is sufficiently tightly drawn that innocent third parties will not find themselves "caught out", at least not foreseeably.

The prohibitions must match the pleaded claim

- iii. The conduct which is sought to be prohibited mirrors the (anticipated) tort of trespass set out in the pleadings.

Geographic boundaries

- iv. The boundaries are set out in a clear plan, which is attached to the Draft Order.

#### Temporal limits – duration

- v. The duration of any final injunction should be such as is reasonably necessary to protect C’s legal rights in the light of the evidence of past tortious activity and the future feared tortious activity. C seeks an injunction for a term of one year, with liberty to apply for the Order to be varied and/or extended.
- vi. C submits that this duration is appropriate. An injunction for a term of one year would restrain the Ds for the rest of this academic year, as well as the start of the next academic year. In any event, at this hearing, C is seeking an interim injunction which can be reconsidered at the next hearing.

#### Service

- vii. As PUs are, by their nature, not identified, the proceedings, evidence, draft orders etc must be served by alternative means which have been considered and sanctioned by the Court. By an application notice dated 14 October 2024, C applied for permission to serve Ds at an alternative place and by an alternative method pursuant to CPR 6.15 and 6.27 (“**the Alternative Service Application**”). By an Order dated 16 October 2024, Adam Johnson J acceded to the Alternative Service Application [pp.35-40].

#### The right to set aside or vary

- viii. The Draft Order makes provision for the Ds (whether named or PUs), or any other affected person, to apply to set aside or vary the injunction on – to borrow Ritchie J’s terminology – “shortish” notice.

#### Review

- ix. C submits that it is not necessary to consider review because the Application is for an interim injunction, not a final injunction (see

*Multiplex Construction Europe Limited v Persons Unknown* [2024]  
EWHC 239 (KB), another decision of Ritchie J, at [24]).

**Conclusion**

33. C has a compelling need for the urgent assistance of the Court to restrain the anticipated and continuing acts of trespass on the Land. There is a real and imminent risk of the tort of trespass continuing to be committed unless Ds are enjoined. If that real and imminent risk were to eventuate, then C would suffer even more grave and irreparable harm.
34. Hence, subject to any modifications the Court considers appropriate, C respectfully requests that the Court grant an interim precautionary injunction in the terms sought.

**KESTER LEES KC**

**TAYLOR BRIGGS**

Falcon Chambers

Counsel for the Claimant/Applicant

23 October 2024