Neutral Citation Number: **[2024] EWHC 2386 (Ch)**

IN THE HIGH COURT OF JUSTICE **Claim No: PT 2024 000483**

BUSINESS AND PROPERTY COURT

CHANCERY DIVISION

Before Deputy Master Henderson

BETWEEN

QUEEN MARY UNIVERSITY OF LONDON

Claimant

-and-

(1) LSY
(2) MBC
(3) PERSONS UNKNOWN
(IN OCCUPATION OF QUEEN MARY UNIVERSITY OF LONDON)
(4) FDE
(5) JST

Defendants

Counsel and solicitors:

The Claimants represented by Ms Myriam Stacey KC and Ms Galina Ward KC instructed by Pinsent Masons

The 1st and 2nd Defendants represented by Mr Jamie Burton KC, instructed by Foster & Foster

Hearing date: 10th July 2024

Judgment: 20th September 2024

JUDGMENT

1. On 10 July 2024 I heard the adjourned hearing of the Claimant University's claim for possession of its Mile End campus, excepting those parts which were subject to leasehold interests registered to third parties.

2. The claim was settled as between the University and the 1st and 2nd Defendants on the terms of a consent order which I made on 10 July 2024. The consent order included an order that the 1st and 2nd Defendants should give the University possession forthwith of the part of the University's land edged red on the plan attached to the order, being part of the University's

Mile End campus (the "**Plan**"), but excluding the land hatched green on the Plan namely those areas subject to leasehold interests registered to third parties. That left outstanding the University's claim for possession against persons unknown and against two individuals who, additionally to the 1st and 2nd Defendants, the University had identified as being protesters in occupation as such of part of its campus and who were added as 4th and 5th Defendants.

3. Mr Burton KC attended in order to deal with the 1st and 2nd Defendants' informal application to continue anonymity orders in their favour which I had made on 7th June 2024. For reasons given at the hearing, I continued those anonymity orders.

4. The two individuals who, additionally to the 1st and 2nd Defendants, the University had identified as being protesters in occupation of part of its campus, did not seek to make submissions. On the informal application of the University and upon the University's Leading Counsel stating that the University did not intend to seek an order for costs against them, I ordered that the two additionally identified protesters be added as 4th and 5th Defendants. The order for their joinder having made without notice to them, I ordered that they had the right to have it set aside or varied within 7 days after service of it upon them. I was, however, concerned that, like the 1st and 2nd Defendants and for similar reasons, they might wish to apply for anonymity orders. I was anxious not to pre-empt any such application. Accordingly, I ordered that their identities be not published before the expiration of 7 days after the service of the order upon them, and that the permission given to them to apply included permission to apply for anonymity orders. Such an application was made on 17 July 2024 and I made anonymity orders in respect of the 4th and 5th Defendants on 19 July 2024.

5. After reading the evidence and hearing argument from the University's Leading Counsel I was satisfied that the University had served the relevant documents appropriately and within the relevant time limits and that the Defendants had no real prospect of successfully defending the claim, either as a matter or property law or by the invocation of public law or of their rights under the European Convention on Human Rights ("the ECHR"). I gave my decision there and then at approximately 1.00 pm on 10th July so that the University could proceed quickly to obtain and enforce a writ for possession.

6. There was some urgency to the obtaining of possession because graduation ceremonies were due to take place on 18, 24 – 26 and 29 - 31 July 2024, with the expected number of graduates and guests over the 7 days being 4,380 graduates and 11,300 guests.

7. The part of the Mile End campus occupied by the protesters as an encampment, was a lawn area in front of the Queen's Building on that campus. The lawn is the area where photo opportunities are taken of students celebrating the end of their University careers with family and their lecturers outside what one witness described as the "iconic" Queens' Building. Normally, when graduation takes place, the lawn and the tarmac road beside it connects buildings called the Queens' Building and the People's Palace. The Claimant's key venues are in those two buildings. At large events such as Graduation or conferences, the lawn can be used as a reception area. It is somewhere for people to congregate.

8. I formed the view that, having regard to my availability and the time needed for me to prepare a full judgment, if the making of the possession order awaited such a judgment the University's graduation ceremony arrangements would be imperilled. Accordingly I made the order for possession there and then, and said that I would give my reasons in writing. These are those reasons.

9. The claim was made by Queen Mary University of London ("the University"). Initially it was only against Persons Unknown. It was for possession of the whole of the Mile End campus of the University, but excluding those parts of it which were occupied by other persons under leases from the University.

10. The occupation in respect of which the University seeks relief is occupation by a group of protesters. It is unclear whether the membership of this group is constant or fluctuates.

11. The protests are or are mainly protests in support of Palestine and against Israel. Amongst other things, the protesters aim to persuade the University to disinvest from and to cease using the services of companies which the protesters believe directly or indirectly support the State of Israel, both generally and specifically in relation to its operations in Gaza. They also aim to persuade the University to break off its relations with Israeli universities.

12. The occupation started on 13 May 2024.

13. The brief procedural history of the claim is that:

    13.1. On 5 June 2024 the University issued these proceedings against Persons Unknown under CPR Part 55.

    13.2. On 6 June 2024 Chief Master Shuman, having read the evidence in support and having accepted that the claim was suitable to be dealt with in the High Court and that the normal period of service of the claim form be shortened in view of the risk of damage to property and persons, ordered that:

    "The claim for possession should be heard before a judge at 10 am on 7 June before a judge to be published in the list. Time for service of the claim, pursuant to Civil Procedure Rule 55.5(2)(b), was to be abridged provided that the defendants were served with claim form, particulars of claim and any witness statements in support by 3 pm on 6 June 2024."

    13.3. The claim was listed for hearing before me in accordance with that order.

    13.4. I was satisfied that the condition as to service was satisfied.

    13.5. By the time of the hearing before me on 7 June, two of the protesters had, through solicitors, instructed leading counsel and junior counsel to represent them at that hearing. I joined those two protesters as the 1st and 2nd Defendants (LSY and MBC).

    13.6. Two lines of defence were advanced on behalf of LSY and MBC.

    13.7. The first was that this was not an appropriate case for a possession order. If any order was to be made it was said that it should be an injunction.

13.8. The second was that the University was in breach of its public law obligations (the public law point). In particular it was said that the University had acted unfairly in deciding to bring the possession claim because it had not engaged with the protesters.

13.9. There was also a practical point, now recognised by the University, that certain leases over parts of the Mile End campus meant that the University was not entitled to a possession order in respect of those parts of the campus.

13.10. Neither Ms Stacey KC for the University nor I were in a position fully to deal with the public law point either on the law or on the facts.

13.11. On the basis of Mr Burton KC's submissions on behalf of LSY and MBC, I was concerned that the public law point might just be so well arguable as to give rise to a real prospect of success on it or, in the language of Part 55 rule 55.8(2) of the Civil Procedure Rules, that the claim was "genuinely disputed on grounds which appear to be substantial."

13.12. I was not satisfied that the public law point had been sufficiently considered to enable me to decide whether or not that was the case on 7 June. I therefore ordered the adjournment of the claim for further consideration of the issues and as to the University's entitlement to an order for possession.

13.13. I gave directions as to the filing and service of further evidence, skeletons and bundles and directed that the adjourned hearing should be listed for 10 am on 10 July with a time estimate of 3 hours, with no live evidence or examination or cross-examination of witnesses.

13.14. My intention was that the adjourned hearing should be just that. That is to say a continuation of the hearing of 7 June but with fuller submissions on the law and with the parties having the opportunity to put in further evidence.

13.15. On 7 June I also made an anonymity order in respect of LSY and MBC which I ordered should remain in force until 10 July 2024 or such date as the adjourned claim was listed for hearing.

13.16. By an application dated 19 June 2024 LSY and MBC sought a variation of my order of 7 June so as (1) to add or substitute an order that they file and serve a defence by midnight on 20 June and (2) for an order listing the case for allocation and a directions hearing.

13.17. It appeared from the contents of the application that it was made under the misapprehension that by my judgment and order of 7 June I had determined that the claim was genuinely disputed on grounds which appeared to be substantial. I had not made such a determination. The transcript of my judgment shows that in it I said that the public law point had not been argued out and that it did seem to me that there was, albeit only just, a real prospect of success on the public law point or, to use the language of Part 55 rule 55.8(2) of the Civil Procedure Rules, that the claim did appear to me to be "genuinely disputed on grounds which appear to be substantial." Read in context, it is clear that what I intended was that I had determined that there might be a real prospect of success on the public law point such that I would not order possession there and then, but would require more facts and argument before determining whether there was such a real prospect of success.

13.18. The information relied upon in support of LSY's and MBC's application dated 19 June also explained that they had not yet received a decision from the Legal Aid

Agency and that they had sought an extension of time from the University for complying with certain of the directions in my order of 7 June.

13.19. In the light of the information contained in that application and the information contained in a letter from the University's solicitors to the court dated 20 June, on 24 June I made an order extending time for the taking of certain of the steps specified in my order of 7 June. Unfortunately this order of 24 June is misdated 7th June. It is clear that that is a mistake. I do not have to trouble with correcting the date shown on that order under the slip rule (CPR 40.12) because nothing turns on whether or not that correction is made.

13.20. By an application dated 20 June 2024 the University sought an order for alternative service, which I granted by an order dated 24 June 2024.

13.21. By an application dated 8 July 2024 the University sought an order for permission to amend its Particulars of Claim to add a reference to a registered title to a part of its Mile End campus which previously had been accidentally omitted. I gave that permission and directed that service of the amended particulars be served in accordance with my order for alternative service dated 24 June.

13.22. As already mentioned, the claim was settled as between the Claimant and the 1st and 2nd Defendants on the terms of a consent order which I made on 10 July 2024, but I still needed to deal with the claim as against the other occupiers.

University Persons

14. The senior persons involved on behalf of the University were:

14.1. Professor Colin Bailey ("Professor Bailey"), who was the Principal and President of the University.

14.2. Dr Sharon Ellis ("Dr Ellis"), who was the Chief Operations Officer.

14.3. Ms Margaret Leggett ("Ms Leggett"), who was the University's Director of External Operations.

Preliminary

15. The hearing on 10 July was a summary hearing of the University's claim under CPR 55.

16. Under CPR 55.8(2) the test for whether to grant possession summarily under CPR 55 is whether the claim is genuinely disputed on grounds which appear to be substantial. This test has been authoritatively equated to the test for summary judgment under CPR 24 of whether there is a real prospect of success and no other compelling reason why the claim should be disposed of at trial (*Global 100 Limited v Maria Laleva* [2021] EWCA Civ 1835, [2022] 1 WLR 1046, per Lewison LJ at paras.13-14).

17. By my order of 7 June I had directed that there would be no live evidence nor any examination or cross-examination of witnesses. Therefore, if there is a relevant conflict of evidence, at this stage I assume that it would be resolved in favour of the Defendants unless there is such compelling evidence, typically documentary evidence to the contrary, as to cause there to be no real prospect of the conflict being resolved in favour of the Defendants. Additionally, by analogy with the approach to summary judgment under CPR 24, I take into account whether there is any real prospect (as opposed to mere hope, speculation or

suspicion) of further facts emerging which, if established, would give rise to a good defence to the claim.

18. A large volume of evidence was filed both by the University and by the 1st and 2nd Defendants. Excluding the evidence as to service and the evidence dealing with the University's title and the leases to which parts of the campus were subject, the following witness statements were filed with about 1,000 pages of exhibits:
    18.1. On behalf of the Claimant: 31/5/24 Marc Mooney (enforcement agent)
    18.2. On behalf of the Claimant: 4/6/24 Dr Ellis, 1st statement.
    18.3. On behalf of the Claimant: 4/6/24 Dr Ellis, "Supplementary" or 2nd statement.
    18.4. On behalf of the Claimant: 4/6/24 Professor Bailey.
    18.5. On behalf of the 1st and 2nd Defendants: 19/6/24 Dr Heidi Viterbo.
    18.6. On behalf of the 1st and 2nd Defendants: 20/6/24 Poulami Somanya.
    18.7. On behalf of the 1st and 2nd Defendants: 20/6/24 Ruth Fletcher.
    18.8. On behalf of the 1st and 2nd Defendants: 25/6/24 LSY (the 1st Defendant).
    18.9. On behalf of the 1st and 2nd Defendants: 25/6/24 MBC (the 2nd Defendant).
    18.10. On behalf of the Claimant: 2/7/24 Dr Ellis, 3rd statement.
    18.11. On behalf of the Claimant: 2/7/24 Ms Leggett.
    18.12. On behalf of the 1st and 2nd Defendants: 4/7/24 LSY, 2nd statement.
    18.13. On behalf of the 1st and 2nd Defendants: 4/7/24 MBC, 2nd statement.
    18.14. On behalf of the Claimant: 8/7/24 Mr Vishnu Patel.

19. My analysis of the facts and the law has been assisted by the very recent judgment of Johnson J in *University of Birmingham v Persons Unknown and Another* [2024] EWHC 1770 (KB) ("Johnson J's case").

20. In Johnson J's case the Claimant and an identified student defendant agreed that if the University's decisions to terminate any licence to occupy the campus as a protester were unlawful as a matter of public law or under the Human Rights Act 1998 ("HRA") and the ECHR, then there would be a real prospect of defending the claim. There was no concession to that effect by the University in the case before me, but I did not hear any detailed argument on the question, and for the purposes of my decision and this judgment I assumed, and now assume, that unlawfulness of any relevant decision would be a good ground for not granting a possession order.

21. In my view it is appropriate to analyse the claim by reference to two broad questions:
    21.1. As a matter of property law, the court taking account of the encampment members' ECHR rights in deciding whether to make a possession order, but regardless of any possible unlawfulness of any relevant decision of the University, is there any real prospect of a defence to the possession claim being successful?
    21.2. Is there a real prospect of a relevant decision of the University as to the occupation of the land and the bringing of these proceedings being held to have been unlawful as a matter of public law or for breach of the encampment members ECHR rights or otherwise?

As a matter of property law, the court taking account of the encampment members' ECHR rights in deciding whether to make a possession order and regardless of any possible unlawfulness of

any relevant decision of the University, is there any real prospect of a defence to the possession claim being successful?

22. The University is the registered proprietor of its Mile End campus under a number of titles. Generally, it is the registered proprietor of the freehold interest, but part of its Mile End campus is held by it under a leasehold title. Nothing turns on that distinction. Prima facie therefore the University is entitled to possession of its Mile End campus. Generally, when I refer to the University's Mile End campus, I do not refer to those parts of the University's registered titles which are subject to leases in favour of others. The University does not seek possession of those parts.

23. The University's prima facie right to possession of its Mile End campus is subject to such rights by way of licence ("the general licence") as its students may have to be on and to use part or parts of it. I was not provided with detail of the nature and extent of that licence, but I assume in the protesters' favour that it extended so as to permit students of the University to be on and to use the campus in the normal course of their education and student life at the University.

24. In the case of "events" the general licence was subject to the terms of University's Code of Practice on Free Speech ("the Code"). This is an important document in the context of this case. Essentially it required the University's permission for the use of the University's premises for an event. The encampment and its associated rallies and protests on the campus were "events" within the meaning of the Code. The protesters did not have the University's permission to hold the encampment or their protests on its campus. Accordingly, their general licence to be on the campus did not extend to their being on the campus for the purposes of the encampment or of associated rallies or protests. It follows that when the students were on the campus for the purposes of the protest, they were trespassers and the University was entitled to possession as against them.

25. The initial approach of the University when the encampment started on 13 May was to take no immediate action, but to monitor the situation. In my judgment there is no real prospect of it being argued successfully that that approach amounted to the grant of a licence to occupy any part of the Mile End campus for the purposes of the encampment or associated rallies or protests; nor to the giving of permission under the Code for the encampment, rallies or protests.

26. The point is a short one. The University did not agree with the protesters or represent to them that they could place or maintain or hold their encampment, rallies or protests on the Mile End campus. The evidence of the 1st Defendant supports that conclusion. Thus, in the 1st Defendant's first statement the 1st Defendant said:

> "19. [...] From the outset the university have ignored us and provided us with little or no support. They immediately saw us as a problem and decided the encampment needed to be dismantled. Instead, when we met with Colin Bailey on the 14th May 2024, we were told in no uncertain terms that there would be no discussion with us unless we removed the encampment.
>
> 20. We had previously received no response or communication from management concerning our official letter of concern/demands which was sent on 13th of May 2024.

There was no attempt to meet with us. They only met with us after we indicated we were going to defend the proceeding. [...]

21. [...] We did not receive any direct communication from the University stating their position and that they would allow us to remain if we complied with health and safety rules or how we must conduct ourselves. If this was the University's decision, it is strange that they did not communicate this to us. [...]""

27. Even if I was arguably wrong on that point, any such permission or licence was ended by each and every one of the following:

27.1. The hand delivery of a letter dated 16 May from Dr Ellis to one of the protest organisers coupled with the posting of copies of that letter on the external and public facing façade of the Mile End campus. Dr Ellis's evidence in support of that posting of the 16 May letter is unsatisfactory in that it is insufficiently attributed hearsay, it being described by Dr Ellis as something of which she was informed of by "security". However, that evidence was not challenged in the evidence of the 1st and 2nd Defendants or their witnesses. The letter of 16 May was addressed to "members of the encampment". The letter refers to an "unauthorised demonstration" that took place inside and outside the Mile End campus in the evening of 15 May. The letter concluded by asking the members of the encampment to disperse.

27.2. The hand delivery of a letter dated 22 May from Professor Bailey to the protesters. Dr Ellis did not say that a copy of this letter was handed to all the protesters. However, her evidence as to the hand delivery of the letter was not challenged in the evidence of the 1st and 2nd Defendants or their witnesses. The letter of 22 May was addressed to "members of the encampment". The letter is in similar terms to the letter dated 16 May. The letter concluded by stating "The encampment is not authorised by the University and must disperse with immediate effect, as previously instructed to you on 16th May."

27.3. The delivery of a letter dated 3 June from Dr Ellis addressed to the "members of the encampment". This letter referred to, amongst other things, the earlier letters of 16 and 22 May. This letter concluded:

"Despite requests made in previous correspondence, the encampment has not been voluntarily dispersed, I now write to you to make it clear that:

1. Any implied permission, licence or consent to enter onto or remain on the University's property, for the purposes of carrying out the ongoing protest, is hereby withdrawn.
2. The continued presence of the encampment on the University's property amounts to a trespass.
3. The University requires that the encampment be dispersed forthwith.

If the encampment is not immediately dispersed, the University will have no option but to take legal action to secure possession of the campus."

Dr Ellis does not say whether or how this letter was served. However, in a letter dated 3 June 2024 from Foster & Foster, solicitors, to Professor Bailey those solicitors state that they note at the time of writing, "yet a further letter has been issued to the encampment dated 3rd June 2024, the contents of which are noted." In their letter of 3 June, Foster & Foster state that they "advise and assist

Queen Mary University London Encampment for Palestine ('QMULEP') (hereinafter referred to as "the students") and specifically in relation to the encampment on a small piece of land situated outside the Queen's Building ..." Thus, it is clear and accepted that the University's letter dated 3 June came to the attention of some, if not all, of the students who formed the encampment.

27.4. The service of these proceedings on the members of the encampment. This was effected in accordance with the requirements of CPR 55.6.

28. A copy of a letter dated 24 May from Dr Ellis addressed to "Dear Students" and requiring dispersement of the encampment is exhibited to Dr Ellis's first statement, but there is no evidence as to whether or how this was delivered and I have discounted it. This letter refers to an email from the "Students", but I was not taken to that email.

29. When the case was before me on 7 June, I was concerned that the status of any individual protester could change from minute to minute or from second to second. One second they might be participating in the protest and be a trespasser; the next they might have stopped protesting, albeit perhaps only temporarily, and have become a non-protesting student carrying on normal student activities, such as being on their way to a lecture, with the general licence applying to them and causing them not to be a trespasser. I was concerned that such changes in status would cause difficulties for a High Court Enforcement Officer who, consequent on the making of an order for possession and the issue by the University of a writ of possession, would be trying to enforce that writ of possession by ejecting the persons in occupation of the land. As a practical matter would the Enforcement Officer have to ask each person who he was proposing to eject whether they were on the land in their capacity as a protester or as a student carrying on normal student activities?

30. I was encouraged in that way of thinking by the submissions which Mr Burton made on 7 June to the effect that an injunction rather than a possession order would be the appropriate remedy. In particular I was attracted by his argument that the court's approach to the making of possession orders in such circumstances should change as a result of the decision of the Supreme Court in *Wolverhampton City Council v London Gypsies and Travellers* [2023] UKSC 47 to the effect that final injunctions can in appropriate circumstances be made against persons unknown.

31. However, despite Mr Burton's encouragement and my initial thoughts on the point, I consider that principle and currently established practice are against the potential changes in status of protesting students being a reason for not granting a possession order.

32. As a matter of principle the potential difficulty in enforcing a possession order should not disentitle the University to a possession order if it is otherwise entitled to such an order. The potential difficulty with enforcement is a potential future problem for the University. In the future, if enforcement of the possession order is problematic, the University may come to regret not having sought an injunction, but that is not in itself a reason for my not ordering possession.

33. I have referred to currently established practice rather than authority, because I was not taken to a case in which the point about the changeable status of the occupiers against

whom a possession order was sought was considered by the court. On the other hand there have been several cases in recent years where the courts have made possession orders against students who were protesting on land belonging to universities where the point could have been raised by the defendants or the court, but was not. Johnson J's case is an example.

34. Ms Stacey sought to persuade me that my concern about the possible changeable status of the protesting students would be disposed of by including in the possession order a recital that the possession order was sought by the University in circumstances where the Defendants did not have a right to occupy its land for the purpose of protest and with the intention that the possession order was intended to prevent unlawful occupation for the purposes of protest and not any lawful use of the Claimant's land for academic purposes. In the event such a recital was included in the orders which I made, but I am far from convinced that it avoids the practical problem which possible future changes in status of the protesting students would cause. However, as explained above, in my view that practical problem was not a reason for my not making a possession order.

35. A second point which concerned me on 7 June was whether it was appropriate to make a possession order in respect of the whole of the Mile End campus, when the protesting students were only occupying part of it. This is a fact sensitive point. The evidence shows that the Mile End campus is in substance a single piece of land, notwithstanding that it is held by the University under a number of different registered titles. The authorities recognise that in such circumstances a possession order can be made in respect not only of the land currently occupied by the protesters, but also in respect of other land belonging to the University (see para.81 of Johnson J's case and the authorities there referred to).

36. In Johnson J's case there was no evidence of any immediate risk that anybody might occupy two other parts of the campus, but nevertheless Johnson J considered that he could and should make a possession order in respect of the whole of the campus. The present case is stronger than Johnson J's case in that regard. The evidence shows that members of the encampment have not restricted their protest activities to the lawn in front of the Queen's Building. Additionally, in a letter dated 13 May from "the members of the encampment" to the University, those members of the encampment who approved the terms of that letter stated, amongst other things, that the encampment would continue "indefinitely until negotiations have reached mutual agreement between negotiators and SET". "SET" was an acronym for the University's Senior Executive Team. Similarly in an email dated 26 June from "QMUL Encampment for Palestine" to Ms Leggett it is stated, incorrectly having regard to the terms of the Code, that the encampment "are aware of our legal right to protest on campus without the need for approval or authorisation." In my judgment those matters meant that there was a real possibility of the protesting students occupying in the future parts of the Mile End campus which they did not currently occupy.

37. Specific instances of protests otherwise than on the lawn outside the Queen's Building are:
    37.1. On 20 February 2024 QMUL Action 4 Palestine (the name of the group which set up the encampment) held a rally and ribbon-tying memorial in Library Square on the Mile End campus.

37.2. On 14 May a protest involving some members of the encampment took place in Library Square, the main square outside the University Library.

37.3. On 23 May a conference of the World Association of Sustainable Development which was being held in the University's BIO Innovation building on the University's Whitechapel campus was disrupted by pro-Palestinian demonstrators who included 6 members of the encampment.

37.4. On 31 May some members of the encampment entered the Queen's Building and hung a banner from the 3rd floor of the Queen's Building.

37.5. Photographs in the evidence clearly show encampment related activities such as the holding of a banner and the placement of noticeboards on the road which runs around the lawn

37.6. On 1 July the participants in a rally organised by encampment members left the lawn in front of the Queen's Building. The rally moved from the lawn at the southern edge to the Mile End campus across the campus to Library Square and on towards the Student Village near the north east corner of the campus.

37.7. On 6 July 6 members of the encampment protested along a similar route to that followed by the 1 July rally.

38. Accordingly I considered that if a possession order was otherwise appropriate, it should extend to the whole of the Mile End campus, except for those parts of it which were subject to leases in favour of third parties.

39. In conclusion on the property law aspect of the case before taking account of the ECHR in deciding whether to make a possession order:

39.1. Under the terms of the Code the protesters required the University's permission to occupy any part of the campus for the purposes of their protest.

39.2. There was no real possibility of its being established that any such permission was ever given either expressly, or impliedly.

39.3. Even if there ever was any implied permission, there was no real possibility of its being established that such permission was not withdrawn before 10 July.

39.4. There was no real possibility of its being established otherwise than that, as at 10 July, the protesters, acting as such, were trespassers on the Mile End campus and that the University was entitled to an order for possession of its Mile End campus.

40. As regards the application of the ECHR by the court in deciding whether to make a possession order, as distinct from a consideration of those rights possibly making a relevant decision of the University unlawful: the relevant articles of the ECHR are Articles 9, 10 and 11 ECHR, possibly supplemented by Article 14, and Article 1 of the First Protocol to the EHCR.

41. Article 9 provides that everyone has the right to manifest their beliefs. Article 10 provides that everyone has the right to freedom of expression. Article 11 provides that everyone has the right to freedom of assembly and to freedom of association with others. In each case the right is qualified; conduct of a public authority (at this stage of my analysis, the court) that interferes with the right may be justified if the conduct is (a) prescribed by law and (b) necessary for the protection of the rights of others.

42. Article 1 of the First Protocol provides that every natural and legal person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The University's domestic law rights to possession of its land are possessions within the meaning of this Article. The encampment members' occupation of part of the Mile End campus for the purposes of the encampment interfered with the University's peaceful enjoyment of its land; as also would any use of any part of the campus for events, such as the encampment, which were not authorised pursuant to the Code.

43. In my judgment the making of a summary possession order, did not amount to an unjustified interference with the encampment members' rights under Articles 9, 10 or 11.

44. It is well arguable that the members of the encampment were not exercising Article 9, 10 or 11 rights by camping on the University's land and it is at least well arguable that the ECHR does not give anyone a right to trespass. However, it is apparent from Johnson J's case that these points are not straightforward and I have not attempted to determine them. I have assumed in the encampment students' favour that the making of a summary possession order does interfere with their rights under articles 9, 10 and 11 of the Convention.

45. Looking at the first qualification to the article 9, 10 and 11 rights of "prescribed by law": The University is the registered proprietor of the land in question. The making of a summary possession order is regulated by Part 55 of the Civil Procedure Rules. The making of a summary possession order, is thus prescribed by law.

46. Looking at the second qualification to the article 9, 10 and 11 rights of "necessary for the protection of the rights of others": the making of a possession order is necessary for the purpose of protecting the University's rights under domestic law and under Article 1 of the First Protocol to the ECHR to occupy its own land, to the exclusion of others. The underlying purpose of a summary possession order, therefore, was "the protection of the rights of others".

47. In order to show that the interference with encampment members' ECHR rights is necessary for the protection of the University's property rights, the measure constituting the interference must be proportionate. That means that (1) the objective of the measure was sufficiently important to justify the limitation of a protected right, (2) the measure was rationally connected to the objective, (3) no less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) balancing the severity of the measure's effects on the encampment members' rights against the importance of the objective, to the extent that the measure would contribute to its achievement, the former did not outweigh the latter.

48. Sufficient importance: The law gives strong protection to the right of a land-owner to possess its own land. That right is "of real weight when it comes to proportionality": *Manchester City Council v Pinnock* [2010] UKSC 45, [2011] 2 AC 104 per Lord Neuberger MR at [54]. It is a right that has been consistently recognised as being of sufficient importance

to justify interference with the qualified Convention rights of students who are seeking to trespass on university premises per Johnson J in his case at [68].

49. Rational connection: There is a direct connection between the measure and the University's objective to secure possession of its land. The measure (a summary possession order) has consistently been recognised as being appropriate in this context: per Johnson J in his case at [69].

50. Less intrusive measure: There may have been other measures that could have achieved the same objective. It might have been open to the University to exercise the remedy of self-help. It might have been open to the University to seek injunctive relief to prevent the trespass. Neither of these measures would have been less intrusive of the encampment members' ECHR rights. They would both have had at least the same impact on those rights as a possession order. Even if the remedy of self-help had been available, it would have been undesirable because of the risk of disturbance and the potential for use of force that was not regulated by a court order. An injunction could have been tailored to suit the circumstances. Any such tailoring which did not result in the eviction of the encampment members from the land would not, however, have achieved the legitimate aim of enabling the University to recover possession of all of its land. There was no measure that would have been less intrusive of the encampment members' rights that could have achieved the legitimate aim of restoring the land to the University.

51. Balance: It is not for a court to tell anyone how they should exercise their article 9, 10 and 11 rights. Weight should be attached to the Defendants' autonomous choices as to the way in which they wished to manifest their beliefs, or assemble together or express their opinions. The encampment students have advanced reasons as to why they chose to exercise their rights by means of a camp on the lawn. There were, however, many other ways in which the encampment members could have exercised their ECHR rights without usurping to themselves land that belonged to the University albeit, that in their view other ways would not have been as effective.

52. The University showed that it was anxious to ensure that its students were able to exercise their ECHR rights. It had adopted the Code which achieved that end. The students decided not to follow the Code, and not to engage with the University, when they started the encampment. No good reason was given for that decision. The encampment members were trespassers. I have assumed that their rights under articles 9, 10 and 11 of the Convention were engaged, but their conduct in establishing and maintaining the encampment was "not at the core of [those] freedom[s]": *Kudrevičius v Lithuania* (2016) 63 EHRR 34 at [97]. The weight that is to be given to those rights was significantly attenuated by reason of each of those contextual factors.

53. As against that, the University's right to possession of its own land is of real weight (see above). That is all the more so where, by not asking for authority pursuant to the Code until 3 June the protesters disregarded the framework (the Code) that was designed to protect freedom of expression.

54. For those reasons, the severity of the impact on the encampment students' rights did not (by a significant margin) come anywhere close to outweighing the importance of the objective of the University being able to regain possession of its own land. This was a conclusion that could comfortably and confidently be reached on a summary application. Accordingly the encampment students' rights under Articles 9, 10 and 11 of the ECHR did not prevent me from making a summary possession order.

55. Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set forth in the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. There is no real evidence that the University made its decisions on a discriminatory basis of that nature. Its evidence and its acts, for example, its initial tolerance of the encampment, are very strongly against its having done so. At most there was speculation that because in the past the University had tolerated unauthorised events by other groups, that indicated that its decisions in the present case were influenced by the University's views of the cause which the encampment members espoused. That speculative allegation might get a small amount of support from the students' allegations as to the implementation of the University's investment policy and its association with Israeli universities, but the link between any of the alleged activities of the University which indirectly supported Israel's conduct in Gaza and the suggestion that those consideration of those activities influenced the University are so remote as not to give rise to a real possibility of such an influence being established. There is also a suggestion in Foster & Foster's letter of 3 June that there was discrimination by reason of Professor Bailey having attended a meeting with the Prime Minister at which measures relating to encampments at universities were discussed. Foster & Foster say that they "understand" that members of the Union of Jewish Students were at the meeting and that there was no representative from any Muslim or Palestinian group. On the footing that that is correct, it does not follow that Professor Bailey or the University caused that situation to arise or that they were thereby discriminating against pro-Palestinian protesters such as the encampment members either at the meeting with the Prime Minister or when deciding what do about the encampment at the University.

56. Further, my approach to this claim, as expressed when Ms Stacey when she was opening the University's case before me on 7 June, is that so far as the University's right to possession is concerned, it really did not matter what the encampment students were protesting about. What was of concern to me was and remains the effects or possible effects of the encampment on the University and its right to possession of its land.

57. Accordingly in my judgment any possible discriminatory effect of a summary possession order was restricted to the fact, consequential on the making of a summary possession order, that the order affected or more greatly affected persons who were pro-Palestinian and, anti-Israel than others. However, that is a necessary effect of any order for possession made against persons of a particular persuasion, religion or belief and in my judgment does not significantly move the scales of the weighing process outlined above.

58. It follows that the encampment members did not have a real prospect of establishing that, unless a relevant decision of the University was unlawful, the making of a possession order by the court would amount to an unjustified interference with their ECHR rights.

59. Thus, as a matter of property law, the court taking account of the encampment members' ECHR rights in deciding whether to make a possession order, but regardless of any possible unlawfulness of any relevant decision of the University, there was no real prospect of a defence to the possession claim being successful.

60. The second broad question mentioned by me above, was whether there was a real prospect of a relevant decision of the University as to the occupation of the land and the bringing of these proceedings being held to have been unlawful as a matter of public law or for breach of the encampment members' ECHR rights or otherwise. That question was raised by the correspondence written on behalf of the 1st and 2nd Defendants; by their evidence and by the submissions of Mr Burton on their behalf on 7 June. However, as a result of the settlement of the claim as between the 1st and 2nd Defendants and the University there is no submission or application before me challenging the lawfulness of any decision of the University. Nor was or is there an application to adjourn the hearing of the claim pending an application to the Administrative Court. In these circumstances I consider that it is not necessary for me to determine the possible unlawfulness of any relevant decision of the University. That is because until any such decision is challenged it stands and can be relied upon. On that basis this judgment could stop here with my conclusion in the immediately foregoing paragraph. However, in case I am wrong in my view that it is not necessary for me to consider the possible unlawfulness of any relevant decision of the University, I do so below. Before doing so I explain the Code and its contents in more detail and then the facts in more detail, so that the background and the disputes as to the background against which the University's decisions were made can be properly understood.

The University's Code of Practice on Free Speech

61. In her 1st statement dated 4 June 2024 Dr Ellis said that the University was committed to encouraging and promoting free speech within the law. She said that that was set out in the University's Code of Practice on Free Speech ("the Code").

62. The University adopted the Code to ensure that it acted in accordance with the duties imposed upon it by s.43 Education (No 2) Act 1986, as updated by the Higher Education and Research Act 2017 and the Higher Education (Freedom of Speech) Act 2023.

63. On 10 July 2024, sub-sections (1) – (3) of s.43 Education (No 2) Act 1986 as so updated, provided:

> (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."

64. The potentially relevant provisions of the Higher Education (Freedom of Speech) Act 2023 were not in force on 10 July 2024.

65. The most relevant provisions of the Code are the following:

65.1. Section 1.1. This states that the University has a longstanding commitment to promoting and encouraging free debate and enquiry. It states that that commitment is enshrined within the University Charter and sets out the following extract from the Chater:
"*The University shall uphold freedom of speech within the law and academic staff shall have freedom within the law to question and test accepted ideas, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges.*"

65.2. Section 2.1, which provides:
"The purpose of this Code is to ensure that, as far as reasonably practicable, freedom of speech within the law is secured for students and staff of the University, as well as for visiting speakers, and that academic freedom within the law is secured for academic staff of the University."

65.3. Section 3.1, which provides,
"The University has adopted this Code to ensure that it acts in accordance with the duties imposed upon it by Section 43 of the Education (No 2) Act 1986, as updated by the Higher Education and Research Act 2017 and the Higher Education (Freedom of Speech) Act 2023".

65.4. Section 3.7 which provides:
"The Equality Act 2010 places a duty on the University to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between all members of the

University's community. It also imposes obligations not to discriminate on the grounds of the relevant protected characteristics."

65.5. Section 4.1, the relevant parts of which provide:

"This Code is applicable to:

a) the legal personality of the University;
b) [...]
c) all students of the University [...]
d) all live and recorded activities, including events, meetings and all education and research activities, that are held, endorsed, organised, funded or branded by the University or QMSU, or by individuals, groups or societies using the name of the University or QMSU, or that use the University or QMSU managed spaces or digital platforms, whether or not they involve an external speaker (referred to as 'events');
e) [...]"

65.6. Section 5.3 which provides:

"Except where expressly agreed by the Council in line with advancing the University's charitable objects (as defined in the University Charter), the University does not take an institutional position on political, cultural and religious debates to ensure that individuals are mot discouraged from expressing themselves freely within the law."

65.7. Section 5.4 which provides:

"Instead, the University endeavours to provide opportunities to facilitate discourse on contemporary issues by encouraging critical debate within the law, where expression of views within the law by different parties is tolerated."

65.8. Section 5.5 which provides:

"As such, the University encourages a wide range of views which might entail the airing of opinions and ideas that are unpopular, controversial or provocative and foster an environment where academic freedom and expression is secured within the law."

65.9. Section 6.1 which provides:

"Council is responsible for the approval of this Code and for seeking assurance on its effective operation."

65.10. Section 6.2 which provides:

"Responsibility for the interpretation and implementation of the Code is delegated by the Council to the President and Principal ('the Principal Officer')."

65.11. Section 6.6 which provides:

"For the purposes of procedures for events (Section 7 below), Heads of Schools and Institutes and Directors of Research Institutes are the 'Designated Officer' for events organised or sponsored by their respective school or institute, and the Director of Estates and facilities, or their designated deputy, is the 'Designated Officer' for all other events."

65.12. The whole of Section 7 which provides:

7. Procedure for Events

7.1 The following procedures will apply when arranging all events.

7.2 All spaces used for events will be booked in line with the relevant booking policies and procedures.

7.3 In considering whether to permit its premises and online platforms to be used for, or its name to be associated with, a particular event, the University will uphold free speech within the law. In doing so, the University will consider whether the views or ideas to be put forward, the manner of their expression, or the event in question:

a) constitutes a criminal offence and whether a participant has a previous conviction in relation to their speech;
b) constitutes a threat to public order, including whether a participant is from an organisation that is officially proscribed by the UK Government;
c) constitutes a threat to the health and safety of individuals attending the event or in the locality which cannot be satisfactorily managed;
d) incites others to commit criminal acts;
e) infringes the legal rights of others or breaches legal requirements in respect of non-discrimination;
f) seeks to disrupt an authorised event or activity on University premises or online platforms, noting that any protest must be conducted without infringing the rights of others, including the right to freedom of speech.

7.4 The expression of views which are unpopular, controversial or provocative or which cause offence, shock or disturb do not, if lawful, constitute grounds for refusal or cancellation of an event or an invited speaker.

7.5 The University reserves the right to impose such conditions upon the use of its facilities as are reasonably necessary for the discharge of its obligations relating to the health and safety of its registered students, staff and other persons lawfully upon its premises or for the efficient conduct and administration of its functions. Conditions for events may include, for example, restrictions on access by those outside the University.

7.6 The University reserves the right to decide that practical considerations such as the cost, short notice period or difficulty of providing the necessary mitigations may require an event to be modified, curtailed, postponed, or exceptionally, cancelled. The University will bear the cost of appropriate security for approved events to uphold freedom of speech within the law.

7.7 The University expects those attending events to respect the values noted in Section 1 above and to show tolerance to all sections of its community. These precepts apply in particular to the way in which views are expressed and the form of events, including any form of protest activity.

7.8 Permission may be withheld only on the grounds indicated in Sections 7.3, 7.5 and 7.6 of this Code, or of the organiser cannot or will not ensure compliance with any conditions set by the Designated Officer. It shall in all cases be open to the Designated Officer to invite the police to be present at any vent on University or QMSU managed spaces.

7.9 It shall be open to the Designated Officer to withdraw permission for an event if, having originally granted permission, they so judge that the event will not in fact conform to this Code.

7.10 It shall be open to the Designated Officer to withdraw permission for an event to be held in association with the University name or brand, whether or not the event is being held on University managed spaces or digital platforms, if it does not conform to the requirements of this Code.

7.11 The University reserves the right to impose conditions on the display of materials, symbols and images on University managed spaces or digital platforms outside the context of education' research and approved events where the display of such materials, symbols and images is in conflict with Section 5.3 of this Code."

66. It is clear from the terms of Sections 4.1 and 7.7 of the Code that protests held on the campus are "events" for the purposes of the Code.

67. It is clear from section 4.1(c) of the Code that it is applicable to students of the university.

68. It is clear from the terms of Sections 7.1, 7.2, 7.3 and 7.4 of the Code that the permission of the University is required for any event which is held on the campus.

69. If an event on the campus has not been permitted pursuant to the Code, then the persons participating in the event are trespassers, even if they would otherwise not be trespassers by reason of the general licence which students have to be on the Mile End campus.

70. In argument on 7 June I mentioned an old case about protesters against grouse or pheasant shooting who protested from a public highway running across land where shooting was taking place. In that case the protesters were not trespassers when they were using the highway as a means for getting from A to B; but when they used it for the purpose of their protest they were trespassers. The name of the case which I had in mind was *Harrison v Duke of Rutland* [1893] 1KB 142. I have since noted that in the case of the use of a public highway for protesting, such user will not always amount to trespass (see *DPP v Jones* [1999] AC 240), but the point holds good in relation to privately owned non-highway land such as the University's Mile End campus. More so where, as in the present case, the use of the land is controlled by a Code, binding on the student occupiers of the land.

The facts in more detail

71. The occupation of the University's land by the protesters started on 13 May 2024.

72. Before then there had been protests in relation to Palestine, Israel and Gaza on parts of the Mile End campus other than the lawn where the encampment became established. Thus, in paragraphs 13 and 14 of the 1st Defendant's 1st statement, the 1st Defendant says:

"13. QMUL Action 4 Palestine (who set up the encampment) was formed on 12th February 2024 and has been holding protests on campus since. the first of which is a rally and ribbon tying memorial in Library Square on the Mile End campus on 20th February 2024.

14. The event on 20th February 2024, took place in Library Square at the Mile End campus and consisted of chants and tying ribbons around the area. This was attended by student and staff. This was not met with any opposition by QMUL security at the time. The next day I noticed that the ribbons had been taken down and after 2 further days I was notified of a second protest on February 27th, 2024. The removal of the ribbons which represented the death of women and children, was a heartless act by the

university. It also sent out a clear message from the university that even peaceful acts of such significance would not be acceptable to the university."

73. Before 13 May, during the day time the Mile End campus and its buildings were generally open to all, students and public alike. After about 7 – 8 pm entrance and egress was controlled using checks of student identity cards.

74. At about 13:43 on 13 May, a group of people entered the University via a vehicle exit gate near the lawn in front of the Queen's Building. The group started erecting small tents on the lawn in front of the Queen's Building. At 14:07 the group started to set up a marquee. By 16:00 the marquee was completely erected.

75. On 14 May an additional marquee was erected. By 30 May there were about 25 tents and 2 marquees on the lawn in front of the Queen's Building.

76. A copy of an eight page unsigned letter dated 13 May addressed to the "Senior Executive team of Queen Mary University of London" from "Queen Mary University of London encampment for Palestine" was in the evidence. The opening heading and the first four paragraphs of this letter read as follows:

"**We, the members of the encampment, are writing this letter to:**

- Formally request a meeting with Queen Mary University of London's (QMUL) Senior Executive Team (SET) to discuss the encampment's demands and seek a resolution through a transparent public negotiation process, as the encampment will continue indefinitely otherwise;
- Draw attention to QMUL's disregard for its students' concerns, especially the inequity faced by its Palestinian students during the ongoing crisis in Gaza;
- Address the extent of QMUL's involvement in supporting Israeli apartheid and occupation;
- Stress that QMUL's refusal to engage with the encampment and reach a mutual agreement contradicts its own policies and values, revealing its complicity in the oppression and killing of Palestinians in the occupied territories."

77. In the context of the letter, the last of those paragraphs did not refer to a refusal to engage with the question of whether the encampment should have permission to be on the campus, but referred to a refusal to engage with the protesters' demands as to what the University should or should not be doing in relation to the situation in Gaza. Thus:

77.1. In the first paragraph of the letter under the heading "Background", the authors of the letter explained that as students of the University they were committed to upholding the values of justice and freedom for all. The authors then alleged that the University had "shown bias and disregard" for its Palestinian students and other pro-Palestinian students. They referred to "several" statements issued by the University which they alleged "failed initially to recognise Palestinian identity and consequently, did not condemn the numerous violations of international law by the colonial state of Israel."

77.2. In the second paragraph of the letter under the heading "Background", the authors stated that "over the past couple of months, multiple societies and individuals, all part of the QMUL community, have proposed concerns over its

investments and involvement in supporting the Israeli occupation of Palestine, and the genocide being inflicted upon Palestinians in Gaza." The authors referred to "multiple open letters" which they alleged had been ignored and to "protest dates, vigils and educational campaigns in protest of QMUL's complicity."

77.3. In the third paragraph of the letter under the heading "Background", the authors stated that "over the past two years, students have passed multiple motions at the Annual Members Meeting aimed at lobbying QMUL to end its complicity.". They alleged that "these motions received support from the majority of the student body, yet the university has failed to respect the student's wishes and act on those requests."

77.4. In the fourth paragraph of the letter under the heading "Background", the authors referred to a statement released by Colin Bailey, the Principal of the University, on 4 December 2023 calling the notion of boycotting institutions an "unacceptable position [for the university]" and that the University "will always maintain interaction" with Israeli universities. This was said by members of the encampment to be "a complete shirk of concerns" and an alleged insistence "that the University's position cannot be negotiated."

78. I have quoted from the letter of 13 May and have referred to what is said in it, but I have not made any finding as to the accuracy or otherwise of what was said or of the allegations made in it because it is not necessary for me to do so in order to determine the issues in the case. I have referred to what is said in it primarily for the purpose of providing the context for the last sentence of the fourth paragraph of the letter under the heading "Background". That sentence was as follows:

> "These developments have prompted the emergence of an encampment, beginning on the 13th May 2024, and continuing indefinitely until negotiations have reached mutual agreement between negotiators and SET".

79. That sentence shows that the authors of the letter and such other of the protesters (if any) as agreed with its terms were not concerned as to whether or not they had or would obtain the University's agreement to the existence of the encampment, either pursuant to the terms of the Code or otherwise.

80. On 14 May a protest took place in Library Square, the main square outside the University Library. On that occasion, when Professor Bailey walked through Library Square some protesters chanted demands as he passed them, seeking that Professor Bailey engage with the demands that had been circulated by the encampment. The protesters followed behind Professor Bailey as he made his way down Physics Avenue, the road running alongside the Queen's Building which leads to the gates and the front lawn. The protesters followed behind shouting through a megaphone for a number of minutes before Professor Bailey returned inside.

81. In relation to the incident of 14 May the University received complaints from some students who were sitting exams close by that their exams were disrupted. That there was some disturbance of exams, albeit on 17 not 14 May, was confirmed to some extent by the evidence of the 2nd Defendant who said:

"20. On one occasion when we realised a rally may have been disturbing an exam, we took immediate action. A rally took place on the 17th of May at 6 pm. Students gathered on one side of the gates, and members of the public on the other side. After the rally began and people had been chanting for about 1 minute, a student noticed a senior member of security waving at the student from the back of the crowd. I am informed the student rushed over and saw that the security guard had a student with him who had raised concerns regarding her friends being in an exam that had not yet finished. The student apologised profusely and admitted that we thought all exams ended at 5:30 pm every day. We forgot to take account of the students who had additional time in exams.

21. The student made it clear that our intention was not to disrupt exams and he immediately notified the attendees of the rally that we would be postponing it until 6:45 pm. Everyone dispersed peacefully and we contained the noise level immediately. The chanting only lasted around minute or two and it was stopped immediately. There was no frustration or upset from any attendees of the rally despite us postponing it for 45 minutes. This shows the understanding, caring, and accommodating nature of the community that attend our rallies. The impression that the rally attracts an unruly mob could not be further from the truth.

82. In paragraph 15 of her 1st statement of 4 June Dr Ellis said:
"A white board is erected most day advertising proposed unauthorised events for that particular day. Examples of these white board advertisements can be seen in the photographs attached. "SE7".

83. There were five photographs of a white board headed "QMUL LIBER8ED ZONE". I do not set out the contents of all of the boards shown in the photos. The contents of the first and second serve as examples. The board shown on the first photo reads:
"SCHEDULE
1:15pm - Open Vigil for Nakba day
3pm - Creative workshop: Zine & bookmark making!
5pm - PYM Nakba workshop
6:30pm - Mass Vigil"

84. The board shown on the second photo reads:
"SCHEDULE
11AM - QUIET STUDY SESH
1:30PM - COMMINIST INTIFADA TALK
2:30pm - ORIGAMI FLOWER-MAKING
6:00om - ABOLISHONIST FUTURES TEACH-OUT"

85. Dr Ellis's evidence that the booking of spaces for those and other events as required by the Code has not occurred was not challenged.

86. There was a demonstration, protest or rally on 15 May. Dr Ellis says she became aware of social media posts advertising the encampment and a rally to be held at the University's Mile End campus. She says that the protesters were told "later" on 15 May 2024 that no one from outside the University would be permitted to come on to the campus "as the front

gates were locked and security staff were positioned at the gates". Dr Ellis goes on to say in paragraph 17 of her 1st statement of 4 June 2024:

> "These decisions were taken on health and safety grounds and as a result of the encampment not following the established procedures in place to enable the University to comply with all relevant laws and regulations. At the most fundamental level, the University was not given the necessary evidence to undertake required risk assessments for events of this nature."

87. Dr Ellis's 1st statement as to what occurred in respect of the protest or rally in the early evening of 15 May is unsatisfactory from an evidential point of view; it being largely unattributed hearsay. Dr Ellis exhibited as SE8 or "Exhibit 8" to her 1st statement of 4 June 2024 photographs and a redacted security incident report showing a crowd at the University's gate. Unsatisfactorily, the author of the incident report was not identified by name and it is unclear which parts of his or her report were derived from his or her own observations or from what he or she was told by others. The pictures on the last page of Exhibit 8 show a crowd of persons, some holding Palestinian flags, congregated outside and inside the University's front gate. In one of the pictures, the gate is open. Dr Ellis referred to a video taken from Instagram which showed an individual cutting with bolt cutters the chain which had been keeping the gate closed.

88. The 2nd Defendant described the "rally" on 15 May in the following terms, also substantially by way of unattributed hearsay:

> "53. I am informed that on the 15th of May 2024, around 18:30pm, the members of the Encampment held a rally to celebrate the beginning of the QMUL Liberated Zone.
> 54. The members of the public rallied on the Mile End Roadside of the gate, and the members of the encampment rallied on the campus side of the gate.
> 55. I am informed that when members of the public were arriving onto the campus, there was a wave of people and so naturally there was some pushing and shoving. It was in no way at the level as stated within Sharon Ellis's statement within paragraph 24, page 67.
> 56. The encampment members had actually tried to prepare for the protest as the encampment security team and members of the encampment got together as a team and discussed and planned how they would all take safety measures. This was discussed in person.
> 57. The encampment members all agreed that the security team would wear green hi-visibility jackets and would be positioned at certain points so as to maintained safety of the public as well as planned the prevention of any damage to buildings and other structures. The encampment members wanted to ensure that though they had considered safety precautions for the students and wider public and ensure they respected the Universities grounds.
> 58. Some attendees at the rally had drawn chalk on the Queens Building, and the security manager on shift at that time requested it was cleaned off and nobody was to draw on the building thereafter. The encampment security team explained this to everybody, and this was cleaned off straight away by members of the encampment, and nobody drew on the building thereafter. With reference to Mr Colin Baileys letter dated 18th June 2024, I want to confirm that this was cleaned off straight away, we wanted to

respect the University premises and everybody at the rally understood and did not do it again.

59. A member of the public took it upon themselves to try and use bolt cutters to cut the lock which held the gate to the campus together. The member of the encampment had nothing to do with the attempt to break the lock.

60. I am informed that as soon as this happened, the encampment security team put on their high-vis jackets to begin ensuring that nothing untoward happened. Before all members of the public could enter the campus, QMUL's security closed the broken gate and held it closed as the lock was broken.

61. The members of the public were unhappy with being locked out and began asking to be let in. They were allowed in by the QMUL security. The crowd moved outside of the Queen's Building, still being facilitated and controlled by the encampment who positioned themselves around the crowd and lined the Queen's Building, guarding both the safety of the encampment, the public, and the buildings.

62. I am informed that as they were taking photos and videos of the rally [exhibit MBC 15]. This shows how well-managed the rally was. That although a crowd had entered the campus the rally always remained peaceful and organised.

63. The police arrived, but as it was so well managed, they shortly left. QMUL's security commended the members of the encampment regarding how well the encampment members facilitated the rally and were impressed by the processes that we had put in place.

64. Once the rally finished, the encampment members offered members of the community food that the encampment had been donated so they could all eat together. Otherwise, they left promptly at around 9pm and there was only students and members of the encampment left on campus. The QMUL's security did not have to intervene after the initial phase when the public entered the camp.

65. At the end of the rally when it was just the members of the encampment, Students informed me that they all felt proud and that it was a momentous occasion that would live with them for the rest of my life. QMUL's security privately said that it went well, and the encampment members were organised, and everything ran smoothly, Although the Claimant may want to paint a different picture, we get on well with their security and they always say that we are a good group and that they do not have any problem with the encampment. Sadly, they cannot relay this to the Claimant for fear of losing their job."

89. Dr Ellis said that she was "aware" that the unauthorised occupiers were making comment on social media and inviting others from outside the University community to attend the ongoing protests. She exhibited a copy of an advertisement which she said was addressed to supporters in Tower Hamlets to join in the rally taking place on 17 May. Unfortunately, the quality of the exhibited copy of this advertisement in the hearing bundle is so poor as to make it illegible in parts and it is unclear whether this rally was intended to take place on or off the campus. It is however some evidence of the encampment on the campus being a focal point for rallies and protests.

90. On 15 May Professor Bailey sent an email to all students and staff. Particularly relevant extracts from that email are as follows:

"Similar to other universities across the country, on Monday (13 May) a demonstration began which involved an encampment on the lawn outside the Queen's Building [...]

"The demonstration relates to the ongoing conflict in the Middle East [...]
"Whilst the demonstration is ongoing, please be ready to show your Queen Mary ID card as you enter the Mile End campus. All University activities will continue as normal and without disruption. We have enhanced our security presence to provide assurance to our staff and students. If anyone has concerns when passing the protesters, please do contact Security [...]
Universities are precisely the places where difficult and complex issues should be debated, and we have a clear code of practice for free speech to allow staff, students and official visitors to do this with confidence within the law.
The demonstrators did not seek authorisation to use our campus as required by our code of practice. We are monitoring the impact of the demonstration on our staff and student communities and the regular activities of the University, whilst being mindful of our legislative duty to promote free speech. We will keep this under review in consideration of our wider duties to foster good relations between all members of our communities, assure safety and security of our communities, and the need to ensure all University activities can proceed unhindered."

91. In paragraph 31 of her 1st statement of 4 June, Dr Ellis said:
"On 16 May 2024, I am informed that the University formed the view that the cumulative incidents, and particularly the events of 15 May 2024, were causing a growing and unacceptable risk to the health and safety of staff, students, the public, and the University grounds. Consequently, Professor Colin Bailey, sent a second email to all staff and students [...]"

92. Dr Ellis did not state who she was informed by or what organ of the University "formed the view" that she refers to. A copy of Professor Bailey's email of 16 May was exhibited. Relevant extracts from it are as follows:
"I am writing to you following my message yesterday regarding the unauthorised encampment on our Mile End Campus.
I am sorry to tell you that last night (15 May) a demonstration took place within and outside our Mile End campus which resulted in criminal damage to our property, put the health and safety of our communities are risk, and potentially was a public order offence.
In light of this we have asked the demonstrators to disperse the encampment with immediate effect.
[...]"

93. The "criminal damage" was limited to the cutting of the chain which held the gates closed and, just conceivably, to the making of chalk drawings on the Queen's Building. On the evidence, at this stage the main risks to health and safety appeared to be limited to (i) the risk to or from the one demonstrator who had climbed on to one of the gate posts; (ii) such general risks as were inherent which large numbers of people gathered in a partly enclosed space, especially when they or some of them were moving; and (iii) the generalised allegation of a lack of health and safety risk assessments.

94. On 16 May Dr Ellis wrote a letter to the members of the encampment. Dr Ellis said that it was hand delivered to one of the protest organisers. Dr Ellis also said that she was informed

"by security" that copies of the letter were posted on the external and public facing façade of the campus with her name highlighted in red.

95. The 16 May letter was written over Dr Ellis's name as the Chief Operations Officer of the University. Relevant extracts from it are as follows:

> "Dear members of the encampment,
> [...]
> As you are aware, you did not seek authorisation to set up this encampment on our campus. We have explained to you and the wider Queen Mary community that we would continue to monitor the impact on your activities.
> The demonstration last night (15 May) resulted in criminal damage to Queen Mary property, put health and safety of our communities at risk, and potentially was a public order offence.
> We are therefore asking you now to disperse your encampment with immediate effect."

96. Dr Ellis said that a letter dated 22 May was hand delivered to the protesters. This letter of 22 May was written over Professor Bailey's name. It was addressed to the members of the encampment. It referred to the 16 May letter and to the fact that the encampment had not dispersed as requested by the University. It concluded: "The encampment is not authorised by the University and must disperse with immediate effect."

97. Dr Ellis exhibited to her statement of 4 June copies of two "posters" which she said it was believed that members of the encampment were responsible for posting" "on social media". She did not say why that was believed, but the contents of the "posters" supports that hypothesis.

98. In relation to the "Wanted" posters in respect of Professor Bailey and Dr Ellis, the 1st Defendant said:

> "Someone prepared the leaflets as meme and they were not meant to be taken seriously. They circulated in our telegram chat but we do not know how these leaflets came to be distributed as the encampment students have not posted these on our social media."

99. In the 1st Defendant's first statement, the 1st Defendant said that the students on the encampment were not responsible for any of the 'wanted' posters created about the urine spraying incident (see below).

100. The first of the "posters" in respect of Professor Bailey and Dr Ellis has the banner headline "WANTED" in large capital letters. It continues "HAVE YOU SEEN OUR OPERATIONS OFFICER?" there is then a photograph of Dr Ellis. Under the photograph is Dr Ellis's name and the following text:

> "IF FOUND PLEASE DIRECT TO THE ENCAMPMENT OUTSIDE QUEENS BUILDING
>
> P.S. WE WILL **NOT** BE REMOVING OUR MASKS OR TAKING DOWN THE ENCAMPMENT UNTIL OUR DEMANDS ARE MET
> Crime:

BEGGING for the removal of all Palestinian flags and sending threatening emails to the students!"

101. I have seen no evidence of Dr Ellis having sent threatening emails to the students. I have seen no evidence that Dr Ellis "begged" for the removal of all Palestinian flags. However, the University and Dr Ellis were concerned that the display of pro-Palestinian material on University property might be viewed as expressions of the University's views, contrary to its policy as set out in section 5.3 of the Code that, except where expressly agreed by the University Council in line with advancing the University's charitable objects, the University does not take an institutional position on political, cultural or religious debates.

102. The second of the "posters" was laid out in a similar way to the first but with different text and with a photograph of Professor Bailey. It read as follows:

WANTED

HAVE YOU SEEN OUR PRINCIPLE? [Sic]
[Photograph of Professor Bailey]
COLIN BAILEY

IF FOUND PLEASE DIRECT TO THE ENCAMPMENT OUTSIDE QUEENS BUILDING

P.S. WE WILL **NOT** BE REMOVING OUR MASKS OR TAKING DOWN THE ENCAMPMENT UNTIL OUR DEMANDS ARE MET
Crime:
Contributing towards the deaths of hundreds of thousands of innocent Palestinian people, and terrorising his students"

103. I have seen no evidence that Professor Bailey terrorised any of his students. I have seen no evidence that Professor Bailey has committed any crime. He may or may not have been involved in the University's decisions as to its holding or continued holding of investments in companies which the students say assist Israel in its operations in Gaza and as to the use or continued use of certain companies which the students say support or assist Israel; but, so far as I am aware, neither of those things would be a crime under English law.

104. Dr Ellis said that as a result of the cumulative actions against Professor Bailey and herself described in her statement, the University was required to undertake personal risk assessments for both of them. Some of the actions described by her are not properly evidenced in accordance with the law of evidence and the CPR. However, some are and, based on the risk assessment, she was advised not to work alone on campus; be accompanied in all areas where protesters might be present; and that she should vary her route to work and time of arrival.

105. The 1st and 2nd Defendants said that Dr Ellis's and Professor Bailey's concerns about their physical safety were greatly exaggerated. They gave examples of where Dr Ellis and Professor Bailey were seen unaccompanied on the campus.

106. An incident occurred on 21 May. The basic facts are not substantially in dispute. In brief two individuals attempted to cut down the Palestinian flag at the encampment. They

allegedly squirted urine from bottles at members of the encampment. There was a fight between a member of the encampment and one of the individuals who had been doing the spraying. This was broken up by other members of the encampment. The University's security team called the police, but the members of the encampment chose not to co-operate with the police. The 2nd Defendant says that one of the attackers was an alumnus of the University and the other was a third year student.

107. Subsequently "Wanted" posters were posted in respect of the two sprayers. As I have already mentioned, the 1st Defendant denies that the publication of these posters was the work of the encampment members.

108. In her statement of 4 June Dr Ellis said that the "University" and she believed that there were other safety issues to consider. She did not identify who or what body representing the University, except for herself, had that belief. She referred to a specific concern that members of the encampment had run multiple electricity extension leads from the building adjacent to the encampment called "the People's Palace" without permission "which was considered to be extremely dangerous" (she did not say who by) "and had to be ceased." Further, said Dr Ellis (but without saying who by), "it is considered that this was not only a health and safety risk but a serious fire risk."

109. The 2nd Defendant disagreed with what Dr Ellis said about the extension leads. At paragraphs 10 – 12 of her 1st statement the 1st Defendant said:

> "10. I refer to Sharon Ellis witness statement, in particular paragraph 49 regarding that permission was not given to the encampment members to plug in an extension cable from the People Palace to the Encampment in particular I am informed that this is false.
> 11. The People's Palace is a building which has lecture rooms and toilet facilities. The students always ensured they liaised with security regarding plugging in of any extension cables. The encampment members always asked for permission from security. I am informed there was some inconsistency in approach as some security staff members would permit it, and others would not. However, if they did not permit it and told them as such, the encampment members do not use the extension lead. When given permission, the encampment members plugged the cable in with extreme care by running the cable in a controlled and safe manner across the ground, as well as ensuring it was only used in dry weather.
> 12. There is a stairway located just outside of the Peoples Palace building which students use to enter in and out of. The encampment members ran the cable from the door at the end of the stairway which was likely to cause the least disruption. The encampment members ran the cable from that door and then around the encampment so that it was out of the way and not a risk. QMUL's security was always aware of how it was laid out and were happy with this. The cable was very visible to minimise the risk of accidental harm."

110. Dr Ellis said that she was aware (she did not say why) that the protesters had placed plastic and paper coverings over spotlights in front of the Queen's Building, "which again is considered a serious fire hazard" (she does not say who by).

111. Dr Ellis referred to an accumulation of wooden pallets on the encampment. She said she had instructed regular health and safety assessments of the campus, which had concluded that the pallets constituted a significant risk and needed to be removed. She said there "is also a concern [she does not say who has that concern, but presumably they included her] that the protesters may carry out additional unauthorised actions which cause further risks to health and safety." She said that she was concerned that, despite the University's best efforts, further fire and safety risks might not be identified in time to prevent serious harm to encampment members, other members of the University, and/or the University grounds.

112. A speech was due to be given on the campus by the Bethnal Green and Bow MP on 18 May. This was cancelled by the MP.

113. Dr Ellis says that a bicycle marking and fixing event on the campus was moved to the Tower Hamlets Town Hall because of access difficulties caused by the encampment and the ongoing protest.

114. On 23 May a conference of the World Association of Sustainable Development was held in the University's BIO Innovation building on the Whitechapel campus. The Whitechapel campus is about a mile to the west of the Mile End campus.

115. Dr Ellis said that she was informed (she did not say who by), that "this conference was completely disrupted in a manner considered to show prior planning and coordination by the protest encampment." Dr Ellis did not say who considered that to have been the case. Dr Ellis' unattributed hearsay evidence of this incident continued as follows:

"I am aware that this disruption was twofold and detail is as follows:

a. An individual, who appeared to be with an identified QM student was signed into the BIO Innovation Building. They did not present any University ID but were with one of our students and so were issued with a visitor pass. On this basis, I believe the individual was not a University student or member of staff. That individual then opened a secure door allowing 10 – 15 other protesters to enter without identifying themselves. I am further informed that these individuals moved to the conference room in that building and were shouting slogans outside of the room using megaphones such that it was impossible to continue the conference. One such slogan being "from the river to the sea".
b. I am informed that within the conference, there were two individuals (including one Queen Mary student who had previously requested they be allowed to attend the conference). Upon the slogans being shouted outside the room, these two individuals stood up in the conference and began reading prepared speeches from their phones."

116. The 2nd Defendant's evidence, also by way of unattributed hearsay, described this incident differently, but it did not address Dr Ellis's hearsay evidence as to the opening of a secure door to allow other protesters in or the shouting of slogans using megaphone. The 2nd Defendant said:

"80. I am informed by an encampment member (also a student) that they saw a poster regarding the conference being held and explicitly asked for permission to attend the

conference [exhibit MBC 20], and all encampment members were given permission. 6 members of the encampment including the student attended [exhibit MBC 21].
81. They were able to get into the building by virtue of their Claimant ID cards alone as they were students. Once they arrived, I am informed that they were welcomed in by the reception at the BIO Innovation building on the Whitechapel campus. Once the conference started, a member of the encampment stood up and introduced themselves as being part of the QMUL Encampment for Palestine and was asking the members of the conference for their support. The initial response from the QMUL staff member who was running the conference told the encampment member to stop.
82. I am informed that shortly after they stood up to be heard and expressed in calm and controlled manner that holding a conference promoting the UN's sustainability and development goals in a building owned by Queen Mary Claimant of London, an institution which has funded over £1 million pounds in aiding the destruction of all 12 universities in Gaza, is completely hypocritical.
83. A woman who was sitting beside the student at the conference, tapped the students arm and informed the student that she was proud of everybody for what they were doing, and that she thought it was remarkable. The lady may have been on the Senate and the student believes this to be case as the QMUL staff member who hosted the conference, yelled out that there were important people in the room and told the encampment members who they were. The support from this lady demonstrated that all present and invited to the conference were open minded and willing to take their views on board, something which the Claimant themselves have fallen short of.
84. As they were being told to leave, they did so respectfully. They were only at the conference for around 10 minutes.
85. [...]
86. This protest was entirely separate to the existence of the encampment."

117. Dr Ellis said that this event was of particular concern to the University as it occurred at the Whitechapel campus, more than a mile away from the encampment located at the Mile End campus.

118. On 24 and 25 May there were further protests outside the campus, but adjacent to the fence between the lawn and the highway with crowds of several hundred people and a police presence.

119. On 3 June the 1st and 2nd Defendants' solicitors (Foster & Foster) sent a letter to the University, "FAO Professor Colin Bailey". The letter of 3 June is a 22 page document. Its first paragraph reads:

> "We advise and assist Queen Mary University London Encampment for Palestine ('QMULEP') (hereinafter referred to as "the Students") and specifically in relation to the encampment of a small piece of land situated outside the Queen's Building on the campus at Queen Mary's University, London. We refer herein to your organisation, Queen Mary's University London, as ('the University')."

120. The first three paragraphs of the letter under the heading "Introduction" summarise much of what follows in the letter. They read:

"The students felt compelled to protest in the manner in which they have to highlight the University's direct and indirect complicity in the war crimes, crimes against humanity, ethnic cleansing and genocide which is being perpetrated by Israel in Gaza and the West Bank.
The students are rightfully exercising their rights enshrined under the law to free speech and freedom of assembly. The University's obvious lack of support and engagement is demonstrative of how it is acting contrary/in breach of its policies and guidelines. Instead, using its policies and guidelines and turning against the students to threaten them with disciplinary action(s).
The University's recent communications to the students dated 15th May 2024, 16th May 2024, 22nd May 2024 and 24th May 2024 fails to recognise and or address the distress the University's actions are causing the students. This is not a proportionate nor a reasonable response from the University in the circumstances."

121. Foster & Foster's 3 June 2024 letter says that the students have taken all steps necessary to ensure that their health and safety together with the health and safety of the other students have been safeguarded. Part of the letter reads:

"The students have taken all steps necessary to ensure that their health and safety together with the health and safety of other students have been safeguarded.
The students have taken the following responsible, reasonable and proportionate measures:
• They have occupied a small piece of land and not any building.
• The students carry out a regular/daily review of the health and safety issues to ensure that they, other students and staff are safe.
• They do not cook on the encampment and have food provided to them from other students, staff or members of the local community.
• They do not allow non-students or staff to stay for any extended period of time or to sleep at the encampment. They do have a very limited number of visitors during the day but they are respectful to the needs of the student and staff population and do not disturb the day-to-day activities of the university.
• They have set up a help desk.
• They will cordon off any area where there are plants or shrubs or bushes so as to ensure there is no damage to them.
• They have adequate supplies of essential products including toiletries.
• They welcome all students and staff irrespective of their race, religion, or beliefs.
• They have made it very clear that they are peaceful.
• The speeches that they make are measured and do not contravene the law.
• The actions of the students do not affect the lectures, exams or any other activity of the university.
• Those on the encampment have invited all other student or staff who wishes to join their encampment or engage with them in dialogue or discussion. It is therefore inclusive.
• The students have been very mindful to any request made by individual students as to any disruption. They ensure that any speeches that have been given a done so after exams have been concluded.

• Most of the students do not wear masks however some are taking extra precautions as they do not want to contract Covid19. The Principal ridiculed the students for wearing masks which is highly insensitive, and demeaning and totally unacceptable.

• Additionally;

- They will instruct an environmental health officer to advise them as to any health and safety concerns.
- The students will ensure that when they finally leave, that the lawn is in the same condition as when they commenced the encampment.

The students are confident that the majority of the students at the University are in favour of the encampment and proud of the commitment and dedication they are showing to accomplish peace for all involved in the conflict."

122. Foster & Foster's letter of 3 June set out their and their clients' cases on a number of matters. Specifically, the letter set out or referred to various matters or allegations under the following headings:

122.1. "Details of the Conflict between Israel and Gaza".

122.2. "International Law and Rulings".

122.3. "Your Legal Obligations". Under this heading there are references to:

122.3.1. Article 9 ECHR.

122.3.2. Article 10 ECHR.

122.3.3. Article 14 ECHR.

122.3.4. S.43 Education (No.2) Act 1986.

122.3.5. The Higher Education and Research Act 2017.

122.3.6. The Equality Act 2010.

122.4. "Breach of University's Policies". Under this heading there are references to:

122.4.1. The Code.

122.4.2. An "Ethical Partnerships Policy".

122.4.3. The University's Investment Policy.

122.4.4. The Students code of discipline.

122.5. "Other Relevant Matters"

122.6. "Going Forward and Next Steps Required".

123. Under the heading "Going Forward and Next Steps Required" the letter read:

"We would urge the University to fulfil its legal obligations and carry out the following acts: -

1. Suspend all investments in the companies identified by the Students in their document dated 13th May 2024.
2. Review the University's investment policy and ensure that you are not investing in any third party which may be directly or indirectly supporting the genocide, war crimes, crimes against humanity and ethnic cleansing and ensure that the policy is amended to reflect this obligation.
3. Provide details of all your investments above £25,000.
4. Review the University's working arrangements to ensure that the University is not engaging with any third party which may be directly or indirectly supporting the genocide, war crimes, crimes against humanity and ethnic cleansing and ensure that the policy is amended to reflect this obligation.
5. Meet with the students on the encampment as a matter of urgency.

6. Set up a formal mediation between the University and the students on the encampment in relation to their reasonable demands.
7. Ensure the students on the encampment have all the necessary facilities required in relation to their health and safety, including shower facilities.
8. Provide reassurances to the students that if they identify themselves to the police following the incident of 21.05.2024 that they will not face disciplinary or any other actions against them for participating in the encampment.
9. If the University is suggesting breaches of policy/law then the Students require written information as to what those breaches may be with specific details rather than the generic statements issued and provide an explanation as to why they constitute a breach.
10. An application by the students for the encampment should be allowed. The students now wish to make a retrospective application for the encampment to be authorised."

We require a substantive reply from the University within 7 days of receipt of this letter. Should proceedings be issued against any of the students on the encampment, they will be vigorously defended."

124. There was a rally on 31 May. Dr Ellis said that on 31 May she witnessed the unauthorised protest encampment become a focal point for local activist groups in the London Borough of Tower Hamlets and beyond, including two known as "The Revolutionary Communist Party" and "Palestine Action".

125. In her Supplemental Statement Dr Ellis said:
"As the University had become aware of this unauthorised event [that with an external speaker on 31 May] a representative from the Univresity approached the protest encampment. Organisers in person were asked over 5 hours before the rally was to commence, about this external speaker and whether they wanted to complete a "speaker request form" that would have enabled us to do our usual risk assessment before deciding whether to allow them on campus. The University needs to undertake these assessments in these circumstances to meet its regulatory obligations with regard to free speech."

126. Dr Ellis continued:
"13. The encampment's organiser's response was to detail that the person's intended presence was "*news to them*" and that "*if they did turn up, they would be outside the gates*" this is despite their Instagram post publicising the speaker's attendance.

127. Dr Ellis exhibited a copy of an Instagram post. This was headed "DAY 19 SCHEDULE". This showed that at 18:00 on 31 May a rally was due to be held and a person whose name had been redacted was due to speak. Dr Ellis said that it was clear from an exhibited video that the unauthorised person proceeded to deliver their speech on University property without approval and that it was not delivered outside the encampment as detailed by the encampment.

128. On 31 May a group of individuals entered the Queen's Building. One of them hung out out of a second floor window of the Queen's Building, with others trying to support the

individual. According to Dr Ellis, the University's security manager could not approach the group because they had boxed themselves in with a large table and two benches. The group was hanging a large fabric banner outside the building. Dr Ellis thought that the actions of this unauthorised group were extremely dangerous.

129. The evidence of the 2nd Defendant put a different complexion on what occurred. The 2nd Defendant said that the 2nd Defendant and around 6 members of the encampment walked into the Queen's Building through the back entrance which was usually left open. They went to the third floor staff and student common room. The 2nd Defendant's statement on this subject did not say whether or not the protesters barricaded themselves in. It said:

> "76. We found a window to safely drop the banner ahead of the Rally. The window was regarded as safe because there were safety locks on the windows and padlocks on others as well. The locks which are 'anti-suicide' locks still made it so that people could put the banner through without any safety concern. We chose this window as we felt it was the safest [exhibit MBC 19]
>
> 77. The encampment members and I dropped the banner through the window on the far left of the Staff and Student common room on the third floor of the Queens building, without breaking any locks or damaging any property. Pictures of the banner drop are within the Claimant bundle Index, on page 240 which shows a Tower Hamlets Instagram in support post of the rally.
>
> 78. QMUL's security later came in and explained to us that this was not allowed and asked for us to leave and so we left peacefully. The banner was still hanging, and the security took the banner off themselves. With reference to Mr Colin Baileys letter dated 18th June 2024, I can confirm security explained to us it was not allowed, and therefore took it off themselves, we did not dispute this and respected their instructions. We left the common room straight after this conversation.
>
> 79. The encampment members and I took extra precaution when hanging the banner, we chose safest windows, and it was purely for the purpose of hanging the banner as when we were told to leave, we adhered to securities instructions. We did not cause any destruction; we didn't break any locks or pose any risk to anyone, nor have we carried a similar protest since."

130. By reason of the existence of the encampment and the additional risks to health and safety which the University perceived to exist as a result of the encampment's presence, the University cancelled its off-campus annual Festival of Communities which was due to be held on 8 June. The costs wasted as result were £101,907.51 out of a total budget for the event of £154,000. The University also considered that as a result of the cancellation it had suffered reputational damage with local community groups which might impact on their willingness to work with the University in the future, including in the furtherance of the University's research and education.

131. The 1st Defendant said that the decision to cancel the Festival was unnecessary. The 1st Defendant said: "Our past rallies have been incredibly peaceful and inclusive, garnering significant support from the Tower Hamlets community. There have never been any allegations of verbal abuse or violence emanating from the encampment toward students, staff or members of the public."

132. Ms Leggett wrote to the encampment on 11 June inviting its members to meet her to discuss how the University's Open Days scheduled for 14 and 15 June could be conducted safely.

133. There was a meeting on 12 June attended by Ms Leggett, two members of the encampment, Mr Ramsamy from the Students' Union, 2 health and safety representatives from Unison and University and College Unions and Mr Vishnu Patel, the University's Assistant Director, Campus Services and FM (which I take to be "facilities manager"). In the course of this meeting one of the encampment members expressed concern about potential hostility to the encampment during Open Days. There was a degree of agreement about the conduct of the members of the encampment during the Open Days. Specifically, the two members of the encampment gave an assurance that they would not rally on open days, nor would they disrupt or hinder the running of those days. There was a conflict of evidence as to what else, if anything, was agreed.

134. The presence of the encampment on the lawn outside the Queen's Building meant that the University had to make different arrangements for the Open Days from those which it had made in previous years.

135. The University decided that, having regard to the disruption which had occurred at the World Association of Sustainable Development conference, it would cancel an Open Day event called "the Principal's talk". Ms Leggett had been due to give that talk. It would normally have attracted 800 people in the Great Hall and be given twice on each Open Day. The University circulated video content instead, but this only attracted 290 views.

136. The University held its 2 Open Days on 14 and 15 June. Normally in June the University has over 10,000 visitors for its open days. These visitors include a large number of young people (aged 16-17), as well as younger children and family groups. The open days are key recruitment activities for the University.

137. The lawn where the encampment was is usually a focal point for open days. It is the place where most visitors would enter the campus, gather and queue for the University's largest venue, the Great Hall in the People's Palace. Many of the University's publicity shots show the lawn.

138. During the Open Day on 14 June a banner that read "QM FUNDS GENOCIDE" was hung on the perimeter fence bordering the encampment. The banner was taken down by one of the University's groundsmen. The banner was returned to the encampment and then subsequently displayed again at the encampment.

139. On a few occasions during at least one of the Open Days, members of the encampment tried to hand out leaflets on the campus.

140. Whether the existence of the encampment operated to encourage or discourage prospective applicants to the University is unclear and, no doubt, it will have affected different potential applicants differently.

141. On 18 June the University's solicitors wrote a letter of that date to Foster & Foster.

142. In the 18 June letter the University's solicitors stated, amongst other things, that:

142.1. The University did not consider that the continuance of the encampment was a reasonably practicable step required to ensure the freedom of expression for Foster & Foster's clients.

142.2. At that stage (18 June) the University was "minded to again refuse permission for the encampment", but wished to engage with Foster & Foster's clients and members of the encampment in relation to its consideration of their retrospective application for permission for the encampment before it made its decision.

143. On 20 June Dr Ellis and Ms Leggett met with 3 students from the encampment and with Alvin Ramsamy of the Students' Union. At this meeting the students were not in a position to discuss the retrospective application for authorisation of the encampment.

144. At approximately 08.27 on 26 June the University's security team was informed that a rally was intended for later that day. The rally commenced at about 6 pm.

145. The rally of 26 June involved non-encampment members outside the University premises and encampment members inside the University premises. It started at 6.00 pm and finished at 7.10 pm. A photograph was exhibited of a person holding a Palestinian flag and sitting on a gate post.

146. Pursuant to a letter dated 21 June from Ms Leggett addressed to the "encampment members", a meeting between the University and members of the encampment took place on 27 June. The students said that they had made all relevant points in Foster & Foster's letter of 3 June. They chose the front of the Queen's Building as most comfortable for camping given that it was a grass lawn and that they had not considered any other areas of the campus for an encampment.

147. Further rallies were held on 28 June and 1 July. These included encampment members repeatedly scaling gate posts.

148. During the 1 July rally, protesters, including encampment members, paraded through parts of the campus other than the lawn in front on the Queen's Building. The rally headed towards areas of the campus used and occupied by children attending summer school programmes.

149. As at the date of my order for possession on 10 July, the next big event scheduled for the University was Graduation. Graduation ceremonies were scheduled for 18, 24-26 and 29-31 July. The numbers of persons expected for those ceremonies were 4,380 graduates and 11,300 guests.

150. Graduation is an important event for the University. The University recruits heavily from local areas, and from communities where a student will be the first in their family to go to university. The opportunity at graduation ceremonies for parents of the University's

students to visit a university, for the first time in many cases, is described by Ms Leggett as "tremendous", as also, she said, was the impact of the word-of-mouth marketing that happened as a result.

151. At large events such as Graduation, in the absence of the encampment, the lawn in front of the Queen's Building can be used as a reception area or as somewhere for people attending events to congregate. The lawn lies between the key venues of the Great Hall in the People's Palace and the Octagon in the Queen's Building. With the encampment in place, movement between those two venues would have been inhibited and alternatives would have had to be adopted.

152. Ms Leggett said that if the encampment remained in situ, thousands of students, their families and guests would not be able fully to enjoy their graduation ceremonies as there would not be access to the lawn where many of the celebrations take place and photographs are taken. Ms Leggett considered that this would be unfair on the students and would also have a significant impact on the reputation of the University, with a further impact on the number of prospective students who would wish to consider studying at the University.

153. The 1st Defendant had a different view. The 1st Defendant referred to a petition signed by 13 of the attendees at the Open Day who were permitted to by the University to visit the encampment on 13 June. The 1st Defendant said that that was a high proportion of those who visited the encampment. The petition provided, amongst other things, for prospective students to sign it "If the Encampment Makes You More Likely to Come to Queen Mary". The 1st Defendant says that members of the encampment have been "sincerely laudatory about positive elements of our university experience." The 1st Defendant says that the members of the encampment "encountered real enthusiasm from many prospective students toward the encampment, especially among those who visited personally." The 1st Defendant says, "It is also very possible the encampment improved their opinion of Queen Mary's student body and the university experience and thus made them more likely to come to Queen Mary University of London." In my judgment this evidence did not advance a case against the University which is relevant to the issues before me. It is, at least primarily, the University which has to decide how to present itself to prospective students and even if the views of the encampment members were relevant, they are clearly views on things on which different decision makers could reasonably and properly take different views.

154. The University had concluded that there was no viable alternative site for graduation to take place. The presence of the encampment had led to expensive and detailed contingency planning having to be put in place in case the lawn should not be available.

155. Moving forwards: during July and August students vacate their on campus accommodation which is re-let by the University. Typically the rooms are re-let for use by attendees at international summer schools which are held on the campus.

156. The largest contingent of people participating in the summer schools comprises children, usually 11 – 16 year olds. There can be up to 1,500 children staying on the campus during peak periods.

157. The summer schools are typically run on the eastern part of the campus, and as at 2 July most of their activities had not been impacted by the encampment. However, the summer schools also use the Great Hall and smaller lecture theatres in the Peoples' Palace adjacent to the lawn. There is nowhere else on campus that can hold the same number of people. Due to the disruption potentially caused by the encampment, the University decided that the use of the People's Palace for summer school children was too high risk. The 1st Defendant disagrees with that assessment. The 1st Defendant says that there have been no allegations of violence, abuse, or intimidation by the encampment. The 1st Defendant says there have been several instances where groups of young students and their supervisors have walked past the encampment without any sense of inappropriateness.

158. The disruption caused by the encampment has reduced revenue for the University.

159. In addition to its use for summer schools, the University also offers the People's Palace for rent during July and August for large events such as conferences and presentations. The daily base rental charge for the premises is upwards from £10,000. Typically additional fees would also be paid for things such as catering ad audio-visual equipment.

160. When the encampment was established, the University stopped taking new bookings for the People's Palace for the period until mid-September. That was because the University's commercial proposition, logistical setup and risk profile were dependent on having access to the lawn where the encampment was situated. The lawn was important because it is the most convenient means of entrance to and egress from the People's Palace. Disruption by the encampment to the University's commercial clients would not only result in a monetary loss, but also in a reputational loss. Thus, although none of the existing bookings were cancelled, the booker of a one week-long booking required and was given a £58,500 discount.

161. For events held on the campus generally, as a result of the encampment the University required advance guest lists and the use of wrist bands for invited guests.

162. The University said that the closure of the gates for vehicles to and from the Mile End Road onto and off the campus had interfered with disabled access to the University for students and visitors. The 1st Defendant did not agree. The 1st Defendant said that it was the University that has chosen to close the gates. The 1st Defendant said that the encampment had placed nothing on the road which runs around the lawn. The 1st Defendant said that the University chose frequently to open the gates, for example for rubbish collection.

163. As at 2 July the direct financial impact of the encampment on the University as calculated by it, has been:

163.1. Additional security costs in May and June: £273,634.

163.2. Additional Open Day costs: £12,000.

163.3. Wasted costs as a result of the cancellation of the Festival of Communities: £101,807.51.

163.4. Discount given for a conference: £58,500.

163.5. Lost bookings for commercial events: figure not given.

Analysis as to lawfulness of relevant decisions

164. As a consequence of the consent order in respect of the 1st and 2nd Defendants and the absence of any application either in these proceedings or in the Administrative Court to set aside any relevant decisions of the University as unlawful, I can deal with the lawfulness of the University's decisions fairly shortly.

165. The first possibly relevant decision is the decision of the Gold Committee on 16 May to ask the encampment to disperse.

166. The University's Gold Committee is the highest level committee under the University's Emergency Management Plan. Its authority can be invoked on the basis of reputational and health and safety risks.

167. This was based entirely on the Gold Committee's health and safety and public order concerns arising from the rally on 15 May. There is no evidence that on this occasion the Gold Committee took into account the provisions of the Code or the students' various rights to freedom of expression.

168. At the hearing on 7 June the decision of 16 May was criticised by Mr Burton on the ground that the students had not been given an opportunity to be heard before it was made. It appeared on 7 June that meant that there might be a real prospect of its being established that this decision did not meet the various public law standards required of the University. However, this decision became one with no legal significance. That is because it was overtaken by the subsequent decisions of the University.

169. The second possibly relevant decision is that of the University made on or about 3 June formally to terminate any licence that the encampment members may have had to occupy the lawn; to send the letter of 3 June formally terminating any such licence and stating that if the encampment was not immediately dispersed, the University would have no option but to take legal action to secure possession of the campus.

170. This decision was said by Dr Ellis to have been taken by reference to the events of 15 May as a direct result of the criminal damage to the University's property, the public disorder caused by the encampment and what the University perceived to be the serious health and safety concerns caused by the encampment. The evidence in relation to this decision, in particular the terms of the 3 June letter itself, shows that in making it the University had regard to the lawful exercise by its staff and students of their right to freedom of expression, but was of the view (which undoubtedly was correct) that the members of the encampment did not have authorisation to set up the encampment.

171. There is a difference of view as between the University's witnesses on the one hand and the 1st and 2nd Defendants on the other as to how serious the criminal damage to the University's property was. I assume in the Defendants' favour that it was limited to the not very serious act of cutting the chain which secured the gates and that the damage was not done by student of the encampment. However, in my judgment there is no real

prospect of its being established that the University was unreasonable in taking the view that the damage was serious.

172. In relation to public disorder, I assume in the Defendants' favour that the Defendants' evidence is accurate to the broad effect that it was not the protesting students who were disorderly or who cut the chain. However, the encampment undoubtedly was a focal point and cause for the participation in the 15 May rally or protest by persons other than encampment members and that at least those other persons were disorderly. In my judgment there was no real prospect of establishing otherwise than that the University was reasonable in forming the view that cutting a chain off a gate adjoining a highway and the invasion of the University's property by a crowd of persons potentially amounted to a public order offence.

173. In relation to health and safety, the University was obliged to consider health and safety on its campus. I assume in favour of the Defendants that the members of the encampment took health and safety seriously and had made their own health and safety arrangements as set out in more detail above. However, the encampment undoubtedly restricted the ability of the University to make what it perceived to be its own necessary health and safety assessments of and arising out of the encampment. In my judgment there is no real prospect of establishing otherwise but that the University was reasonable in forming the view that health and safety concerns were an important reason for attempting to cause the encampment to disperse and for bringing possession proceedings.

174. There is no evidence that, in relation to its decision of 3 June, the University considered all the possible nuances of the encampments members' rights to freedom of speech or their rights under the Equality Act or the ECHR. However, in my view all those rights are substantially covered by the Code and there is no real prospect of its being established that in deciding to enforce its property rights, any failure by the University adequately to consider the encampment members' rights made the decision unlawful at common law. I follow Johnson J's case, *SOAS v Persons Unknown* [2010] EWHC 3977 (Ch) and *Appleby v United Kingdom* (2003) 37 EHRR 38.

175. Complaint was made that the University had not given the encampment members an opportunity to make a case to the University for the establishment and maintenance of the encampment. In my judgment, having regard (i) to the encampment members' failure to request permission under the Code or otherwise; (ii) to what the University reasonably perceived to be the circumstances and risks arising from the encampment and (iii) to the urgency of the situation, the University acted reasonably in making its decision of about 3 June without giving the members of the encampment an opportunity to make a case to the University for the establishment and maintenance of the encampment.

176. Further, the University did not attempt to evict the encampment members without a court order. The encampment members had the opportunity to make such a case as they could against the making of a possession order at the hearing of the application for the possession order.

177. The 1st and 2nd Defendants suggested that the University was motivated by its dislike of their cause or by third parties. There was no real evidence to support that suggestion. The students' allegations as to the implementation of the University's investment policy and its association with Israeli universities if established would lend some slight support to the first part of that suggestion, but the link between any of the alleged activities of the University which indirectly supported Israel's conduct in Gaza and the suggestion that consideration of those activities influenced the University are so remote as not to give rise to a real possibility of such an influence being established. The 1st and 2nd Defendants referred to Professor Bailey having attended a meeting at 10 Downing Street. However, there is no evidence that pressure or undue pressure was put on the University at that meeting or otherwise.

178. Accordingly in my judgment there is no real prospect of the University's decision of about 3 June being successfully challenged on public law grounds. Further, even if there was, that decision, like the earlier decisions, was overtaken by a later decision. Specifically, the decision of the University's Gold committee on 28 June not to grant retrospective permission to the encampment students to hold or to continue to hold the encampment. This was the third possibly relevant decision of the University.

179. On 28 June the University's Gold Committee met to consider the retrospective application for permission. On this occasion the Gold Committee comprised:
179.1. Professor Bailey.
179.2. Dr Ellis.
179.3. Jonathan Morgan (Chief Governance Officer and University Secretary).
179.4. Ms Leggett.
179.5. Louise Lester (Director of Human Resources).
179.6. Sarah Morgan (Chief of Staff).

180. It is material that the Gold Committee included Professor Bailey because under section 6.2 of the Code responsibility for the interpretation and implementation of the Code was delegated to him. The members present did not include the Director of Estates and Facilities who, under section 6.6 of the Code prima facie was the "Designated Officer" in respect of events such as the encampment and protests or rallies from whom authority might be sought. However, (i) the 1st and 2nd Defendants complained about there being no process for a request by them for organisation, so they could scarcely complain about a decision being made by a body other than the Designated Officer and (ii) implementation of the Code could be effected by Professor Bailey.

181. An email contains a note of the meeting of 28 June prepared by Thomas Shaw (Legal Counsel) which Dr Ellis treats as accurate and which I have no reason to think is otherwise than accurate. From this note it appears that the concluding resolution of this meeting was to reject the retrospective application for permission.

182. It is implicit from the continuation of the possession proceedings after that decision of the Gold Committee that the University also decided to continue to pursue or at least not to discontinue the possession claim. There was no evidence about any such decisions except for what was apparent from the settling of the claim with the 1st and 2nd Defendants and the continued pursuit of a possession order by the University before me on 10 July. I did not and

do not see the lack of such evidence as being a relevant gap in the University's evidence. That is because by the time of the Gold Committee decision on 28 June the University's possession proceedings were already on foot and were progressing towards the hearing on 10 July. For the reasons set out above, the University clearly had an unanswerable case to a possession order, subject only to the public law, ECHR and other non-property law points which had been raised. For the reasons I give below, in my judgment the 28 June Gold Committee decision disposed of all the non-property law points, with the consequence that having made the 28 June decision, there was no need for the University to make any further decision about whether or not to continue the proceedings, it could simply allow them to continue which, except for agreeing the settlement with the 1st and 2nd Defendants, it did.

183. Mr Shaw's email note of the Gold Committee meeting of 28 June records, amongst other things, that:

183.1. The meeting noted the broader context of the issues, including: the deeply held, divergent, and genuine views held by some students, staff and members of the wider community relating to the Gaza conflict; the importance of freedom of expression; the University's obligations re the same; the Code; the engagement with the encampment representatives on 20 and 27 June; the complexity of the issues and the importance of balancing the needs and rights of all members of the University community.

183.2. The matters considered or relied upon were:

183.2.1. Criminal damage to the University's property arising from the 15 May rally.

183.2.2. That the encampment had become a focal point for numerous uncontrollable activities, whether initiated by the encampment, against the encampment, or by third parties supporting the encampment. Examples given were:

183.2.2.1. Distribution of staff and student "wanted" posters.

183.2.2.2. The intimidation of Queen Mary security staff.

183.2.2.3. The incident of 21 May which, at the time, was still under investigation by the University.

183.2.2.4. Disruption of University events such as the sustainability conference at the Bio Innovation Centre.

183.2.2.5. Actions taken during the Open Day, contrary to what had been agreed.

183.2.2.6. The encampment's creation of its own security team independent of the University's oversight.

183.2.2.7. Claims by encampment members widely distributed on social media that there will be "*no business as usual*" at the University.

183.2.3. The encampment's location had caused, and would continue to cause, considerable disruption (e.g. open days, graduation events, commercial bookings and disabled access).

183.2.4. The encampment has "also variously:" not followed or circumvented standard University procedures for undertaking events or organising speakers on campus, the University being required by law to have such policies; and, except once, not availed themselves of alternative authorisation channels offered directly to encampment members.

183.2.5. The University often found out about proposed rallies via social media.

183.2.6. The encampment asserted a right to hold activities on the University's grounds without University permission.

183.2.7. The encampment asserted a right to undertake activities on University premises without University authorisation.

183.2.8. The encampment had broadly not coordinated with the University on health and safety, which impacted on the University's ability to meet its own requirements. This included: not accepting help when ambulances were called; not providing the encampment's risk assessment; and continuing to climb on fence pillars after having been asked not to.

183.2.9. The encampment had caused sustained risk and uncertainty outside of University tolerance.

183.2.10. The University had had to incur considerable expense; additional security staff and processes; replanning, altering or cancelling events (Festival of Communities, Open Days and Graduation); not offering the People's Palace for commercial hire; and reallocation of staff time.

183.2.11. The nature of the above matters meant that they could not be sufficiently mitigated regardless of the encampment's location.

183.2.12. Moving the encampment would cause additional location-specific issues. For instance if the encampment were closer to the summer school activities in the northeast residential areas of the campus, there would be additional safeguarding concerns and disruption to residents after the summer period; there were several construction sites on campus; areas of the campus from Graduate square through Geography and Library squares, to the residential areas on the west of campus were required to be free for emergency ingress and egress.

184. Consequently, records Mr Shaw's email: "it was resolved to reject the retrospective application."

185. The fact of or nature of several of the matters considered or relied upon were disputed by the 1st and 2nd Defendants and in correspondence. Specifically:

185.1. The criminal damage which involved the cutting of a lock off the gates on 15 May was said not to have been the work of any of the students on or from the encampment.

185.2. There is an issue as to whether any intimidation of Queen Mary security staff took place and, if so who by.

185.3. Whether the students on the encampment were at fault in respect of the incident of 21 May.

185.4. The extent, if any of the disruption of the sustainability conference at the Bio Innovation Centre.

185.5. Whether actions were taken during the Open Day, contrary to what had been agreed.

185.6. Whether and if so to what extent the encampment's location had caused, and would continue to cause, considerable disruption to open days, graduation events, commercial bookings and disabled access.

185.7. Whether there was non-acceptance of help when ambulances were called and if so whether it was justified.

185.8. Whether the incurring by the University of considerable expense; additional security staff and processes was necessary or reasonable.

186. I have assumed against the University that there was a real prospect that the University was incorrect or mistaken on all those points. However, the Gold Committee was not attempting to resolve those issues as if at a trial. In my judgment the Gold Committee's view of those things was not such that there is a real prospect of successfully establishing that its perception of them was such that no reasonable Gold Committee could have formed the views that they did or that, in forming the views which it did, the Gold Committee took into account things which it ought not to have done, or failed to take into account things which it ought to have done. I repeat that the Gold Committee was not trying the issues. It would have been disproportionate for it to have attempted to have done so. It was, as Mr Shaw's email records, attempting to balance the needs and rights of all members of the University community. That was a decision for it, as also was the route by which it came to that decision, provided that the route chosen was a reasonable one, which, in my judgment it so clearly was, that there was no real prospect of the contrary being established.

187. Foster & Foster's 3 June letter referred to Articles 9, 10, 11 and 14 ECHR. It was submitted in that letter that the fact that the University was threatening the encampment and asking the protesters to disperse was a breach of Article 10. In the 3 June letter it was submitted that the request to disperse was not a proportionate or necessary response to the encampment. It was submitted that the students' encampment was exercising the right to peaceful assembly under Article 11 and that the University by taking a unilateral and unqualified stance of simply asking the encampment to be dispersed was in breach of Article 11. Under Article 14 it was said that the students' position was that they were "being treated less favourably compared to some other Students" and were being unfairly discriminated against.

188. The University may or may not be a public authority, and may or may not have been exercising public functions when it acted or made decisions in relation to the encampment. I do not make any finding on those points, but I have assumed for the purposes of my decision that the University was exercising public functions when it acted or made decisions in relation to the encampment.

189. It is unlawful for a public authority to act in a way which is incompatible with an ECHR right: section 6(1) of the Human Rights Act 1998.

190. The rights and freedoms set out in Articles 9, 10 and 11 ECHR are each ECHR rights: section 1(1)(a) of the 1998 Act.

191. Article 9 provides that everyone has the right to manifest their beliefs. Article 10 provides that everyone has the right to freedom of expression. Article 11 provides that everyone has the right to freedom of assembly and to freedom of association with others. In each case the right is qualified. Conduct of a public authority that interferes with the right may be justified

if the conduct is (a) prescribed by law and (b) necessary for the protection of the rights of others: article 9(2), 10(2), article 11(2).

192. In my judgment the Gold Committee's decision of 28 June and the decision to seek a possession order (see below), as with the making of a summary possession order as discussed above, did not amount to unjustified interferences with the encampment members' rights under articles 9, 10 or 11.

193. My analysis and conclusions in the context of the Gold Committee's decision are essentially the same and for essentially the same reasons as those explained by me above in relation to the making of the possession order. Looking at the first qualification to the article 9, 10 and 11 rights of "prescribed by law": The University is the registered proprietor of the land in question. On the footing that the Gold Committee's decision did not amount to unlawful discrimination, a breach of the public sector equality duty or a breach of section 43 of the 1986 Act, as to all of which, see below, the decision was not unlawful. The University's entitlement to possession and the measure of seeking to evict the encampment members and recover possession of its land by obtaining a summary possession order pursuant to Part 55 of the Civil Procedure Rules was prescribed by law.

194. Looking at the second qualification to the article 9, 10 and 11 rights of "Necessary for the protection of the rights of others": The decision of 27 June not to grant retrospective authority for the encampment and the decision to seek a possession order were made for the purpose of protecting the University's right to possession of its own land, to the exclusion of others. The underlying purpose, therefore, was "the protection of the rights of others" than the encampment members.

195. Sufficient importance: as above, the law gives strong protection to the right of a land-owner to possess its own land which is a right "of real weight when it comes to proportionality" which has been consistently recognised as being of sufficient importance to justify interference with the qualified Convention rights of students who are seeking to trespass on university premises.

196. Rational connection: as above, there is a direct connection between the measure and the University's objective to secure possession of its land.

197. Less intrusive measure: as above, there may have been other measures that could have achieved the same objective, but there is no measure that would have been less intrusive of the encampment members' rights that could have achieved the legitimate aim of restoring the land to the University.

198. Balance: as above, it is not for a court to tell anyone how they should exercise their article 9, 10 and 11 rights. Weight should be attached to the defendants' autonomous choices as to the way in which they wish to manifest their beliefs, or assemble together or express their opinions. The encampment students have advanced reasons as to why they chose to exercise their rights by means of a camp on the lawn. There were, however, many other ways in which the encampment members could have exercised their ECHR rights

without usurping to themselves land that belonged to the University albeit, that in their view other ways would not have been as effective.

199. To repeat what I have said above in the context of the court's decision: the University showed that it was anxious to ensure that its students were able to exercise their ECHR rights. It had adopted the Code which achieved that end. The students decided not to follow the Code, and not to engage with the University, when they started the encampment. No good reason was given for that decision. The encampment members were trespassers. I have assumed that their rights under articles 9, 10 and 11 of the Convention were engaged, but their conduct in establishing and maintaining the encampment was "not at the core of [those] freedom[s]". The weight that is to be given to those rights was significantly attenuated by reason of each of those contextual factors.

200. As against that, again as above, the University's right to possession of its own land is of real weight.

201. For those reasons, the severity of the impact on the encampment students' rights did not (by a significant margin) come anywhere close to outweighing the importance of the objective of the University being able to regain possession of its own land. This was a conclusion that could comfortably and confidently be reached on a summary application.

202. I have considered Article 14 above and my analysis and conclusions in relation to it as there set out apply equally in the present context.

203. It follows that the encampment students did not have a real prospect of establishing that a possession order would amount to an unlawful interference with their ECHR rights. They therefore had no real prospect of successfully defending the claim on that basis.

204. Foster & Foster's 3 June letter referred to the Equality Act 2010; s.43 Education Act (No.2) 1986; and the Higher Education and Research Act 2017. The analysis under these Acts can to some extent be shortened because the relevant parts of them are all taken account of or incorporated into the Code and, provided that the University has complied with its obligations under the Code, it would have complied with its obligations under these Acts.

205. Foster & Foster alleged that the University was in breach of the Code by refusing to say that it would not take disciplinary action against students who were participating in the encampment or otherwise supporting it. Foster & Foster argued that the University was in breach because the threat of disciplinary action prevented or discouraged the encampment students from exercising the academic freedom and free speech which the Acts and the Code encourages and protects. In my judgment, those arguments were irrelevant to the question of possession of the campus and were not a bar to the making of a possession order.

206. The University's decisions in relation to possession of the campus did have the effect of barring one way in which the students might choose to exercise their academic freedom and freedom of speech, but as with the ECHR rights discussed above, the academic freedom and free speech mentioned in the Code were not absolute; the right to enjoy them was

subject to the terms of the Code. The University took those freedoms into account and gave effect to the Code when it made its decision of 28 June not to authorise the encampment and, implicitly, to continue the possession proceedings. The creation and maintenance of the encampment was only one of many ways in which the students could enjoy their academic freedom and freedom of speech. The decisions not to authorise the encampment; to take possession proceedings and to obtain a possession order did not interfere in any substantial way with those freedoms.

207. Yet further, the point about the University refusing to say that it would not take disciplinary action against students who were participating in the encampment or otherwise supporting it, if it ever had any force, fell away to a large extent because by a recital to the consent order against the 1st and 2nd Defendants of 10 July the University confirmed that, in relation to the involvement in setting up the encampment and/or remaining in the encampment having been instructed by the University to disperse, (i) there would be no disciplinary action against any student who was graduating this summer and (ii) any disciplinary action against any student who had no previous disciplinary history would result in a maximum sanction of a warning and/or restrictions on use of the campus the consequences of such outcomes to be in line with the University's ordinary policies, processes, and procedures.

208. Foster & Foster's 3 June letter alleged that the University was in breach of an "Ethical Partnerships policy" which stated that the University was committed to operating ethically across the full range of its activities, thereby safeguarding its reputation as well as that of the higher education sector. In the letter it was submitted that pursuant to that policy, the University should support "the aims and objectives of the student encampment which actively promotes peace in Israel's war on Gaza" and that "the University is acting unlawfully as it is not complying with this policy and working with organisations whose conduct is clearly unethical and in breach of humanitarian law" (quotes from the letter). Reasonable individuals may have different views as to what is and what is not ethical. It is not necessary for me to attempt to decide whether or not the University was or was not acting ethically. Even if it was not, these allegations are one stage removed from the questions of whether the protesters were or are trespassers and of whether the University was acting properly in deciding to take step to end the encampment.

209. There was a speculative suggestion in Foster & Foster's letter of 3 June that the University had had "considerable pressure placed upon it by third parties." There is no evidence before me that it has.

210. The letter alleges breaches by the University of its investment policies. Even if there were such breaches, the existence of such breaches would be one stage removed from whether the University was acting properly in deciding to take steps to end the encampment.

211. By "one stage removed" I mean that the University might be acting in breach of its ethical or investment policies, but the fact or possibility that it is does not go to the lawfulness of the encampment's occupation of the University's property or in substance to the lawfulness of the University's decision to end that occupation. On the last point, if the

University's reasons for deciding to end the encampment included the desirability of preventing attention being drawn to the alleged breaches of its policies, then the decisions might be susceptible to public law challenge, but there is no evidence that the University's decisions included any such reasons.

212. Finally, I mention the content of the relatively short statements of Dr Hedi Viterbo, Dr Poulamis Somanya Ganguly and Dr Keren Weitzbergwere and Ms Ruth Fletcher which were filed on behalf of the 1st and 2nd Defendants:

212.1. Dr Viterbo is a Jewish-Israeli Senior Lecturer in law at the University. He says that to the best of his knowledge the encampment does not pose any threat whatsoever to Jews. On the contrary says Dr Viterbo, "many Jewish members of the university strongly support students' right to set up an encampment as part of their freedom of expression." He continues: "Similar views have been publicly expressed by dozens of thousands of Jewish and other staff and students across the country as detailed below." I do not set out that detail. With respect to Dr Viterbo, his support for the students' right to set up an encampment as part of their freedom of expression begs the questions of whether they have such a right and, if so, what the nature of that right might be.

212.2. Dr Ganguly is a member of staff at the University employed as a postdoctoral research assistant at the School of Mathematical Studies. Dr Ganguly says she was present on the Mile End campus on 13 May when the encampment was set up. She participated in that evening's rally. She says the rally was "inspiring and peaceful, and created a truly welcoming space on campus." She describes support from large parts of the local community and the University for the aims of the encampment. She says the students "have been steadfast in their commitment to keeping the university campus a safe and welcoming space for all". She says the University's additional ID checks and extra security, although "ostensibly" to keep the QMUL community safe, in reality "only serve management in increasing surveillance of students and staff, adding to an already existing climate of repression on campus." She gives her "unequivocal support to the encampment". All I need to say about that is that Gr Ganguly's views differ from the reasonable views of the University's Gold Committee.

212.3. Dr Weitzberg describes herself as a Jewish British-Israeli Senior Lecturer in the School of Politics and International Relations at the University. She says that to the best of her knowledge the encampments do not pose any threat whatsoever to Jewish people. Dr Weitzberg refers to an open letter dated 31 May 2024 which was sent by her and other Jewish and/or Israeli members of staff at the University to the University's senior management expressing their solidarity with the activists in the encampment and their demand to bring the University's financial and academic commitments in line with the values of the University. Dr Weitzberg refers to several open letters by Jewish and/or Israeli members of staff across UK universities and by other academics supporting their local student encampments. Dr Weitzberg considers that evicting the encampment would "constitute an unprecedented infringement of freedom of expression within UK higher education." Dr Weitzberg seeks to distinguish and, apparently, to attempt to justify her use of the phrase "unprecedented infringement of freedom of expression" firstly on the ground that "some" of the cases involving encampments at universities of which she was aware at the time of her statement

involved students taking over university buildings, which the Queen Mary University encampment did not; and that at some universities there "might have been allegations that students involved in the encampments directly caused harm." That some such cases did involve the students taking over buildings, does not mean that a possession order against those that did not take over buildings would be unprecedented. Firstly, in Johnson J's case the students were encamped on open land. Secondly, there is no difference in principle so far as the law of trespass is concerned, though as I understand Dr Weitzman, she does not challenge that, only saying, in effect that where the trespass was not to buildings, the seeking and making of a possession order would be disproportionate. As regards the doing of harm, Dr Weitzman says that, to the best of her knowledge, the University senior management had not accused the encampment students of causing harm. This depends on what is meant by "harm". Very little physical damage has been caused by the encampment. The inevitable slight damage to the grass from the pitching and use of tents is insignificant. However, the University considered that the encampment was doing harm to the University in other ways.

Overall Conclusion

213. My above analysis and conclusions on the various possible grounds for denying the University summary possession show that there was no real prospect of a defence to the claim for summary possession being successful on any of those grounds. In my judgment there was no other compelling reason why the claim should be disposed of at trial. The order for possession was made accordingly.

DEPUTY MASTER HENDERSON

20th September 2024