



Neutral Citation Number: [2024] EWHC 1770 (KB)

Case No: KB-2024-BHM-000127

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 July 2024

Before :

MR JUSTICE JOHNSON

Between :

University of Birmingham

Claimant

- and -

(1) Persons Unknown

(2) Mariyah Ali

Defendants

Katharine Holland KC and Michelle Caney (instructed by Shakespeare Martineau LLP) for the
Claimant

Liz Davies KC and David Renton (instructed by Hodge, Jones and Allen) for the Second
Defendant

Hearing date: 4 July 2024

Approved Judgment

This judgment was handed down by release to The National Archives on 9 July 2024

Mr Justice Johnson:

1. This case concerns an encampment by students (and possibly others) at the University of Birmingham (“the University”) on the University’s campus. The campers are opposed to actions of the Israeli Defence Force in Palestine. They demand that the University takes certain steps to show that it too opposes those actions. The University seeks an order for possession of its land against the campers. It says that a summary order for possession should be made under Part 55 of the Civil Procedure Rules.
2. Mariyah Ali is one of the campers. She is, apparently, the only one who is willing to reveal her identity and take part in these proceedings. She says that there are grounds to dispute the claim and that directions should be given for a trial of the issues. Specifically, she says that the University’s decisions to terminate her licence to use its land, and to seek possession of its land, are unlawful because (i) they discriminate against her on the grounds of her beliefs, contrary to sections 13 and 91 of the Equality Act 2010, (ii) the University has not complied with its public sector equality duty, contrary to section 149 of the 2010 Act, (iii) the decisions amount to a breach of the University’s statutory duty to ensure freedom of speech for university students, contrary to section 43(1) of the Education (No 2) Act 1986, and (iv) they amount to a breach of her rights to freedom of expression and freedom of assembly, contrary to section 6 of the Human Rights Act 1998 read with articles 10 and 11 of the European Convention on Human Rights (“the Convention”).

The test for granting a summary order for possession

3. Part 55 of the Civil Procedure Rules makes provision for possession claims, meaning claims for the recovery of possession of land: CPR 55.1(a). This includes a possession claim against trespassers, meaning (for these purposes) a claim for the recovery of land which the claimant alleges is occupied only by persons who are on the land without the consent of anyone entitled to possession of the land: CPR 55.1(b).
4. Where, in a possession claim against trespassers, the claimant does not know the name of a person in occupation or possession of the land, the claim must be brought against “persons unknown” in addition to any named defendants: CPR 55.3(4).
5. Once a claim has been issued, a hearing must be fixed. At that hearing, or any adjourned hearing, the court may either decide the claim or may give case management directions: CPR 55.8(1). CPR 55.8(2) states:

“Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions... will include the allocation of the claim to a track or directions to enable it to be allocated.”
6. The test for deciding whether to make a summary possession order is the same as the test that applies to the grant of summary judgment under Part 24 of the Civil Procedure Rules: *Global 100 Limited v Maria Laleva* [2021] EWCA Civ 1835, [2022] 1 WLR 1046 *per* Lewison LJ at [13] – [14]. A summary order for possession may therefore be made if there is no real prospect of successfully defending the claim and there is no other compelling reason why the claim should be disposed of at trial: CPR 24.3. If this test is satisfied then it will necessarily follow that the court is satisfied that the claimant

would be likely to establish at a trial that possession should be granted (cf section 12(3) Human Rights Act 1998).

7. The procedure under Part 55 of the Civil Procedure Rules (and its predecessor provision, order 13 of the Rules of the Supreme Court) has been used by universities and other academic institutions on many occasions to secure summary possession orders against students taking part in encampments or “sit-ins”: *University of Essex v Djemal* [1980] 1 WLR 1301, *School of Oriental and African Studies v Persons Unknown* [2010] EWHC 3977 (“SOAS”), *University of Sussex v Protesters* [2010] PLSCS 105, *University of Sussex v Persons Unknown* [2013] EWHC 862 (Ch), *University of Birmingham v Persons Unknown* [2015] EWHC 544, *University of Manchester v Persons Unknown* (transcript, 20 March 2023).

The issues

8. The parties agree the University is the registered freehold and leasehold owner of the land that is occupied by the camp. They agree that the defendants are in occupation of the land. They agree that the defendants do not have an interest in the land or any right to occupy the land. They agree that the University has (purportedly) terminated any licence that they had to use the land.
9. That means that subject to any defence that the defendants might have to the claim, the University is entitled to an order for possession of the land.
10. The parties agree that if the decisions to terminate any licence Ms Ali had to use the land, and to bring possession proceedings, were unlawful then Ms Ali has a real prospect of successfully defending the claim: *Lewisham London Borough Council v Malcolm* [2008] 1 AC 1399 *per* Lord Bingham at [19], *Aster Communities Ltd v Akeman-Livingstone* [2014] EWCA Civ 1081 [2014] 1 WLR 3980 *per* Arden LJ at [2], [2015] UKSC 15 [2015] AC 1399 *per* Baroness Hale at [17], *Forward v Aldwyck Housing Group Ltd* [2019] EWCA Civ 1334 [2019] HLR 47 *per* Longmore LJ at [21], [25] and [31].
11. Ms Ali’s case is that the University’s decisions to terminate any licence she had to use the land, and to seek possession of the land, are unlawful for the reasons set out in paragraph 2 above.
12. The primary issue on this application for a summary possession order is therefore whether Ms Ali has a real prospect of successfully defending the claim on one or more of these grounds.

The facts

13. The basic factual background is largely undisputed. I summarise the facts based on the following sources:
 - (1) The statements of case, so far as the University’s summary of facts in the particulars of claim is admitted in the amended defence.
 - (2) A judgment of Ritchie J given at an earlier stage of these proceedings: [2024] EWHC 1529 (KB) at [5] – [29].

- (3) Written witness statements of Ms Ali.
 - (4) Written witness statements of Dr Nicola Cárdenas Blanco, the University's director of legal services, together with exhibits to those statements.
 - (5) A written witness statement of Mark Lawrence, the University's head of community safety, security and emergency planning, together with exhibits to that statement.
 - (6) Written witness statements of Jon Elsmore, the University's director of student affairs, together with exhibits.
14. The University is a corporate body created by Royal Charter in 1990, It is an exempt charity under schedule 3 to the Charities Act 2011. Its governing body is "the council", and members of the council are the claimant's charitable trustees. It has approximately 38,000 students and 9,000 staff. It has two main campuses in Birmingham, one of which is at Edgbaston, the other at Selly Oak.
 15. The University is the registered freehold and leasehold owner of land at its Edgbaston campus. Part of the Edgbaston campus includes "The Green Heart". The Green Heart is an open area of land which is intended to "provide stimulating, secure and accessible landscaped surroundings." Dr Blanco says that students use The Green Heart both to study on the grass, and to take a break from studies in the adjoining library. Marquees are often erected on The Green Heart for different events in the University's annual calendar, including enrolment in September, a festival to celebrate belonging and inclusion at the start of Semester 2, and a programme of activities in the summer term. The main site for graduation celebrations is a marquee located on The Green Heart.
 16. The University has a Code of Practice on Freedom of Speech ("the Code"). The Code is incorporated in every student's contract with the University. The Code covers demonstrations and protests and other events organised by the University's staff or students. It draws attention to the Public Sector Equality Duty:

"which requires the University to have due regard to the need to eliminate discrimination, harassment, victimisation, and to advance equality of opportunity and foster good relations between people who share 'protected characteristics' (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) and those who do not.

...

...for freedom of speech, the University 'must promote the importance of freedom of speech and academic freedom', and must 'take such steps as are reasonably practicable' to secure freedom of speech within the law. For other duties, including PSED... universities are required to 'have due regard' to the need to achieve the aims of these pieces of legislation. Therefore, in balancing these obligations and making decisions, the University will be mindful that it has a particular responsibility to promote and protect freedom of speech."

17. The Code requires the organiser of an event to comply with its provisions and to follow a prescribed procedure. This includes discussing the activity with the organiser's Head of School before proceeding. The Head of School is then responsible for determining whether (and what) additional measures should be put in place. It states:

“Where the Head of School or Head of College’s assessment is that there are particular risks raised by the event that require a fuller risk assessment and mitigations to be put in place, this should be escalated to and discussed with the Pro-Vice-Chancellor (Education) or the Pro-Vice-Chancellor (Research), who are the Authorising Officers for education and research activities respectively (see section 7.2). Examples of where this might be the case are: teaching or research seminars that involve speech which may fall within paragraph 5.2 of Appendix B; ...or where other risks are raised by the event (for example due to the prevailing political context, or the timing or physical location of the event...). On these occasions, relevant aspects of the procedure in Appendix B of this Code should be followed. Examples include the completion of a risk assessment, and identification and implementation of mitigations that are relevant to the teaching or research activity. The Head of School should discuss these with the Authorising Officer, who is responsible for approving whether academic-related activities that have been escalated in this way may go ahead.”
18. The Code states that the duty to promote and protect freedom of speech means that the starting point for any event is that it should be able to go ahead, but that a risk assessment must be carried out which should include the identification of steps that can be taken to ensure that lawful speech is protected. Such steps may include putting in place measures to ensure that opposing views can be put forward lawfully.
19. Mr Elsmore says that in the academic years commencing in 2020, 2021 and 2022 requests were made for a total of 1,596 events. Permission was granted in all cases. In 1,465 cases (just over 90%) no conditions were imposed. In the remaining 131 cases some conditions were imposed. Since October 2023, a number of requests have been made for “Pro-Palestinian events” to take place at the University. Permission was granted in every case (although Ms Ali gives evidence that in one case the event was required to be postponed and it has not yet been re-arranged). These events included vigils and speaking events. In a small number of cases conditions were imposed (for example to ensure that the event was held in a location away from an unauthorised protest that was taking place at the same time). There were also a number of unauthorised protests. At one of these it is said that an antisemitic banner was displayed, resulting in more than 1,500 complaints and a police investigation (this pre-dates the Green Heart camp and therefore cannot be attributed to that camp). The University became aware of one unauthorised protest in advance, and a letter was sent to the organiser to advise that the protest was not authorised, and explaining how authorisation could be secured.
20. Ms Ali describes herself as a British-Pakistani Muslim woman and one of the University’s undergraduate students. She pays tuition fees to the University via the Student Loans Company. She condemns the attacks perpetrated by Hamas against

Israeli people on 7 October 2023, but she also opposes the response of the Israeli Defence Force since 9 October 2023. She considers that response amounts to genocide, or that there is a risk of genocide. She says that she has “philosophical beliefs in regards to Palestinian Liberation and Self-Determination, sanctity of religious worship; and against Genocide, and against racism and apartheid.” She is a committee member of one of the University’s student societies, the Friends of Palestine Society. She is concerned that the University’s investment strategy “might be directly or indirectly involved, perhaps through profiting from investments in companies who have a very direct, or lesser, involvement in the conflict.” She gives, as an example, a partnership between the University’s engineering department with BAE Systems which, she says, builds fighter jets that are used by the Israeli Defence Force to attack Palestinian civilians.

21. In late April 2024, a student society wrote a letter to the University’s Vice-Chancellor and made a series of demands. These included that the University should apologise “for the University’s delay in condemning Israel’s genocide and scholasticide Gaza, and for its repression of student and staff organising in solidarity with Palestinians, and specifically the University’s currently known investments and partnerships with companies, particularly arms manufacturers, linked to Israel.”
22. From the early hours of 9 May 2024, a camp commenced at The Green Heart. No permission had been sought for the camp, as required by the Code.
23. The camp initially involved approximately 15 people. Those present were served with notices entitled “notice to quit” which stated that the University had not given permission for a protest at The Green Heart, that the occupation amounted to a trespass, and that the University required them to leave the campus immediately. Further such notices were served as new tents appeared on the camp. A series of “demands” were made of the University (relating to its relationship with institutions and businesses connected to Israel) on social media accounts which are said to be associated with the campers.
24. On 17 May 2024, the Vice-Chancellor published a message “to all students”. This said:

“You may have seen that a group of tents has been set up on the Green Heart by individuals protesting in support of Palestine and I wanted to address this in this message. Firstly, I want to emphasise that we will support students who wish to take part in protests about issues that they care deeply about. There are many ways in which this can be done lawfully, including through authorised demonstrations and our staff have worked with students over recent weeks and months to encourage this wherever possible. However, this does not extend to setting up tents where there is no authority or permission to do so. Although the camp has been largely peaceful to date, the Green Heart is a space which is important for University activities, and the presence of the camp (which has also included those who are not members of the University community) causes disruption to current and planned University activities in and close to that area. This includes examinations, the summer programme activities, which take place from the start of June, and the July degree

ceremonies. It is also true that camps at other universities have led to incidents that we do not want to see repeated here.

While I have informed the students involved that I am unable to meet with them whilst the camp is in place, members of the University's senior team are visiting the camp daily for welfare checks. Once the encampment ends, I remain open to meeting with them. As I have said above, there are other ways in which protests can be done lawfully, and we are happy to discuss and facilitate these with the organisers so that those who wish to can continue to protest..."

25. On 24 May 2024, the University sent an email to an email account associated with the campers. It said that the camp would cause "increasing disruption to essential activity planned for the whole student community, including the summer term programme and graduation ceremonies and celebrations".
26. The evidence suggests there were 61 tents on The Green Heart on 3 June 2024, rising to 83 by 20 June 2024. Dr Blanco says that the campers advertise daily schedules of events to take place on The Green Heart and continue to call for external third parties to attend and to join the camp.
27. Ms Ali is one of those taking part in the occupation. She is doing so, she says, to manifest her beliefs. For periods of time there were camps in other parts of the claimant's land, but those camps have ceased following an order made by Ritchie J.
28. The University claim that a number of concerning incidents have occurred, but the facts of these are disputed. For example, there is evidence of red paint being sprayed on one of the University's buildings, but Ms Ali says that was some distance from the camp and there is no evidence that it relates to the camp. In another incident, there is a dispute as to whether an item being carried by a student was a weapon or a religious item. Mr Elsmore says that on 22 May 2024 a group of masked individuals from the camp entered one of the University's building and surrounded the outside of a meeting room where a meeting was taking place. They banged on the door and walls of the meeting room, shouting and chanting loudly, intimidating the staff who were attending the meeting, many of whom were visibly shaken. I was provided with a video of this incident. Mr Elsmore also says:

"The encampment has caused ongoing disruption to the wider university community, with a number of complaints and concerns raised by staff and students - in particular our Jewish staff and students who have described the encampment as having created an uncomfortable and hostile environment. The permanence of the camp is creating an increasingly uncomfortable and hostile environment for all others who use the campus including members of staff. The protestors have stated that their intention is to disrupt University business. Masked protestors have shouted at staff, blocked people's movement around campus, attempted to force their way into University meetings. On Wednesday 5 June 2024 several buildings across the campus were vandalised by masked individuals. This

included spraying red paint across a large part of the front of the Aston Webb building, damaging an important sculpture which is part of the University's Research and Cultural Collections. This act of vandalism was posted on social media by pal_action who state that the action was carried out by midlands_pal_act being one of the groups associated with the camp and it was supported on social media by the bhamliberationzone account."

29. It is not practical, on this summary application where no oral evidence has been heard, to resolve the rights and wrongs of these disputed accounts. I proceed, in Ms Ali's favour, on the basis (which, anyway, is consistent with the bulk of the evidence) that the camp has been (at least largely) peaceful and has not involved any actual or threatened violence.
30. On the other hand, the camp has the undoubted effect that the University's land has been occupied in a way that has prevented the University from using it in the way it would wish. For example, it is unable (so long as the camp continues) to hold graduation ceremonies at The Green Heart, which it would otherwise have done. This amounts to a significant incursion into the University's right to possession of its land. It also prevents the University from operating the Code in the way it would wish, so as to ensure freedom of speech (including for those who hold views that differ from the campers). It also has a potential impact on many of the University's (ex) students, for example by depriving them of having a graduation ceremony at The Green Heart.

The decision to bring possession proceedings

31. The camp was discussed by the University's executive board (which forms part of the claimant's council, and hence its governing body) on 13 May 2024. The Vice Chancellor said that the camp involved "individuals protesting in support of Palestine". The minutes record "There were many ways to protest lawfully and the profile of a cause raised, including through authorised demonstrations. However, this did not extend to setting up and occupying tents on University property without authority or permission to do so."
32. On 3 June 2024 the Board's minutes record:

"...there had been escalation and growing disruption to University business and student events. There had been several incursions by members of the camp wearing masks into Aston Webb. There had been a demonstration outside the meeting of the Investment Sub-committee. Attempts had been made by protestors to enter the Vice-Chancellor's Office. The student summer programme due to be held in the Green Heart and Chancellor's Court had been disrupted as the encampment occupied the spaces where the programme was to be held. The Graduation Ball due to be held in Chancellor's Court was also at risk of not going ahead. Those in the encampment had stated publicly their intention to disrupt University activities. It was particularly concerning that junior members of staff had been targeted and reported feeling intimidated and upset by the masked protestors. There was a significant risk that the

encampments and actions of protestors would disrupt the forthcoming Graduation Ball, Open Days, and Graduation Ceremonies. Other universities with encampments had seen growing escalation with very concerning incidents at Manchester, Oxford, Leeds and Exeter. Nottingham, the only University to go to court to date over the issue, had not experienced such escalation; the University had made offers to the encampment to meet them to listen to their concerns and to offer alternative means for them to protest peacefully if they ended their encampment but all these had been rejected by the camp with the message that they would only meet the Vice-Chancellor to discuss their demands. The University would make another offer to meet this week, this time with the Pro-Vice-Chancellor (Education), noting the threat to the Graduation Ball and other student events;

...

UEB discussed the matter. UEB... noting its concern over the camp's disruption of and risks to University business and key events for students, such as the Graduation Ball and Graduation Ceremonies, as well as the Open Days.

Resolved that in relation to the encampments, the University would:

(i) apply for a Possession Order in the High Court...

(ii) continue to make further attempts to engage with the encampment, noting the Pro-Vice-Chancellor (Education) would offer this week to meet the encampment."

33. On 11 June 2024, the Vice-Chancellor sent a message to students in which he explained the decision to bring possession proceedings:

"Taking legal action is not a step that any of us would take lightly and I recognise that not everyone will agree with this approach. This is now necessary as a result of the escalation and unacceptable behaviour, and in order to look after the interests of the whole University community, including students and graduands, and their families and friends who wish to enjoy their graduation ceremonies without concern that their special day will be disrupted."

34. Dr Blanco says that the decision to bring possession proceedings was made because the camp was unauthorised, it amounted to a trespass, it was interfering with the University's activities and it was having a negative impact on other members of the claimant's community. She says the decision had nothing to do with the beliefs of Ms Ali or the other defendants, and that the same decision would have been made if the protest related to any other cause.
35. Dr Blanco is not a member of the Executive Board. She was not present when the decision to seek a possession order was made. She does not identify the source of her

knowledge for this part of her witness statement. I do not therefore attach any weight to it.

Procedural background

36. The University issued proceedings on 10 June 2024. A hearing took place on 14 June 2024, before Ritchie J. Hodge, Jones and Allen solicitors wrote a letter to the court “in support of the Persons Unknown” indicating that they were not yet formally instructed but intended to act as legal representatives once instructions had been obtained and funding arranged. They sought an adjournment of 21 days. Following a hearing on 14 June 2024, Ritchie J handed down a reserved judgment on 19 June 2024. He made an order joining Ms Ali as a second defendant to the claim and recording that the proceedings had been validly served against all defendants. He also granted summary orders for possession:

(1) in respect of part of the University’s land known as “Chancellor’s Court” against all defendants.

(2) In respect of Edgbaston Campus against all those in occupation of that campus save for any of the University’s students or staff.

37. As to the balance of the claim, Ritchie J adjourned the proceedings to 25 June 2024.

38. On 19 June 2024 Hodge, Jones & Allen filed a notice of acting on behalf of Ms Ali. At the adjourned hearing on 25 June 2024, Ritchie J recused himself from further involvement in the proceedings. The hearing was relisted for hearing on 4 July 2024.

Does Ms Ali have a real prospect of successfully defending the claim?

39. In order to answer this question, it is necessary to determine whether Ms Ali has a real prospect of success in respect of any of her four defences (see paragraph 2 above).

(i) Unlawful discrimination: section 13 of the Equality Act 2010

40. A person’s “religion or belief” is a protected characteristic for the purposes of the Equality Act 2010: section 4. A person’s belief, in this context, means any religious or philosophical belief (or lack of belief): section 10(2). For the purposes of the 2010 Act, a person discriminates against another if, because of a protected characteristic, they treat that person less favourably than they treat or would treat others: section 13(1). The University’s governing body must not discriminate against Ms Ali (or any other student) by not affording her access to a facility, or by subjecting her to any other detriment: section 91(2)(d) and 91(2)(f) of the Equality Act 2010. If there are facts from which the court could decide, in the absence of any other explanation, that the University contravened the 2010 Act then the court must hold that the contravention occurred, unless the University proves otherwise: section 136 of the 2010 Act.

41. The University disputes that Ms Ali has a belief that is protected by the 2010 Act. It says that Ms Ali’s claimed beliefs do not satisfy the criteria required to constitute a philosophical belief within the meaning of the 2010 Act, as explained by Burton J in *Grainger PLC v Nicholson* [2010] ICR 360 at [24]. I heard extensive submissions on this issue from Liz Davies KC for Ms Ali and Michelle Caney (who argued this part of

the case for the University). It is the type of issue which may well be better determined following oral evidence at trial rather than at a summary hearing. In the event, it is not necessary to determine the issue and I prefer not to do so. I am content to assume (but, emphatically, without in any way deciding the point) that Ms Ali has a real prospect of establishing that she has a relevant philosophical belief, amounting to a protected characteristic.

42. The next issue is whether the University's governing body decided to terminate any licence Ms Ali had to use the land, and to bring these proceedings, because of her belief. There is no evidence to support such a suggestion. The basic facts do not suggest that this was the University's motivation. Ms Ali has not provided any evidence to support her contention that this was the motivation for terminating her licence or bringing possession proceedings. The University has disclosed minutes of the meetings that resulted in the decision to bring possession proceedings. Nothing in those minutes suggests that the decision was motivated by Ms Ali's beliefs. Rather, they suggest that they were motivated by the unauthorised nature of the camp and the disruption it caused. That is consistent with the communications sent by the Vice Chancellor before and after the decision was made. Ms Ali has not identified any comparator unauthorised camp that was permitted to proceed where the campers espoused different beliefs. By contrast, the University points to a previous instance where it has taken enforcement action against an unauthorised camp which had nothing to do with Israel or Palestine: *University of Birmingham v Persons Unknown* [2015] EWHC 544 (Ch).
43. Ms Davies and David Renton point out, in their written submissions, that at a hearing under CPR 55.8 the court is not obliged to accept the claimant's evidence. I agree. They also point out that at a trial they would be able to cross-examine the witnesses. Again, I agree. They also point out that this hearing is taking place prior to disclosure. Again, I agree. But that does not mean that the case should be permitted to continue just because something might emerge on disclosure or in cross-examination.
44. There is nothing in the facts, as they have emerged from the available evidence, which would entitle the court to decide that the University terminated Ms Ali's licence, or brought these proceedings, because of Ms Ali's beliefs. The reverse burden of proof under section 136 of the 2010 Act is not triggered. Ms Ali does not therefore have any real prospect of establishing a contravention of section 91(2) of the 2010 Act on the grounds of direct discrimination within the meaning of section 13 of the 2010 Act.
45. In the course of her oral submissions, Ms Davies recognised that this element of the case could not be sustained. Very properly, she formally withdrew the claim for direct discrimination.
46. Ms Davies maintains, however, that this is not fatal to Ms Ali's claim for discrimination contrary to the 2010 Act. She argues that even if there had not been direct discrimination on the grounds of Ms Ali's belief, the University did discriminate against Ms Ali on the grounds of actions taken by her (the participation in the camp) which were a manifestation of her belief. This, says Ms Davies, is sufficient to constitute unlawful discrimination. She relies on the decision of Eady J, President of the Employment Appeal Tribunal, in *Higgs v Farmor's School* [2023] EAT 89 [2023] ICR 1072. That case concerned claims in the employment tribunal for direct discrimination on grounds of religion or belief contrary to section 13 of the 2010 Act. Eady J drew attention to EU law, and specifically Council Directive 2000/78/EC which aims to combat certain

forms of discrimination in the workplace. The protection afforded by the Directive extends not just to the holding of a particular belief, but also its manifestation: Eady J at [32], *Bouagnaoui v Micropole SA* (Case C-188/15) [2018] ICR 139 at [30]. Further, article 9 of the Convention protects the freedom to manifest one's religion or beliefs. The employment tribunal has no jurisdiction to entertain a claim for breach of Convention rights, but claims for breach of the Equality Act 2010 must be determined compatibly, so far as possible, with those rights: Eady J at [35]. Eady J explained the step-by-step analytical approach that should be taken to such a claim "within the employment context": Eady J at [94]. That analytical approach corresponds to the test for deciding whether an interference with the freedom to manifest breach of article 9 of the Convention is justified.

47. The present case does not arise in the employment context. The court (unlike the employment tribunal) has jurisdiction to determine a claim for breach of Convention rights, and the court, as a public body, must itself act compatibly with Convention rights. I do not see any basis on which Ms Ali could realistically fail in an argument under article 9 of the Convention, but succeed in an argument raised under the Equality Act 2010 interpreted in the way explained in *Higgs*. For all these reasons, I prefer to deal with this aspect of the case by reference to article 9 of the Convention – see paragraphs 58 – 75 below.

(ii) Breach of public sector equality duty: section 149 of the 2010 Act

48. Section 149 of the Equality Act 2010 states:

“Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act...
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- ...
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.

- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are—
...
religion or belief;
...
...”

49. Public authority: The duty under section 149 of the 2010 Act only applies to public authorities, or to a person exercising public functions. Katharine Holland KC, for the University, submits that a university is not a public authority, and it is not, here, exercising public functions. The relevant function, she says, is the claim for possession of land that it owns. It owns its land in a purely private capacity, and there is no public element to its decision to enforce its right to possess its own land.
50. There may well be force in this argument in some contexts, for example if a university seeks possession of a property that it has leased. However, the test for determining whether a person is exercising public functions is multi-factorial, fact-sensitive and complex. Here, the defendants claim to be exercising public law rights. The University owes statutory duties to its students, including under section 43 of the 1986 Act. Disputes concerning a University’s compliance with section 43 of the 1986 Act may be brought by way of a claim for judicial review - that provision does not create private rights which can readily be assured by other means: *R v University College London ex parte Riniker* [1995] ELR 213 *per* Sedley J at 216. The University is seeking an order for possession in a context where Ms Ali claims to be exercising her rights of freedom of expression and assembly, and her right to manifest her beliefs. I do not consider that it would be appropriate to make a final ruling on the issue following a summary hearing where there has been no disclosure and no oral evidence. I therefore assume, for the purposes of this decision, and in Ms Ali’s favour, that the decisions to terminate Ms Ali’s licence and to seek a possession order did amount to the exercise of public functions.
51. Breach of section 149: The next question is whether the University breached its obligations under section 149. Ms Davies relies on well-established principles as to the application of section 149 of the 2010 Act, as explained by McCombe LJ in *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345. She draws particular attention to:
- (1) The intention of Parliament that considerations of equality of opportunity are placed at the centre of formulation of policy by all public authorities.
 - (2) The heavy burden on public authorities in discharging the duty and ensuring the availability of evidence to demonstrate that discharge.
 - (3) The obligation to fulfil the duty before and at the time when a particular policy is being considered.

- (4) The obligation to assess the risk and extent of any adverse impact and the ways in which such a risk may be eliminated, before adopting a proposed policy.
- (5) The need for the duty to be discharged in substance rather than by ticking boxes.
52. Ms Davies submits that there was a breach of this obligation. At no point did the University assess the risk and extent of any adverse impact that its decision to seek possession might have, and the ways in which such a risk might be eliminated. There was simply a “one-way discussion” with no consideration of the fact that Ms Ali had rights that needed to be accommodated. Nor was any consideration given to taking lesser steps, such as meeting the students and listening to them.
53. The evidence convincingly shows that the University had due regard to the factors identified in section 149 of the 2010 Act, including the need to foster good relations between persons who share a relevant protected characteristic and those who do not (and, specifically in this context, those who have conflicting views or beliefs), and the need to tackle prejudice and to promote understanding. The relevant underlying policy is the Code. The public sector equality duty is explicitly referenced in the Code, and not simply in a “tick box” manner. The substantive content of the Code indicates a real commitment to structured decision-making on requests to hold events on campus. It does so in a way that is designed to ensure freedom of speech and to accommodate those who hold different, challenging, and opposing views and beliefs. The evidence shows that, in practice, the University has delivered on that commitment. It authorises hundreds of diverse events every year, and has not refused authorisation for any single event. It has imposed conditions in only a small proportion of cases. Where it has done so it appears from the evidence that that has been to enhance, promote and protect freedom of speech, rather than in any way to undermine the expression of opinion or manifestation of belief. It has authorised many events which have enabled Ms Ali, and those who hold similar beliefs, to express their views and manifest their beliefs. It has apparently tolerated similar events, including protests, which were held without authorisation (there is no evidence of any disciplinary action being taken against students in such circumstances). It did not immediately issue proceedings when the camp commenced on 9 May 2024. The Vice Chancellor’s message to students on 17 May 2024 expressed a commitment to support students who wished to take part in protests about issues that they cared deeply about. It pointed out that there were many ways in which that could be done lawfully, including through authorised demonstrations. It expressed a commitment to work with the organisers of the camp to enable them to continue to protest. The decision to issue proceedings was not made until 3 June 2024. It is now accepted that the decision was not made because of Ms Ali’s beliefs, or the beliefs of others taking part in the encampment. The decision was made because of the impact of the camp on the rights of the University and its students, and because those taking part in the camp were unwilling to bring it to an end peacefully and explore other ways of manifesting their beliefs.
54. All of this demonstrates that throughout its decision-making process the University practically and substantively had regard to its public sector equality duty. Ms Ali does not have a real prospect of success on this issue.

(iii) Breach of section 43 of the Education (No 2) Act 1986

55. Section 43 of the 1986 Act states:

“Freedom of speech in universities, polytechnics and colleges

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

56. Subsection (2): It is convenient first to address the specific duty imposed by subsection (2). Ms Ali claims a breach of this duty because, she says, the University is denying her the use of The Green Heart on a ground connected with her beliefs or on a ground connected with the objectives of those taking part in the camp. Ms Holland does not dispute that The Green Heart is “premises” within the meaning of section 43(2). Her primary argument is that the defendants are not using the premises. They are, instead, occupying (part of) the premises. That is a false dichotomy. The defendants are using the premises by occupying them for their encampment. As to the reason why the University seeks to deny the defendants the use of the premises, I have already rejected the discrimination claim. That reason has no connection with the beliefs of the defendants or their objectives. Ms Ali thus has no real prospect of establishing a breach of subsection (2).
57. Subsection (1): The University has promulgated a Code which is intended to ensure that freedom of speech within the law is secured for its members, students and employees and for visiting speakers. The evidence shows that the Code achieves its intended effect. The University has thus taken such steps as are reasonably practicable to ensure that freedom of speech is secured. Its decision to seek a summary possession order in this case, where the defendants have decided not to act in accordance with the Code, does not amount to a breach of subsection (1).

(iv) Breach of Convention rights: section 6 of the Human Rights Act 1998 read with articles 9, 10 and 11 of the Convention

58. It is unlawful for a public authority to act in a way which is incompatible with a Convention right: section 6(1) of the Human Rights Act 1998. The rights and freedoms set out in Articles 9, 10 and 11 of the Convention are each Convention rights: section 1(1)(a) of the 1998 Act. 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).

59. Ms Ali contends that the decision to terminate her licence to use the land, the decision to seek a possession order, and (if it were made) a summary possession order, each amount to an unjustified interference with her rights under articles 10 and 11. It is convenient, at this point, to consider also whether it would amount to an unjustified interference with her rights under article 9 (see paragraph 47 above).
60. For the reasons given at paragraph 50 above, I proceed on the basis that Ms Ali has a real prospect of establishing that the University is, in this context, to be treated as a public authority for the purposes of the Human Rights Act 1998. Even if that is wrong, the court is a public authority and must act compatibly with Convention rights.
61. Ms Holland disputes that a summary possession order will interfere with Ms Ali's rights under articles 9, 10 and 11 of the Convention. She says that Ms Ali is not exercising such rights by camping on the University's land and that the Convention does not give anyone a right to trespass: *Richardson v Director of Public Prosecutions* [2014] UKSC 8, [2014] AC 635 *per* Lord Hughes at [3], *Director of Public Prosecutions v Cuciurean* [2022] EWHC 736 (Admin), [2022] QB 888 *per* Lord Burnett CJ at [45], *Ineos Upstream Limited v Persons Unknown* [2019] EWCA Civ 515, [2019] 4 WLR 100 *per* Longmore LJ at [36]. Further, she submits that there is no scope for a Convention defence to a possession claim under Part 55 of the Civil Procedure Rules: *McDonald v McDonald* [2016] UKSC 28, [2017] AC 273.
62. I do not consider that this point is straightforward. In *Cuciurean*, Lord Burnett CJ considered it was "highly arguable" that articles 10 and 11 were not engaged on the facts of that case, but did not ultimately determine the issue (see at [45]). There are many cases where articles 10 and 11 have been found to be engaged in the context of conduct which amounts to a trespass, or an obstruction of the highway, or is disruptive: *Director of Public Prosecutions v Ziegler* [2021] UKSC 23, [2022] AC 408 *per* Lord Hamblen and Lord Stephens at [64] – [69], *Steel v United Kingdom* (1998) 28 EHRR 603 at [142], *Appleby v United Kingdom* (2003) 37 EHRR 38, *Kudrevičius v Lithuania* (2016) 62 EHRR 34 at [98], *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9, [2020] 4 WLR 29 (see *per* Leggatt LJ at [23], [43] and [45]), *Hall v Mayor of London* [2010] EWCA (Civ) 817 *per* Lord Neuberger MR at [37] – [42], *City of London Corporation v Samede* [2012] EWCA Civ 160, [2012] 2 All ER 1039, *R (Tabernacle) v Secretary of State for Defence* [2009] EWCA Civ 23 *per* Laws LJ at [37].
63. In *Hicks v Director of Public Prosecutions* [2023] EWHC 1089 (Admin) Chamberlain J (at [46]) described a submission that "articles 10 and 11 are not engaged where expressive speech takes place on private land on which the speaker is trespassing" as "ambitious", but it was not necessary to decide the point. Bean LJ agreed (at [52]).
64. In the present case it is also unnecessary to resolve the point. I prefer not to do so on what is a summary application where there has been no process of disclosure and no oral evidence. I assume, in Ms Ali's favour, that the decision to make a possession order, and the making of an order, do interfere with her rights under articles 9, 10 and 11 of the Convention.

65. (a) Prescribed by law: The University is the registered owner of the land at The Green Heart. Its decisions to terminate any licence that Ms Ali had, and to seek a summary possession order, do not amount to unlawful discrimination, a breach of the public sector equality duty or a breach of section 43 of the 1986 Act. These decisions are not otherwise unlawful. The making of a summary possession order is regulated by Part 55 of the Civil Procedure Rules. Those decisions, and the making of a summary possession order, are thus prescribed by law.
66. (b) Necessary for the protection of the rights of others: The termination of any licence, the decision to seek a possession order, and the making of an order, is for the purpose of protecting the University's right to occupy its own land, to the exclusion of others. The underlying purpose, therefore, is "the protection of the rights of others".
67. In order to show that the interference with Ms Ali's Convention rights is necessary for the protection of its property rights, the University must show that the measure constituting the interference (the decisions to terminate the licence and seek a possession order, and the making of the order) is proportionate. That means that (1) the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) the measure is rationally connected to the objective, (3) no less intrusive measure could be used without unacceptably compromising the achievement of the objective, and (4) balancing the severity of the measure's effects on Ms Ali's rights against the importance of the objective, to the extent that the measure will contribute to its achievement, the former does not outweigh the latter: *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 39, [2014] AC 700 *per* Lord Reed at [74].
68. *(1) 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 (Nos 1 and 2)* [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.
69. *(2) 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: *Secretary of State for Environment Food and Rural Affairs v Meier* [2009] UKSC 11, [2009] 1 WLR 2780 *per* Baroness Hale at [35] and Lord Collins at [96].
70. *(3) Less intrusive measure:* There may be other measures that could achieve the same objective. It might (subject to the application of the Protection from Eviction Act 1977) be open to the University to exercise the remedy of self-help. Or it might be open to the University to seek injunctive relief to prevent the trespass. Neither of these measures would be less intrusive of Ms Ali's Convention rights. They would both have at least the same impact on those rights. Even if the remedy of self-help is available, it is undesirable because of the risk of disturbance and the potential for use of force that is not regulated by a court order. "In a civilised society, the courts should themselves provide a remedy which is speedy and effective: and thus make self-help unnecessary": *McPhail v Persons Unknown* [1973] Ch 477 *per* Lord Denning MR at 456E and 457C. An injunction could be tailored. It might, for example, permit one token tent symbolically to remain to enable the University to take possession of the rest of the land whilst allowing the defendants still to exercise their Convention rights on the land

through the medium of a single tent. That would not, however, achieve the legitimate aim of enabling the University to recover all its land, rather than only part of its land. There is no measure that is less intrusive of the defendants' rights that could achieve the legitimate aim of restoring the land to the University.

71. (4) *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 wish to manifest their beliefs, or assemble together or express their opinions. Ms Ali has, anyway, advanced cogent reasons as to why the defendants have chosen to exercise their rights by means of a camp at The Green Heart.
72. There are, however, many other ways in which the defendants could exercise their Convention rights without usurping to themselves land that belongs to the University. The University has shown that it is anxious to ensure that its students, including Ms Ali, are able to exercise their Convention rights. It has formulated a Code which achieves that end. That Code forms part of the contract between the University and its students. By entering into that contract, Ms Ali agreed to comply with the Code. She decided to breach that agreement, and not to follow the Code, and not to engage with the University, when she embarked on the camp. No good reason has been given by Ms Ali, or any of the other defendants, for that decision. It impacts on the University's ability to ensure freedom of speech for its students, for example by ensuring that alternative or competing opinions are also heard. Ms Ali's licence to use the land at The Green Heart has been terminated. The termination of her licence was lawful (subject to the questions that arise under the 1998 Act). She is a trespasser. I have assumed that her rights under articles 9, 10 and 11 of the Convention are engaged, but her conduct is "not at the core of [those] freedom[s]": *Kudrevičius* at [97]. The weight that is to be given to those rights is significantly attenuated by reason of each of these contextual factors.
73. As against that, the University's right to possession of its own land is of real weight (see paragraph 68 above). That is all the more so where the University positively seeks to use its land in a way that gives full voice to rights of free expression and where part of the reason for seeking possession is because the campers have completely disregarded a framework that is designed to protect freedom of expression.
74. For these reasons, the severity of the impact on Ms Ali's rights does 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 is a conclusion that can comfortably and confidently be reached on a summary application.
75. It follows that Ms Ali does not have a real prospect of establishing that a possession order would amount to an unlawful interference with her Convention rights. She thus has no real prospect of successfully defending the claim on that basis.

Is there any other compelling reason why the claim should go to trial?

76. The parties sought to argue issues which are not straightforward and which are potentially fact sensitive: whether the University is exercising a public function when it seeks a summary possession order in this context, whether the defendants' beliefs amount to a protected characteristic within the meaning of the 2010 Act, whether the defendants' activities fall within the scope of articles 9, 10 or 11 of the Convention, and

whether the defendants are entitled to rely on the Convention as a defence to a claim for the summary possession of land. If any of them had required resolution then it might well have been better to determine them only after a process of disclosure, and after hearing oral evidence tested under cross-examination at a trial. That may then have amounted to a compelling reason why the claim should have proceeded to a trial, rather than being subject to summary determination.

77. It is not necessary to determine those issues and I prefer not to do so. Irrespective of the answer to those issues, Ms Ali has no real prospect of establishing discrimination on the grounds of her belief, a breach of the public sector equality duty, a breach of section 43 of the 1986 Act or a breach of her Convention rights. She therefore has no real prospect of success on any of her defences to the claim. There is good reason for claims like this to be determined summarily (“a remedy which is speedy and effective”) where it is possible to do so. That is the case here. There is no other compelling reason why the case should go to trial. Put another way, there is no reason not to exercise the discretion in CPR 55.8(1) to make a summary order for possession.

Claim against “persons unknown”

78. The claim against the first defendant, the “persons unknown”, is not defended. The University has proved its case against the first defendant. It has proved that it has a right to regain possession of its land. Its decision to terminate any licence to use the land, and to seek a summary possession order, was not unlawful on any ground, and the granting of a summary possession order is compatible with the defendants’ Convention rights. The University has taken all practicable steps to notify the “persons unknown” of these proceedings and this hearing (section 12(2)(a) Human Rights Act 1998).

Relief

79. It follows that a summary order for possession will be made.
80. A residual issue concerns whether the order should be made only in respect of the land at The Green Heart, or whether it should extend to the remainder of the University’s land at Edgbaston Campus and also to its land at the Selly Oak Campus and the Exchange Building. There is currently no camp at the Edgbaston Campus besides that at The Green Heart. Nor is there any camp at the Selly Oak Campus or the Exchange Building. Nor is there evidence of any immediate risk that anybody might unlawfully occupy that land.
81. However, there was an occupation of the Chancellor’s Court as part of the activity which is now continuing at The Green Heart. The camp at The Green Heart commenced without warning, and in the early hours of the morning. The evidence suggests that in other universities similar camps are taking place, and that there is the potential where a possession order is made in only one limited area for a camp simply to move to another part of the campus. In these circumstances, the authorities recognise that it is justified to make a summary possession order not just in respect of the occupied land, but also other land belonging to the University (albeit this issue has been left open by the Supreme Court): *Djemat per Buckley LJ* at 1304G and *per Shaw LJ* at 1305D, *Meier per Lord Neuberger* at [69] – [70], *SOAS per Henderson J* at [31], *University of Sussex v Protesters per Vos J* at [8] – [9], *University of Sussex v Persons Unknown per Sales*

J at [26]. It is justified to make the wider order that is sought in the circumstances of the present case.

Outcome

82. There is no real prospect of Ms Ali successfully showing that the University has discriminated against her, contrary to section 91 and 13 of the 2010 Act, or that it has breached its public sector equality duty, or that it has breached section 43 of the 1986 Act, or that a possession order would be incompatible with her Convention rights.
83. The defendants have no real prospect of successfully defending the claim, and there is no other compelling reason why the claim should proceed to trial or why a summary possession order should not be made.
84. The University has therefore established that it is entitled to a summary possession order.