



Neutral Citation Number: [2024] EWHC 1771 (KB)

Case No: KB-2024-BHM-000107

**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 Nottingham**

**Claimant**

**- and -**

**(1) Mx Joel Butterworth (also known as River  
Butterworth) (they/them)**

**(2) Persons Unknown**

**Defendants**

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

Owen Greenhall and Audrey Mogan (instructed by Bindmans LLP) for the First Defendant

Hearing date: 5 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 a camp by students (and possibly others) at the University of Nottingham (“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. River Butterworth is one of the campers. They are the only camper who is taking part in these proceedings. They say that there are grounds to dispute the claim and that directions should be given for a trial of the issues. Specifically, they say that that the University’s decisions to terminate their licence to use its land, and to seek possession of its land, are unlawful because (i) the University has failed to comply with its duties and obligations under statute and its own policies (“the public law defence”) and (ii) the decisions amount to a breach of their 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 human rights defence”).
3. Mx Butterworth was a student at the University and is at the end of their term as the postgraduate officer of the University’s student union. The day of the hearing was (at least on one view) their final day at the University. Katharine Holland KC, for the University, did not suggest that this was necessarily a fundamental obstacle to the claim. I agree. The decisions which Mx Butterworth seeks to impugn were made at a time when they were undoubtedly a member of the University. In any event, there are other campers who are students at the University. It is convenient to use Mx Butterworth’s defence to the claim as a vehicle to assess the issues that arise when deciding whether the University should be granted a possession order.
4. This application was heard the day after an application by the University of Birmingham which raises similar issues. The representatives of the Universities are the same in each case. The representatives of the defendants are different, but Owen Greenhall, who appears for Mx Butterworth, helpfully attended the Birmingham hearing, and David Renton (junior counsel in the Birmingham case) helpfully attended the Nottingham hearing. I am giving judgment in both cases at the same time. In this judgment I make reference to the reasoning in the Birmingham judgment: [2024] EWHC 1770 (KB).

**The test for granting a summary order for possession**

5. The test for granting a summary order for possession is whether there is (a) no real prospect of a successful defence to the claim and (b) no other compelling reason why the claim should be disposed of at trial: *Birmingham* at [3] – [7].

**The issues**

6. Mx Butterworth put the University to proof that it is the registered freehold owner of the land. The University adduced Land Registry records that establish its ownership of the land, and Mx Butterworth did not suggest otherwise.

7. Mx Butterworth agrees that they are in occupation of the land. They did not identify any interest in the land or any right to occupy the land. They agree that any licence that they had to use the land has (purportedly) been terminated.
8. 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 its land.
9. The parties agree that if the decisions to terminate any licence Mx Butterworth had to use the land, and to bring possession proceedings, were unlawful then Mx Butterworth would have a real prospect of successfully defending the claim: *Birmingham* at [10].
10. Mx Butterworth's case is that the University's decisions to terminate any licence they had to use the land, and to seek possession of the land, are unlawful for the reasons set out in paragraph 2 above.
11. The primary issue on this application for a summary possession order is therefore whether Mx Butterworth has a real prospect of successfully defending the claim on one or both of those grounds.

### **The facts**

12. The basic factual background is largely undisputed. I summarise the facts based on the following sources:
  - (1) The statements of case.
  - (2) Written statements of Mx Butterworth dated 11 June 2024 and 1 July 2024.
  - (3) Written statements of Asher Rose, Adrian Black, Professor Andreas Bieler, Dr Andreas Wittel, Animah Kosai, Anthony Dranfield, Caroline Morris, Chloe Birney, Dr Koshka Duff, Lily Friesen, Professor Mark Jago, Perveen Hussain, Sage Stephanou, Syed Shah, Dr Thomas Kemp. They have each visited the encampment and speak of it variously as being hospitable, approachable, inclusive, peaceful, welcoming, well organised, safe, friendly, respectful, calm, quiet and gentle, with no signs of aggressive or provocative or disruptive behaviour, or antisemitism or incitement to violence.
  - (4) A witness statement of Jason Carter, the University's Director of Governance and Assurance.
  - (5) Witness statements of Dr Paul Greatrix, the University's Registrar.
  - (6) A witness statement of Stuart Croy, the University's Head of Security.
13. The second statement of Dr Greatrix and the statement of Mr Croy were served after the deadline for filing witness statements (but they relate to events that postdate that deadline). Mx Butterworth does not object to the statements being adduced. I grant the University permission to rely on those statements, and I abridge time for the service of those statements.

14. The University is a corporation formed by Royal Charter in 1948 (having previously been a civic college since 1881). It has about 34,000 students and 8,000 staff. It is an educational charity that is regulated by the Office of Students. It enters into a contract with each of its students. Under this contract, each student agrees to comply with the University's policies.
15. The University maintains a governance policy entitled "Free Speech and Academic Freedom at the University of Nottingham". Mx Butterworth relies on the following extract from this policy:

"Free Speech and Academic Freedom at the University of Nottingham"

Freedom of speech and the free exchange of ideas are central to the University of Nottingham's mission of advancing truth, knowledge, and understanding. Pursuit of these aims requires free and open enquiry within the law, including the airing of ideas or perspectives which may be unpopular or cause offence. This is especially important given that many ideas which were previously regarded as deeply controversial or offensive are now widely accepted. Thus, a commitment to freedom of speech must apply to challenging or unpopular ideas as well as ideas about which there is broad consensus.

The University commits to protecting and promoting free speech and academic freedom so that students and staff can become acquainted with new information and ideas and with diverse viewpoints. The University provides an inclusive and supportive environment that encourages civil and peaceful debate, one in which students and staff can challenge their own and others' beliefs and opinions and scrutinise these on their merits. This commitment reflects the University's core values of inclusivity, ambition, openness, fairness, and respect, and it is consistent with its legal responsibility to protect and promote free speech and academic freedom as detailed in the Higher Education (Freedom of Speech) Act 2023.

Promoting Free Speech and supporting people

...Freedom of expression applies to all who wish to seek, receive, or impart information and ideas of all kinds, and includes the right to protest peacefully; protest is itself a legitimate expression of freedom of speech. In seeking to protect the freedom of speech of its staff and students, the University will take appropriate measures, in accordance with the terms of this statement, to assist staff and students whose freedom of speech is threatened. We prioritise the wellbeing of our staff and students and provide a range of services designed to support them whilst working and studying at the University.

...

Civil Debate within the law

...These commitments inform all of the University of Nottingham's specific policies that have implications for the freedom of speech and academic freedom. Whilst it is recognised that it can be difficult in practice to balance competing rights and obligations, this statement provides a framework for any decision-making on behalf of the University that may have implications for the freedom of speech, which should always take into account relevant domestic and international standards."

16. The University maintains a Code of Practice that deals with meetings or other activities on the University's premises ("the Code"). This states that so far as is reasonably practicable, no premises of the University shall be denied to anyone on any grounds connected with the beliefs or views of that person. It sets out a procedure to be adopted in respect of events or meetings on University premises to which any external speaker is invited, or where an internal speaker is invited and it is reasonably foreseeable that the event will raise controversial issues. The Code requires that notice is given to the "Event Approver" at least three weeks before the date of the event. The Event Approver then gives notice of the proposed event to the Registrar. The Registrar may impose such conditions on the event as are reasonably necessary to fulfil the University's responsibilities concerning the protection of free speech within the law. If the Registrar is not satisfied that adequate arrangements can be made to maintain good order, he may refuse permission for the event. There is a right of appeal against rulings of the Registrar to the Vice-Chancellor.
17. The University has award-winning campuses. Its campuses include Jubilee Campus which covers about 65 acres, 1.5 miles from Nottingham City Centre, and 1 mile from the University's main campus. The University is the registered freehold owner of the Jubilee Campus. The Jubilee Campus includes a building known as the Advanced Manufacturing Building.
18. Mx Butterworth is the elected postgraduate officer of the University's Student Union. They are a trustee of the union. They have taken part in previous demonstrations at the University that have included occupation of university premises in April 2022, March 2023 and December 2023. On each occasion the University issued possession proceedings. In the latter two cases a possession order was made; in the first case the camp dispersed so it was not necessary to obtain a possession order.
19. Mx Butterworth is deeply concerned about the war in Gaza and the loss of life that is taking place. They say that they are aware of the finding of the International Criminal Court that the actions of Israel plausibly amount to genocide (it is not necessary to decide whether that is an accurate reflection of that court's finding) and the court's subsequent order that Israel cease its offensive in Rafah which, they say, Israel has ignored. They want to put pressure on institutions "not to become complicit in these crimes". They say that they are aware that the University conducts research, and develops weapons, for arms companies at its Advanced Manufacturing Building. They demand that the University discloses details of its financial relationships, ends partnerships with arms companies, provides bursaries for Palestinian students, and contributes to the reconstruction of educational infrastructure in Gaza.

20. A camp opposite the Advanced Manufacturing Building commenced at about 9.55pm on 10 May 2024. At that time the University's security staff became aware of individuals setting up about 20 tents in that area. No permission had been sought for the camp, as required by the Code. Mx Butterworth has not explained the failure to comply with the Code. Nor has any other camper.
21. The campers used showers and toilet facilities in the Advanced Manufacturing Building. The University's security staff cleared them from that building but allowed them to use toilet facilities in another building.
22. Mx Butterworth says the camp is there to protest on behalf of the Palestinian people. Mx Butterworth and other campers arrange speeches, creative activities and cultural activities at the camp. They have a library tent and a schedule of open talks, and they hold vigils which are inclusive to people of all faiths and people who have no faith.
23. On 12 May 2024, a group calling itself the Nottingham Camp for the Liberation of Palestine ("NCLP", which includes Mx Butterworth) sent an email to the University's Executive Board setting out its demands and stating that if the University did not actively consider them, it would escalate its action.
24. Mr Carter says that the University estimates there are about 50 individuals in the camp including students, but others too. For the most part, the University does not know the names of the campers because they are masked or are wearing balaclavas or hoods to hide their identities.
25. Mx Butterworth says that despite a number of attempts on the part of NCLP, the University has failed to engage with it. Attempts at a meeting broke down when the campers refused to remove their masks, and the University refused to engage in a meeting with masked campers.
26. The University makes a number of allegations of disruptive conduct by the campers. These are denied by Mx Butterworth. It is not necessary, or practical, to resolve these disputes on a summary application. I am content to determine the application on the assumption that the camp has been entirely peaceful (at least in the sense of it being non-violent), consistent with the evidence of the many witnesses who have visited the camp and provided statements in support of the defendants.

*The decision to bring possession proceedings*

27. At 11.50am on 14 May 2024 a notice was issued to the defendants making it clear that the University supported lawful freedom of speech and freedom of assembly, but that they did not have a licence to occupy the land, that they were trespassers and that they were required to leave immediately or else court proceedings would be issued. In his statement made the same day, Mr Carter says that the campers remained in occupation and that the University had "no choice but to take Court action to forcibly remove the occupiers."

**Procedural background**

28. Proceedings were issued on 14 May 2024 against Mx Butterworth, three other named defendants, and "persons unknown". A hearing took place before Ritchie J on 17 May

2024. Following that hearing, on 20 May 2024, Ritchie J made an order granting the University permission to discontinue the claim against all named defendants apart from Mx Butterworth (the other named defendants had given written confirmation that they were not involved in the camp). The description of the “persons unknown” was amended to distinguish between students and members of staff, and others. An order for possession was made against those who are not students or members of staff. The claim against Mx Butterworth and the remaining persons unknown was adjourned to 24 May 2024. On 20 May 2024 that hearing was vacated. It was eventually relisted on 5 July 2024. On 10 June 2024 Ritchie J made further orders which amended the precise terms of the order of 20 May 2024.

**Does Mx Butterworth have a real prospect of successfully defending the claim?**

29. In order to answer this question, it is necessary to determine whether Mx Butterworth has a real prospect of success in respect of either of their two defences.

*(i) Public law defence: breach of policy or statute*

30. **Breach of policy:** Owen Greenhall and Audrey Mogan, on behalf of Mx Butterworth, submit that the University is obliged by its freedom of speech policy to engage with the campers. I do not agree. The passages from the policy that Mx Butterworth relies on are set out at paragraph 15 above. Nothing in those passages requires the University to engage with Mx Butterworth or the other campers. The Code sets out a structured framework to engage with those seeking to put on events. Mx Butterworth and the other campers did not comply with the Code because they did not notify the Event Approver of the proposed encampment. The framework within which engagement takes place was therefore never triggered.

31. Mr Greenhall further submits that the University failed to consider the principles set in the free speech policy when deciding to terminate the campers’ licences to use the land and to seek possession of the land. However, there is no evidence to support this contention and, anyway, nothing in the free speech policy inhibits the University from taking the steps that it has, here, taken in response to a trespassory encampment.

32. The Code does restrict any power the University might otherwise have to deny Mx Butterworth the use of its land on any grounds connected with their beliefs or views of that person. There is, however, no evidence that the University’s grounds for seeking to deny Mx Butterworth the use of its land have any connection with Mx Butterworth’s beliefs or views. The evidence shows that the University has sought possession of its land in other cases concerning the expression of different views, and there is no evidence that it has tolerated any other camps. All the evidence suggests that it is the appropriation of its land (and the associated claimed disruption) to which the University objects, and not the beliefs or views held by Mx Butterworth.

33. **Breach of section 43 of the 1986 Act:** 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.”

34. Mx Butterworth has not identified any arguable basis on which the University has failed to comply with these provisions. The University has promulgated a policy and Code which precisely seek to ensure that freedom of speech within the law is secured for the University’s members, students and employees and for visiting speakers. There is no evidence of a breach of the policy or the Code by the University. Mx Butterworth has, by contrast, fundamentally breached the Code by occupying the University’s land without first giving notification under the Code. Nor, as explained above, is there any evidence that the University is bringing possession proceedings because of Mx Butterworth’s beliefs. There is therefore no real prospect of establishing a breach of section 43.

35. Breach of section A1 of the Higher Education and Research Act 2017: This provision is not in force. There can be no question of the University being in breach of it.

36. For all these reasons, Mx Butterworth does not have a real prospect of success on their public law defence.

*(ii) Human rights defence: Breach of section 6 of the Human Rights Act 1998 read with articles 10 and 11 of the Convention*

37. For the same reasons as in *Birmingham*, the critical issue, at least so far as this summary application is concerned, is whether there is a real prospect that, at trial, the court will find that any interference with Mx Butterworth’s Convention rights is unjustified: *Birmingham* at [58] – [64].

38. The University’s decisions to terminate any licence that Mx Butterworth had, and to seek a summary possession order, are not unlawful on any public law ground. Those decisions, and the making of a summary possession order, are thus prescribed by law: *Birmingham* at [65]. For the same reasons as in *Birmingham* (at [66] – [70]), the objective of the measure taken by the University is sufficiently important to justify the limitation of a protected right, the measure is rationally connected to the objective, and no less intrusive measure could be used without unacceptably compromising the achievement of the University’s legitimate aim.



39. The critical issue is whether the severity of the measure's effects on Mx Butterworth's rights is outweighed by the importance of the objective that is pursued by the measure. For reasons that largely mirror those given in *Birmingham* (at [71] – [75]), I am satisfied that it is. Mx Butterworth's conduct is, at best, right at the margin of the protection afforded by article 10 and 11. They did not comply with the Code (which would have enabled a structured approach to a decision as to whether the encampment would be permitted and what, if any, conditions would be appropriate). They did not give any advance notice of the camp. They are trespassing on the University's land and have now been doing so for 8 weeks. There are many other ways in which Mx Butterworth could lawfully exercise their Convention rights. By contrast, the most appropriate (and least intrusive) way in which the University can vindicate its own legal rights is by these proceedings.
40. It follows that Mx Butterworth does not have a real prospect of establishing that a possession order would amount to an unlawful interference with their Convention rights. They do not have a real prospect of successfully defending the claim on that basis.

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

41. For the same reasons as given in *Birmingham* (at [76] – [77]), there is no other compelling reason why the claim should go to trial.

**Claim against "persons unknown"**

42. The claim against the "persons unknown", is not defended. The University has proved its case against the "persons unknown". 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, is lawful, and the granting of a summary possession order is compatible with the defendants' Convention rights. There is no longer any need to draw a distinction between different categories of "persons unknown". They can now be described, simply and compositely, as "persons unknown" as required by CPR 55.3(4).

**Relief**

43. It follows that a summary order for possession will be made.
44. For the same reasons as given in *Birmingham* (at [79] – [81]) the order for possession should be in respect of the whole of the Jubilee Campus rather than just the site of the camp.

**Outcome**

45. There is no real prospect of Mx Butterworth successfully showing that the University has acted in breach of its policy, or section 43 of the 1986 Act, or section A1 of the Higher Education and Research Act 2017, or that a possession order would be incompatible with their Convention rights.
46. 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.

47. The University has therefore established that it is entitled to a summary possession order.