IN THE HIGH COURT OF JUSTICE **Claim No: KB-2025-000497**

KING'S BENCH DIVISION

B E T W E E N:

THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

Claimant

- and -

PERSONS UNKNOWN AS DESCRIBED IN THE CLAIM FORM

Defendants

- and -

EUROPEAN LEGAL SUPPORT CENTRE ("ELSC")

Intervener

- and -

NATIONAL COUNCIL FOR CIVIL LIBERTIES ("LIBERTY")

Proposed Intervener

SKELETON ON BEHALF OF ELSC
FOR HEARING ON 19 MARCH 2025

Time estimate: 1 day

Pre-reading: The Intervener suggests pre-reading, if time permits:

(i) Skeleton Arguments;

(ii) Witness Statements: Clark 1 **{SB2/6(PDF129)}**; Eshete 1 **{SB2/12(PDF252)}**; Hassoun 1 **{SB2/10(PDF242)}**

Reading estimate: 1 hour

References to **{HB/tab/page(PDFpage)}** *are to the Claimant's Hearing Bundle; to* **{SB1 or 2/tab/page(PDFpage)}** *to the Claimant's First or Second Supplementary Hearing Bundle; to* **{AB/tab/page}** *to the Claimant's Authorities Bundle; to* **{IAB/tab/page}** *to the Intervener's Authorities Bundle.*

A. INTRODUCTION

1. This is the skeleton argument of the Intervener ("**ELSC**") for the hearing of the Claimant's application for an interim injunction in the terms set out in the Draft Order provided 13 March 2025 **{SB1/4/665(PDF27)}** (the "**Proposed Injunction**"). The revised terms arrived late in the day, and take a substantially different approach from those sought in the Claimant's Particulars of Claim or considered in the Court's earlier judgment in *Cambridge University v Persons Unknown* [2025] EWHC 454 (KB) ('*Fordham Judgment*') **{IAB/38/1142}**. It remains a broad and all-encompassing measure, striking at the heart of protest at the University of Cambridge. It should not be ordered. In particular:

   1.1. The Proposed Injunction is a disproportionate infringement on the Article 10 and 11 Convention rights of the Defendants.

   1.2. The Proposed Injunction is discriminatory on grounds of race and/or political belief, contrary to the Equality Act 2010 and Article 14 ECHR.

   1.3. There is an insufficient nexus between the alleged risk identified and the broad, *contra mundum*-style injunction sought by the Claimant.

   1.4. The Proposed Injunction improperly restricts the public highway.

B. RELEVANT PROVISIONS

B.1. *European Convention on Human Rights*

2. Articles 10 and 11 of the European Convention on Human Rights ("**ECHR**") state:

> "***Article 10 – Freedom of expression***
>
> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Article 11 – Freedom of assembly and association

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

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

3. Article 14 ECHR (which is ancillary to Articles 10 and 11) states:

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention 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.

B.2. ***Human Rights Act 1998***

4. Section 6 of the Human Rights Act 1998 ("**HRA**") states:

"***6.—Acts of public authorities***

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right. […]

(3) In this section "public authority" includes—

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature, […]

(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private."

5. The Claimant seeks interim relief, stating in its **"Second Skeleton**" that "*at this stage*" it seeks an order for 4 months only. Where HRA section 12(3) applies, the Claimant is required to establish they are "*likely to*" establish such a remedy at trial.

6. HRA section 12(3) applies to interim relief which restrains any act of communication that falls within Article 10 ECHR: see the discussion of Hill J in Shell UK Ltd v Persons Unknown [2023] 1 WLR 4358 at [183]-[198] **{IAB/33/971-975}**, following the broad approach taken to the definition of "*publication*" by (among others) Warby J in Birmingham City Council v Afsar [2019] EWHC 1560 (QB) at [60] and the Court of Appeal in Boyd v Ineos Upstream Ltd [2019] 4 WLR 100, as well as the expansive approach of the Strasbourg court to this issue. Civil disobedience such as obstructive

protest on the highway or acts of peaceful trespass is by its nature a communicative act. In Shell UK Ltd v Persons Unknown [2024] EWHC 3130 (KB) at [5] **{IAB/35/1015}**, Dexter Dias J approves the definition of civil disobedience given by John Rawls in *A Theory of Justice* as a public, nonviolent, conscientious, and political act contrary to law, usually done with the aim of bringing about a change in the law or policies of the government (and it should be noted that not all acts of protest restrained by the injunction will amount to breaches of civil or criminal law). The public nature of the action and its aim in bringing about change is inherently communicative, engaging HRA section 12(3).

B.3. ***Equality Act 2010***

7. Section 19 of the Equality Act 2010 ("**EA 2010**") provides:

> "***19.—Indirect discrimination***
>
> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
>
> *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
>
> *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
>
> *(c) it puts, or would put, B at that disadvantage, and*
>
> *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*
>
> *(3) The relevant protected characteristics are—*[…]
>
> - *race;*
> - *religion or belief;"*

8. Section 10(2) of the EA 2010 provides:

> "***10.—Religion or belief***
>
> *(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief."*

9. Section 91(2) of the EA 2010 provides:

> "***91.—Students: admission and treatment, etc.***
>
> *(2) The responsible body of such an institution must not discriminate against a student—* […]

(b) in the way it affords the student access to a benefit, facility or service;[…]

(d) by not affording the student access to a benefit, facility or service;[…]

(f) by subjecting the student to any other detriment.

B.4. *Higher education provisions*

10. As a higher education provider, the Claimant is obliged to act in accordance with the following policies and legal obligations.

11. Section 43 of the Education (No. 2) Act 1986 states:

"***43.—Freedom of speech in universities, polytechnics and colleges***

(1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.

(2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—

(a) the beliefs or views of that individual or of any member of that body; or

(b) the policy or objectives of that body.

(3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out—

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

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

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

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

and dealing with such other matters as the governing body consider appropriate.

12. Section A1 of the Higher Education and Research Act 2017 (as introduced by the Higher Education (Freedom of Speech) Act 2023, yet to come into force)[1] requires (at sub-section (1)): "*The governing body of a registered higher education provider must take the steps*

[1] Although yet to come into force, the University's Codes of Practice on Freedom of Speech, which applied from 1 August 2024, expressly refers at clause 3.3 to the duties under the new legislation: The provision is therefore relevant for interpreting the Claimant's policies made in anticipation thereof.

that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to" secure freedom of speech within the law.

C. HUMAN RIGHTS ACT

13. Per the Claimant's Second Skeleton at [56], the Claimant "*is content to proceed on the basis that it is a public authority and that the grant of injunctive relief would interfere with the Article 10 and 11 ECHR rights of Persons Unknown*", but "*reserves the right to argue the contrary at any future hearing*". This is unsatisfactory. The Court is respectfully invited to make positive findings on the applicability of Articles 10 and 11 ECHR, which are necessary to dispose of the Claimant's application.

C.1. *The Proposed Injunction is in exercise of a public function under HRA s 6*

14. The distinction between core and hybrid authorities is familiar to the Court. The determination of whether a specific action by a hybrid authority is done in the exercise of a public function requires a "*factor-based approach*". These factors include: (i) whether the body is publicly funded; (ii) whether it is exercising statutory powers; (iii) whether it is taking the place of central government or local authorities; and (iv) whether it is providing a public service: *R (Weaver) v London and Quadrant Housing Trust* [2010] 1 WLR 363 (CA) at [35] {**IAB/13/301-303**}. In assessing these factors, the Court must adopt a "*broad or generous application of section 6(3)(b)*": ibid at [35(4)].

15. The High Court has previously proceeded on the basis that universities are public authorities for the purposes of HRA s 6 in relation to disputes concerning freedom of expression.[2] For completeness, the *Weaver* test is satisfied in the present case:

    15.1. The University of Cambridge derives all its powers (including to make its own statutes and ordinances, and to take decisions thereunder) from statute: Oxford and Cambridge Act 1923.

    15.2. The University of Cambridge is subject to specific regulatory oversight by the State. There are general regulatory limitations on the University's actions as a provider of higher education.

[2] See in particular *University of Birmingham v Ali* [2024] EWHC 1770 (KB) at [50] (Johnson J) **{AB/8/257}**. See also to like effect: *Queen Mary University of London v LSY* [2024] EWHC 2386 (Ch) at [188] **{AB/12/390}**; *University of Birmingham v Ali* [2024] EWHC 1529 (KB) at [48] **{IAB/34/1007-1008}**. The point was taken as given in *R (Ben-Dor) v University of Southampton* [2016] EWHC 953 (Admin) at [16] **{IAB/19/511}**; *University of Oxford v Broughton* [2004] EWHC 2543 (QB) at [79]-[84] **{IAB/9/195-197}**.

15.3. The University of Cambridge is publicly funded.

15.4. The University of Cambridge, when providing tertiary education to UK students subject to State regulation and in receipt of state funding, is performing an act of a public nature.[3]

15.5. The starting point is therefore that, where acting within its core functions (and not e.g. in employment or contractual disputes),[4] the University of Cambridge is acting as a "*public authority*" for the purposes of HRA s 6.

15.6. There is specific statutory provision for the exercise of the University's core functions which require it to secure the freedom of speech of its students: Education (No. 2) Act 1986 s 43. Compliance with such duties may be enforced through public law remedies: *R v UCL, ex p Riniker* [1995] ELR 213 (QBD), 216 **{IAB/3/23}**.

15.7. There is a public good in the provision of higher education, research, debate and engagement on issues of public importance.

16. It follows that, in seeking an injunction that directly engages its students' (and others') capacity to exercise their freedom of expression, the University is performing an act of a public nature. It is irrelevant that the University is also seeking to enforce its private property rights.[5] The exercise or enforcement of private law rights is a public function so long as it satisfies the multi-factorial assessment: compare *R (Holmcroft Properties Ltd) v KPMG llp* [2020] Bus LR 203 at [42] **{IAB/25/728}** (on amenability to judicial review).

17. The Claimant is accordingly required to act compatibly with the Defendants' ECHR rights where engaged. The Court is similarly required to consider such rights in assessing the proportionality of granting relief in the present claim.

C.2. *The Defendants' Article 10 and 11 ECHR rights are engaged by the Proposed Injunction*

18. Articles 10 and 11 together protect the right to protest. Given the breadth of the Proposed Injunction (which is nowhere limited to "*protest*"), it is plain that the conduct proposed

[3] See e.g. *R v University of Cambridge, ex p Persaud* [2001] EWCA Civ 534 at [33] **{IAB/5/93-94}** (finding that the University's power to exclude a student was amendable to judicial review).
[4] See e.g. *Evans v University of Cambridge* [2002] EWHC 1382 (Admin) at [23] **{IAB/6/103}**.
[5] Such an argument was expressly rejected in the protest context by Johnson J in *University of Birmingham v Ali* [2024] EWHC 1770 (KB) at [49]-[50] **{AB/8/257}**.

to be prohibited may engage those Articles. In particular, they would be engaged by the conduct of Cambridge for Palestine said to justify the application.

18.1. As the ECtHR stated in *Murat Vural v Turkey* (App. No. 9540/07, 21 January 2015) at [54] **{IAB/17/421}**, the scope of Article 10 is determined by "*an assessment* […] *of the nature of the act or conduct in question, in particular of its expressive character seen from an objective point of view, as well as of the purpose or the intention of the person performing the act or carrying out the conduct in question*".

18.2. Once the act is "*expressive*", it is only if it is violent, incites violence or has violent intentions that the conduct will fall outside the protection of Articles 10 and 11. As the ECtHR held in *Kudrevičius v Lithuania* (2016) 62 EHRR 34:[6] "*The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society.*"

18.3. Disruption, even serious disruption intentionally caused, does not take an act outside of the scope of Article 10 ECHR. As the Supreme Court held in *Ziegler* at [67]: "[S]*eriously disrupting the activities carried out by others* […] *"might", not "would", have implications for any assessment of proportionality. In this way, such disruption is not determinative of proportionality.*"

18.4. Significantly, Articles 10 and 11 may protect the establishment of protest camps, and the establishment of a camp may itself constitute a form of political expression. See *Frumkin v Russia* (2016) 63 EHRR 18 at [107] **{IAB/18/490}**: "*The Court notes that although Article 11 of the Convention does not guarantee a right to set up camp at a location of one's choice, such temporary installations may in certain circumstances constitute a form of political expression, restrictions on which must comply with the requirements of Article 10 § 2 of the Convention.*"

18.5. Further, the "*manner and form*" of a protest "*may constitute the actual nature and quality of the protest; it may have acquired a symbolic force inseparable from the protestors' message; it may be the very witness of their beliefs*": *R (Tabernacle) v Secretary of State for Defence* [2009] EWCA Civ 23 at [37] **{IAB/12/288}**.[7]

[6] Approved by the Supreme Court in *DPP v Ziegler* [2022] AC 408 at [69] **{IAB/28/797}**.
[7] See also *Hall v Mayor of London* [2011] 1 WLR 504 (CA) at [37] **{IAB/15/366}**.

19. It is suggested in the Claimant's skeleton for the first hearing dated 24 February 2024 at [43] that Articles 10 and 11 may not be engaged following "*trespass on private property*". This submission – politely described as "*ambitious*" by Chamberlain J[8] – is wrong in law.

19.1. It is the uniform approach of the ECtHR that Articles 10 and 11 may be engaged even when on private land without consent. For example:[9]

19.1.1. An unauthorised entry into an administrative building: *Taranenko v Russia* (App. No. 19554/05, 13 October 2014) at [28], [71], [77] **{IAB/16/382, 391-393}**.

19.1.2. A protest where a punk band sought to perform a song in a cathedral: *Mariya Alekhina v Russia* (2019) 68 EHRR 14 at [14], [205]-[206] **{IAB/22/580, 628}**.

19.1.3. Occupation of a university lecture hall by protestors: *Tuskia v Georgia* (App. No. 14237/07, 11 January 2019) at [15], [74]-[75] **{IAB/23/656, 672-673}**.

19.1.4. A protest where demonstrators used climbing equipment to hang a poster on the wall of a (private) hotel, causing some damage: *Olga Kudrina v Russia* (App. No. 34313/06, 6 July 2021) at [49] **{IAB/26/749}**.

19.1.5. A demonstration where 30 protestors pushed their way into a government building and were found to be trespassing: *Yezhov v Russia* (App. No. 22051/05, 29 September 2021) at [11], [27]-[28] **{IAB/27/758, 763}**.

19.1.6. An unauthorised entry into and occupation of a court building: *Ekrem Can v Turkey* (App. No. 10613/10, 8 March 2022) at [6]-[8], [87]-[96] **{IAB/29/827-828, 846-847}**.

19.2. In those ECtHR cases, the Articles were found to be engaged notwithstanding that they do not require "*freedom of forum*" or "*the automatic creation of rights of entry to private property".*[10] But that merely confirms that Articles 10 and 11 do not create a new right of entry. Where the proprietor is a public authority exercising a

[8] *Hicks v DPP* [2023] EWHC 1089 (Admin) at [46] **{IAB/32/932-933}**.
[9] It was said in *DPP v Cuciurean* [2022] 3 WLR 446 at [43] **{AB/3/33-34}** that *Taranenko* could be distinguished because "*qualified public access was an important factor*" there. But: (i) that factor played no role in the ECtHR's reasoning in the other cases raised here; and (ii) in this case, at least some affected individuals (including students and staff of the University of Cambridge) likewise have qualified access to the sites.
[10] See *Appleby v United Kingdom* (2003) 37 EHRR 38 at [47] **{IAB/7/119}**, quoted in e.g. *Ekrem Can*, *Tuskia*, and *Taranenko*.

public function, the Court must consider whether the sanction applied in enforcing those private claims is a disproportionate interference with Article 10 and 11 rights.

19.3. Put simply, there is no ECtHR case-law which states that an act of trespass takes conduct outside the scope of Articles 10 and 11 and exempts the enforcing public authority from scrutiny as to the proportionality of the means of enforcement.

19.4. The issue was addressed by the Court of Appeal (Criminal Division) in the very recent decision in *R v Hallam and Others* [2025] EWCA Crim 199 **{IAB/38/1155}**. The case concerned deliberate, intentional disruption of traffic on a vast scale as a form of civil disobedience arising from trespass to motorway gantries. The prosecution submission that Articles 10 and 11 were not engaged was rejected. In a section of the judgment entitled "*Articles 10 and 11 and Trespass"* the Lady Chief Justice ruled (at [36]) that: "*Although the appellants' activities were not at the core of Articles 10 and 11* [due to the intentional disruption of traffic], *we do not consider that their acts of trespass removed them completely from the scope of Articles 10 and 11*." The Court accepted that *Appleby v United Kingdom* (2003) 37 EHRR 38 was authority for the proposition that "*Articles 10 and 11 did not confer on the appellants a right of entry to private property*" (at [34]), but noted that ECHR caselaw did not support the proposition that a protester who commits an act of trespass thereby automatically loses their rights under Article 10 or 11 altogether. "*On the contrary*", ECHR caselaw supported the proposition that Articles 10 and 11 remained engaged despite acts of trespass: at [34].

19.5. The decision of the Court of Appeal in *Hallam* should be followed on the basis of precedent, cogency of reasoning and consistency with ECHR caselaw.

C.3. *The Claimant may not rely on A1P1*

20. As a hybrid public authority exercising public functions, the Claimant may not rely on A1P1 rights in the present claim and is confined to legal rights under domestic law. The starting point is *Aston Cantlow PCC v Wallbank* [2004] 1 AC 546 (HL) **{IAB/8/123}**.

20.1. At [8] **{IAB/8/131}**, Lord Nicholls set out the position applicable to "*core*" public authorities: "*One consequence of being a "core" public authority, namely, an authority falling within section 6 without reference to section 6(3), is that the body in question does not itself enjoy Convention rights. It is difficult to see how a core*

public authority could every claim to be a victim of an infringement of a Convention rights [sic]."

20.2. At [11] **{IAB/8/132}**, Lord Nicholls turned to consider the position applicable to "*hybrid*" public authorities (emphasis added):

"*Unlike a core public authority, a "hybrid" public authority, exercising both public functions and non-public functions, is not absolutely disabled from having Convention rights. A hybrid public authority is not a public authority in respect of an act of a private nature. Here again, as with section 6(1), this feature throws some light on the approach to be adopted when interpreting section 6(3)(b). Giving a generously wide scope to the expression "public function" in section 6(3)(b) will further the statutory aim of promoting the observance of human rights values without depriving the bodies in question of the ability themselves to rely on Convention rights when necessary.*"

21. The position of a hybrid authority when exercising public functions was further considered in *YL v Birmingham City Council* [2008] QB 1 (CA) at [75] **{IAB/11/272}**:

"[A] *core public authority would be, or was likely to be, a body that was not a victim, and thus had no Convention rights of its own. But if that is so of core public authorities, it is very difficult to see why that is not so of hybrid public authorities in relation to the activities that confer on them their public status.* […] [I]*t would therefore seem to follow that when making decisions of the sort indicated above* [to control its property] *the care home cannot take into account, under the rubric of the rights of others, its own Convention rights, because when discharging its public functions it has no such rights*."

22. The decisions in *Aston Cantlow* and *YL* are therefore binding authority that, where a party to litigation is either a core public authority, or is exercising functions of a public nature for the purposes of HRA s 6(3)(b), it cannot rely on its own ECHR rights, either as a cause of action, or to be weighed in the balance when assessing the proportionality of interference with the Convention rights of another.

23. Contrary to this authority, the High Court has recently permitted public authorities to rely on A1P1 in protest cases. The only substantive treatment of the point appears in *HS2 Limited v Persons Unknown* [2022] EWHC 2360 (KB) at [125]-[129] (Knowles J) **{AB/18/680-681}**. With respect, Knowles J's approach is inconsistent with authority.

23.1. Knowles J did not address either *Aston Cantlow* or *YL* in his reasons.

23.2. Rather, the high point of His Lordship's reasoning is reliance on *Secretary of State for Transport v Cuciurean* [2022] 1 WLR 3847 (CA) at [28] **{IAB/31/908-909}**. While the Court of Appeal there did avert to the possibility that the public authority lacked Convention rights, it made no finding about their applicability, but instead

concluded only that property rights "*are clearly legal rights (either proprietary or possessory) recognised by national law*".

23.3. But "*legal rights*" – in the sense of an ability to enforce a claim under domestic private law – cannot be balanced against Convention rights. The relevant question is only whether the public authority's enforcement of such a claim (when done in exercise of a public function) is a disproportionate interference with others' Convention rights. To "*balance*" such a domestic legal right with the Defendants' Convention rights would elevate the former to Convention status through the back door, despite the prohibition in *Aston Cantlow* and *YL*.

23.4. In the event, the Court of Appeal in *Cuciurean* did not in fact balance the authority's and the protestors' rights. Rather, it found only that Articles 10 and 11 did not create a positive right to protest on private property, such as to render private rights to property irrelevant: see [31], [53].

23.5. A1P1 is not irrelevant in every protest case involving private land. In *Appleby* (concerning protest at a privately owned shopping centre), the ECtHR had "*regard*" to the "*property rights of the owner of the shopping centre under* [A1P1]": at [43] **{IAB/7/118}**. But that claim concerned the State's "*positive obligation to protect the applicants' freedom of expression*" (at [49]), requiring the State to balance each private party's ECHR rights. Here, it is the University itself as the public authority that seeks to enforce the private law rights. In doing so, it must have regard to the Article 10 and 11 rights of affected persons, but (in accordance with *Aston Cantlow* and *YL*) not its own A1P1 rights.

C.4. *The Proposed Injunction is a disproportionate interference with the Defendants' Article 10 and 11 ECHR rights*

24. The Supreme Court recently considered the application of Articles 10 and 11 ECHR in relation to obstructive protests in *Ziegler* **{IAB/28/771}**. The relevant principles are:

24.1. "[I]*ntentional action by protestors to disrupt by obstructing others enjoys the guarantees of articles 10 and 11*": [70];

24.2. No restrictions may be placed on the enjoyment of Article 10 and 11 rights "*except "such as are prescribed by law and are necessary in a democratic society'*": [57];

24.3. "*Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case*": [59];

24.4. "[D]*eliberate obstructive conduct which has a more than de minimis impact on others still requires careful evaluation in determining proportionality*": [67];

24.5. "[B]*oth disruption and whether it is intentional are relevant factors in relation to an evaluation of proportionality*": [70];

24.6. However, "*there should be a certain degree of tolerance to disruption to ordinary life* […] *caused by the exercise of the right to freedom of expression or freedom of peaceful assembly*": [68].

25. In the circumstances, the Proposed Injunction is a disproportionate infringement of the Defendants' rights.

26. **First**, whilst the Claimant pleads on a broad basis that it is pursuing the legitimate aim of vindicating its own property rights and carrying out lawful activities on the Land, the evidence suggests that in fact its aims are limited to protecting particular events, and namely restricting encampments in relation to graduation ceremonies. This is the **only** potential harm identified by the Registrar as posing a risk to the Senate House, Senate House Yard and Old Schools.[11] It is further confirmed by the nature of interim relief now sought, which is time-limited by reference to the last graduation ceremony of the 2024/25 academic year. There is no rational connection between the vast majority of the conduct prohibited by the Proposed Injunction – which covers not only all protest, but any non-consensual access to the Land – and the restriction of disruption to graduation ceremonies through encampments.

27. **Second**, the Proposed Injunction is not necessary.

27.1. There is a broad and robust framework under the criminal law which addresses protests which cross beyond the threshold of Article 10 and 11 ECHR and cause disruption to University activities.

27.2. Criminal Justice and Public Order Act 1994 section 68 ('Aggravated Trespass') provides wide protection in relation to disruptive protest on private property. It

[11] Rampton 1 at [135]-[140] **{HB/2(1)/73-75(PDF75-77)}**.

creates an offence in respect of trespass which creates (a) disruption;[12] (b) obstruction;[13] or (c) intimidation,[14] to lawful activity taking place on that land. It also extends to activity undertaken on adjoining land, where that activity can properly be said to be disrupted by the trespasser(s).[15] There is no requirement that any disruption must be severe or significant.

27.3. The Claimant's case relies on what it terms the *"significant disruption"* caused by protests.[16] If such protest occurred on the Claimant's land, it would fall squarely under section 68, and the Claimant would have recourse to the police and the criminal law. Importantly, in the context of proceedings which may result in the imposition of penal sanctions for contempt of Court, the maximum sentence which Parliament has seen fit to impose in relation to Aggravated Trespass is 3 months imprisonment. The effect of the Proposed Injunction would be to create a regime of harsher penalty in relation to behaviour already covered by criminal statute.

28. **Third**, the Claimant has not identified any serious risk sufficient to justify the extreme rights infringement now sought.

28.1. The protests affecting graduations at the Senate House and Senate House Yard are "*not erratic, unpredictable and random*", but form part of continual and ongoing political dialogue between the University and its students.[17] For example, the occupation of the Senate House Yard in May 2024 was concluded the evening of 15 May 2024, after the University reached an agreement with students.[18] The 16 May 2024 graduations were relocated despite no protestors remaining on site.

28.2. During the encampments at the Senate House Yard, the protestors did not take exclusively occupy the Land. Rather, the Senate House Yard remained accessible, including to those wishing to participate in the various protest activities (including e.g. teach-ins and community kitchens).[19]

28.3. No encampments or other disruption took place at the Senate House Yard or the Senate House between May and November 2024. In that period, 10 consecutive

[12] Section 1(c).
[13] Section 1(b)
[14] Section 1(a)
[15] Section 1.
[16] POC at [25.4.6] **[SB1/3/663(PDF25)]**.
[17] Eshete 1 at [14] **{SB2/12/1284-1285(PDF255-256)}**.
[18] Eshete 1 at [14] **{SB2/12/1284-1285(PDF255-256)}**.
[19] Eshete 1 at [11]-[12] **{SB2/12/1284(PDF255)}**.

graduations went ahead without disruption.[20] For that period, the Claimant refers only to an incident of graffiti at the Senate House on 22 June 2024, four days before a graduation ceremony.[21] It is not explained how that graffiti could have affected the graduation, even *in abstracto*. It in fact did not. In any event, that conduct falls outside the scope of the Proposed Injunction.

28.4. There is currently no encampment at any of the identified sites.

28.5. The Claimant has identified **no** Cambridge for Palestine conduct at Old Schools justifying injunctive relief. The sole relevant incident – the graffiti by Palestine Action on 4 March 2025 (after the injunction was first sought)[22] – did not involve access to the site, would not be covered by the Proposed Injunction, and was not carried out by Cambridge for Palestine. It provides no safe basis for the injunction

28.6. The risk of further direct action at Greenwich House is entirely speculative. The Claimant relies on two occupations, 6 years apart and about distinct political issues, as evidence of a "*history*" of being targeted.[23] The University's true complaint about the Greenwich House incident was the severity of the incursion; but that is not a safe basis for assessing the future risk of such an incursion.

29. **Fourth**, the Proposed Injunction affects the core of the Defendants to exercise their Article 10 and 11 rights in respect of the University.

29.1. The Senate House and the Senate House Yard are at the heart of the University, with a potent symbolic importance. The area is "*widely considered to form the traditional centre of protest for all issues within Cambridge, outside many of the areas named in the Injunction application*".[24]

29.2. It therefore is closely and directly connected with the nature and substance of the protest. In particular, Dr Hassoun explains that such protests are intended to be "*seen by the people in charge and who may make decisions on divestment*".[25]

[20] *Fordham Judgment* at [32] **{IAB/37/1151-1152}**.
[21] Rampton 3 at [20] **{SB1/7/758(PDF120)}**, [42] **{SB1/7/763(PDF125)}**.
[22] See Rampton 3 at [12]-[15] **{SB1/7/756(PDF118)}**. See the Claimant's Second Skeleton at [49].
[23] Rampton 1 at [141] **{HB/2(1)/75(PDF77)}**.
[24] Clark 1 at [4] **{SB2/6/1159(PDF130)}**.
[25] Hassoun 1 at [6] **{SB2/10/1273(PDF244)}**.

29.3. As the Claimant explains, very little of the land in central Cambridge belongs to the University.[26] Indeed, the Senate House Yard is the only open space in the centre of town owned by the University.

30. **Fifth**, the conduct prohibited is not calibrated by the requirements of Articles 10 and 11 ECHR. The Proposed Injunction affects **all** entry onto the Land without the Claimant's consent. Its effect extends onto protest conduct taken on the public highway: see paragraphs 52 to 66 below. The extent of infringement outweighs the potential protection of graduation ceremonies.

31. **Sixth**, the key condition – that the conduct must lack the Claimant's "*consent*" – is an uncertain and discretionary basis for whether the Injunction is engaged or not. The nature of the "*consent*" on which the Claimant relies is unclear, both on its face and to those most closely affected by the measure: students and staff.

31.1. "[G]*uidance surrounding public gatherings of students*" is *"poorly and infrequently communicated*".[27] In particular, many of the Intervener's witnesses were not made aware of the application of the University's Freedom of Speech code, at least before the present injunction application.[28]

31.2. As for staff, Dr Clark is "*not aware of any specific policies for staff, and have never had reason to believe these rules applied to use of public land of University property*", as all such policies are aimed at students only.[29]

31.3. In Dr Clark's experience, the process of securing consent is not fit for purpose, including because of "*spontaneous individual or group responses to specific fast-emerging issues*".[30]

31.4. For grassroots student groups, there is in practical terms no appreciation of the need to request permission from the University prior to protesting against it.[31] Where student protesters have sought consent, it is typically from the City Council and not the University.[32] This approach to consent reflects the UCU's experience.[33]

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[26] Rampton 3 at [29] **{SB1/7/759(PDF121)}**.
[27] Clark 1 at [7] **{SB2/6/1161(PDF132)}**.
[28] Denis 1 at [7] **{SB2/9/1269(PDF240)}**; Clark 1 at [11] **{SB2/6/1162(PDF133)}**; Alaeddin 1 at [4] **{SB2/11/1279(PDF250)}**.
[29] Clark 1 at [7] **{SB2/6/1161(PDF132)}**.
[30] Clark 1 at [9] **{SB2/6/1161-1162(PDF132-133)}**.
[31] Eshete 1 at [6] **{SB2/12/1282(PDF253)}**.
[32] Eshete 1 at [7] **{SB2/12/1282-1283(PDF253-254)}**.
[33] Abberton 1 at [6(c)] **{SB2/7/1206(PDF177)}**.

31.5. Even if the individual is aware of the consent requirement, she cannot easily determine *a priori* what conduct will and will not be treated by the Claimant as in breach of the University's rules and so sufficient to automatically revoke the (otherwise) general license to access the Land and engage the injunction.[34] The Claimant's Second Skeleton at [46(b)] attempts to clarify that only a student "*entering onto the Land for the purposes of carrying out the Direct Action*" would engage the injunction. But this is circular: 'Direct Action' is defined at [3] as e.g. simply entering the land without the Claimant's consent.

31.6. Tellingly, the Skeleton nowhere addresses the position concerning the staff of the University (to which, presumably, different unspecified rules apply).

32. The result of is a chilling effect on political expression at Cambridge. For example, Dr Hassoun, a British-Palestinian member of staff, explains: "*I would be afraid to be caught by the injunction if I were walking through any of these university buildings with cultural symbols of my people – like a keffiyeh or a flag – even on my way to a cultural event like an iftar* […] *or a poetry reading*".[35]

33. Where the injunction is improperly uncertain or unclear, including because it delegates decision-making powers in an uncontrolled manner, the resulting chilling effect directly goes to the disproportionality of the measure.[36]

34. **Seventh**, there are less restrictive means of achieving the aim sought.

34.1. The Claimant has other, less restrictive means at its disposal of addressing protest by its own staff and/or students that violates its policies, in particular through its internal disciplinary processes. That is the appropriate and proportionate means of addressing breaches of University rules. Achieving the aim of enforcing University rules – which is the substance of the Proposed Injunction, given the "*consent*" requirement – is regularly and properly dealt with by internal processes set up to investigate and sanction those breaches, and not by recourse to the Court's committal jurisdiction.

[34] See e.g. the Claimant's Second Skeleton at [46(b)], referring vaguely to the need to obtain "*express consent*" for "*protests*", absent which an individual lacks license to be on the Land.
[35] Hassoun 1 at [7] **{SB2/10/1273(PDF244)}**.
[36] See *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29 (CA) at [54]-[60]; Gillan v United Kingdom (2010) 50 EHRR 45 at [66]-[70].

34.2. It is relevant to note in this regard that there has been a recent history of student occupations of University buildings which did **not** result in applications for injunctions.[37] The University has given no explanation why the less restrictive means used to address those occupations were not available here, or why it was considered necessary to seek an injunction now, but not previously.

34.3. The 4-month interim injunction now sought is not proportionate to the events sought to be prevented. Outside of graduations (the key focus of the Proposed Injunction), both the Senate House and the Senate House are empty for almost all of the year. The Claimant's evidence identifies 23 days over the coming 12 months – 21 graduation ceremonies, and two further election days.[38] Of the other 342 days, the height of the Claimant's evidence is that "[i]*t is possible that there will be other events convened at Senate House and Senate House Yard*".

34.4. It may be said that the requirement for the Court's consent to commence committal proceedings (newly introduced in the second Draft Order) limits the restriction of the rights of affected persons. On the contrary, that provision provides no prospective security, and so a chilling effect applies regardless.

35. **Eighth**, the injunction and its consequences has not been subjected to the scrutiny of the University's decision-making bodies. In the absence of any evidence to the effect that the University undertook a proportionality assessment, the Court should be hesitant to endorse the Claimant's approach.

35.1. The evidence of Professor Scott-Warren, an elected member of the University Council, is that the University pursued the Proposed Injunction without consultation or approval from the Council.[39] Such agreement from Council, included by tabled papers and a vote, would usually be expected for matters of substantive importance.[40] That did not occur in this case.

35.2. The Claimant has belatedly filed evidence in response to Professor Scott-Warren to clarify that the Registrar had authority to commence these proceedings.[41] This misses the point. It is telling that the Registrar provides no further evidence of any

[37] As set out at Clark 1 at [5] **{SB2/6/1159-1160(PDF130-131)}**, and Exhibits JC1-3.
[38] Rampton 3 at [43]-[44] **{SB1/7/763-764(PDF125-126)}**.
[39] Scott-Warren 1 at [5]-[6] **{SB2/5/1143-1144(PDF114-115)}**.
[40] Scott-Warren 1 at [7] **{SB2/5/1144(PDF115)}**.
[41] Rampton 4 at [18] **{SB2/4/1048-1049(PDF19-20)}**

proportionality assessment or other University consultation undertaken prior to seeking the injunction.

35.3. It is unclear whether the University even accepts that it owes a duty to act in accordance with the HRA, ECHR or statutory requirements in implementing restrictions on freedom of expression, or that any such decision may in principle be amenable to judicial review.

D. DISCRIMINATION

36. It is submitted that the Proposed Injunction is indirectly discriminatory, inconsistent with EA 2010 and Article 14 ECHR (read with Articles 10 and 11):

36.1. **On the basis of belief**: towards those who hold a political and philosophical belief in support of the Palestinian people and their right not to live under occupation and oppression.

36.2. **On the basis of race**: towards Palestinians.

37. The terms of the injunction sought in the first instance applied to Persons Unknown "*in connection with Cambridge for Palestine or otherwise for a purpose connected with the Palestine-Israel conflict."* The Claimant seeks permission to amend the injunction to encompass Persons Unknown with no qualification. This amendment does not change the essence of the Claimant's case: as set out in the proposed amended Particulars of Claim, the protests targeted remain those *"in relation to the Israel-Palestine conflict and the University's alleged complicity in the actions of the Israeli Defence Force, such as by its investments in and research arrangements with the defence industry."*[42] There is no evidence before the Court that the Claimant seeks or intends to regulate protest in relation to any other subject matter.

38. Whilst the Claimant frames its case in a 'value neutral' manner as relating to protest *"connected with the Palestine-Israel conflict",* this obscures the particular disadvantage created by the Claimant's approach towards Palestinians and those who hold a belief in (a) anti-Zionism (b) Palestinian liberation from structural oppression. The protests are occurring at a moment of monumental importance in relation to the Palestinian cause. They are against the status quo of research and financial complicity by the University in

[42] Claimant's POC at [2] **{SB1/3/655(PDF17)}**.

the Israeli oppression of the Palestinian people.[43] Preventing protest imposes a disproportionate burden on groups who are more likely to stand in opposition to the status quo, in other words, the groups identified by the belief and race at paragraph 36 above.

39. The injunction would represent a total shift in the University's approach to protest. The University's approach in practice has not required the seeking of permission in relation to protest activities touching upon other subject matters. The Claimant describes its own historic approach as follows: *"*[I]*n appropriate circumstances,* [the University] *will not, for a short period, take enforcement measures against a student-led or staff occupation of its land or buildings, in respect of which the occupying group has not sought or been given the University's permission"*.[44] Likewise, as Ms Eshete, the Student Union Welfare and Community Officer explains:[45]

> *"Although the University's Freedom of Speech Code of Practice* […] *does state that "Permission is required for meetings and events to be held on University premises, whether indoors or outdoors", it is my experience as both a former student and SU officer, that this is not routinely the practice of the University or understood by students, aside from a general need to book rooms for events and activities.* […] *Additionally, when I have asked student organizers about the authorisation of their protest activities, the response has consistently been one of bewilderment. This highlights the absurdity of requiring students who are protesting about the university to first gain explicit consent from the university."*

40. The injunction, therefore, does not seek to enforce an existing approach to protest activity on campus, but to create a new policy on the ground, targeted towards a particular protest subject matter.

41. This is not a policy that has been applied in response to protests by other groups. In particular, as Dr Hassoun explains:[46]

> *"Unlike other specific national/ethnic groups experiencing state-sanctioned violence abroad, like our Ukrainian colleagues, whose speech and expression has received support from the University (and certainly has not been targeted by the University), this injunction singles out Palestinians based on their national and ethnic identity and limits our expression (and expressions of solidarity on our behalf) as it is protests on behalf of Palestine that have led to the injunction being sought."*

[43] Hassoun 1 at [5] **{SB2/10/1273(PDF244)}**.
[44] Rampton 2 at 24 **[SB1/6/713(PDF75)]**.
[45] Eshete 1 at [3], [6] **{SB2/12/1282(PDF253)}**.
[46] Hassoun 1 at [4] **{SB2/10/1272(PDF243)}**.

42. Likewise, the Claimant did not seek injunctive relief against prior occupations of University buildings between 2018 and 2022, by those protesting in solidarity with industrial action.[47]

43. The particular impact of the Proposed Injunction on Palestinians is highlighted by Mr Alaeddin, a postgraduate Palestinian student, who explains:[48]

> "*As a Palestinian, I feel it is integral to protest against the complicity of the University I am a student at as they have investments in arms companies which enable the genocide of my homeland. An injunction like this leaves me more exposed because of my identity and those of my fellow Palestinians on campus. Therefore, I feel that a chilling effect that the injunction would have on the Palestinian movement in Cambridge would be even more severe on Palestinians.*"

44. The discriminatory impact of the injunction extends to those whose philosophical beliefs make them more likely to become involved in protests against the University's complicity in the treatment of Palestinians through its research and financial ties.

45. A wide ambit of beliefs is protected by Article 14, and includes the political opinion identified by the Intervener. The starting point for the determination of whether a belief constitutes a philosophical belief for the purposes of EA 2010 s 10(2) is *Grainger plc v Nicholson* [2010] ICR 360 at [24] **{IAB/14/347-348}**. EA 2010 s 10 is required by virtue of HRA s 3 to be read consistently with ECHR rights, and in particular Articles 9 (freedom of conscience) and 10 (freedom of expression). In *Forstater v CGD (Europe)* [2022] ICR 1 at [45] and [55] **{IAB/30/870-871, 875-877}**, Choudhury J summarised the relevant principles to be applied in relation to identifying the 'core elements' of a belief. *Grainger* is not an exacting standard, and as Choudhury J warned in *Gray v Mulberry Co (Design) Ltd* [2019] ICR 175 at [28] **{IAB/21/555}**, the Court must be careful to ensure that *"the bar is not set too high"*, as beliefs are not always capable of exact and precise definition.

46. Given the *prima facie* case of indirect discrimination identified by the Intervener, it is for the Claimant to show that its injunction, which targets a particular protest movement, will not have a discriminatory impact, or that any such impact is justified. Notably, although raised by the Intervener at the 27 February 2025 hearing, discrimination is nowhere considered (let alone justified) in the Claimant's Second Skeleton.

47. Whether a measure creating indirect discrimination is assessed under Article 14 or under the EA 2010, the approach to assessing proportionality is broadly similar. As explained at

[47] Clark 1 at [5] **{SB2/6/1159-1160(PDF130-131)}**, and Exhibits JC1-3.
[48] Alaeddin 1 at [7] **{SB2/11/1279(PDF250)}**.

paragraphs 24 to 35 above, the Proposed Injunction does not satisfy this test, whether in general or with particular reference to the discriminatory prejudice of the measure.

48. If the Claimant were to pursue the Proposed Injunction on the basis of the class as originally defined, the resulting injunction would be directly discriminatory against those with the protected belief. In that case, the correct approach to cases where the manifestation of those beliefs is said to be objectionable: see *Higgs v Farmor's School* [2025] EWCA Civ 109 **{IAB/36/1085}**. The proportionality assessment would be broadly similar in any event.

E. CONTRA MUNDUM-STYLE INJUNCTION

49. Under the new Draft Order, and by its application of 13 March 2024, the Proposed Injunction now sought is a *contra mundum*-style injunction, addressed only to "*Persons Unknown*". The Claimant adopts the submissions made by Liberty on this point.[49] In brief:

    49.1. This approach was deprecated by the Claimant in its skeleton for the 27 February 2025 hearing (at [35]) for its excessive breadth.

    49.2. The requirement to identify the class is a corollary of the requirement that "[t]*he actual or intended respondents to the application must be defined as precisely as possible*".[50] The principled basis for the requirement for precise identification is clear: as in standard litigation, the Court's jurisdiction should only be exercised in respect of those against whom the claimant can make out their claim or application.

    49.3. To that extent, Nicklin J appears to be mistaken in *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB) in considering that obligation to now be diminished. On the contrary, it remains a key procedural safeguard, and Nicklin J is clear that he remains troubled by such an expansion of the Court's jurisdiction to make *contra mundum*-style newcomer injunctions (at [367]-[371]):

    > "*I remain troubled by the Courts seeking to set the boundaries upon lawful protest by contra mundum injunctions. I remain concerned that, constitutionally, the prohibition of conduct by citizens generally, with the threat of punishment (including imprisonment) for contravention, ought to be a matter for Parliament.* […] [T]*he reality of the imposition of contra mundum injunction, with the threat of sanctions including fines and imprisonment for breach, is that it is akin to the creation of a criminal offence.* […] *Further, a contra mundum injunction is a prohibition, the alleged breach of which has none of the safeguards that are present in the criminal justice process*. […] *In protest cases, there are additional reasons*

[49] Liberty's Written Submissions at [11]-[16].
[50] *Wolverhampton CC v London Gypsies and Travellers* [2024] AC 983 (SC) at [221] (emphasis added) **{AB/6/201}**.

to be concerned at the risk of abuse. The Court may well grant the injunction (and its enforcement) to a private individual, often the very person against whom the protest is directed."

49.4. The *contra mundum*-style interim order made by Fordham J on 27 February 2025 was justified only by the difficulty of confining the Defendants' description at very short notice, and the very limited nature of the injunction (both temporally and geographically).[51]

49.5. Here, it appears that the Claimant is aware of the challenges posed by its prior formulation. A class definition extending to all those acting "*in connection with Cambridge for Palestine or otherwise for a purpose connected with the Palestine-Israel conflict"* is insufficiently precise and (as explained above) is indirectly discriminatory on grounds of race and/or belief.

50. The Proposed Injunction is motivated solely by the direct action taken by Cambridge for Palestine in May and November-December 2024, and (apart from belated references to Palestine Action) not by any other protest group. The Claimant's case depends on it making out those particular risks. If it wished for a broader order, it would need to satisfy the applicable tests in respect of the broader category. It has failed to do so. It would be a perverse result if the claimant could gain broader relief simply because it has failed to adequately specify the category of affected persons with sufficient precision.

51. Likewise, a *contra mundum*-style injunction cannot cure the discriminatory effect of either the original or current formulation of the Proposed Injunction. If the Claimant wishes to pursue a discriminatory measure, it is for it to (i) draft the injunction with sufficient precision to minimise the discriminatory effect; and (ii) justify any discrimination caused. The Claimant has done neither. Instead, the Claimant has opportunistically attempted to dodge the issue by seeking the broadest possible relief. The Court should not indulge that attempt.

F. PUBLIC HIGHWAYS

52. Paragraph (2) of the Proposed Injunction seeks to prohibit acts interfering with access to the Land **{SB1/4/667(PDF29)}**: "[T]*he Defendants must not, without the consent of the Claimant, directly block the access of any individual to the Land with the intention of stopping that individual accessing the Land."* Insofar as this aspect of the Proposed

[51] *Fordham Judgment* at [27] **{IAB/37/1150}**.

Injunction extends the prohibited conduct beyond that in Paragraph (1) (which covers entry onto the Land) it necessarily restricts action on the public highway.

53. The public have a right of reasonable use of the highway which may include protest: *DPP v Jones* [1999] 2 AC 240 **{IAB/4/24}**. This is so even when protests deliberately obstruct other road users. Ultimately, the issue is one of the proportionality of interference with rights protected under Articles 10 and 11 ECHR when prohibiting such protest: see the Divisional Court decision in *DPP v Ziegler* [2020] QB 253 **{IAB/24/686}**.

54. It is wrong to view the right of the public to pass and repass as having primacy over the right to protest on the highway. Instead, there is a need to "*balance the different rights and interests at stake*": *Ziegler (DC)* at [108] **{IAB/24/711}**. Clearly it cannot be asserted any form of obstructive protest on the highway (whether deliberate or inadvertent) will be unreasonable without regard to its degree, impact, purpose and general circumstances.

55. The Supreme Court in *Ziegler* emphasised the fact-specific nature of the proportionality assessment. Deliberately obstructive protest falls squarely within the protection of Articles 10 and 11. The Court noted that it was only protests on the highway which intentionally caused significant disruption which were "*not at the core*" of Articles 10 and 11. Nonetheless, even such protests fell within the protection of these rights, requiring a fact-specific assessment of the proportionality of any interference with the protest. Similarly, the Court in *Ineos* at [40] **{IAB/20/543}** stated: "[T]*he concept of 'unreasonably' obstructing the highway is not susceptible of advance definition* […] *that is a question of fact and degree that can only be assessed in an actual situation and not in advance*."

56. Similarly protests which do not cause undue interference with the rights of others do not constitute either public or private nuisance. This cannot be ascertained from simply the fact that there is an obstruction, nor from the fact that it is of such a degree as to have a significant impact on either the individual claimant or the rights of the public at large. See *R v Clark (No 2)* [1964] 2 QB 315, 321 **{IAB/2/19}**: the existence of a public nuisance may not be inferred from the fact of obstruction without consideration of reasonableness or unreasonableness of the obstruction.

57. Whilst the owner of a property may enjoy a common law right of access to the highway, it is not the case that *every* interference with such access will constitute an actionable private nuisance. As Lord Adkin stated in in *Marshall v Blackpool Corp* [1935] AC 16, 22 **{IAB/1/10}** (emphasis added):

> *"The owner of land adjoining a highway has a right of access to the highway from any part of his premises.* […] *The rights of the public to pass along the highway are subject to this right of access: just as the right of access is subject to the rights of the public and must be exercised subject to the general obligations as to nuisance and the like imposed upon a person using the highway."*

58. Insofar as the general obligations as to nuisance on the highway are referred to, the general features of the tort of private nuisance was described by the House of Lords in *R v Rimmington* [2006] 1 AC 459 at [5] **{IAB/10/206}** (emphasis added): "*Thus the action for private nuisance was developed to protect the right of an occupier of land to enjoy it without substantial and unreasonable interference.*"

59. As Nicklin J stated in *MBR Acres* at [80] **{AB/15/437-438}**: "[T]*he right of access to the highway cannot be absolute* […] *the* [Claimant] *has no right to ask the Court to prohibit lawful use of the highway by protesters on the grounds that it would interfere – for a short period – with the* [Claimant's] *right of access to the highway*".

60. It is therefore not the case that every interference with access to the highway, for whatever duration, extent or purpose, will be tortious. Similarly, not every such obstruction will be lawful. It is all a matter of fact and degree.

61. The important point is that the underlying claim in private nuisance relied on by the Claimant to establish the basis for Paragraph 2 of the Draft Order rests on an assessment of disruptive protest on the highway as unreasonable. But not every protest which blocks access to the Land, even intentionally, is unlawful. For example, a one-off peaceful 5-minute prayer vigil in the entrance way to the Senate House Yard, which deliberately stops persons from accessing the Land as part of a symbolic protest asking persons to reflect for a matter of minutes on the Claimant's connections to those children killed in Gaza, will not constitute a private nuisance. Such vigils are common at Cambridge, for Palestine, Ukraine and other causes.[52]

62. It is no answer that the Claimant would grant consent to such a demonstration if advance notice were given because: (i) there is no basis on which to impose such a notice requirement; (ii) it is not for the Claimant to determine what protests will and will not be permitted on the public highway; and indeed (iii) the Claimant has no legal power to give or refuse permission for protests on the public highway. Moreover, the chilling effect of the

[52] Hassoun 1 at [6] **{SB2/10/1273(PDF244)}**; Eshete 1 at [13] **{SB2/12/1284(PDF255)}**.

uncertainty created by the injunction sought is itself a breach of Articles 10 and 11 ECHR and a basis to refuse the order.

63. Should the court decline to make an order restricting protest on the highway, the Claimant is not left without any remedy for protests which constitute an unreasonable obstruction of the highway. Rather, an unreasonable obstruction of the highway constitutes a criminal offence contrary to Highways Act 1980 section 137 punishable with up to 6 months' imprisonment. Police officers have powers of arrest for those suspected of such offences (or simply to use force to clear an obstruction). Bail conditions may be imposed on those arrested pending any further investigation. It follows that:

    63.1. In seeking to restrain protest on the highway outside the Land the Claimants are in effect seeking an injunction in aid of the criminal law; however, the Court must exercise great care in making such an order: see *MBR Acres* at [76] **{AB/15/437}**.

    63.2. The powers of the police to deal with such matters, in particular the power of arrest, provide a far quicker remedy and the existence of such an alternative remedy is relevant to both the proportionality assessment under Articles 10 and 11 and the exercise of the Court's discretion to make any order.

64. The importance of considering police powers to enforce the limits of protest on the highway was emphasised by Nicklin J in *MBR Acres* at [348] **{AB/15/505}** (emphasis added): "[I]*n the context of protest cases, the Court is entitled to and must have regard to: (a) the extensive powers the police have to deal with protest activity* […]*; and (in relation to potential exclusion zones) (b) the powers of local authorities to impose public space protection orders"*.

65. Nicklin J also ruled that the decision in *Wolverhampton* did not overrule his own comments in *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 417 (QBD) on the importance of the role of the police in regulating public demonstrations, and their later approval by the Court of Appeal in the same case. The Court of Appeal stated that private law remedies "*are not well suited to such a task*" which "*involve complex considerations of private rights, civil liberties, public expectations and local authority policies*": *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802 (CA) at [93], approved by Nicklin J at [351] **{AB/15/507}**. Injunctions have been accurately and conveniently described as "*a nuclear option in civil law*": *Valero Energy Ltd v Persons Unknown* [2024] EWHC 124 (KB) at [57] **{AB/7/236}**. In seeking to

restrain action on the public highway outside the Land, the Claimant has moved to this "*nuclear option*" without any proper consideration of the ability of the police to regulate protests based on a fine-grained assessment of conditions on the ground rather than seeking to set limits in advance and in the abstract.

66. In light of the above, it is submitted that the injunction should not restrain actions which are not on the Land.

OWEN GREENHALL

MIRA HAMMAD

GRANT KYNASTON

18 March 2025