Neutral Citation Number: [2019] EWHC 3217 (QB)

Case No: F90BM116

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Civil Justice Centre, The Priory Courts
33 Bull Street, Birmingham B4 6DS

Date: 26/11/2019

Before:

MR JUSTICE WARBY

- -

Between:

Birmingham City Council	**Claimant**
- and -	
(1) Mr Shakeel Afsar	
(2) Ms Rosina Afsar	
(3) Mr Amir Ahmed	
(4) Persons Unknown seeking to express opinions about the teaching at Anderton Park Primary School	
(5) John William Allman	**Defendants**

- -
- -

Jonathan Manning and Clara Zang (instructed by **Birmingham City Council**) for the **Claimant**
Ramby de Mello and Tony Muman (instructed by **JM Wilson Solicitors**) for the **First to Third Defendants**
Paul Diamond and Thomas Green (public access barristers) for the **Fifth Defendant**
The Fourth Defendants did not appear and were not represented

Hearing dates: 14-18 October 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WARBY

MR JUSTICE WARBY:

I. INTRODUCTION

1. This is a claim for injunctions to restrict street protests about a school, and to prohibit online abuse of teachers at that school ("the School"). The School is Anderton Park Infant and Junior School in Birmingham, a maintained school which teaches children between the ages of 4 and 11. It is a large school with approximately 700 children on the roll, half girls and half boys. The majority of the children are of British Pakistani heritage, though there is a sub-set of Romanian children. The claim is brought by Birmingham City Council ("the Council"). It arises from objections raised to aspects of the teaching at the School, and seeks to curtail some of the ways in which those objections have been expressed. At the centre of the case is the School's teaching, or what has been said to be its teaching, of "LGBT issues". That is a rather broad-brush label to which I shall have to come back, because clarity and precision matter in this case. But let me adopt it for the time being. In broad terms, the question for decision is what if any restrictions should be placed on what can be done and said by parents and others who wish to criticise the School's behaviour in relation to the teaching of LGBT issues.

II. THE HISTORY IN OUTLINE

2. From about mid-March 2019, there have been frequent and regular protests or demonstrations outside or near the School about the teaching, or what was said to be the teaching, of LGBT issues at the School. Abusive messages have also been posted on social media and online. The protests have continued for some 7 months.

3. I shall address some of the detail of the protests later, but it is appropriate to mention now some of their most extreme manifestations. Speakers at street protests outside or near the School have alleged that it is pursuing "a paedophile agenda", and teaching children how to masturbate. Leaflets have alleged that the School is providing "LGBT sexual education". Videos have accused the School of bringing in gay teachers to teach children about anal sex, and allowing convicted paedophiles into the school. The Council maintains that all of this is utterly false. It has called evidence to make good that assertion. There is no evidence to the contrary. None of the defendants who are represented before me has challenged these aspects of the Council's case, which I find are clearly proved. The defendants' case is that they are not responsible for these extreme and untrue characterisations of the School's behaviour.

4. The focus of the claim is not, however, on the content of the protests. The Council has not sought, and is not seeking, to restrict what the protestors say in the street. On 29 May 2019 the Council issued a Part 8 claim form seeking injunctions to restrict the way these protests were carried on. The Council's case was that the protests involved nuisance and disruption. It also complained of what it said was unacceptable abuse of teachers on social media. It relied on the provisions of the Local Government Act 1972, the Highways Act 1980, the Localism Act 2011 and the Anti-Social Behaviour, Crime and Policing Act 2014. The Council sued four defendants: three individuals - Shakeel Afsar, his sister Rosina, and Amir Ahmed - and "Persons Unknown". Ms Afsar is the mother of two children both of whom were at the School at the time. Mr Afsar is the brother of Ms Afsar. Mr Ahmed is a member of the local community. Neither Mr Afsar nor Mr Ahmed is a parent.

5. On 31 May 2019, the Council applied for an immediate injunction pending trial. The application was made in London, without notice to the defendants. Moulder J granted the injunctions sought. These had five main aspects. The orders prohibited (1) entry into a designated area around the School ("the Exclusion Zone"); (2) conduct which harasses, alarms or causes distress to others; (3) approaching staff of the school or witnesses in the case; (4) & (5) the use of social media to offend or abuse teachers, and (6) otherwise engaging in or encouraging others to protest within the Exclusion Zone against the "teaching of equalities" at the School.

6. On 4 June 2019, on the application of the Council, Moulder J enlarged the Exclusion Zone. The injunctions had exceptions to allow Mrs Afsar to take her children to and from the School, and to allow all the first three defendants to attend a mosque within the Zone. Persons Unknown were subject to injunctions of types (2) and (4).

7. On Monday 10 June 2019, there was a hearing in Birmingham to decide whether there should be injunctions pending the trial of the action. I heard applications from both sides. I set aside the existing injunctions on the grounds of material non-disclosure by the Council at the hearings before Moulder J; but I granted fresh interim injunctions pending the trial. These were in terms similar to, but in some ways different from, the original injunctions. I gave my reasons in a judgment handed down on 18 June 2019: [2019] EWHC 1569 (QB) ("the Interim Judgment").

8. Annexes A and B to the Interim Judgment set out the terms of the original injunctions. The modifications I made at the hearing on 10 June are identified and explained in paragraph [72] of the Interim Judgment. Appendix I to this judgment sets out the terms of the interim injunctions I granted against the second defendant. Appendix II is "Map 1", showing the Exclusion Zone. Similar orders, but with fewer exceptions, were made against the first and third defendants, and Persons Unknown were subjected to an order in the terms of paragraphs 4 and 5 of Appendix I.

9. I gave directions for the case to proceed to trial, modifying the procedure under Part 8 by agreement of the parties. On 3 July 2019, the first to third defendants served Defences in which they raised (among others) issues of discrimination. They alleged treatment amounting to indirect discrimination on ethnic and/or religious grounds, contrary to the Equality Act 2010 ("the EA"). On 24 August 2019, the defendants served their witness statements. On 13 September 2019, by order of HHJ Worster, a fifth defendant was added to the case. This was John William Allman, from Okehampton in Devon. He had applied to be joined with a view to raising freedom of expression arguments in opposition to those aspects of the injunctions that restrict statements on social media. Mr Allman contends that he is a person affected by these aspects of the injunctions. HHJ Worster directed him to serve a witness statement setting out his case in relation to the relief that affected him, and on 20 September 2019, he did so. On 23 September 2019, the Council served a Reply to the Defences of the first three defendants. On 27 September 2019, the Council served its evidence in reply.

10. On Monday 7 October 2019, I held a pre-trial review. I gave the first three defendants permission to amend their defences to allege direct discrimination, contrary to the EA; I gave the parties permission to adduce certain expert evidence; and I gave other directions about evidence. I declined Mr Allman's application to be appointed under CPR 19 as a representative defendant, on behalf of "Persons Unknown". Later, I declined his application for a costs-capping order or protective costs order.

11. This judgment follows the trial, held in Birmingham over five days commencing on 14 October 2019, at which the first to third defendants and Mr Allman were all represented by Counsel, put oral and written evidence before the court, and advanced legal submissions.

III. ISSUES

12. As is common ground, the claim and the defences to it engage important civil rights, including fundamental human rights. I have been provided with more than ample legal material. The legislation, case law and policy guidance provided to me filled no fewer than five lever arch files. However, the main issues arising from the written statements of case, Mr Allman's witness statement, and the arguments of Counsel, can be quite shortly summarised in this way:-

    (1) Is the Council's claim in accordance with the law; or are the defendants right to submit that the legislation relied on cannot lawfully be used as the basis for injunctions of the kinds that are sought ("the Construction Issues")?

    (2) Does the Council's claim pursue one or more legitimate aims; or does the relevant teaching and/or the School's conduct in respect of it, amount to unlawful discrimination on grounds of ethnicity and/or religion, contrary to the EA, against which it is legitimate to protest, so that it would be wrong to grant any such injunctions ("the Discrimination Issues")?

    (3) If the claim is in accordance with the law and pursues legitimate aims, is it in all the circumstances, having due regard to all the rights engaged, necessary in a democratic society to grant injunctions to restrain protest or criticism that

        a) causes harassment, alarm or distress; or

        b) causes public nuisance or obstructs the highway; or

        c) involves the abuse of teaching staff on social media ("the Necessity Issue")?

    (4) If any such injunction would in principle be lawful, necessary and proportionate,

        a) can an order be framed which is clear, and not excessive ("the Form Issues")? If so,

        b) against which (if any) of the five defendants could the court properly grant one ("the Liability Issues")?

13. The main issues of fact are (i) what teaching of LGBT issues has in fact been delivered or is to be delivered by the School? And (ii) to what extent are the defendants responsible for the street protests, and any protest or abuse of teachers, so far?

IV. EVIDENCE

14. The written evidence before the Court runs to over 1,800 pages, filling five lever arch files.

15. The Council relied on witness statements from the following ten witnesses, each of whom gave oral evidence and were cross-examined. Robert James, the Council's Acting Corporate Director for Neighbourhoods, whose first statement was relied on at all stages as a convenient summary of the evidence from others; Sarah Hewitt-Clarkson, headteacher at the School ("the Head"); the Deputy Head Teacher, Claire Evans ("Mrs Evans"); the Assistant Head Teacher, Kathy Mayne ("Mrs Mayne"); Richard Harris ("Mr Harris"), Senior Learning Mentor at the School; Tom Brown ("Mr Brown"), a local resident; Isobel Knowles ("Mrs Knowles"), a Liberal Democrat campaigner who gave evidence of her observations of the protest and its impact; Amanda Daniels ("Mrs Daniels"), Principal Educational Psychologist for Birmingham City Council; Nick Tinsdeall ("Mr Tinsdeall"), Senior Technical Officer (Acoustics) in the Council's Environmental Protection Unit; and Sophie Taylor, Deputy Director of Education at the Department for Education ("Ms Taylor").

16. In addition, the Council relied on a body of documentary evidence. This included written statements from a number of individuals who were not called to give oral evidence. There were three witness statements from police officers, in the form required by Part 22 of the CPR. One of these was Mark Longden, the Senior Investigating Officer for "Operation Dubnium", the label for the police operation relating to protests outside the School and another local school called Parkfield. Mr Longden's statement gave an account of Op. Dubnium. The other two police witness statements came from PCs Young and Bowditch, who attended some of the protests.

17. The Council's witness statements also exhibited a range of other statements made by police officers and others relating to protests and incidents, or alleged incidents, of relevance to the issues in the case. Mr Longden exhibited a number of statements made by other police officers and members of the public, relating to the protests. These were statements taken for the purposes of Op. Dubnium. None of these statements was in CPR format, but each identified the name of the maker. Mr James exhibited to his first statement seven statements from police officers dated 23 May 2019. Again, these were not in CPR format. Mr James exhibited to his second statement six written witness statements which were in CPR format, each dated 26 September 2019, and said to be made by an individual living near the School. Each of these statements contained the name of the maker, but this was redacted, and these witnesses were anonymised as "Witness A" to "Witness F". Each statement explained that the witness was not willing to attend court, for fear of reprisals.

18. Each of the four individual defendants made a witness statement, gave oral evidence confirming the statement, and was cross-examined – in the case of Mr Allman, very briefly (he was not challenged on most of what he said). The first three defendants called additional factual evidence from Rosina Akhtar ("Mrs Akhtar"), and expert evidence from two witnesses. One of these was Ajmal Masroor ("Imam Masroor"), an Imam and broadcaster, who offered opinions on a range of religious, ethical and social issues. The other was John Holmwood, Professor of Sociology in the School of Sociology and Social Policy at the University of Nottingham. Prof. Holmwood addressed regulatory frameworks; their inter-relationship with the EA; the professional expectations of senior managers in relation to the implementation of those frameworks; and the impact on children with regard to social integration and welfare. All these additional witnesses gave oral evidence and were cross-examined.

19. The first three defendants also relied on a body of documentary evidence. As with the Council, these defendants' documentary evidence included written statements from individuals who did not give oral evidence at the trial. Most of these were parents of children at the school. I had witness statements in CPR form from four parents: Rangzeb Hussain, Khadija Kubra, Muhammad Latif, and Shaida Rashid. In addition, the statement of Mrs Akhtar exhibited seven written statements from other parents, dated 28 and 29 June 2019. All these statements identified the maker, but none was in the CPR form.

20. The action began as a Part 8 claim, as the CPR indicate it should have been. But it was always liable to involve disputes of fact. That is why it was agreed at the interim injunction hearing that directions should be given for the service of Defences to identify the issues, and for requests for disclosure, and notice of intention to cross-examine witnesses. A hybrid procedure thus emerged. Beyond this, the parties have chosen in the interests of economy and efficiency not to cross-examine some witnesses whose evidence is not accepted. Over and above that, there is the Council's highly unusual decision to rely on anonymous witnesses. There has however been no objection to any of this. It has been common ground at the trial that I should have regard to all the written hearsay evidence before me, giving it such weight as is appropriate in all the circumstances. I have reminded myself of the relevant provisions, those of the Civil Evidence Act 1995, and in particular section 4 ("considerations relevant to weighing of hearsay evidence").

V. CONCLUSIONS

21. I can summarise the conclusions I have reached on the main issues:

    (1) The legislation relied on by the Council permits it to seek, and empowers the Court to grant, injunctions of the kind that are claimed in this action.

    (2) The claim pursues legitimate aims: preventing disorder and protecting the reputations and rights of others. The grant of injunctions in pursuit of those aims would not be contrary to the EA, which does not apply to the pursuit of claims for anti-social behaviour, public nuisance, or obstruction of the highway. Alternatively, the conduct complained of by the defendants relates to the content of the curriculum, which is outside the scope of the EA. Accordingly, injunctions of the kinds sought would not amount to, or serve to enforce, unlawful discrimination. I am not persuaded, in any event, that there has been such discrimination. The teaching has been misunderstood and misinterpreted by the defendants, and misrepresented, sometimes grossly misrepresented, in the course of the protests. The matters that have actually been taught are limited, and lawful.

    (3) (a) and (b): Despite the sometimes gross misrepresentation of its teaching, the Council has not sought restrictions on the content of the protestors' expression, but restrictions on the way the protestors express themselves. Some such restrictions, in respect of the street protests, are necessary in a democratic society, and proportionate to the legitimate aims I have identified. On the balance of probabilities, the defendants bear responsibility for the most extreme manifestations of objection to the supposed teaching at the School. But even if that were wrong, an Exclusion Zone, and restrictions on the frequency and

duration of protests, and on the use of amplification, would remain legitimate interferences with the protestors' freedom of expression.

(c) The evidence does not, however, demonstrate a pressing social need to impose restrictions on what is said on social media.

(4) (a) It is possible to formulate injunctions which restrict the way in which street protest is carried on, in terms that are clear, and limited to the prevention of what would otherwise be unlawful behaviour. For the reason just given, it is unnecessary for present purposes to decide whether the prohibitions on abuse of teachers that have been imposed to date were clear enough, or whether some other form of words could be arrived at to achieve the same objective.

(b) There is a sufficient evidential basis for the grant of final injunctions against each of the first three defendants. Mr Allman was never a target of any restriction on street protest. As for Persons Unknown, it is legitimate to grant permanent injunctions against those individuals, albeit their identities are unknown, who have been served with, and have thus had the opportunity to take part in the proceedings. The description of Persons Unknown will need to be adjusted to correspond with this group.

22. In the light of these conclusions, I will grant injunctions against the first three defendants and Persons Unknown. I will not continue the injunction restraining abusive statements on social media, and there will be no injunction against Mr Allman, who has succeeded in resisting the imposition in these proceedings of any further restriction on his freedom of speech.

VI. REASONS

The Convention Rights

23. The Human Rights Act 1998 (HRA) requires me to read and give effect to legislation compatibly with the Convention rights, so far as this is possible (s 3). Unless compelled by statute, I must not act incompatibly with the Convention rights (s 6). The Convention Rights engaged in this case are the rights to respect for private and family life (Article 8(1)), freedom of thought, conscience and religion (Article 9(1)), freedom of expression (Article 10(1)), peaceful assembly and freedom of association (Article 11(1)). All of these are qualified rights; they can be interfered with or restricted by measures that are prescribed by law, and necessary in a democratic society in pursuit of one or more of the legitimate aims specified in paragraph (2) of each Article. I also have to consider Article 2 of the First Protocol (A2P1), which prohibits the denial of education to any person, and requires the state, in any functions which it assumes in relation to education and teaching, to respect the right of parents to ensure that such education and teaching is in conformity with their religious convictions.

The Construction Issues

24. The claims are brought in reliance on a number of statutory provisions. I have already identified the principal statutes relied on ([4] above). All impose duties or confer powers on a local authority, or do both. Section 222 of the Local Government Act 1972 gives an authority power to bring civil proceedings in its own name "where the authority

considers it expedient to do so for the promotion or protection of the interests of inhabitants of its area". Section 111 of the 1972 Act grants power to do anything which is "calculated to facilitate or is conducive to" any of the authority's functions. Section 1 of the Localism Act 2011 confers an additional, general power for a local authority to do anything that individuals with full capacity may do. Section 130 of the Highways Act 1980 imposes duties "to assert and protect the rights of the public to the use and enjoyment" of the highway, and "to prevent, as far as possible, … obstruction", and empowers the authority to bring legal proceedings for that purpose.

25. The Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) contains the following relevant provisions:

> **"1 Power to grant injunctions**
>
> (1) A court may grant an injunction under this section against a person aged 10 or over ("the respondent") if two conditions are met.
>
> (2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.
>
> (3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.
>
> (4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour—
>
> (a) prohibit the respondent from doing anything described in the injunction;
>
> (b) require the respondent to do anything described in the injunction.
>
> …
>
> (8) An application for an injunction under this section must be made to—
>
> (a) a youth court, in the case of a respondent aged under 18;
>
> (b) the High Court or the county court, in any other case
>
> …
>
> **2 Meaning of "anti-social behaviour"**
>
> (1) In this Part "anti-social behaviour" means—
>
> (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,

> (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
>
> (c) conduct capable of causing housing-related nuisance or annoyance to any person.
>
> (2) Subsection (1)(b) applies only where the injunction under section 1 is applied for by—
>
> …
>
> (b) a local authority, …
>
> (3) In subsection (1)(c) "housing-related" means directly or indirectly relating to the housing management functions of—
>
> …
>
> (b) a local authority.
>
> …
>
> **5 Applications for injunctions**
>
> (1) An injunction under section 1 may be granted only on the application of—
>
> (a) a local authority, …"

On the face of it, these provisions would appear to confer on a local authority power to seek and for the High Court to grant an injunction to restrain behaviour by an adult which qualifies as "anti-social behaviour" within the meaning of s 2(1).

26. The Council's Particulars of Claim also pleaded reliance on three further sets of duties: those under the Crime and Disorder Act 1998, to formulate and implement a strategy for the reduction of crime and disorder, and to do all that it reasonably can to prevent crime and disorder, in its area; the duty under the Children Act 2004 to make arrangements for ensuring the authority's functions are discharged having regard to the need to safeguard and promote the welfare of children; and the public sector equality duty (PSED) under s 149 of the EA.

27. At the interim hearing in June 2019 there was no dispute that the Council had the power to bring these claims, or that the Court had jurisdiction to grant the orders sought: see the Interim Judgment at [17]. But in paragraphs 19 and 20 of their defences, served on 3 July 2019, the first three defendants took a fundamental point. They disputed the claims on the basis that none of the statutory provisions relied on by the Council permits or is intended to restrain or curb the exercise of the defendants' rights under Articles 10 and 11 of the Convention.

28. Mr de Mello has elaborated that argument at the trial. His submissions have focused mainly on the 2014 Act. His argument is that the relief sought on the present application is outside the purpose and mischief at which the statute was aimed, which is to be identified in the light of its historical context. Reliance is placed on the predecessor legislation of 2009, said to be aimed at gang-related activities, and it is argued that Part 1 of the 2014 Act was "not intended to be deployed against protestors exercising their fundamental rights under [the Convention]". It is further submitted that many protests

cause "harassment, alarm or distress", so that the application to protests of section 1 of the 2014 Act would mean that a local authority "can readily apply for and obtain an injunction in circumstances where the local authority disagrees with the content of the speech", which would "cut across freedom of expression". Mr de Mello has reminded me of the ringing words of Sedley LJ in *Redmond-Bate v DPP* [2000] HRLR 249 [18], [20]:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having."

29. In support of the overarching submission that Parliament did not intend such effects, reference is made to Parliamentary materials, to the Explanatory Notes to the 2014 Act, and to the Statutory Guidance issued under s 19 of that Act, all of which were said to indicate that ss 1 and 2 had a narrow and specific scope which did not encompass protest. In the absence of clear wording, it is argued, the statute should not be construed in such a way as to authorise an interference with fundamental rights to protest. Mr de Mello submits that Parliament's intention can be discerned by contrasting the broad provisions of ss 1 and 2 with ss 34(3), 59 and 72 of the 2014 Act. The latter make express provision for those exercising dispersal powers, or making public space protection orders (PSPOs), to "have particular regard" to the rights protected by Articles 10 and 11. The absence of any such provision in ss 1 and 2 is said to provide a clear indication that Parliament did not intend those powers to be used in such a way as to interfere with these fundamental rights. Further and in the alternative, I am invited to give the statute a Convention-compliant reading, in accordance with s 3 of the HRA.

30. The first difficulty with these submissions is that they ignore the starting point of statutory construction, which is the ordinary, grammatical meaning of the legislative provision under consideration. It is a rule of law (known as the "golden rule" or the "plain meaning rule") that if statutory wording, read in its context, is unambiguous, and there are no interpretative principles which cast doubt on whether its ordinary meaning is the one that Parliament intended, then the ordinary meaning of the statute is its legal meaning (Bennion on Statutory Interpretation, Section 195 (6th ed., 2013); Cross on Statutory Interpretation, 1st ed., p1). Mr de Mello has not suggested that the statutory wording is ambiguous. It is not. Nor has it been argued that the ordinary meaning is not a common sense interpretation. The argument for the defendants is that for other reasons the words should not be given their ordinary, common sense meaning, but should instead be treated as incorporating some implicit limitation. I am not persuaded that any of the arguments advanced for doing so carries any weight.

31. The court's interpretation of a statute must be informed by its context. But the legislative history does not provide any indication that Parliament intended to restrict the scope of what could and could not be regarded as anti-social behaviour, by excluding "protest". If it had so intended, it might in principle have incorporated limitations into the definition of that term. But it is hard to see how that could have been done. It is not possible to infer that Parliament intended to exclude from the scope of ss 1-5 of the 2014 Act any utterance falling within Article 10(1), or any combination falling within Article 11(1). That would deprive the statute of much of the effect which on any view it was intended to have. A great deal of anti-social behaviour (including several of the illustrative examples given in the Explanatory Notes) consists of spoken

words and public assemblies; such conduct may well represent an unwarranted interference with the rights of others, in particular those under Article 8. The freedom to speak offensively, though important, is not an unqualified right. It is not feasible to read in any narrower limitation, to exclude "protest". That is a protean term, with no fixed meaning, and protest in not in and of itself legitimate. Mr de Mello has offered no wording that would give effect to the implied intention he asserts.

32. The short answer is that there is no need for any such wording. It is not arguable that to give the statute its ordinary meaning would allow the Court to grant injunctions that wrongfully interfere with Convention rights. The HRA, passed sixteen years before the 2014 Act, prohibits the Court from doing so. The HRA is a key aspect of the legal context in which Parliament passed the 2014 Act. In my judgment, there is no reason to doubt that in passing this legislation Parliament intended to confer power to seek and to grant injunctions to prohibit anti-social utterances and assemblies of all kinds, in any case where it is shown that this is necessary and proportionate in pursuit of one of the legitimate aims identified in Articles 10(2) and 11(2). The safeguards for the human rights of protestors lie in the Court's statutory duty under s 6 of the HRA, and in the procedures of the Court. The Court can be relied on, with or without the assistance of those representing the defendants to claims for injunctions of this kind, to keep in mind the importance of freedom of expression and freedom of assembly. It can be trusted to avoid unwarranted interferences with these (and other) fundamental rights by insisting on compliance with the well-established principles, that any interference must correspond to a pressing social need, its necessity must be established by clear and compelling evidence, and it must not go further than is necessary.

33. The spelling out, elsewhere in the statute, of the need for other public authorities to have regard to Articles 10 and 11 is readily explicable as a statutory reminder to those authorities of the need to comply with the Convention when exercising administrative, as opposed to judicial, powers. Indeed, this aspect of Mr de Mello's argument tends to undermine his principal submission. Inherent in the argument is an acceptance that the statute authorises a local authority to curtail fundamental rights by administrative action; and the Court has, unsurprisingly, so held. In *Dulgheriu v The London Borough of Ealing* [2019] EWCA Civ 1490 the Court of Appeal upheld the local authority's decision to make a PSPO imposing an exclusion zone around an abortion clinic. It cannot be supposed that Parliament intended to allow that, but not the grant of an injunction by the Court.

34. Mr de Mello had an alternative submission: that if the legislation allows the Council scope to choose between a PSPO or an injunction as the means of combating anti-social behaviour, it should not be granted an injunction, thereby bypassing the statutory safeguards built into the PSPO regime. In support of that submission he cited *Birmingham City Council v Shafi* [2008] EWCA Civ 1186 [2009] 1 WLR 1961 [36], [45] and [59]. A similar argument was advanced by Mr de Mello in *Birmingham City Council v Sharif* [2019] EWHC 1268 (QB) and rejected by HHJ McKenna (sitting as a Deputy High Court Judge). I share the view expressed by Judge McKenna at [27] that the argument is entirely misplaced, for the reasons he gave at [28-33]. In short, *Shafi* is no authority for the proposition that an injunction under the 2014 Act cannot or should not be sought or granted if the authority could have imposed a PSPO, or other lesser remedy: see *Redpath v Swindon BC* [2009] EWCA Civ 943 [2010] PTSR 904, *Birmingham CC v James* [2013] EWCA Civ 552 [22], [28], [31]. A local authority's power to ask the

Court to determine whether an injunction is a necessary and proportionate interference with Convention rights is not shackled by rigid rules of this kind. Nor can it be argued that the powers of the Court should not be invoked or exercised, on the grounds that Court procedures are inferior to the administrative procedures specified in the statute. That is manifestly not the case.

35. As for s 130 of the Highways Act 1980, Mr de Mello submits that it can have no application to the facts of this case. In support of that submission he cites *Ali v Bradford Metropolitan Borough Council* [2010] EWCA Civ 1282 [2012] 1 WLR 161, where the Court of Appeal upheld the striking out of a claim for damages for personal injury, based on an alleged breach of the statutory duty imposed by s 130. I was unable to follow this line of reasoning. Mr de Mello's skeleton argument asserts, in my judgment correctly, that the section is concerned with the protection of the legal rights of the public at large to use the public highway. That is the basis of this aspect of the Council's claim. It maintains that the protests obstruct the highway adjacent to the School or risk doing so. The fact that a person injured by an obstruction to the highway cannot sue the Council for damages is not pertinent.

The Discrimination Issues

36. These issues were not before me at the time of the interim injunction hearing. They arise from lines of defence that first emerged in the Defences of the first, second and third defendants, served in July 2019, and in the Amended Defence served by Mrs Afsar shortly before the trial.

37. The case has been pleaded and argued in various ways, but at its heart is the argument that the School's teaching policy – described by the defendants as "the teaching of LGBT issues (ie teaching equalities)" – represents or involves unlawful discrimination against British Pakistani Muslim children at the School, and those with parental responsibility for them (who are said to include not only Mrs Afsar but also Mr Afsar), on grounds of race and/or religion. It is submitted that the core religious, philosophical and cultural values of this group "are centred on heterosexual relationships in marriage; this state of belief does not encompass same sex relationships".

38. It was in support of this part of their case that the defendants called from Imam Masroor. The Imam expressed a number of opinions about aspects of the School's conduct, all of which were based on hearsay and which, in my judgment, are issues for me to determine. His principal remit was to provide expert evidence as to Islamic doctrine and teaching. His report did however correctly identify the nature of the issue at the centre of the debate as whether schools should be teaching young children of primary school age about the different types of relationship that exist in the UK today, including homosexuality as a valid form of family relationship". He said, "there is no simple answer to this question". He set out to identify the Islamic approach to sex and sexuality, and its inter-relationship with teaching. The following aspects of the Imam's evidence on those issues were not disputed. "A Muslim can have homosexual, bisexual or transsexual thoughts or tendencies" but they commit grave sins if they translate their thoughts into sexual acts. There is "no room for … kinds of sexual relationship" other than the heterosexual, which is "the moral absolute in Islam." In Islam, "standing up against wrong is a religious obligation". His evidence was that "equality should not be confused with sexuality" and "certainly should not be taught as only a sexual act and the promotion of casual sexual behaviour". The principle that, in his opinion, "should

form the bedrock for teaching human relationship" is one that he identifies as clearly stated in the Quran: "everyone is born with inalienable right to dignity, honour and respect regardless of their background."

39. It is asserted by the first to third defendants that the School "under the guise of British laws", seeks to "teach and promote LGBT subjects" to pupils in this group, without any or any proper consultation, with a destructive impact on their religious and cultural traditions. That being so, the argument runs, the Court should not, indeed cannot lawfully grant an injunction to curtail protest against the teaching policy, and related conduct of the School. To do so would itself be an act of discrimination, that could not be justified. Reliance is placed on the principle stated by the majority in *Lewisham London Borough Council v Malcolm* [2008] UKHL 43 [2008] 1 AC 1399 [19], that "the courts cannot be required to give legal effect to acts proscribed as unlawful". That was a case of possession proceedings alleged to have been brought in breach of the Disability Discrimination Act 1995, but the principle applies to cases of race and sex discrimination: *Aster Communities Ltd v Akerman Livingstone* [2015] UKSC 15 [2015] AC 1399 [17], [34].

40. Direct discrimination is defined in s 10(1) of the EA: "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others." Indirect discrimination is defined by s 19(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." The defendants' pleaded case alleges both indirect and (more recently) direct discrimination.

41. However, though the pleading is lengthy, it lacks clarity. Among other things, it does not clearly specify the discriminatory provision, criterion or practice (also known as PCP) which is said to have been applied. The skeleton argument is also vague on the matter. It says, at paragraph 62, that the PCP "is the teaching of LGBT issues (as pleaded in the PoC at [18])". That is unhelpful, because the Particulars of Claim are unspecific about the content of the teaching. At a late stage during the hearing, Mr de Mello produced a written statement of the PCP relied on:

> "Weaving into lessons through years one to six, without informing parents in advance, that (a) it is ok for a child to have two mummies and two daddies (b) it is ok for two ladies to get married (c) it is ok to be gay (d) it is ok for a boy to dress as a girl and (e) it is up to the parents to teach their child(ren) what they believe at home, without the opportunity for the parents to opt the child out."

The defendants' statement of the PCP contains a number of footnotes, referring among other things to a book called "My Princess Boy", which is the foundation of paragraph (d) of the PCP. I shall come back to that book.

42. The Council submits that the defence case proceeds from a number of inaccurate factual premises, set out in the defendants' witness statements and repeated in the skeleton argument filed by their Counsel. The Council's factual case is that it is teaching children about all aspects of equality, after conducting appropriate consultations; it has made every effort to engage with parents in relation to this teaching. And the Council

maintains that it has not acted in any way that can properly be said to involve unlawful discrimination against any of the defendants, or any member of the group relied on. But the Council has two more fundamental answers to this part of the defence case: (1) allegations of discrimination cannot be an answer to the Council's claim for an injunction; (2) in any event, the conduct to which objection has been taken is outside the scope of the EA.

43. In the Interim Judgment at [14], I observed that it might be open to the protestors to seek judicial review of the educational policy that has been adopted and applied at the School, but it was "not easy to see how the merits of that policy can figure large in this case". That remains my view, despite the submissions of Mr de Mello. The present case is distinguishable from *Lewisham v Malcolm* and *Aster Communities.* In both the cases relied on the defence case was that the very act which the court was being asked to carry out, namely the grant of an order for possession, would be unlawful because it would give effect to an unlawful decision of the claimant. That is not the position here.

44. The EA does not outlaw all discrimination based on any protected characteristic. It covers specific territory, carefully mapped out in the Act. Conduct is only unlawful discrimination if it relates to an activity falling within one or more of Parts 3 to 7 of the Act, which cover, respectively, Services and Public Functions, Premises, Work, Education, and Associations. *Aster Communities* was a case about premises, and the defendant relied on Part 4, s 35(1)(b) of the EA, which provides that "a person (A) who manages premises must not discriminate against a person (B) who occupied the premises … by evicting B": see [16] (Baroness Hale). In the present case, the Court is not being asked to give effect to an eviction, or any other act of the Council falling within EA Parts 3 to 7. The application is for an order curtailing what is said to be anti-social behaviour, public nuisance, and obstruction of the highway. The application pursues inherently legitimate aims, concerned with upholding the rights of others. The Council's conduct in seeking such injunctions does not fall within the ambit of the EA.

45. Even if that is wrong, the acts complained of appear to me to fall outside the scope of the EA. Education in schools is covered by Part 6, Chapter 1 of the EA. The relevant provisions for present purposes are contained in ss 85 and 89.

> **"85 Pupils: admission and treatment etc.**
>
> …
>
> (2) The responsible body of … a school [to which this section applies] must not discriminate against a pupil—
>
> (a) in the way it provides education for the pupil;
>
> (b) in the way it affords the pupil access to a benefit, facility or service;
>
> …
>
> (d) by not affording the pupil access to a benefit, facility or service;
>
> …
>
> (f) by subjecting the pupil to any other detriment.
>
> …

> (7) In relation to England and Wales, this section applies to—(
>
> (a) a school maintained by a local authority;
>
> …
>
> (9) The responsible body of a school to which this section applies is—
>
> (a) if the school is within subsection (7)(a), the local authority or governing body …
>
> …
>
> **89 Interpretation and exceptions**
>
> (1) This section applies for the purposes of this Chapter.
>
> (2) Nothing in this Chapter applies to anything done in connection with the content of the curriculum."

46. The proscribed conduct is, therefore, discrimination by the local authority or governing body against a pupil "in the way it provides education for the pupil", and in the other ways identified above; but not in "anything done in connection with the content of the curriculum." It is not easy to see how the conduct complained of, as regards the pupils, can fall within s 85(2)(b), (d) or (f). Although all those sub-paragraphs have been mentioned in the defendants' written materials, the defendants have nowhere pleaded, nor have they set out in writing or orally any detailed case in relation to those provisions. The argument has focused on s 85(2)(a) and its relationship with s 89.

47. Mr Manning submits that the term "curriculum", in its context within s 89(2), embraces all learning and other experiences that a school plans for its pupils, and that the national curriculum forms only part of this. Mr de Mello counters that s 85(2)(a) should be given an expansive interpretation, and that the term "curriculum" in s 89 has a narrow meaning, denoting the national curriculum, and not any other aspect of what is taught in schools. Since the teaching of "LGBT issues" and equality in the School is not required or covered by the national curriculum, the argument goes, the discrimination complained of is proscribed by s 85(2)(a). In my judgment, Mr Manning's submissions are clearly to be preferred.

48. As is common knowledge, the national curriculum is a prescribed sub-set of what is taught in schools. It is one element of the picture, albeit an important one. The national curriculum is not new. It has been a feature of the education landscape for over thirty years, first prescribed by the Education Reform Act 1988. It would be odd, to say the least, if Parliament had meant EA s 89(2) to exempt only things done in respect of the "national curriculum", for it to use the single word "curriculum". It is not plausible, in any event, to ascribe to Parliament an intention to afford local authorities and governing bodies protection against allegations of discrimination in connection with things done in relation to the content of the "national curriculum". The content of the national curriculum is not the responsibility of a local authority or school governing body. Even if such limited protection had an identifiable purpose, it would leave the responsible bodies open to attack in relation to the content of other, more peripheral, aspects of what is taught in schools. No rational ground for such a policy has been identified. Furthermore, the language of s 85(2)(a) supports Mr Manning's submissions. The

distinction may sometimes be blurred in practice, but in principle there is a clear distinction between the content of the curriculum at a School, and "the way it provides education".

49. Mr Manning has helpfully referred me to the Explanatory Notes to the EA, and to paragraph 2.2 of the National Curriculum in England: Key Stages 1 and 2 Framework Document (September 2013). I am not sure that the latter is a legitimate aid to construction, but the Explanatory Notes certainly are, and they support the Council's argument. The Notes say this:

> "**Effect**
>
> 302. This section … makes it clear that the prohibitions in the Chapter do not apply to anything done in relation to the content of the school curriculum. … The way in which the curriculum is taught is, however, covered by the reference to education in section 85(2)(a), so as to ensure issues are taught in a way which does not subject pupils to discrimination. ….
>
> **Background**
>
> 303. This section is designed to replicate the effect of an exception relating to discrimination because of religion or belief in the Equality Act 2006, and extends it to other protected characteristics.
>
> **Examples**
>
> - A school curriculum includes teaching of evolution in science lessons. This would not be religious discrimination against a pupil whose religious beliefs include creationism.
> - A school curriculum includes The Taming of the Shrew on the syllabus. This would not be discrimination against a girl."

The second example is very much in point, given the defendants' reliance on specific books, as part of their PCP. It indicates, rightly in my judgment, that a decision to use a particular text as part of a programme of instruction is likely to be something done in relation to "curriculum content".

50. I cannot accept Mr de Mello's invitation to give the wording of s 89(2) the narrow interpretation for which he contends, on the grounds that giving the words their natural meaning would militate against the purpose of the Act. This seems to me to be circular reasoning, as it presumes a legislative intention to do something other than that which the statutory wording indicates. To adopt this approach would deprive the sub-section of all or most of the effect it is evidently intended to have. It is easy to understand the rationale for the exemption. The purpose of s 89(2) is to enable a school to teach controversial material without being accused of contravening the EA. Paragraph 302 of the Explanatory Notes makes this clear:-

> "This ensures that the Act does not inhibit the ability of schools to include a full range of issues, ideas and materials in their syllabus and to expose pupils to thoughts and ideas of all kinds."

51. The exemption is cast in broad terms; it does not just apply to decisions about the curriculum content, but to "anything done in connection with" that content. This is consistent with an intention to protect against collateral attack. In my judgment, the PCP alleged by the defendants is entirely concerned with the "content of the curriculum" within the meaning of s 89(2). None of it is about the "way education is delivered" so as to fall with s 85(2)(a), and outside the scope of that sub-section.

52. The defendants' pleaded case on this issue goes beyond complaint about discrimination against pupils in relation to the content of the curriculum. Paragraphs 7, 8 and 9 of the Amended Defence allege discrimination against parents, and those in parental roles, including Mrs and Mr Afsar. Paragraph 9.1 contains 13 sub-paragraphs alleging conduct said to be direct discrimination, and to demonstrate "expressive harm and detriment suffered by" a group of "parents/pupils/protestors/close associates". It is unnecessary to list all the complaints. It is enough to say that they include the language used by the Head Teacher towards and about parents and protestors opposing the School's policy; decisions to invite an MP and others onto the school premises; failures or deficiencies in consultation; the inclusion of a rainbow colour on the School's letterhead; and various other collateral matters. These aspects of the claim face several difficulties. First, these are not complaints about "the way in which education is delivered" by the School. Secondly, as I have noted, the conduct proscribed by EA s 85 is discrimination against pupils, not parents, still less discrimination against third parties who hold views about the content of the curriculum or, indeed, the way in which education is delivered. Aggrieved parents and interested third parties have no standing to complain of a contravention of Part 6 of the EA.

53. The defendants have pleaded claims under Part 3 of the EA, which is concerned with Services and Public Functions. These are described by Mr de Mello as "fall—back" claims. The Defence relies on ss 29 and 31, which contain these provisions:

> **29 Provision of services, etc.**
>
> (1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
>
> (2) A service-provider (A) must not, in providing the service, discriminate against a person (B)—
>
> (a) as to the terms on which A provides the service to B;
>
> (b) by terminating the provision of the service to B;
>
> (c) by subjecting B to any other detriment."
>
> …
>
> (4) A service-provider must not victimise a person requiring the service by not providing the person with the service.
>
> …
>
> **31 Interpretation and exceptions**
>
> (1) This section applies for the purposes of this Part.

> (2) A reference to the provision of a service includes a reference to the provision of goods or facilities.
>
> (3) A reference to the provision of a service includes a reference to the provision of a service in the exercise of a public function.
>
> (4) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.
>
> …
>
> (10) Schedule 3 (exceptions) has effect."

54. The Defence makes no attempt to identify the service or services provided by the School, or which of the alleged victims are said to be "persons requiring the service". The defendants' skeleton argument contains (at paragraphs 58-59) a section headed "Facilities benefits and services (and ss 29 and 85(2))", which states that the defendants will rely on the Amended Defence, and adds the following:

> "D2 as a parent complains that the head teacher invited a number of persons into the School who championed her cause and a publicist who characterised the parents and protestors as being homophobic and a mob (including inviting LGBT groups to tie rainbow ribbons on the School gates). Such invites and rejection of offers of mediation from others fall within the prohibition of ss 28(2)(a), 29(2)(c) and s 85(2)(b), (d) (associative discrimination)."

Although protestors are mentioned here, the wording makes it appear to be a claim by Mrs Afsar alone of discrimination against her personally.

55. The reference to s 85(2)(b) appears irrelevant, as that provision is concerned with the provision of benefits to pupils. Reference to "the prohibition of s 28(2)(a)" is also hard to understand. Section 28(2) provides that Part 3 "does not apply" to

> "discrimination, harassment or victimisation
>
> (a) that is prohibited by Part … 6 (education), or
>
> (b) that would be so prohibited but for an express exception."

56. Mr de Mello dealt quite briefly with these fall-back claims in his closing submissions. Mr Manning has submitted that they fall at the first hurdle, as they fall outside the scope of Part 3 as defined by s 28. I am not persuaded of this. The claims with which I am now concerned are not about discrimination that is prohibited by Part 6. And s 28(2)(b) does not apply, either, because the acts complained of are not complaints of discrimination against a pupil in relation to "the way in which education is delivered" within the meaning of s 85(2). The complaints are also excluded by s 89(2), but they are not claims that "would be … prohibited but for" that subsection.

57. The defendants do however face a problem in the form of the following, similar exception, provided for in Schedule 3 Part 2, paragraph 11:

> "Section 29, so far as relating to religious or belief-related discrimination, does not apply in relation to anything done in connection with—
>
> (a) the curriculum of a school;"

That would appear to exclude the claims stated in the skeleton argument, which complain of detriment due to things done by the Head Teacher in response to criticism of her conduct in implementing the curriculum. But even if these fall-back claims were not excluded from Part 3 for that reason, I could not uphold them. The defendants have failed to make clear to me just how, on their case, the provisions of s 29 would supposedly apply.

58. No doubt education authorities are public authorities for the purposes of s 29. Schools may provide services to members of the public, for instance by making their facilities available out of hours to parents, or others, for non-educational purposes. I am unable to see how s 29 could be relied on in relation to any alleged discrimination against protestors who are not parents of pupils at the school, or "close associates" (if such a contention is pursued). Those are not people to whom the school is providing any relevant service, or persons requesting a service from the school. Nor is the delivery of teaching by a state school to a child pursuant to a statutory duty the provision of a service to parents. Nor can it realistically be said that Ms Afsar was a person "requesting a service" from the Head Teacher, such that (for instance) permitting third parties to tie ribbons to the school gates (at a weekend) represented a "detriment" to which the Head Teacher subjected Mrs Afsar "in the course of providing a service".

59. I am fortified in these conclusions by the *Technical Guidance for Schools in England*, published by the Equality and Human Rights Commission (last updated July 2014), pursuant to s 13 of the Equality Act 2006. At paragraph 1.34, the guidance addresses the question, "Does a school have obligations under the Act to parents?". The answer does not even contemplate the provision of state education as a "service" within EA Part 3. It gives examples concerned with public access to a school swimming pool, and attendances at parents' evenings. I do not regard any of the matters complained of in the passage cited at [51] above as analogous to service provision of that kind.

60. In these circumstances, it is unnecessary for me to address in detail the further factual and legal submissions advanced by the parties in relation to the pleaded case of discrimination. I will however say that at the end of the evidence and argument I was left unpersuaded that the School had engaged in any illegitimate direct or indirect discrimination against any of the defendants, on the grounds of race, religion or belief.

61. It is necessary to have in mind the legal and policy context, which includes the following key features. A2P1 has two aspects. One is the right to education, possessed by all pupils at the School. The other is the right of parents "to ensure … education and training in conformity with their own religious and philosophical convictions", a right which the State must "respect." That second right is, in comparison with most other Convention guarantees, "a weak one", which is principally aimed at ensuring fair and non-discriminatory access to the state education system: *A v Head Teacher and Governors of Lord Grey School* [2006] UKHL 14 [2006] 2 AC 363 [24]. A2P1 does not prevent the State from imparting unwelcome information or knowledge: "It is not possible to deduce from the Convention a right not to be exposed to convictions

contrary to one's own": *Appel-Irrgang v Germany* (Application No 45216/07) [12]. A2P1 "does not even permit parents to object to the integration of such teaching in the school curriculum": *Kjeldsen v Denmark* (1979-80) 1 EHRR 711 [53]. The key requirement is for the State to avoid indoctrination, confining itself to instruction that is "objective, critical and pluralistic": *Kjeldsen* (ibid.)

62. Domestic law requires the state, including local education authorities to "have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training …": Education Act 1996, s 9. But the duty to "have regard" to parental wishes is not a duty to comply with those wishes. An authority can have regard to other things as well, and can make exceptions to the general principle: *Watt v Kesteven CC* [1955] 1 QB 408. An authority must, in addition, comply with the duties imposed by s 11 of the Children Act 2004 (to safeguard and promote the welfare of children), s 78 of the Education Act 2002 (to promote fundamental British values so as to ensure that pupils are able to understand the norms of modern British society), and s 149 of the EA (to have due regard to the need to achieve the equality objectives set out in that section). The equality objectives include the elimination of discrimination prohibited by the EA, and fostering good relations between people with a protected characteristic and those who do not share it: s 149(1)(a) and (c). Sexual orientation is a protected characteristic: s 149(7).

63. The defendants' case involves much criticism of the School's approach to consultation, including a complaint that parents have not been permitted to "vet" the books their children will be given or allowed to read. The defendants have however failed to identify any legal duty to consult. There was in fact engagement, as I shall explain. I do not consider the School's conduct in this respect is open to objection, as a matter of law. I do not accept Mr de Mello's contention, that the School failed to take account of racial or religious considerations, in breach of s 149 of the EA. Nor am I persuaded that the School's decision to provide its pupils with the limited instruction in relation to sexual orientation that I shall shortly identify, notwithstanding objection from some parents on cultural, religious or philosophical grounds, involves direct or indirect discrimination against the pupils or their parents on grounds of race, religion or belief. I find it hard to detect any real conflict between what the school is teaching, and the beliefs identified by Imam Masroor, which I have set out above. If, contrary to my views, the limited instruction provided does represent indirect discrimination, it is justified by the need to comply with the legal requirements I have identified.

64. With respect to Prof Holmwood his views, trenchant as they were, did not assist me. The topics on which he had been asked to provide his opinions were somewhat diffuse, and their relationship with the legal issues I have had to decide was tangential. He expressed opinions, for instance, on whether, under the Ofsted inspection criteria, fault might be found with the School because relationships with the parents had broken down, without more. I have not been able to see how an opinion on that question can help me resolve the issues defined above. His conclusion, that an injunction would not address the underlying causes of the protest, may well be right. But that is not the aim and purpose of the injunction. He is clearly right to say that if the causes of the protest are removed the need for an injunction disappears. But his assessment of the causes is not the same as mine. Much of what he said was founded upon an account of events provided to him by the defendants, which does not correspond with what, after a 5-day

trial, I find to be the facts. It seems to me, moreover, that while the causes of the protest have not been removed, it is legitimate to protect innocent third parties from unwarranted intrusion into their private and family lives, and homes.

The Necessity Issue

The facts

The teaching

65. It is time to state my findings on what the School has actually been teaching its pupils. The evidence called by the Council on this topic comes from the Head Teacher and staff members, and it is for the most part unchallenged, albeit not accepted.

66. The School is committed to equality for all. It has a written school ethos, outlining this commitment to which, as a matter of policy, parents are expected to subscribe and to which, as matter of fact, Ms Afsar did subscribe. This includes the following:

> "1. We are a state school and follow British Law. We uphold and believe in British Values.
>
> …
>
> 3. We teach about and believe in all aspects of the Equality Act 2010. This is very important to us at Anderton Park. The 7 aspects of equality gender, disability, sexual orientation, religion or beliefs, race, pregnancy, age. This is law and one we are very proud of. There are no outsiders here. We always challenge stereotypical language and views.
>
> …
>
> 6. The school does not instruct your child in a religion, we educate them about religion practised in the world and in our city. This is based on knowledge about these religions, not about practising beliefs."

67. The School has a Family and Relationships Education (FRE) policy, approved in 2016-2017, produced following a consultation. It states, among other things, that "… in *our* primary school we are NOT teaching children about sexual intercourse …" This was not contradicted in cross-examination. There was no suggestion that the School did in fact teach children about sexual behaviour. Nor have the defendants adduced evidence that sex education forms part of the curriculum at the School. The evidence of Ms Hewitt-Clarkson that the School has no plans to teach sex education was not challenged.

68. The FRE policy contains the following passages:

> **"3. Morals and Values**
>
> All cultures, faiths and people of no faith have their own morals and values that relate to Family and Relationships.
>
> The school's policy demonstrates and encourages the following values amongst our pupils:

- …
- Respect for others
- Respect for the Equality Act 2010
- Respect for the law
- …

… pupils should be aware that their cultures have a great deal to say about personal relationships and the way in which men and women relate to each other. At the same time pupils should know that British society may have different values and laws which they should respect.

4. How will our policy work in school?

… In all year groups we teach children about relationships, and we encourage children to discuss issues

…

6. The Role of Parents, Families and Carers

The school is well aware that the primary role in children's Family and Relationships Education lies with parents, families and carers. We therefore expect parents to:

- Encourage and allow your children to take part in FRE lessons
- Advise and support your child at home in areas not covered by the school's policy an scheme of work … "

69. The School does not have separate lessons to teach pupils about equality. Instead, it seeks to weave the language of equality into everyday school life, aiming to "normalise" tolerance, and acceptance of difference. The key messages for pupils differ according to the year group. In relation to the topics of "Family" and "LGBT", the messages are conveniently summarised in a table or grid produced by the Head Teacher in the course of discussions with parents, to set out the content of what was actually being taught:-

	Family	LGBT
Nursery and Reception	"Mummies, daddies. Cinderella & Prince Charming lived happily ever after. There are lots of different types of family – some people have a mum & dad, some live with grandma or grandad, some have 2 mums or 2 dads."	"Some people have a mum & dad, some live with grandma or grandad, some have just a mum or a dad, some have 2 mums or 2 dads. Differences between themselves and others. Community & traditions."
Years 1 and 2	"There are lots of different types of family – some people have a mum & dad, some live with grandma or grandad, some have	"Treat everybody equally. Some people have a mum & dad, some live with grandma or grandad, some

	just a mum or dad, some have 2 mums or 2 dads."	have just a mum or a dad, some have 2 mums or 2 dads."
Years 3, 4, 5 and 6	"Some people don't have a mum and dad living with them. There are lots of different types of families."	"Everyone has a right to feel safe. Gay is not an insult. Struggles for gay rights."

70. Ms Hewitt-Clarkson explained the meaning of "differences between themselves and others", giving examples: "If you live with grandparents that is one way; we also teach that we may have different languages and look different." "Community and traditions" was a label for references to such matters as Muslims having Eid, and families having different foods at home. The words under the heading "LGBT" mean that there are different ways of having families.

71. In addition, when dealing with issues of sexuality, the School tells children that they must talk to their parents about it too because, while what the School is saying is the law, some people and cultures disagree with what it is teaching. The School makes sure that some of its books, displays and posters reflect the diversity of society. The School's approach has been consistent for the past 8 to 10 years. The School has been praised by Ofsted for this aspect of its teaching.

72. The school has approximately 800 books in total. Among them, according to Ms Hewitt-Clarkson, are no more than ten in all that relate to different types of family, including some she bought at Easter, since the protests began. The books cover other issues, such as disability, and there are books that are not about equality but illustrate diversity, such as a book about a refugee from Syria and books showing Afro hair styles. The two that have featured prominently in the evidence are the following:

(1) "My Princess Boy", to which I have referred already. This is a book written by a parent about her four-year-old son who liked to dress up in Princess clothes. It is this book that seems to have sparked the initial concerns of parents. Four pages from the book were in the trial bundle. They contained these words, illustrated by pictures:

> "My Princess Boy has playdates with boys and girls. He likes to climb trees in his Princess Boy tiara crown.
>
> When he plays dress up, he likes to change clothes a lot. He wears a green ballet leotard and dances with his friends.
>
> But a Princess Boy can wear a dress at his school and I will not laugh at him."

The book as a whole was not in evidence until a copy was produced half way through the trial. A colour photocopy was then shown to me.

(2) "And Tango Makes Three", also produced in photocopy during the hearing. This is a "Classic Board Book", first published in 2005, about a zoo with various animal families, including two male penguins who incubate an egg. No reliance

was placed on any particular passages in this book, but in cross-examination it was put to Ms Evans that the book was symbolically discussing things like same-sex relationships. She replied that she did not know what the symbolism was, but believed it to be a true story about two male penguins in a zoo. I pause to note that same-sex relationships do not produce eggs.

73. Mr de Mello questioned witnesses from the School about two other books, copies of which were produced during the hearing and not before (apparently they had not been mentioned until some correspondence shortly before trial). These were "Mommy, Mama and Me", and "King and King". Mr de Mello was unable to establish whether the first of these books had ever been held or used by the School. It was first published in 2009, and Ms Evans did not recognise it and could not remember it. "King and King" turned out to be a book the School had bought recently. Ms Evans explained that the reason was "because there were news articles alleging we had this book, so we went out and bought a copy, so we knew what it was." Her uncontradicted evidence was that the book was in the head's office, for the relationships consultation which is ongoing (in relation the new laws coming in next year) but had not been used in the school. It is therefore unnecessary to say more about these two books. A book called "Prince Henry" was also mentioned, but not produced and I accept the evidence of Ms Hewitt-Clarkson was that it was not being used.

74. The witness statements relied on by the defendants contain many expressions of concern about the School's teaching. Much of this is general terms. One witness stated, for instance that having "seen material to say that these issues are being taught" he was "very angry", and did not think it "appropriate to teach children of primary school age about gender and sexual relationship issues." The "material" was not identified. The witness went on to express this opinion: "From where I am standing the School is trying to indoctrinate my child to show them that being gay is normal and being straight is not normal." The basis for that opinion is not stated, nor is it clear. Another witness expressed herself as "deeply concerned" about "the teaching of and heavy concentration of LGBT as just one relationship", but did not explain what facts she relied on for the view that there was such a "heavy concentration". There are also expressions of concern, for instance, about "LGBT teaching", and "random things" said by children about it to their parents. I do not question the sincerity of these opinions, or the parents' right to hold and express them; but it is hard to make out their precise factual basis, and this evidence cannot be taken to contradict or undermine the evidence of the Head Teacher and other staff about what was and is actually taught.

75. There were a few specific allegations or suggestions about what was being taught at the School. These included a suggestion that the School was teaching that two sisters could get married. I accept the evidence of Ms Hewitt-Clarkson that this was not taking place. I accept, however, that teachers were telling pupils that two women or two men could get married to one another. That is consistent with the evidence and materials I have cited already. The evidence of Ms Hewitt-Clarkson, which I accept, is that apart from the matters I have outlined there is nothing about what she and her staff tell children at the School that could be considered LGBT content.

76. Another, separate, strand in the evidence from the parents is objection to primary school children being taught anything at all about the existence of same-sex couples. Examples from the witness statements include, "I don't think it is appropriate to teach children of primary school age about gender and sexual relationship issues", "I just don't want my

child to be exposed to discussions about adult relationships", "The young children lack the maturity required to understand topics such as LGBT including concepts like having two daddies or two mummies". These standpoints would appear to be based on developmental considerations, and to represent social rather than religious objections based on the teachings identified by Imam Masroor.

Disputes arise

77. A falling-out between the School, some parents, and some third parties originated in about early February 2019. There has been much debate about this aspect of the matter, and allegations and counter-allegations have been made about the way the Head Teacher and the parents behaved towards one another when questions were raised about the way the School was teaching equality or "LGBT issues". Mrs Afsar and other parents have been very critical of Ms Hewitt-Clarkson's conduct. I have taken this into account in reaching my conclusions on whether if (contrary to my view) the EA does apply, there was discriminatory behaviour. Given my other conclusions on that aspect of the case, it is unnecessary to cover all the detail. My overall conclusions are that there was a breakdown in communications between the School and parents for which neither side is solely to blame; but that the parents' side was over-hasty in its approach; and Ms Hewitt-Clarkson did not behave as she did because of any protected characteristic of the children or the parents.

78. The curriculum content I have described, and the fact that "My Princess Boy" was being used as part of that curriculum, came as a surprise to Mrs Afsar, and a number of other parents. The flashpoint seems to have been when Mrs Afsar's child came home with extracts from "My Princess Boy", which was due to be used as the basis for an audio-book exercise. Passions evidently rose. The School could have done more to make this aspect of the curriculum more transparent, sooner. But the Head Teacher is not to be criticised for her conduct after the issue was raised. There was a meeting in early February, attended by Ms Hewitt-Clarkson, Mrs Afsar and other parents. The Head Teacher made further, sincere efforts to respond to the concerns expressed, arranging and attending meetings with parents to explain and discuss this aspect of the school's teaching. The matter escalated quite swiftly and, in my judgment, it did so largely on the basis of confusion, misunderstandings, and misrepresentation for which the School cannot fairly be held responsible.

79. A meeting took place between Mr Afsar, Mrs Afsar and the Head Teacher in about mid-February 2019, lasting about half an hour. This was, I find, an acrimonious meeting at which Mr Afsar banged the table and raised his voice, demanding that the Head Teacher stop teaching LGBT issues. He used aggressive words, referring to war, and aggressive body language. Mrs Afsar was largely silent. On 17 February 2019, Mrs Afsar wrote to the School stating that Mr Afsar was authorised "to deal with the welfare of her children". On the same day, Mr Afsar wrote a letter to Ms Hewitt-Clarkson and the School Governors. It contained the following:

> **"Re: Our Concerns to The Welfare of our Children**
>
> Dear, Mrs S, Hewitt Clarkson & School Governors,
>
> I am writing this letter to you in regards to concerns that myself and a vast amount of other parents at the school and the

information that is being provided to children in around, LGBT, sex education and same sex relationships.

As discussed with you we the parents feel that firstly our children are not able to comprehend this information and this is causing a massive impact on our children and their welfare as this is going totally against the teachings and beliefs of our children's individual's faith …

…

Also you did say that Anderton Park is not taking part in the No Outsiders scheme we would appreciate if you could CONFIRM this and whether or not you are taking part in ANY programme.

The answer given by yourself to me at the time of our meeting was that you are teaching our children about LGBT relying on legislation namely the (Equality Act 2010) which you justified in the promotion of Homosexuality, and our children are expected to affirm, Verbally and in Writing that 'Being Gay is ok'.

We the parents would say 'some people choose to be gay and in our multicultural society, we will accept them as they are because it is for them to make that choice not us.

What you are doing is clearly an imposition of belief, which undermines faith beliefs and values espoused by the parents and community that the school serves.

We the majority of parents at Anderton Park have no objection to the promotion of respectful treatment of all people and the protected characteristics (Equality Act 2010) this is NOT what the 'no outsiders' program is focussed on. In any case, this does not necessitate positive promotion of homosexuality and its affirmation as being acceptable by pupils.

Just as sexual orientation is a protected characteristic RELIGION IS ALSO A PROTECTED CHARACTERISTIC. People whose religious convictions are that practising homosexuality is morally wrong and sinful should not be forced to affirm that it is not.

…

We believe our children are too young to be taught about relationships in this manner, which we feel over sexualises and confuses children in taking away their innocence. And this sexualisation of children is also a safe guarding issue …

… Majority at the school want the 'No Outsiders' Programme abolished from our school and replaced with a programme that teaches the Equality Act 2010 in an age appropriate and cultural sensitive manner.

…

> We would also like to request
>
> - …
> - to be made aware of what literature the school has been providing our children in this regards
> - What lessons are currently being taught this type of information and by WHOM?"
>
> …"

80. Mr Afsar signed this letter "for and on behalf of the parents", and he told me that he wrote the letter, in consultation with parents who asked him to represent them. It is nonetheless striking that he referred to "myself and … other parents." A number of points can be made about this letter. It contains both requests to know what is being taught, and criticism of what is being taught. The criticism is made on the basis of a number of factual propositions which I find to be untrue. It is not the case that the Head Teacher "justified" the School's teaching to parents as "the promotion of homosexuality". It is not the case that the teaching involved "positive promotion of homosexuality" or its "affirmation" as not "morally wrong or sinful". The criticism of the "No Outsiders" programme, and the call for its abolition from the School, are misconceived. As the letter acknowledges, the Head Teacher had said that the programme was not being taught at the School, and I find that this was indeed the position. No grounds are set out for disbelieving that assertion. Nor have any cogent grounds for doing so been advanced during the trial.

81. On 27 February 2019, Ms Hewitt-Clarkson put out a 7-minute video, to explain the School's position. She referred to the change of law that is due to come into effect in September 2020, and set out what, according to her, the School was and was not teaching at present. She said, among other things, the following:

> "… The two things that seem to be troubling parents are the new SRE or RE policy that's coming out from the government and some LGBT issues. So, the government has produced a new policy that all schools must follow, secondary schools and primary schools, from 2020. … primary schools it's called relationships education so the word sex has been taken out of the primary school policy … It's nothing to do with sexual or intimate relationships at all in primary school.
>
> The other thing people are a bit worried about at the moment is the LBGT part of the Equality Act. The Equality Act … states that people cannot be discriminated against for a number of protected characteristics, for example, religion whether you're male or female and disability and one of those is sexual orientation, which is lesbian, bisexual, gay and trans people and I think there's a concern for some parents that this means we are teaching children how to be gay. That is simply not the case at all. We are not teaching children how to be gay, how to be lesbian, how to be trans or how to be straight, that's nothing to do with schooling, that's nothing to do with education, what we do have to do we have to educate all children from birth that in

> our country there is a law about equality which includes LGBT people so that means a gay person is equal to a straight person, that's it, what we do in primary school is more or less say some people have two daddies, some people have two mummies, that's ok, …
>
> … what we're doing is raising awareness that in Britain, in our country people will see, might have neighbours who have two mummies, they might walk down the road and see two daddies with a child or some children and that is ok. Religiously, or culturally, some people don't think that is ok, and that's also something to be respected, so school, Anderton Park, is not teaching anybody to change their religious beliefs, in fact we often say, some, some, religions don't actually think it's ok to have two daddies but British law says it is ok, so religion and the religious beliefs that you have in your household that's up to you to teach your children what you believe and that that's a good thing and that's fine …
>
> So, if you can explain to your children look we don't have a Christmas tree because we're not Christian then you can say we don't think it's ok for two, for two ladies to get married but actually in Britain it is ok for two people to get married and what we want to promote, what we have to promote, we have to promote understanding …
>
> So, let me reiterate, we do not teach children how to be gay, we do not at our school teach anything about sexual intercourse or sexual relations whether it's between a man and a woman or anything else we do not do that, that is not part of our policy."

I find this to be an accurate account of the School's teaching and its approach. It is at odds with much of what has been said about the teaching in the evidence of parents, and cannot fairly be described as any form of indoctrination.

The protests

82. The evidence is that these began after the February 2019 half term. Mr James gave evidence about the most important incidents, and the overall characteristics of the protest. His evidence was hearsay, but it was based on reading of evidence submitted in support of the original application, it provides a convenient summary of events that are covered elsewhere, and he was extensively cross-examined upon it. The general picture, I find, is this:

(1) There were protests almost every school day from about 18 March 2019 (the exception being some days when children were sitting SATs) to the date of the interim injunction in June. Protests started at around 3:25, outside the School gates, there normally being between 10 and 30 protestors. Slogans were chanted, including "Our children" "Our choice" "Head Teacher: step down", "Don't confuse our children", "You can't bully us", "Let kids be kids", "Listen to

Parents." Mr Afsar has addressed the crowd through a megaphone, on at least one occasion calling the Headteacher a liar and Islamophobe.

(2) On a number of occasions, including 4, 8 and 28 April 2019, police officers in attendance have concluded that the gathering was posing a danger to those involved in the protest and those wanting to park and use the road, as well as forcing children into the road in order to walk by.

(3) It is common ground that the principal organisers of these and the majority of the later protests were Mr Afsar and the third defendant, Mr Ahmed. Evidence from police officers who have attended the protests confirms this.

(4) The service on Mr Afsar of a Community Protection Warning Notice dated 2 May 2019 did not lead to the cessation of the protests, which continued and escalated between that date and 24 May 2019. Evidence was gathered of what was happening and its effects on pupils, staff members, parents, visitors, governors and local residents. More detail of this part of the story is set out in the Interim Judgment at [28-34]. It is unnecessary to repeat what I said then.

83. I should however give more detail of some key events over a 9-day period before the grant of the original injunction.

(1) **Monday 13 May 2019.** A protest outside the School, led by a female whom I find to be Mrs Afsar, was assessed by a police officer as posing a danger to the protestors and people wanting to use the road. Mrs Afsar was leading the chants, or screams, using the same slogans as before.

(2) **Wednesday 15 May 2019.** A group of about 25 protestors gathered outside the School, chanting slogans, using a megaphone and handing out leaflets. Police attended the scene. PC Carroll formed the view that the protest was causing a danger to the protestors and other road users. The officers identified Mr Afsar, who was handing out leaflets. He handed one to the officers, one of whom, having read it, formed the view that the leaflet was factually incorrect, insulting to the gay community and "intended to incite tensions between parents and the School". I will come to the content of the leaflet. The officer said it was "all wrong". Mr Afsar became annoyed, and was heard to say the words "Islamophobic" and "bacon" or "bacon breath". Although Mr Afsar disputed this, I find it probable on all the evidence before me that he did use such language.

(3) **Thursday 16 May 2019.** A smaller group of about 10 assembled, with children in attendance, chanting "Let kids be kids". The police officer in attendance concluded that the highway was being obstructed and asked Mr Afsar to ensure this was not repeated.

(4) **Friday 17 May 2019.** In the afternoon, between about 2.15 and 3.25, there was a large gathering of, I find, at least 60 people, including children, outside the School. Mr Afsar and Mr Ahmed were organisers. An individual who has become known as "the Imam from Batley" in Yorkshire, attended. The size of the group and the perceived risk of violence led to the attendance of police riot vans**.** I have viewed video footage of this event, and find that it was a large,

well-organised protest with prepared banners, of an intimidating scale and nature, at a sensitive time before the School day ended. A microphone was used to address the crowd. The Imam did so in terms which included the allegations of paedophilia mentioned at the start of this judgment. He distributed (in the sense that he held up for viewing by those present) pictures of a gingerbread man with male genitalia, telling the crowd that this was material being shown to pupils at the School, and alleged that anal intercourse was being or would be taught.

(5) **Sunday 19 May 2019.** The tying of ribbons to the school railings by members of SEEDS (Supporting Education of Equality and Diversity in Schools), led to an altercation. It happened at around 8:30pm. About 11 individuals attended to tie ribbons, banners and flags, with the permission of the Head Teacher. Mr Afsar attended, along with a group of 10 or more other males. He spoke to Honor Bridgman, one of the SEEDS members. Members of Mr Afsar's group pelted SEEDS members with eggs. Mr Afsar told them to stop, but group members chanted "We won't back down" and one told Ms Bridgman "Don't fucking come back". There is a dispute about whether Mr Afsar used a megaphone, and it may be that he did not. But I accept Ms Bridgman's evidence that the scene was redolent of gang activity, the atmosphere was intimidating and frightening, and caused her such disturbance that she had to take a day off work

(6) **Monday 20 May 2019.** PC Jason Roberts attended, in the light of concerns over what had taken place the day before. Mr Afsar had an argumentative altercation with Jess Phillips MP, in such a way as to make PC Roberts "genuinely concerned for her safety, although no threats had been made"

(7) **Friday 24 May 2019.** A large protest was held outside the school. It had been advertised as starting at 2.30pm. Having learned of this, the School decided to close early, at 12:00. Protestors, including Mr Afsar and Mr Ahmed, arrived between 10 and 11am, and began to cause disturbance from around 11:15am. By the early afternoon, there were over 300 protestors in attendance, with shouting via a megaphone, chanting and holding of placards. A neighbour, Tom Brown, describes shouting with megaphones. He referred to comparisons between gay men and paedophiles by one speaker.

84. It was after this that the Council, perceiving a substantial escalation, prepared and presented its original application for interim injunctive relief. That part of the process is detailed in the Interim Judgment, from paragraph [35].

85. The contents of leaflets distributed by the protestors during this period have been explored in the course of the trial. Those for which the defendants accept responsibility include the following:

(1) "The promotion of homosexuality and LGBT lifestyle to children is an immoral and unlawful imposition…" The School is not promoting these things.

(2) "What we hear from our children at schools is the same as the 'No Outsiders' programme". The School does not teach that programme.

(3) "It teaches 4-year-old-children that they can be a boy or a girl". That is not what the School is teaching, and Mr Ahmed confirmed in cross-examination that he got that proposition from the 'No Outsiders' programme.

(4) "This programme promotes a whole-school gay ethos". The approach at the School cannot be fairly described in this way.

86. All that the Imam from Batley said (as detailed above) was untrue. Neither Mr Afsar nor Mr Ahmed has claimed, or identified any basis for believing, it was true. They have instead sought to distance themselves from what was said. They accept that they were the organisers of this event. But Mr Afsar told me he had no idea what the Imam was going to say, and that he had gone beyond what had been expected. He tried to intervene but had public safety responsibilities which limited his ability to do so, claiming that he was "trying to manage 300 parents and keep the road clear". He did not know at the time what was on the gingerbread man pictures. I reject that evidence, which is wholly inconsistent with what can be seen and heard on the video. Mr Afsar introduced the Imam to the crowd. To enable him to address the crowd, the microphone was handed to the Imam and later held for him, by Mr Afsar and Mr Ahmed. Mr Afsar did nothing to intervene when the Imam made allegations of paedophilia. He helped the Imam present the gingerbread man pictures. When the Imam had finished, Mr Afsar led enthusiastic applause and spoke approvingly, saying that the School would have to listen. Mr Afsar then allowed the Imam to address the crowd further. There is also evidence of previous dealings between Mr Afsar and the Imam, which reinforces these points.

87. As for Mr Ahmed, on his own evidence the Imam had visited Birmingham and they had spoken; he had been to a TV studio in London with the Imam; they had discussed the protests; he knew the Imam wanted to speak at the protests. Against this background, and on the basis of the video evidence, it is not credible that he was taken by surprise by what was said, or that he disapproved. There is evidence of a statement issued by Messrs Afsar and Ahmed, after the event, purporting to disassociate themselves from at least some of what the Imam said, but this was limited and unsatisfactory. Neither of them made any contact with the School to make any such point. On the defendants' own case, the episode with the Imam shows, at the very least, that there were insufficient safeguards against the hijacking of the protest by a rogue speaker. In reality, there were minimal if any real efforts to do anything of the kind. It is noteworthy that the Imam's wild and untrue statements were made in front of a large crowd including children. The children were thereby exposed to sexualised language going far beyond anything they were exposed to in the controversial teaching of the School. My conclusion is that the second and third defendants authorised and approved of what was said, and the way in which it was said.

88. The second witness statement of Mr James brings matters up to date, containing evidence of events since June 2019, when I re-granted the interim order in modified terms. His evidence is that since that injunction the defendants have been protesting "just outside the exclusion zone" causing noise nuisance to the school and local residents. Mrs Evans made video and audio recordings from within the school, recording the impact, internally. Two clips relating to protests on 21 June 2019 which lasted for about two hours show a woman shouting "Head Teacher" very loudly, and from within the school angry male voices can be heard outside, though the content of what they are saying cannot be heard. In a video from 12 July 2019, which Mrs Evans

found online, protests outside the School are depicted. Text is shown, stating that parents had been protesting for weeks "to stop teaching children anal sex and transgender & that it's ok to be gay". A speaker can be heard alleging that the School is teaching children about anal sex. The video alleges that the head teacher called gay teachers into school to teach anal sex. I find, on the balance of probabilities, that the first and third defendants published or approved of this video. Its content is almost entirely false.

89. Further videos, which I find were uploaded to the Twitter account of Mr Afsar, depict a protest on 4 October 2019, close to the School, within the area allowed pursuant to the injunction I granted. These show a woman in a red coat, who became known during the trial as "The Lady in Red". She shouts, repeatedly and very loudly, about the evils of masturbation, and the (alleged) teaching of this practice. In somewhat incoherent terms she speaks of this "atrocity", of an addiction of sexual connotations to our children, of causing children to have a desire for sexuality in their lives. She speaks of an "abomination being taught to our children", namely teaching a child to masturbate themselves. A leaflet advertising this event, for which the defendants deny responsibility, is in evidence. It includes the following: "Protest against LGBT & Self Touching RSE lessons to 4 year old children" The time and address for the protest are given as "4th October 2019, 3pm – 5pm @ Yardeley Wood Road, Birmingham B13" (sic). I find that, on the balance of probabilities, the defendants are responsible for these leaflets. The mis-spelling of the name of the road is, strikingly, one that Mr Afsar perpetrated himself on other occasions. He tried to explain this away by suggesting it was an auto-correct on someone's iPhone, but this was wholly unconvincing. It is highly improbable that there was another group or person promoting the same protest event, using different flyers, but perpetrating the same spelling mistake. Even if that were not the position, this would again demonstrate the defendants' inability to control the content of the protests outside the school, of which they are the main organisers.

Impact of the protests

90. There is ample evidence that the protests have had a very significant adverse impact on teachers, pupils, and local residents. It is unnecessary to conduct a comprehensive review. Written evidence from police officers attending outside the school includes not only the assessments I have cited already, but also the following. Dennis Road is a small residential street that suffers from daily congestion. The protests are "intimidating for parents and children attending the school and those residents of the street." On 13 May a number of residents approached PC Smith with "concerns about the noise, and there being a breach of the peace …" On 15 May, Mrs Wiseman felt very uncomfortable and intimidated by the protestors' conduct, coupled with TV cameras. The protest of 17 May frightened children who had to walk past a large group of noisy protestors, some of whom were filming those inside the school using their phones to film through the railings. On 20 May one unknown male was "almost pleading with camera crews … that he wanted the protests to stop as they were affecting himself and his family" (PC Roberts.) Isobel Knowles, who gave evidence to me, is a local activist. She had knocked on doors during the early part of the protests, and convincingly stated that although some local residents did not seem to mind the protests others were very upset. She reports that after the protest on 24 May she spoke to one resident on the phone, who became very distressed and told her he had suffered a panic attack whilst at work.

91. I heard live evidence from one local resident, Mr Tom Brown. He is a gay man who lives near the school with his partner, and has lived in the area for a number of years. The protest on 24 May led him to fear for his safety and to approach the police, which he did on 27 May. He works at home and had suffered for 8 weeks. He wrote of feeling "more and more concerned and threatened in the area since the protests began", and of being "scared" by the events of Friday 24 May. The noise of the protest was clearly heard even through closed double-glazing, shut doors and with the TV on. The couple were thinking of moving out of the area because of the protest.

92. Mrs Evans described the events of 7 June 2019. Protests on the grass verge continued at full volume for two hours, from 2.30 to 4.30. Mr Afsar shouted "a tirade of abuse directed at the school" and passed the microphone to others. Mrs Evans points out that this was taking place near to the nursery where some 30 children aged 3 and 4 are meant to be learning. They had to be prevented from using their outdoor classroom area, and all the windows had to be closed. It was still very loud, and staff had to resort to singing sessions to try to drown out the noise. I am entirely satisfied that this was very disruptive and intrusive.

93. Mrs Evans described the impact of the protest of 21 June 2019: the noise was so great that the School had to lock all the windows and still the noise was "intolerable". I accept that evidence. Mr Afsar was cross-examined about the videos made by Mrs Evans. It was put to him that the noise was completely unacceptable. He said "possibly yes", but complained that the protestors were unable to measure the noise themselves. Mr Tinsdeall gave evidence of calibrated audio recordings from inside and outside the School on 28 June 2019. The protests increased the average noise level in the playground from 59.6 to 69.7 decibels. Such an increase is perceived as a doubling in volume. His opinion is that the noise would interfere with normal conversations in the playground.

94. Amanda Daniels, Principal Educational Psychologist in the Council's Education and Skills department, told me that on 21 May 2019, she had been called in urgently to provide support for staff at the school who were experiencing physical and mental health difficulties as a result of the protests. She and a colleague had made seven support visits, over a two month period between May and July 2019, seeing 21 staff members. The symptoms identified included sleeping difficulties for the majority of staff, loss of enjoyment from work, loss of confidence in professional skills and abilities, distrustful behaviour, low mood and irritability, and anxiety. All these are widely recognised as symptoms of stress, and the timing suggested the protests were a causal factor. Ms Daniels' evidence was that "the level, extent and persistence of the trauma" she had witnessed were "significantly greater" than she had seen in eight years of responding to "critical incidents."

95. Mrs Knowles gave evidence of emails she had received after the 28 June protests. One said "we have had to close windows and doors the last two Friday afternoons because of the noise… It was unbearable this Friday". Another spoke of feeling intimidated. She had received numerous complaints of "incredibly loud" protests which the complainants felt went well beyond the peaceful protest which they acknowledged was legitimate. Six anonymised statements from residents, exhibited by Mr James in his second witness statement, clearly showed a seriously intrusive level of noise pollution and (in ordinary terms) anti-social behaviour. They speak of repeated "shouting (and sometimes screaming) that can be heard in the back garden". They talk of being "scared

and intimidated", of "unbearably loud" protest which has "become increasingly intimidatory". They complain that their right to peaceful enjoyment of their homes has been "severely compromised", and "an alarming atmosphere which makes residents fearful". This is a summary of some key parts of the evidence; it is by no means exhaustive.

Social media

96. The Council's case in this respect is less impressive. Formally speaking, the Council's case is that Mr Afsar is the administrator of a WhatsApp group which "is used to abuse and spread false information about the School and the staff especially the Head Teacher"; and that he has also used social media accounts to abuse members of staff. On this limb of the case, therefore, there is therefore no pleaded case against any other defendant. The case put to Mr Afsar in cross-examination was that he had told lies on social media. Reliance was placed on a WhatsApp Group, involving parents at the School and others, and his Twitter account. The Twitter account featured some photos of men dressed up in provocative men's clothing, with a legend suggesting this was to be the school clothing code. It also showed men with naked buttocks, with children staring at them. Another tweet relied on by the Council stated that "Parents will not allow ANY teaching that infringed on parents moral and religious values…"

97. The WhatsApp group is, I find, a closed group limited to parents and others who have subscribed. It certainly features a number of messages with offensive or potentially offensive content, some of which I referred to in the Interim Judgment. They include "The head at Anderton is a vile Islamophobe", "homosexuality a mental disease", and "Teach kids how to be Bat man not BattyMan". I do not accept Mr Afsar's attempts to distance himself from the expression of such views, or his evidence that he monitored, or attempted to monitor, the content of messages on this group. There is no corroboration of that claim, and some of his own posts tend to undermine it. That said, I do accept that this was a closed group with a limited membership, and that the Council and the teachers have only come to know of it through what might be called "leaks" from one or more group members.

The Head Teacher's conduct

98. Attempts were made in the course of cross-examination of Ms Hewitt-Clarkson, to suggest that she was an extremist advocate of lesbian and gay rights, who had allied herself with a campaign to "smash heteronormativity", and engaged in forthright, indeed provocative language and behaviour, which was disrespectful of parents' views, and caused them understandable offence. I believe these lines of cross-examination had at least three main purposes: to support the defence case of direct or at least indirect discrimination, contrary to the EA; to undermine Ms Hewitt-Clarkson's account of the teaching at the school; and to legitimise or at least explain the protests and/or social media abuse. The Head Teacher, rightly, accepted some of the general points advanced by Counsel: that some parents had strong views, and that parents are entitled to raise their concerns if they do not believe the School is taking good care of their children. Otherwise, I did not find these lines of cross-examination, or the defence evidence called to support them, persuasive in any of these ways.

99. The term "smash heteronormativity" derives from someone called Elly Barnes, who organises a programme called Educate and Celebrate. The Head Teacher's evidence,

which I accept, is that she had never heard the term before these proceedings, and the School's only contact with the Educate and Celebrate programme was to receive an award, which features on its notepaper. This is the rainbow. Extracts from Ms Hewitt-Clarkson's Twitter output were put to her, and it was suggested that she had refused to entertain parents' religious views, and shown "eagerness to talk to someone who was saying he was proud to be queer and Muslim". She was criticised for (among other things) being photographed with and sharing a platform with gay people, and inviting an MP from another constituency (Jess Phillips) into the school, whilst failing to invite the local MP (Roger Godsiff). None of this, in my judgment, advanced the defendants' case.

100. The Head Teacher, who was driven by these lines of questioning to proclaim her heterosexuality, has taken a consistent position: she has spent many hours considering parents' religious views, but it is lawful, indeed necessary to teach equality in the way adopted by the School, and religious convictions cannot trump that. As far as Roger Godsiff MP is concerned, the uncontradicted evidence of the Head Teacher is that she did see him in School. "He thought we taught 'No outsiders' but we don't. He was reassured." A further criticism related to banning some parents from School (as she did, for short periods) then granting permission to a group called SEEDS to tie ribbons and other items to the school railings. This was said to display "a sharp contrast of attitude". She said, as she had on a previous occasion, that she allowed the ribbons to be put up "to make it a nice welcoming place after 8 weeks of nastiness." Mr Diamond, on behalf of Mr Allman, put it to Ms Hewitt-Clarkson that she had taken a "high-profile position" on the issue. Her answer, which was clearly correct, was that she had only done so since the protests began.

The law

101. I have identified the statutory provisions relied on by the Council, and the human rights context: [23-26] above. I should say some more about the human rights relied on by the parties.

102. The jurisprudence shows that Article 10 protects speech which causes irritation or annoyance, and information or ideas that "offend, shock or disturb" can fall within its scope: see, eg, *Sánchez v Spain* (2012) 54 EHRR 24 [53], *Couderc v France* [2016] EMLR 19 [88]. Mr Diamond places particular reliance on the domestic authority of *Livingstone v the Adjudication Panel for England* [2006] EWHC 2533 (Admin) [2006] HRLR 45 (Collins J) [35], where the Judge emphasised that freedom of speech does extend to abuse, including offensive and anti-Semitic remarks made by the then Mayor of London to a journalist. Article 11 "protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote": *Lashmankin* [145]. But the rights engaged in this case have outer limits. Article 9 does not protect every act that is motivated by religious considerations: *Van den Dungen v The Netherlands* (1995) Application no 22838/93 (Judgment of 22 February 1995). Article 11(1) does not protect violent or disorderly protest; the primary right is one of "peaceful" assembly. Further, whilst the right to education is unqualified, the rights guaranteed by Articles 8, 9, 10 and 11 are all qualified. Paragraph (2) of each Article makes clear that interference with the primary right may be legitimate if (but only if) two conditions are satisfied. It must be not only in accordance with or prescribed by law (a matter I have dealt with above) but also "necessary in a democratic society" in pursuit of one or more legitimate aims. Paragraph (2) of each Article identifies "the interests of … public safety …... or the

protection of the rights and freedoms of others." Another legitimate aim identified in each Article is "the prevention of public disorder" or, in the case of Article 9(2), "the protection of public order", which would appear to be synonymous.

103. Generally, the available grounds for interference or restriction are to be narrowly construed. The word "necessary" in this context does not carry the meaning of "indispensable", but nor is it to be treated as tantamount to such notions as "convenient". It implies the existence of a "pressing social need". Competing human rights stand on a different footing from other rights, however. In that connection, two further provisions of the HRA should be mentioned. Section 12, cited extensively in the Interim Judgment, applies whenever – as here -- a court is "considering whether to grant any relief which, if granted, might affect the Convention Right to freedom of expression". Subsection (4) requires the court, in such a case, to have "particular regard to the importance of the Convention right to freedom of expression". Section 13, to which Mr Diamond has drawn attention, is headed "Freedom of thought, conscience and religion", and contains similar provision:

> "(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right."

104. These are statutory reminders of the importance of these two Convention Rights. It is however clear that s 12(4) does not place freedom of expression on a pedestal, affording it presumptive priority over the Convention right to respect for private life; one cannot have particular regard to freedom of expression without also having particular regard to the right to privacy: *Douglas v Hello! Ltd* [2001] QB 967, 1003, 1005 (Sedley LJ). The Convention rights under Articles 8 and 10 are of equal inherent value; a conflict between them is not to be resolved by reference to rival generalities, but by focusing intensely on the facts, identifying and weighing up the comparative importance of specific rights being claimed in the individual case, with the ultimate outcome determined by considerations of proportionality: *A Local Authority v W* [2005] EWHC 1564 (Fam) [53] (Sir Mark Potter P), *In re S (A Child)* [2004] UKHL 47 [2005] 1 AC 593 [17] (Lord Steyn). The same reasoning must apply to the instruction in s 13(1) to have "particular regard" to the rights guaranteed by Article 9 of the Convention; these cannot trump the rights guaranteed by, for instance, Article 8 and A2P1. Nor can the rights guaranteed by Article 11 do so.

105. There is ample authority to support and to illustrate the application by the Court of the general points made above. "Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing. Common civility also has a place in the religious life": *R (SB) v Denbigh High School* [2006] UKHL 15, [2007] 1AC 100 [50]. Article 10 does not confer a right to hold a protest at the location of the protestors' choosing: *Appleby v UK* (2003) 37 EHRR 38 [47], *City of London Corp v Samede* [2012] EWCA Civ 160 (Occupy London), *Manchester Ship Canal Developments Ltd v Persons Unknown* [2014] EWHC 645 (Ch) [37] (fracking). Article 11(1) confers the freedom to choose the time, place and manner of assembly, but only within the limits established by Article 11(2): *Lashmankin v Russia* (2019) 68 EHRR 1 [405]. Article 8 rights have been recognised by Strasbourg and domestically as justifying targeted and proportionate restrictions on the Convention rights of others to assemble and express

their views outside abortion clinics: *Van den Dungen v The Netherlands* (above), *Dulgheriu v Ealing LBC* [2019] EWCA Civ 1490.

106. In *Van den Dungen,* the Commission held that the imposition of a 250-metre exclusion zone around a clinic did not interfere with the applicant's Article 9 rights. The applicant's complaint that the exclusion zone infringed his Article 10 rights was dismissed as manifestly ill-founded, as the restriction did not represent a deprivation of those rights but a restriction, limited in time and space, proportionate to the legitimate aim of protecting the rights of staff and visitors. In *Dulgheriu,* the Court considered Articles 8, 9, 10 and 11 in the context of a similar protest in West London, in respect of which the Local Authority had made a PSPO establishing a "Safe Zone" 100 metres around the entrance to the clinic. Evidence attested to the distress and upset caused by the protestors' activities to visitors, local residents, members of staff, and passers-by. The matter was approached on the footing that it was for the Court to determine whether restrictions infringed the Convention rights. The Court upheld a PSPO carving out an exclusion zone, holding this to be justified for the protection of the Article 8 rights of visitors. The Court of Appeal dismissed an appeal against this decision.

107. Of course, an interference must not go so far as to destroy the very essence of the Convention right in question: *Appleby* [47]. And a public authority seeking to justify interference with a fundamental right must show that the objective is important enough to justify limiting the right in question; that the means chosen are rational, fair and not arbitrary; and that they do not go further than is necessary: see, for instance, *R v Shayler* [2003] AC 247 [59]-[61] (Lord Hope). A key part of the balancing process will be to assess the weight to be given to the particular kind of speech and activity under consideration, and to the specific rights that compete with them. The jurisprudence reveals a scale of values. It emphasises that speech on political or ethical issues, or which contributes to controversial debate on matters of public interest or concern, will normally call for a high degree of protection: see *Annen v Germany* [2015] ECHR 1043 [62]. At the other end of the scale is speech that has little inherent value because it is used for the purposes of blackmail or extortion: see, for instance, *AMM v HXW* [2010] EWHC 2457 (QB). *Van den Dungen* indicates that abusive, intimidatory and anti-social speech, although protected by Article 10, may be in the lower part of the scale. The applicant in that case accosted visitors and employees, showing them photos of foetal remains, and referring to "child murder" and describing the employees as "murderers".

108. The Council maintains not only that the conduct of the protests and the social media communications represents anti-social behaviour, public nuisance and obstruction of the highway, but also that it infringes the Convention rights and freedoms of the staff, children and members of the local community. Article 8 is relied on in relation to all three categories. For local residents, the protection of the "home" and of "family life" is relevant. For others, the notion of "private life" is central. The Strasbourg jurisprudence makes clear that this is incapable of exhaustive definition, but "is a broad concept which encompasses, inter alia, the right to personal autonomy and personal development" (*A v Ireland* (2011) 53 EHRR 13 [212], cited by the Court of Appeal in *Dulgheriu* [53]). The protection of Article 8 also extends to a person's "physical and psychological integrity" (ibid.) and "aspects relating to personal identity … and moral integrity": *Einarsson v Iceland* (2018) 67 EHRR 6 [32]. Article 8 can thus encompass the protection of reputation against serious assaults "carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life", such as abusing a

public figure on Instagram with a picture of him captioned "Fuck you, rapist bastard": *Einarsson* [32], [34], [52].

109. A person claiming the protection of Article 8 must show that they enjoy a reasonable expectation of privacy, or a legitimate expectation of protection (concepts treated as synonymous): see, eg, *Re JR38* [2015] UKSC 42, [2016] AC 1131 [84]-[88]. There is however a "zone of interaction" of a person with others, even in a public context, which may fall within the scope of "private life"; so there may be a reasonable expectation of privacy in respect of acts in public places, as in *Peck v United Kingdom* (2003) Application no. 44647/98, and *Murray v Express Newspapers plc* [2008] EWCA Civ 446 [2009] Ch 481. The cases show that there may sometimes be a legitimate expectation of privacy when a person is at their workplace. Matters that feature high on the scale of values, where Article 8 is concerned, include the rights of children which must, of course, include their Convention right to education.

110. The defendants submit that there are some further considerations of importance. Even if, contrary to the submissions of Mr de Mello, the Court has power to grant injunctions as sought it should not, he argues, exercise its discretion in the Claimant's favour as there are alternative remedies available under statute, including criminal law procedures, which would afford an effective means of controlling the protests. Mr Diamond submits that the Attorney General has the exclusive role of enforcing the criminal law by way of injunction. Section 222 of the Local Government Act 1972 does not confer unlimited powers on the Council: *Worcestershire County Council v Tongue* [2004] EWCA Civ 140 [2004] Ch 236. The Court must be cautious in invoking the civil law, where the criminal law may apply, and even more so, in relation to acts which would not cross the threshold of criminality.

Harassment, alarm or distress

111. I do not consider that citation of such cases as *Gouriet v United Post office Workers* [1978] AC 435 is pertinent. Nor am I persuaded that the grant of the injunctions that are presently in place, or those that I propose to grant, involves the breach of any legal curb on the Court's powers or discretion. The 2014 Act expressly confers on the Council the power to seek injunctions against anti-social behaviour which, for reasons I have given, must be taken to encompass protest. I see no reason to conclude that these statutory powers are exercisable only where the behaviour under scrutiny can be categorised as criminal. That forms no part of the case for the Council. In any such case, a local authority would bear the heavy legal, evidential, and persuasive burdens imposed by the Convention, and the related jurisprudence. The Court would be bound to apply an intense focus to the facts before it. Those, I think, are sufficient protections for the rights of free thought, conscience, speech and assembly and, if engaged, the rights to hold and manifest one's religious views.

112. I have considered whether the use of the term "harassment" in this statute imports the tests which have been held to apply to that term in the context of the Protection from Harassment Act 1997. I do not believe it does. The 1997 Act creates a statutory tort and a crime which are of precisely the same scope. The 2014 Act does not. Harassment, alarm and distress, in that context, bear their ordinary and natural meanings. In the case of harassment this is "…a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause

that person alarm, fear or distress": *Hayes v Willoughby* [2013] UKSC 17 [2013] 1 WLR 935 [1] (Lord Sumption).

113. In general terms, I can accept Mr de Mello's submission that the 2014 Act creates a "high hurdle". The court should not be too ready to grant injunctions prohibiting activities which citizens would ordinarily be free to undertake in a public place, or restricting the way they express themselves in such places. Injunctions under the 2014 Act should not be lightly granted, and their terms should be carefully framed to ensure that they do not involve unnecessary or excessive interference with the rights of others. These considerations will be especially potent in the context of protests, and all the more so where the protest relates to the conduct of a public authority, such as a School or local education authority, and issues of policy with a religious or ethical flavour. But I reject the submission that the Court is powerless to grant, or should always refrain from granting, an order protecting fellow citizens from alarm or distress, or other consequences of harassment or anti-social behaviour, falling short of that which would justify prosecution. Other remedies are available in principle. But in this case, the Council considered whether lesser measures might suit the factual situation confronting it and decided, in my judgment legitimately, that interim relief under the 2014 Act was required due to the urgency of the matter. Having taken that decision, it was and is entitled to press the civil claim to its final conclusion, rather than falling back on other measures available under the 2014 Act, or other legislation.

114. Applying the principles identified above to the facts of the present case, I find that the first, second and third defendants have engaged in or been party to a concerted course of conduct lasting many months, amounting to harassment, which has, on occasion, caused fear or alarm, and has frequently caused distress to others. I am satisfied that the existing injunctions under the 2014 Act were and remain measures that are necessary to protect the Convention rights and other civil rights of the children, staff and neighbours of the School, and proportionate to that aim. In a democratic society protest must be allowed, but that does not carry with it a right repeatedly to cause distress to primary school children by aggressive shouting through megaphones or microphones using amplification, or to inflict months of distress on teachers and local residents, causing anxiety to the staff, and leading some residents to consider selling up their homes.

115. In assessing the legitimacy and proportionality of the restrictions I shall be imposing, I have borne in mind the nature and content of the speech involved. The topic is, in a broad sense, political. But I am largely concerned with the repetitive chanting of slogans, with relatively little informational content, together with loud and amplified speeches. I am doubtful that any of this amounts to the manifestation of religion, within the ambit of Article 9(1), but I shall assume that it does. I accept, of course, that Articles 10(1) and 11(1) are engaged. In some respects, it is at least questionable whether the protests count as "peaceful" within the scope of Article 11(1). Nonetheless, my focus has been on paragraph (2) of each Article.

116. The rights that justify the interference pursuant to Articles 9(2), 10(2) and 11(2) are weighty. The protests impair the delivery to children at the School of the education which is their fundamental right. They interfere with the normal processes by which the children develop and mature as individuals, which should normally be allowed to progress without outside interference. In my judgment, the impacts on the teachers represent a significant interference with their private lives. These are impacts that are

not just felt when they are carrying out their professional roles. The evidence shows that the effects have spilled over into their domestic lives, affecting their relationships with others outside work to a marked degree. The right to respect for residents' homes and family lives is interfered with to a significant extent, over a prolonged period.

117. On the other side of the scales, I must assess the value of the speech that is affected. As I have said, chanting conveys little by way of information or ideas. Much of what the defendants have written and distributed, or caused or allowed to be written and said, and which does convey information, is untrue. Some of it would seem, on the protestors' own view of matters, to be inappropriate for the ears of children. Some manifestations of the protests appear to me to have been positively harmful to children whose parents or carers have allowed them to become involved. I am referring here to the children brought to hear the Imam from Batley. Despite all this, and this bears repetition, the restrictions that have been sought and will be imposed are tailored to the harms I have identified. They do not target the content of the speech. They do not prevent the distribution of leaflets. They impose an exclusion zone around the School. They are very far from impairing the essence of the Convention rights relied on by those defending the protests. I do not believe any lesser measure could achieve the legitimate aim of preventing those consequences.

118. Indeed, in the light of the evidence adduced at trial, I have been persuaded that the interim measures do not go far enough. In his closing argument Mr Manning submitted that the way the protests had developed was such as to justify an enlargement of the exclusion zone, to encompass the green areas close to the school entrance, the place at which the Lady in Red had spoken out about the evils of masturbation. Mr Manning relied on four main points. First, evidence given by Mr Afsar that it was no part of his intention to disturb the School's activities, or to pressurise it into conceding the protestors' demands. Secondly, evidence given by Mr Ahmed, that he did not believe it was important to the protestors for the School to be able to hear what they were chanting or saying. Thirdly, Mr Manning referred to complaints by local residents of disturbance to them caused by protests in that location. Finally, he relied on Mr Afsar's own evidence that the issues raised by the protestors were now national and international in nature, a matter – suggested Mr Manning – that made it fair and reasonable for the protestors to move to another location. I am not persuaded that Mr Afsar or Mr Ahmed were being candid in what they said about the purposes of the protest, but apart from that I see the force of all these points. I consider them strong enough to justify a modification of the injunction. But not the one contended for.

119. When asked where the protestors might go, if ousted from the last green patch of land available near the school, Mr Manning suggested City centre locations, outside this locality. He reasoned that the protest has become a challenge to local and national government, as opposed to the teaching at this School. Even if that were wrong, he suggested that the effect of the interim order had been to create a significantly higher level of disturbance for those who lived in the vicinity of the new location, due to the protestors' "insistence" on very loud amplification. This seems to me to be the crux of the matter. It begs the question of why the protestors have insisted on such measures. Mr Ahmed sought to persuade me that it was because there were some parents at the School who did not know of the protests, and it was necessary or at least desirable to draw the protests to their attention. That is, to be blunt, incredible. The protests are nationally known. In other aspects of their argument the defendants have made a play

of that fact. The (strong) probability, indeed the only reasonable conclusion, in my judgment, is this: the protestors have used amplification because they have been pushed (by the injunction) further away from the main part of the School and they are keen to be heard in and around the School premises.

120. The messages themselves are not denounced as illegitimate, although of course the School maintains they are unjustified. But everybody with any real interest in the matter already knows the main messages, which have been repeated frequently, over many months. The evidence – including but not limited to the expert evidence - persuades me that the levels of noise generated by this way of protesting is clearly excessive, amounting to an intrusion into the lives of those at the School and its neighbours that goes well beyond anything that could be justified as proportionate to the aims of persuasion. There has been discussion, about ways of limiting the levels of noise (as there was at the interim hearing: see the Interim Judgment at [75]), but (as then) no methodology for doing so has been proposed. As Mr Manning has pointed out, there is no reliable way of defining and measuring noise levels for the purposes of an injunction, as noise levels are very dependent on the specific location. More pertinently still, it would be very difficult for the protestors to measure with any accuracy the effects of their protests on those indoors at the School, or in their homes. In my judgment, after nearly 8 months of noisy and highly visible protest, the appropriate course is to allow continued presence on the green space, but to prohibit the use of megaphones or amplification.

Nuisance or obstruction

121. I am satisfied on the evidence that the first three defendants in concert, and others, have committed public nuisance and obstruction of the highway, and that they will repeat such conduct if not restrained. I conclude that the Council is entitled to appropriately formulated injunctions on those grounds as well.

Abuse

122. This is the aspect of the injunction that concerns Mr Allman, and prompted his intervention in the case. He has indicated no intention of participating in the street protests, many miles from his home. His case is that he should be free to speak his mind about teachers involved in teaching LGBT issues, without fear of being held or accused of being in contempt. When I first saw his written argument in support of his intervention, it struck me that his intervention was largely based on a false premise. After reading and hearing Mr Allman's evidence, and the arguments of Mr Diamond, that remains my view. The argument was, in origin, a suggestion that Mr Allman's freedom of speech would be interfered with in a way that was arbitrary and subjective because either (a) he was being prohibited from doing anything that a teacher might subjectively consider to be abuse; or (b) his expression would be chilled by the fear that he might be exposed to an allegation of contempt, based on a subjective view of what amounted to abuse. In its mature form, in Mr Diamond's words, the argument was this:

> "The subjective interpretation of *abuse* is difficult to apply and will be seen in different lights: to some people the headteacher is abusing the children in her care, but to the Headteacher such an accusation of mistreating children is the abuse."

123. Mr Diamond cross-examined the Head Teacher in an attempt to elicit from her subjective assessments of whether particular kinds of activity would represent abuse. He cited to me a passage from the judgment of Tugendhat J in *Trimingham v Association Newspapers Ltd* [2012] EWHC 1296 [2012] 4 All ER 717 [267], to the effect that

> "it would be a serious interference with freedom of expression if those wishing to express their views could be silenced by, or threatened with, a claim for harassment on subjective claims by individuals that feel offended or insulted."

This citation is taken out of its proper context, which was one in which Tugendhat J was emphasising that the test for harassment is objective. For the same reason, this line of argument is misconceived; the injunction does not prohibit what others believe or claim, subjectively, is offensive or insulting. It prohibits conduct that, objectively speaking, represents abuse. The right response to an ill-founded claim that particular conduct was abusive would, as with any ill-founded claim, be to deny it and resist any application based upon it.

124. The main issue on this part of the case is whether an injunction prohibiting conduct that represents abuse of teachers for engaging in their professional work is, in principle, necessary and proportionate in pursuit of one or more of the legitimate aims I have mentioned. My conclusion is that this is not so. As already indicated, the trial process has persuaded me that the existing injunctions prohibiting abuse on social media should not be continued.

125. It is generally undesirable for individuals to be abused, or for abusive things to be said or written about them, for what they do at work. Online abuse can be, and sometimes is, oppressive and intolerable. The speech with which the injunction interferes, and would interfere, is not on the evidence of especially high value. Much of it is little more than vulgar abuse with little or no informational content. All of that being said, the exercise of freedom of speech does not call for justification; it is interference that must be justified. This is not a case on similar facts to those of *Sanchez v Spain* (above) which related to a newsletter published by a trade union, containing grossly insulting words and images relating to the applicants. The speech with which I am here concerned has been expressed in the context of a private, or limited, WhatsApp group. It was not aimed at the teachers, in the sense that they were intended to read it. It has come to their attention only as a result of disclosures made by one or more members of that group. The scale, frequency, nature and impact of the abuse to date, given its context, do not give rise to a sufficiently compelling case for interference. It follows that I decline Mr Manning's invitation, at the end of the trial, to make the injunctions permanent and to enlarge it by removing its existing qualifications.

126. These conclusions make it unnecessary to address the merits of the elaborate argument advanced by Mr de Mello, on behalf of the first three defendants, that the abuse injunction is and would be incompatible with EU Law, including the Privacy Directive (2002/58/EC) governing the privacy of electronic communications, and/or the Charter of Fundamental Rights of the EU, because it represents a form of censorship (as pleaded in the Defence) or surveillance and/or a breach of confidentiality, or a breach of data protection rights (as argued in the first skeleton argument for the trial), or principles related to Article 17 of the Convention (supplemental skeleton argument for the trial).

Again, these are all points of law that did not feature in the argument before the Court at the interim injunction stage. Many of them were never even pleaded. Nor is it necessary for me to analyse and pronounce on Mr Diamond's arguments about the peculiar nature and status of social media. Aspects of his argument would have called for careful analysis. One submission was, as I understood it, that the Court and those targeted should tolerate a greater degree of hostile and (at least arguably) abusive language, because "Social media is particularly volatile, aggressive and abusive medium, where language is used loosely". The reason that I need not lengthen this judgment by discussion of these interesting points is that all of them are expressly tied to the narrow aspect of the existing injunctions that places restraints on what can lawfully be said on social media.

127. I should mention one factual issue that arose, and became the subject of some quite heated evidence and discussion. After leaving the witness box, Tom Brown was recalled on the application of Mr Manning, whereupon he gave evidence that as he passed Mr Allman to take his seat in the public gallery, Mr Allman called him a "fag". Mr Afsar had been sitting behind Mr Allman, and gave evidence that he had heard no such word. Mr Allman, when he gave evidence, denied that allegation. Mr Afsar said that in private conversation Mr Allman had praised Mr Brown's courage in giving evidence. That was Mr Allman's account as well. I have been provided with the relevant section of the digital recording and written submissions from Mr Diamond and Mr Manning. This is a matter that has consumed disproportionate attention, and in the end it is a matter of credibility, and nothing turns on it, and it seems to me, having reflected on the point, that it is unnecessary to make a finding on the point.

The Form Issues

128. Mr Diamond addressed these issues in some detail in his written and oral submissions, maintaining that the injunction that affects his client is "over-broad" and lacking in clarity. It is of course the case that injunctions must not be vague. Any injunction, whomever it is aimed at, must be clear enough to enable the respondent to tell what it is that they can or cannot do. The order should not be in terms which prohibit innocuous or lawful behaviour. I did not see any great merit in the argument that the term "abuse" is ambiguous, as suggested by Mr Diamond and his client. In principle, the distinction between speech that amounts to abuse and that which does not is clear enough. There may be difficulties on the facts of an individual case, but cases such as *Sanchez* illustrate the ability of the Court to reach firm conclusions on the matter. I note that it is customary to grant injunctions which prohibit intimidation and harassment, either with non-exhaustive illustrations of prohibited conduct, or without further elaboration: see *Dulgheriu* [100]. In the light of my conclusions on the facts relating to the anti-abuse injunctions, however, these issues fall away.

The Liability Issues

129. The question that remains is how to address the claim against those unknown persons who may in future protest, or threaten or intend to protest, within the exclusion zone, in ways that will be prohibited, so far as the first three defendants are concerned. This aspect of the case has gone through a number of twists and turns. The leading authorities today are *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6 [2019] 1 WLR 1471, and the subsequent decision of the Court of Appeal in *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515. These and other cases establish that it can be

legitimate in principle to grant injunctions against persons whose identity cannot be ascertained at the time. At one point it was being suggested at the interim hearing in June 2019, I was satisfied that the relevant law had been properly identified and examined before Moulder J and before me. I concluded that the order as it stood, against "Persons Unknown" was too wide; but that there was a class of persons unknown against whom it was legitimate to grant interim relief, namely "Persons Unknown seeking to express opinions about the teaching at the School": Interim Judgment [69-70].

130. At this, final stage of the litigation, it is necessary to look at this issue afresh. Mr Diamond addressed the Persons Unknown issue in some detail in his skeleton argument, for which I am grateful. He has reminded me of the checklist of requirements tentatively identified by Longmore LJ in *Boyd v Ineos* at [34]. In summary, there must be a risk of a tort, it must be impossible to name those who are likely to commit it, unless restrained; it must be possible to give them notice; the terms of the order must not be too wide, or imprecise; and the order should have geographical and temporal limits. All these requirements appear to me to be satisfied or capable of being satisfied in relation to the pool of additional defendants who are targeted by this aspect of the order, save possibly one. I suspect that the Council may be able to identify at least some of those who have participated in the protests, other than the first three defendants. That is a matter that will need to be addressed in the form of order, in conjunction with another issue not addressed in *Boyd v Ineos.*

131. The main point made by the Supreme Court in *Cameron* was that orders can only be properly made against those who have been properly joined as parties to the litigation, and given an opportunity to contest the claim. This is not a fundamental problem here. Mr Allman is such a person, having received notice of the proceedings and joined as a party. There will no doubt be others who still cannot be identified, but who have been served with the proceedings pursuant to the arrangements for service put in place in the interim period; and they will have had a fair and proper opportunity to participate, albeit they have not taken it. I do not see a good reason why I should not make final orders against that category of individual. It will be necessary to refine the designation of the class, but that is a practical matter not a point of principle, as I see it. But the Council's case raises a difficulty. It is illustrated by the Particulars of Claim which, at paragraph 38, say this:

> "The participants in the activities referred to above are transient, mobile and from across the country. The highly transient nature of the protestors renders it difficult for the Claimant or the police to identify participants in any significant numbers. Different participants attend on different days … if one group were to be prohibited from attending protests, it would make little practical difference to the problem as D1, D2 and D3 would simply recruit other people to attend."

For these reasons, it is said, the Claimant has been unable to identify enough regular participants to take proceedings against named individuals "at this stage".

132. One might question whether the problem is really as acute as this pleading suggests. An injunction against the first to third defendants would inhibit the recruitment by them of new protestors, which would seem to amount to a breach of the orders against them.

But these points, whatever might be their merits at the interim stage, cannot I think be relied on as a basis for final orders against a broad group of unidentified individuals of indeterminate number, let alone a body of fluctuating composition. That would be inconsistent with the basic principles reaffirmed in *Cameron.* This is a point highlighted by the recent decision of Nicklin J in *Canada Goose UK Retail Ltd v Persons unknown who are protestors against the manufacture and sale of clothing made of or containing animal products and against the sale of such clothing at* [an address in Regent St, London W1] [2019] EWHC 2459 (QB): see [144]ff. For the reasons given by Nicklin J, which I find persuasive, it seems to me – subject to any further argument - that the final order against Persons Unknown in this case can only be made against persons who are parties to the action at this point in time. It cannot be framed in such a way as to extend to all members of the "transient, mobile" class described in the Particulars of Claim. It can only be made in terms that confine its effect to those who have been served with the proceedings prior to trial. It may be that the Council will have to give undertakings to use reasonable efforts to trace and identify those who do fall within the class of Persons Unknown who remain defendants to the claim, and targets of the final order.

Disposal

133. The precise terms of the final order to be granted will remain to be settled by agreement or, failing that, by a decision from me. But the shape of the final relief I will grant should be clear enough from what I have said above. The individual defendants' freedom to protest in the street in ways that are anti-social, cause a public nuisance, or obstruct the highway, will continue to be curtailed to an extent that I consider is convincingly shown to be necessary in a democratic society in the pursuit of the legitimate aims I have spelled out. Persons Unknown, who have had proper notice of this claim, will be similarly restrained. The freedom of speech online will not be interfered with, on the basis that the Claimant has failed to present a sufficiently compelling case against any of the defendants, that there is a pressing social need for such restriction

APPENDIX I

The court ordered that the Defendant, Ms Rosina Afsar (whether by herself or by instructing, encouraging or allowing any other person) SHALL NOT:

1. Enter the area shown on Map 1, attached to this Order, at Schedule 1, the boundaries of which are delineated in red except that she may enter the area for the purpose of taking her children to or collecting them from Anderton Park Primary School ("the School"), or for any prearranged meeting at the School; or for the purpose of attending the Dennis Road Mosque.

2. Approach, contact or attempt to contact any member of staff of the School, or any person who has given a witness statement relied on by the Claimant, by any means, including social media, whether directly or through any other person, except that she may contact the School in relation to matters concerning her own children using the main phone number 0121-464 1581, and may contact any member of staff as permitted by the school.

3. Use any social media account to make abusive comments about any member or members of staff at the School in relation to teaching at the school, including in relation to their evidence in these proceedings.

4. Organise engage in (whether by herself or with any other person) or encourage any other person to engage in any protest against teaching at the School within the area shown on Map 1.

5. The prohibition at paragraph 4 includes, but is not limited to:
   i. distributing leaflets for any person to hand out within the said area;
   ii. inviting, encouraging or arranging for any other person to come to attend such a protest within the said area;
   iii. encouraging or arranging for any other person to congregate at any entrance to the School, within the said area, for the purpose of any such protest.

APPENDIX II


Stoney Ln
A K Halal Meat Centre
Uzy Supermarket
Stag Chemist
Newport Medical Pratice
Yardley Wood Rd
Natural Beauty
abdullah & sons company
Army Cadet Force
Dennis Rd
Anderton Park Primary School
Birchwood Cres
Balsall Heath Park
Ladypool Cycles
Antep Turkish Cuisine
Rapunzel Hair D-Zine
Woodstock Girls' School
Woodstock Rd
Heavenly Desserts
Road Post Office