

Birmingham High Court District Registry Kings Bench Division

Claim No. KB-2024-BHM-000107

The University of Nottingham v (1) Mx Joel Butterworth (also known as River Butterworth (They/them)) (5) “Non Students” Persons Unknown and (6) “Students” Persons Unknown

Application Notice dated 6 June 2024

Box 10 - What Information will you be relying on, in support of your application?

The evidence set out below:

1. *Background*

- (1) By way of ‘liberty to apply’ in respect of the Order of 20 May 2024 (as varied by the Order of 22 May 2024 (as amended under the slip rule on 24 May 2024)) and pursuant to the Court’s case general powers under CPR 3.1(7), this Application is principally to seek revocation and/or variation of paragraph 6 of the Order dated 20 May 2024. This was a mandatory self-identification order directed to those occupying at the encampment and various consequential orders. The Application is made in the context of there being a forthcoming adjourned hearing on 19 June 2024 and in the context of the Claimant, as requested by the Court, seeking to progress communications with the encampment occupiers.
- (2) At the forthcoming hearing on 19 June 2024, the Court is to consider the claim for possession further, most particularly with respect to any encampment occupiers who are students or staff or employees of the University. By paragraph 6 of the Order dated 20 May 2024, the Court made various directions to the effect that those occupying had to produce specified forms of identification and that upon doing so, they would become named defendants to the Claim. Further, those student or staff members who did not produce that form of identification would come within an existing order for possession that the Court had made in relation to persons who were not students or staff.
- (3) As part of the duty to assist the Court, the Claimant wishes to draw the attention of the Court to certain issues in advance of the deadline for compliance with the mandatory self-identification order, which is 4pm next Monday 10 June 2024, and in advance of the hearing on 19 June 2024. For the reasons set out below, the Claimant requests that the order be revoked in the interests of the overriding objective.
- (4) The legal backdrop to the Application is that, unlike the procedure for injunctions against ‘persons unknown’, the summary possession procedure specifically allows for the description of defendants to be ‘persons unknown’: see CPR 55.3(4). Also, unlike, the position in relation to injunctions, a possession order operates ‘in rem’ and is enforced by High Court enforcement officers physically going on to the land and securing possession. It is therefore not required to be directed against specific

individuals and the remedy is not by way of contempt proceedings in relation to specific individuals.

- (5) Notwithstanding this, in an attempt to assist the Claimant, the Court by its Order dated 20 May 2024 distinguished between different categories of encampment occupiers and amended the description of the parties in order to grant an immediate order for possession against those persons who were not students, staff or employees. However, the scheme of the Order mandatorily required students, staff or employees who are occupiers to provide a specific form of identification and provided that if they did not comply with this mandatory order, they would then retrospectively come within the scope of this existing order for possession.
- (6) In accordance with the overriding objective and in light of the above, it is right for the Claimant to draw the attention of the Court to the following matters prior to the date by which compliance with the mandatory self-identification order is required, namely 4pm on Monday 10 June 2024.

2. *The mandatory self-identification order*

- (1) The mandatory self-identification order in paragraph 6 of the Order dated 20 May 2024 stated that *“all those occupying the land... shall identify themselves and prove their membership as a current student or member of staff of the Claimant by providing (a) their full name (b) student or staff identification number; and (c) an email address for service of documents; either verbally on the spot, when asked, or by emailing all of these details to the Claimant’s solicitor (Danielle.Long@shma.co.uk).”*
- (2) The first point to which the Claimant wishes to draw to the attention of the Court is that this was a mandatory injunction requiring the provision of personal information. The Claim, however, is merely for an order for possession against ‘persons unknown’. The Claimant has not asked for a court to require the provision of personal information or for such personal information to be given in the manner directed. The mandatory self-identification order is not necessary or proportionate in relation to the relief sought in the form of an order for possession.
- (3) Furthermore, the summary possession procedure expressly provides that an order for possession can be made against ‘persons unknown’: CPR 55.3(4). There is no need for named identification of the defendants, albeit that it is always open to an occupier to apply to become a named defendant and to serve a defence. The fact that the mandatory self-identification order has the effect under paragraph 8 that such persons automatically become named defendants to the Claim may run contrary to the summary possession procedure against ‘persons unknown’ and may be unnecessary and disproportionate in light of the above.
- (4) Furthermore, if and insofar as any person wishes to become a defendant, the requirement that they produce the personal information referred to in the mandatory self-identification order may mean that their ability to be able to defend has been the subject of an unnecessary and disproportionate restriction.

3. *Abridgement of Time*

- (1) Given that the self-identification mandatory order is required to be complied with by 4pm on Monday 10 June 2024, the Court is asked for this matter to be heard on Friday 7 June 2024. In accordance with the Court having urged the parties to communicate, the Claimant is seeking to progress such communications in advance of the hearing on 19 June 2024 but it will not be helpful in these communications for the mandatory self-identification process to be part of the context. The deadline of 4pm on Monday is critical in that respect. Either some or all of the occupiers will have been forced to give such personal information by that deadline or they will find themselves in a position where they have breached a court order and are to be treated as the subject of an existing possession order. This is the reason why the Claimant is applying to the Court at this stage and respectfully requests the Court to deal with the matter urgently on Friday 7 June 2024.
- (2) There is no express period specified for notice in respect of ‘liberty to apply’ for the Claimant, although a period of 24 hours was specified in paragraph 15 in relation to those served with the Order. Insofar as it may be considered necessary or appropriate, the Court is asked to exercise its discretion to abridge the time for service of this Application Notice so that it can be heard on 7 June 2024.

4. *The Possession Order*

- (1) An existing order for possession cannot be treated subsequently as retrospectively applying to other persons; see the Supreme Court in *Wolverhampton City Council and Others v London Gypsies and Travellers* [2023] UKSC 47 at paras [166] and see also [127-130].
- (2) Furthermore, it is not possible, in practical terms, to enforce the existing order for possession by reason of the inability for enforcement officers to distinguish, for enforcement purposes, between those persons who are staff, students or employees of the University and other persons.

5. *The Description of the Fifth and Sixth Defendants*

- (1) In relation to possession proceedings, CPR 55.3(4) merely requires that unknown defendants trespassing on the Claimant’s land be referred to as “Persons Unknown”. However, if they are to be named, then in the context of the law on injunctions, there is a clear rule that the description must be by reference to the conduct which is alleged to be unlawful and must be clear and specific so that there is no ambiguity as to who is within the scope of the description: see *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802.

6. *The Proposed Orders*

- (1) By reason of the matters set out above, the Claimant respectfully requests the Court to revoke and/or vary certain provisions in the Order dated 20 May 2024, pursuant to the Court’s general powers under CPR 3.1(7).

- (2) There are two draft Orders attached to this Application Notice, namely “Draft Order 1” and “Draft Order 2”. The rationale for these two Orders and the purpose of the principal provisions is summarised below:
- (3) Draft Order 2 - Paragraph 2: This order seeks to revoke the mandatory self-identification order and the consequential orders in the Order dated 20 May 2024 which flowed from that order.
- (4) Draft Order 1 – Paragraph 1: Consistently with the revocation of the mandatory self-identification order and the new consequential directions proposed, the description of the parties to which those orders apply should be made clear on the face of the Order. The making of Draft Order 1 to deal specifically with the change to the description of the parties so that when it comes to Draft Order 2 it is clear on the face of the Order to whom those directions apply is the suggested procedural approach requested to be adopted.
- (5) Draft Order 2 – Paragraph 2: Consistently with the above, the Court is requested to re-state the order for possession with respect to those unlawful occupiers who are not associated with the University.
- (6) Draft Order 2 – Paragraphs 3-9: These are consequential suggested ancillary directions flowing from the above.

STATEMENT OF TRUTH

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

The applicant believes that the facts stated in these continuation sheets are true. I am authorised by the applicant to sign this statement.

Signed: 

Applicant’s legal representative (as defined by CPR 2.3(1))

Dated: 6 June 2024

Full Name: Martin James Edwards

Name of applicant’s legal representative’s firm: Shakespeare Martineau LLP

If signing on behalf of a firm or company give position or office held: Partner