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## OPEN LETTER TO THE UNIVERSITY OF BIRMINGHAM

Professor David Eastwood, Vice-Chancellor  
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**URGENT BY POST & FAX (0121 414 4534)**  
**cc Carolyn Pike, Director of Legal Services (0121 414 3200)**

23 January 2012

Dear Sirs,

### **The University of Birmingham v Persons Unknown *Claim No. 1BM 30637***

We represent persons who fall within the category of "persons unknown" for the purpose of the above claim. For the purpose of this letter, we refer to our clients (who are students at the University) as the Defendants. This open letter requires your urgent and immediate attention.

### **The Matter Under Challenge**

1. On 25 November 2011, the University obtained a court injunction that for twelve months prohibits the Defendants from entering or remaining on the University campus or buildings for the purpose of any occupational protest action without the prior written consent of the University. Any person found in breach of the court order may be found guilty of contempt of court and is liable to be imprisoned, fined or have their assets seized.
2. The year-long injunction was obtained in response to a small, peaceful occupational protest in an empty residential building on campus that began on 23 November 2011 and lasted for less than 48 hours. The University sought a possession order to cover the entirety of the campus (see paragraph 25 of the witness statement of Gordon Stuart Richards dated 24 November 2011) but the Court granted a possession order in respect only of the property occupied (which had already been vacated by the Defendants).

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Solicitor



Solicitor of the Year

3. The Defendants strongly object to the injunction granted and seek its full and immediate discharge. We submit that it is a wholly disproportionate response and represents an unacceptable restriction on students' legitimate right to protest. It is completely at odds with the University's duty as a public body to respect and protect students' right to freedom of expression and assembly.
4. It is hoped that this matter can be resolved by consent without further costly legal proceedings. In short, the Defendants request that the University agree to the discharge of the injunction by consent.

### **The University's Position**

5. The University's unprecedented action in obtaining the injunction is indicative of a draconian and needlessly aggressive attitude to student protest, which requires urgent reconsideration. We set out below the context in which the injunction was obtained.
6. At approximately midnight on 23 November 2011 a number of students occupied an unused residential gatehouse known as No 2 the Lodge on the University campus. The students sought through the occupation to raise awareness of the Higher Education White Paper and voice their concerns over the privatisation of the Higher Education System.
7. The protest that followed did not cause any criminal damage and was entirely peaceful. It did not restrict access to university facilities or prevent anyone from going about their lawful business. However, students taking part in the protest allege that they were quickly the subject of a sustained campaign of harassment and intimidation by University Security Guards.
8. During the course of the occupation, it is alleged the University Security Guards:
  - i) Prevented students from leaving the house, effectively imprisoning students within the premises;
  - ii) Prevented others from accessing the house;
  - iii) Denied the occupants access to food;
  - iv) Denied the occupants access to educational and writing material;
  - v) Assaulted a student who was seeking to enter the premises;
  - vi) Punched a student called Simon Furse three times, twice as he was seeking to shut the window of the gatehouse;
  - vii) Repeatedly sought to intimidate the students and deprive them of sleep by ringing the doorbell and banging on windows;
  - viii) Taunted the students as they were trying to toilet by shouting comments such as "are you having a wee?" and shining a torch light into the bathroom;
  - ix) Caused damage to the property by forcing a window open;
  - x) Insisted on filming lawyers from this office attempting to visit our clients thereby preventing legally privileged conversations from taking place.
9. The University was made immediately aware of these serious allegations but rather than seek to address them or ensure the safety of the protesters, it made a court application for possession. The application made without notice on 24 November 2011 to Birmingham High Court sought a possession order over the entirety of the campus and

an interim injunction. An urgent full hearing of the matter was listed for 25 November 2011.

10. After careful consideration, the Defendants decided not to oppose the application at the full hearing. The individual students were concerned that the University would, as threatened, take disciplinary action against them. Whilst the Defendants wished to exercise their lawful right to protest they were concerned that if they were named in legal proceedings they would face expulsion from University.
11. At approximately 9pm on the evening of 24 November 2011 the Defendants peacefully vacated the building. On 25 November 2011 a member of this office notified the Court that the Defendants had vacated the property concerned and that the order sought was no longer necessary.
12. Despite the fact the protest had ended, the University chose to proceed to a full hearing. On the morning of 25 November, Michael Green of Martineau Solicitors, telephoned Tessa Gregory, a solicitor at these offices, to state that University "Intelligence" suggested that a further protest was planned at 9:30 am that morning. He made clear the University would seek to enforce the terms of the injunction and take action against any protesters who entered the campus. This position was echoed in the witness statement of Martin Edwards of Martineau Solicitors dated 25 November 2011. Martin Edwards states, in respect of a message posted on an internet site which called on protesters to "gather" on campus (without any indication it would be an occupation of buildings), that:

*"I notified the police at 9:15am ...and indicated to them that it [presumably the gathering of protesters on campus] would be breach of our Court order which prevents anyone named or otherwise from holding any occupational protest. The police called me back at 9:40 am to confirm they are attending the North gate and they will monitor the situation"* (paragraph 3).
13. A small number of protesters did gather on campus but no arrests were made. Later that day the interim injunction obtained on 24 November 2011 was amended to remain in force for 12 months.
14. The above approach taken by the University's legal representatives illustrates how the University may seek to enforce the injunction in its widest terms to prevent anyone "named or otherwise" from holding protests across the campus. In further confirmation of the disproportionately aggressive approach being taken, the University brought disciplinary proceedings against a student, Simon Furse, for taking part in the occupational protest. The means by which the University identified him was his own complaint to the police after he was allegedly punched three times by a University Security Guard.
15. Students who wish to protest now fear that they may face both disciplinary action by the University or potential criminal sanctions for breaching the court injunction dated 25 November 2011. They also feel intimidated in complaining to the police about any criminal offences committed by University security guards in their interventions in lawful protests.

## The Law

16. The 12 month ban on any occupational protest across the entirety of the campus without written consent, obtained upon the University's application, is unlawful and places the University in breach of its duties as a public body.
17. The right to protest is protected by Articles 10 and 11 of the European Convention on Human Rights which provide that everyone has the right to freedom of expression and of peaceful assembly and association with others. Both Articles 10 and 11 qualify the rights by providing that they may be interfered with in circumstances "prescribed by law" and "necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others."
18. The University is a public authority within the meaning of section 6 of the Human Rights Act 1998 and is therefore required to protect and observe the aforementioned rights. The Domestic courts and the European Court of Human Rights have repeatedly emphasised the importance of freedom of speech. It has been described as the "life blood of democracy" (*Lord Steyn in R v Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115) and "one of the essential foundations of...a society...for its progress and for the development to every man" (*Handyside v UK* [1976 1 EHRR 737 para 49). The rights protected under the Convention "extend to the manner in which the defendants wish to express their views and to the location where they wish to express their views" (*Mayor of London (on behalf of the Greater London Authority) v Hall and others* [2011] 1 WLR 504).
19. Accordingly, any interference with the students' right to protest can only be justified with reference to the legitimate aims specified in Articles 10 (2) and 11 (2). Any prior restraint requires the most careful scrutiny (*Sunday Times v United Kingdom...No 2* (1992) 14 EHRR 229). Consideration must be given as to whether the interference is lawful, necessary and proportionate. To be proportionate the action should be the least intrusive necessary to achieve the aim and must strike a fair balance between the needs of the individual and the community.
20. We submit, emphatically, that the twelve month widely applicable injunction is neither necessary nor proportionate. The University has failed to properly take into account the Defendants' rights under Articles 10 and 11. In this case the students (whom we understand numbered significantly less than the figure of 27 estimated by the University) posed no security threat. The protest did not have any significant implications for the rights and freedoms of others and did not obstruct others from carrying out their normal business at the University. The University itself stated that the protest was "*not causing any disruption to teaching or other University activity*"<sup>1</sup>.
21. The students were raising legitimate political concerns in a serious manner. The occupational style of the action and its location on the University campus was integral to the expression of the rights exercised. In response to a protest that caused minimal disruption, the University sought and obtained an injunction against persons unknown preventing any occupational protest from taking place across the whole campus. No matter how pressing the cause, how well planned and executed the protest, no matter

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<sup>1</sup> <http://www.redbrickpaper.co.uk/2011/11/ncacf-students-occupy-former-north-gate-gatehouse/>

how great the wave of national occupational protest or how minimal the inconvenience to other users of the University, you have prohibited it and reserved the right to unreasonably withhold your consent. In doing so, you have fettered your responsibilities under the ECHR. This is clearly disproportionate and prevents the University from balancing the competing interests of its students' legitimate right to protest and the wider community. Regard must be had to the specific nature of the protest and the identity of the individuals taking part who as students of the University ordinarily have extensive rights and access to the property covered by the injunction.

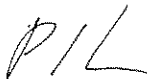
22. We note the support the University drew at the hearing from the first instance decision of *School of Oriental and African Studies v Persons Unknown* [2010] 49 EG 78 in which a possession order for the entirety of the campus was granted. In the instant case the Court did not grant a possession order in those terms and did not have full regard to all the relevant authorities. We do not consider that the facts of this case, which related to a single occupation in an empty residential building could have justified the granting of a possession order over the entirety of the campus. As stated in *University of Essex v Djemal* [1980] 1 WLR 1301 "the extent of the field of operation of any order for possession which the court may think fit to make will no doubt depend upon the circumstances of the particular case". Accordingly, there is also no justification for what is in effect a "super-injunction" which seeks to pre-emptively stop any occupational protest across the entirety of the campus for a full twelve months. Under the terms of the injunction there is nothing preventing the University from unreasonably withholding their consent. In granting the unopposed injunction the Court was not given access to all the relevant facts.
23. The University may refer to its rights as a private landowner but it is also a public body amenable to judicial review with a duty under section 6 of the Human Rights 1998 not to act in ways incompatible with Convention rights.

#### **Action Required**

24. We call upon the University to agree to seek the discharge of the order by consent. We hope that in future the University will more carefully consider its response to student protest. Universities should be at the forefront of ensuring the right to protest is protected, not responsible for the criminalisation of its students who legitimately wish to raise serious concerns of public importance.
25. Only once the injunction is removed can a sensible dialogue take place between the University staff and the student body regarding the exercise of the legitimate right to protest.

Please provide your response to this letter no later than **4.00pm on Friday 27 January 2012**.

Yours faithfully,



**Public Interest Lawyers**