



JUDICIARY OF  
ENGLAND AND WALES

26 November 2019

**SUMMARY**

**Birmingham City Council v Afsar & Others (No 3)**  
**[2019] EWHC 3217 (QB)**  
**Mr Justice Warby**

1. The judgment is given after the trial over five days of a claim for injunctions to restrict street protests about a school, and to prohibit online abuse of teachers at that school (“the School”).
2. 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 [1].
3. 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”. 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 [1].
4. The focus of the claim is not, however, on the content of the protests. The Council is not seeking to restrict what the protestors say in the street. Its case is that the protests have been carried on in ways which are anti-social, involving interference by noise and in other ways with the education of the pupils, the private lives of teachers and local residents, of a nature which is serious, and to an extent which is disproportionate to any legitimate purpose. The Council also alleges public nuisance and obstruction of the highway, as well as seeking restraint on the use of social media to abuse teachers. [4-5], [8].
5. There are five defendants. The first three are individual protestors, two of whom have children at the School, and one of whom is the uncle of pupils there. The fourth defendant is a group of unidentified protestors, described as Persons Unknown [4]. The fifth defendant, Mr Allman, lives in Devon. He was joined on his own application to resist the part of the claim that seeks to prohibit the online abuse of teachers [9].

- 6.** The claim and the defences to it give rise to four main issues, **[12]**:
- (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 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 Equality Act 2010 (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")?
- 7.** 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 abuse of teachers, so far? **[13]**.
- 8.** The Court's conclusions on the main issues are these.
- (1) *The Construction Issues*
- 9.** First, 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 **[21(1)], [24-35]**.
- (2) *The Discrimination Issues*
- 10.** Secondly, 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 Equality Act, which does not apply to the pursuit of claims of this kind. Alternatively, the conduct complained of by the defendants relates to the content of the curriculum, which is outside the scope of the Act. Injunctions of the kinds sought would not amount to, or serve to enforce, unlawful discrimination. The Court is not persuaded, in any event, that there has been such discrimination. **[21(2)], [36-64]**.
- 11.** The true nature of the teaching has been misunderstood and misinterpreted by the defendants. A letter written to the School by the first defendant mis-stated the facts. Leaflets distributed by the defendants have done likewise, suggesting, for instance, that

the School is “promoting homosexuality”, which is not the case. The matters that have actually been taught are limited, and lawful. The school does not deliver any sex education. It seeks to weave the language of equality into everyday school life, conveying messages such as “There are lots of different types of family ... some have 2 mums or 2 dads” and (in years 3-6) “Gay is not an insult”. Pupils are told that they must talk to their parents about these issues too because, while what the School is saying is the law, some people and cultures disagree with what it is teaching. The teaching cannot fairly be described as any form of indoctrination. [3], [21(2)], [65-76], [79-80], [85].

(3) The Necessity Issue

12. Turning to the question of whether injunctions are necessary, the judgment notes that the true position so far as the teaching is concerned has been misrepresented, sometimes grossly misrepresented, in the course of the protests. 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. None of this is true. None of the defendants has suggested that any of it is true. The Council has proved it is untrue. [3], [81], [86], [89].
13. Despite these misrepresentations, 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 identified.
14. The protests for which the defendants accept responsibility have led police officers in attendance to conclude that the gatherings pose a danger to the public, including the protestors, and that the highway was being obstructed. They have involved the distribution of leaflets making false allegations that the School is engaged in the “promotion of homosexuality” and other falsehoods about the teaching at the school. A megaphone has been used, and amplification, causing noise nuisance to the School and local residents. There is ample evidence that the protests have had a very significant adverse impact on teachers, pupils and local residents. Residents have found the protests intimidating, alarming, and distressing. One had suffered a panic attack. Another was said to be almost pleading with bystanders to get the protests stopped. Teaching at the School has been disrupted. Children have had to be kept indoors with all windows locked to avoid noise which the Deputy Head Teacher described as “intolerable”. When it was put to the first defendant that this was “completely unacceptable” he accepted that this was possibly the case. An educational psychologist told of seeing 21 staff members at the School over a 2-month period, exhibiting symptoms of stress, including sleeping difficulties and anxiety, at a level significantly greater than any she had seen over 8 years of responding to “critical incidents” [21(3)], [83-85], [88], [90-95], [111-121].

- 15.** On the second main question of fact, the Court finds, on the balance of probabilities, that 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. The injunctions will be modified to prohibit the use of megaphones and amplification **[86-87], [89], [120]**.
- 16.** The evidence does not, however, demonstrate a pressing social need to impose restrictions on what is said on social media **[21(3)], [96-97], [122-127]**.

(4) *The Liability Issues*

- 17.** On the fourth issue, the Court's conclusion is that 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.
- 18.** 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 **[21(4)], [129-132]**.

*Disposal*

- 19.** In the light of these conclusions, the Court continues injunctions against the first three defendants and Persons Unknown. It does 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.

**NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [www.bailii.org.uk](http://www.bailii.org.uk).**

**Paragraph numbers in bold are those assigned in the judgment.**