Neutral Citation Number: [2016] EWHC 953 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2016

Before :

Mrs Justice Whipple

- -

Between :

	R (on the application of Ben-Dor & ors)	**Claimant**
	- and -	
	University of Southampton	**Defendant**

- -
- -

Ms Shivani Jegarajah, Mr Mark McDonald and Ms Natalie Csengeri (instructed by **Public Interest Lawyers**) for the **Claimants**
Mr Edward Capewell (instructed by **University of Southampton**) for the **Defendant**

Hearing dates: 6 April 2016

- -

Judgment **Mrs Justice Whipple:**

I. INTRODUCTION

1. 1. Professor Oren Ben-Dor is a professor of philosophy and law. Professor Suleiman Sharkh is a professor of Engineering. They are the "Claimants". The Claimants bring two claims for judicial review against their employer institution, Southampton University (the "Defendant"). The Claimants had organised a conference to be held at the Defendant's campus, entitled "International Law and State of Israel: Legitimacy, Responsibility and Exceptionalism".

2. 2. The conference was originally planned to take place between 17 and 19 April 2015. The first application for judicial review, which I shall refer to as JR 1, challenges the Defendant's decision dated 31 March 2015 (wrongly stated in the Claim Form as 30 March 2015) which was upheld by the Defendant on internal appeal on 1 April 2015, to withdraw permission to hold the conference on the Defendant's campus on the proposed dates, on grounds that there was an unacceptably high risk of disorder arising out of the conference, and there was insufficient time before the conference to put adequate

measures in place to ensure that good order could be maintained. Permission to claim judicial review was granted by Arden LJ on 27 October 2015, and this judgment determines that judicial review substantively.

3. 3. In light of the Defendant's withdrawal of permission, the conference did not take place as planned in April 2015, but the Claimants and the Defendant continued to investigate the possibility of holding the conference on another date. On 1 February 2016, the Defendant wrote to the Claimants with proposals for hosting the conference, now scheduled for April 2016, on the Defendant's campus. Those proposals included a requirement that the conference organisers should cover the costs of security within the venue for the duration of the conference from the conference budget. The security costs were estimated at around £24,000. The Claimants challenge that proposal by way of the second judicial review, which I shall refer to as JR 2. JR 2 comes before me for permission only.

4. 4. The conference has not yet taken place. I am told that the Claimants are currently planning to host it in April 2017, depending to some extent on the outcome of these two applications for judicial review (and in particular JR 2 which relates to the validity of requiring the Claimants to meet part of the security costs from the conference income).

5. 5. At the heart of both judicial reviews lies the Claimants' argument that the Defendant has, by these decisions, unlawfully interfered with the Claimants' rights of freedom of expression and assembly, protected by Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"). By JR 1, the Claimants seek a declaration that the Defendant's decision to withdraw permission to hold the conference in April 2015 was unlawful. By JR 2 they sought an Order quashing the decision of 1 February 2016. The challenge put in that way is now redundant because the conference has been postponed to 2017. The Claimants now seek a declaration that the Defendant's decision to charge the security costs to them is unlawful, effectively amounting to an insurmountable obstacle to their ability to hold the conference and thus a disproportionate interference with their Convention rights. The Claimants contend that these claims engage fundamental issues of principle and wider importance for the academic community.

6. 6. The Claimants were represented by a legal team which acted *pro bono*, consisting of Ms Shivani Jegarajah who led on the law, and Mr Mark McDonald who led on the facts, supported by Ms Natalie Csengeri, and instructed by Public Interest Lawyers. I am very grateful to all of them for the time and expertise which they have volunteered. The Defendant was represented by Mr Edward Capewell, for whose submissions I am similarly grateful.

II. LITIGATION HISTORY

1. 7. The JR 1 Claim Form was issued on 7 April 2015 and included an application for a protective costs order as well as expedition. Andrews J refused permission and all other applications by order dated 8 April 2015. The Claimants applied to renew its applications and the matter was listed for hearing on 14 April 2015. The Defendant filed an Acknowledgment of Service on 13 April 2015, which attached a skeleton argument drafted by Mr Capewell which was to stand as summary grounds of resistance; and filed three witness statements at the same time, from Professor Don Nutbeam, Vice-Chancellor of the University of Southampton dated 13 April 2015, Mr Stephen White, the Defendant's Chief Operating Officer dated 13 April 2015 and Mr Gary Jackson, the Defendant's head of security, dated 10 April 2015.

2. 8. The hearing on 14 April 2015 proceeded before HHJ Alice Robinson sitting as a Deputy High Court judge. Giving reasons in an *ex tempore* judgment, she refused

permission, and also refused the Claimants' ancillary applications.

3. 9. The Claimants appealed to the Court of Appeal against the refusal of permission. By order dated 27 October 2015, Arden LJ granted permission to appeal, making the following observation:

> "…the applicants have shown that their claim is sufficiently arguable to justify the grant of permission. It is plainly arguable that the duty to protect freedom of speech means that it is not enough to act on a threat of violent protest unless it is significant and unavoidable and that therefore the court must scrutinise for itself whether the reaction to the threat was justified in light of all the circumstances. Accordingly, I grant permission and direct that the application is heard in the administrative court in order that any further evidence can be filed."

1. 10. In light of that grant of permission, the Claimants renewed their application for a PCO which was granted by HHJ Cooke QC sitting as a Deputy High Court judge, by order dated 7 March 2016, capping the costs recoverable against the Claimants at £8,000 inclusive of VAT.

2. 11. The substantive hearing was listed for one day. It came before me on 6 April 2016. The Defendant did not file detailed grounds of resistance, and relied instead on its original summary grounds in the form of a skeleton argument.

3. 12. The Claim Form in JR 2 was issued on 17 March 2016 with an application for urgent consideration. (I think that the date on the Claim Form is probably incorrect, and JR 2 was in fact issued on or about 17 February 2016.) The Defendant submitted an Acknowledgement of Service on 5 March 2016 indicating an intention to resist the claim. The papers were put before Holman J on 21 March 2016 who ordered JR 2 to be listed for oral consideration of permission at the hearing of JR 1 fixed for 6 April 2016. Summary grounds of resistance together with supporting documents in relation to JR 2 (but no further witness evidence) were lodged on 4 April 2016.

4. 13. No witness evidence has been filed by the Claimants in support of either claim for JR. The facts are outlined in the grounds drafted by lawyers, supported by correspondence attached to the claim forms.

III. BACKGROUND

Legal Framework

1. 14. The Defendant is subject to obligations under Section 43 of the Education (No 2) Act 1986, which provides, so far as is relevant for present purposes, as follows:

> **"43.— Freedom of speech in universities, polytechnics and colleges.**
>
> (1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.
>
> (2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—
>
> (a) the beliefs or views of that individual or of any member of that body; or

(b) the policy or objectives of that body.

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

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

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

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

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

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

(4) Every individual and body of persons concerned in the government of any such establishment shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code of practice for that establishment, issued under subsection (3) above, are complied with.

…"

1. 15. (The Claimants also referred to Section 202 of the Education Reform Act 1988 which relates to obligations of University Commissioners. I am satisfied that Section 202 is not relevant to this case, which does not concern the Commissioners but the University itself, and I say no more about that section.)

2. 16. By operation of Section 6(1) of the Human Rights Act 1998, the Defendant is also subject to obligations under the Convention. Articles 10 and 11 are relevant:

"**Freedom of expression**

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of assembly and association

Article 11

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

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

The Defendant's Code Of Practice

1. 17. At all material times the Defendant has maintained a Code of Practice to Secure Freedom of Speech Within the Law, as it is required to do by s 43(3) of the 1986 Act. At the time of the decision leading to JR 1 (March and April 2015), the Defendant's Code of Practice provided, so far as relevant, as follows:

"1 (a) *A designated activity* is defined as any meeting, event or other activity due to take place on University premises where there is a reasonable expectation on the part of the Principal Organiser … or the Responsible Officer … that freedom of speech within the law may be compromised unless appropriate remedial action is taken. Whilst it is not possible to be prescriptive about such activities they may include visits by public figures especially where their views have aroused controversy in the past or where the subject matter of the activity is likely to be regarded as controversial or objectionable by at least some of the participants. In cases of doubt the Responsible Officer should always be consulted.

…

2.3 The Council of the University has authorised the Responsible Officer, at his/her sole discretion but taking account of such advice as he/she deems necessary, to declare any activity to be a 'designated activity' within the meaning of this Code.

…

The Responsible Officer shall have authority to withdraw permission for the holding of a designated activity if in his/her opinion such changes in circumstances have occurred since the original granting of permission as to make it likely that good order cannot be maintained. Such action shall only be taken in exceptional circumstances and wherever possible after consultation with the Principal Organiser.

2.5 Where an activity is designated the Principal Organiser shall consider what measures, if any, might need to be taken in order to safeguard freedom of speech and advise the Responsible Officer as appropriate. The Responsible Officer may, at his/her sole discretion, vary the measures proposed by the Principal Organiser or require additional measures to be taken.

…

7.1 Appeals against any rulings or requirements of the Responsible Officer or his/her nominee may be made by the Principal Organiser or

> his/her nominee to the Vice-Chancellor whose decision shall be final. In the absence of the Vice-Chancellor and in cases of urgency appeals may be determined by the Provost or, in his/her absence, by a Pro Vice-Chancellor."

1. 18. The Defendant amended its Code of Practice on 27 November 2015. This amended version of the code was operative at the time of the decision leading to JR 2 (1 February 2016). The costs provisions in the amended code were materially identical to those in the earlier code, providing as follows:

> "12.1 Except in respect of Designated Activities this Code does not alter the normal policy whereby budgetary groups, the Staff Club, the Student's Union and hirers are responsible for payment where appropriate and necessary for services provided by another budgetary group or central funds.
>
> 12.2 Save for Type C events, where all costs shall be borne by the hirer, where additional costs arise as a direct result of the requirements of the Responsible Officer in relation to a Designated Activity these shall normally be borne by the University where they relate to:
>
> (i) the provision of University portering and security staff *outside* the venue.
>
> (ii) the provision of streaming and overspill facilities.
>
> 12.3 All other costs, including any additional external policing and security costs, shall be borne by the appropriate budgetary group or other financial entity except where it can be clearly shown that the right to freedom of speech is being inhibited by lack of funds. This shall not apply to Type C events, where all costs shall be borne by the hirer."

Facts

The Conference

1. 19. The Claimants called for papers for the conference by a document entitled "Call for Papers" which was circulated widely by email in April 2014. That document described the conference in the following terms:

> "This conference seeks to analyse the challenge posed to international law by the Jewish State of Israel and the whole of historic Palestine – the area to the west side of River Jordan that includes what is now the State of Israel and the Palestinian territories occupied in 1967."

It was said that the conference would examine the legality of the State of Israel rather than its actions. The conference was described as *"the first of its kind"*. Its purpose was:

> "…to open up and serve as a platform for scholarly debates rather than positing an activist aim of adopting a firm normative position."

The intention was to publish the proceedings of the conference as an edited collection. The whole conference would be documented and filmed. Contributors were told that they would be fully funded or substantially assisted with their expenses. A conference fee of £50 (£30 for students) was to be charged.

1. 20. The Defendant approved the conference as a legitimate academic exercise in or around July 2014, and accepted that the conference could take place on the Defendant's campus.

2. 21. From around December 2014, the Defendant began to receive correspondence expressing opposition to the conference. This correspondence came from a wide range of individuals and organisations. The Defendant replied to each communication stating that it had no position on the substance or content of the conference.

3. 22. In February 2015 and in light of the expressions of opposition, the Defendant designated the conference as a "designated activity" under the Code of Practice.

The Defendant's Risk Assessment

1. 23. The Defendant commissioned a risk assessment to be prepared by Dr Andrew White, the Defendant's Head of Safety and Occupational Health. It was originally produced on 2 March 2015, and then updated on 17 and 26 March 2015 as further information came to light and further thought was given to the assessment of risk. The risk assessment was based on a risk estimation matrix which produces a combined risk rating based on two criteria, (i) likelihood of hazard and (ii) reasonably foreseeable worst case consequence.

2. 24. The inherent risk of protest outside or near the conference venue, or elsewhere on site, was considered to be a high risk. I shall return later in this judgment to the evidence on which that risk was estimated. Importantly, as time went on, two notes were added to this part of the risk assessment. The note added on 17 March 2015 recorded as follows:

> "Intelligence has been received of at least two opposing protests being planned for at least Sunday 19 April 2015. The size and scope of these protests is not clear, but could be substantial. There are also student societies in the University with a history of assertive protest on these issues. The adverse publicity and complaints re this conference are growing in scale and stridency."

The note added on 26 March 2015 recorded as follows:

> "Further intelligence received indicating 300-400 protestors expected, and also opposing protests, for at least Sunday 19 April, and possibly targeting other locations in addition to the venue. It appears that these protests may attract an element of agitators. Adverse publicity in both mainstream and social media is further intensifying. However, there is no evidence of direct explicit threat of violence. That said, the Police threat assessment has escalated such that 63-84 officers will be on site for 300-400 protestors, and possibly more, with other in-venue requirements added."

The controls or measures to reduce these risks included this:

> "Added 17 March 2015:
>
> …
>
> More intensive policing reduces likelihood of hazard event to Possible, but reasonably foreseeable worst case consequence is now Major because of anticipated size of protest and increasing indications of agitation. Possible x Major. Residual risk remains High."

The residual risk of protest, with controls, was rated "High".

Hampshire Constabulary's Event Assessment

1. 25. On 30 March 2015, Mr White received a document from the Hampshire Constabulary entitled "Event Assessment". There are a number of points which emerge

from the Event Assessment, which is an important document. The first is that although the Hampshire Constabulary was willing to assist in policing the event, the primary responsibility for maintaining good order at the event rested with the Defendant. This division of responsibility was explained by the Hampshire Constabulary in the Event Assessment in the following ways:

> "The event is a private event held within Southampton University and it will be the responsibility of the university to consider how they will manage potential protesters gaining entry to the conference by ticket and how they will deal with this issue. They will always need to consider how they mitigate against the potential for terrorist attack." (Introduction)

> "This is a private event which is on private property (Southampton University) which has a security department of its own. … It could be that the event is disrupted by persons inside who have paid to attend. It would be expected that the security team would have a plan for dealing with such matters. A warning method for conduct and an ejection policy will be developed. Police would only be expected to deal with matters of aggravated trespass, prevent a breach of the peace or investigate / prevent criminal matters. … It is not expected that police will have any uniformed presence within any buildings. … Security of the site is the responsibility of the university, plan for protests and who to deal with persons on their premises." (Public Order Public Safety Assessment)

> "One of the biggest threats will be the University's capacity and experience to deal with protests or activity within the conference. It is a University event for which they must take responsibility for planning and delivering safe outcomes. The university only has a small security team and it would be expected that additional skilled resources are available to manage the event. … The provision of protest areas and clear stewarding will be the responsibility of the university as event organiser. … Hampshire Constabulary will offer all support and guidance required to assist with the delivery of a safe event. There is already a close liaison between parties and clear exchange of information and as appropriate intelligence. Discussions on requesting Special Policing Services have not commenced. … Within Universities generally there has been a call for "Cops off Campus". Events have taken place with protests against Police presence on university property. … This should also be considered a potential challenge for the event organisers." (Summary)

(I am told that the reference to Special Policing Services in the last cited paragraph is to services provided by the police which are charged to the event organisers, and which therefore carry a cost.)

1. 26. The second point to emerge was the significant threat of disorder at the event. The Event Assessment recorded that the Defendant had received a large amount of correspondence objecting to the conference from community leaders, politicians and academics, as well as others expressing strong anti-Israeli views. A variety of groups were posting articles or discussing the conference on social media. The Event Assessment categorised these groups under the following headings: Pro-Israel, Right Wing, Left Wing, Pro-Palestine and Political Commentators. Only one official protest had been notified by the Sussex Friends of Israel ("SFOI") but the Event Assessment recorded that a known tactic of other groups was to stage surprise protests intended to cause wider disruption and provoke a response. Under the heading "Public Order Public Safety Assessment", the Hampshire Constabulary noted that only the SFOI had indicated an intention to protest, and that the threat of disorder from that group was low towards

the university and the staff; the SFOI was a peaceful group who at their national protest had 200 attendees, and were open to engagement. The Event Assessment continued:

> "The assessment is that between 400-1000 attendees could attend and should be planned for, with necessary arrangements to accommodate them for their protest in the event vicinity. They are likely to cooperate on where they can go. This will have to be managed by the university if on private land.
>
> It is likely that their protest will have a counter demonstration by pro Palestinian. The management of the two groups on University property will be managed by the University".

1. 27. The Event Assessment then dealt with Right Wing groups. It was noted that although there was an active Right Wing group in Hampshire, previous attendances at Southampton University had involved low numbers (about six people) for protests called at short notice on weekdays. There had been confrontation between this group and Pro-Palestinian protest groups in Southampton in the previous year. The Hampshire Constabulary concluded that:

> "The threat from this group of disorder is low if there is no counter demonstration or numbers are few. If extreme Left Wing groups attend then it would be necessary for either security to provide a presence or if there is an increase in hostility from the groups for police to attend therefore threat of disorder is medium. At this stage there has been no notification of extreme Left Wing groups attending this event, though again their attendance is considered probable.
>
> There is the possibility of splinter groups from the right wing also attending. …They will seek confrontation with left wing groups."

1. 28. The Event Assessment then dealt with Left Wing groups, and noted that if the Right Wing announced a demonstration, the Left Wing would "*actively look to organise a counter demonstration*". Around 100 attendees from this group was anticipated, based on previous local experience.

2. 29. The Event Assessment also dealt with more extreme Left Wing groups and noted that police resources were sometimes required to keep activists from these groups apart from other protesters:

> "Should the profile of this event rise and an announcement of the Right Wing demonstrating at the site then the attendance of more extreme Left Wing could be considerably higher."

1. 30. Consideration was given to local Pro-Palestinian groups (normally peaceful and not wishing to engage with opposing groups), student groups (usually willing to engage with police and organisers), national Pro-Palestinian groups (previously involved in peaceful marches but might provoke counter demonstration) and local Muslim groups (could become provoked by inflammatory comments made by Right Wing activists: "*local leaders have expressed concern, should Right Wing attend future events, that confrontation between parties could escalate if provoked*".)

2. 31. The Summary to the Event Assessment noted that:

> "The conference has received significant national and international media coverage and it is expected to continue up to and during the event. This will focus attention on the debate and raise the likelihood of groups attending to express their political views. Coverage during the event is considered to be high and so press attention on protest group

considered likely.

…

The event organisers and University should consider the JTAC threat to the UK from terrorist activity. This event has a profile that would for some seem as a potential legitimate target and considerable thought needs to be made as to how this threat is mitigated against."

(JTAC stands for the Joint Terrorism Analysis Centre).

1. 32. The Event Assessment concluded with this statement:

> "Given the above assessment, it is likely that this event will lead to the attendance of groups with opposing views and in turn the potential for disorder. Hampshire Constabulary remains confident it can provide the necessary support to Southampton University, if requested, to assist with the mitigation of risk from any protest. This may result from the event itself or as a consequence of cancellation."

IV THE DECISIONS UNDER CHALLENGE

The Decision – JR 1

1. 33. On receipt of the Event Assessment on 30 March 2015, Mr White, the Defendant's Chief Operating Officer, invited the Claimants to a meeting to discuss the conference in light of the Event Assessment. The following day, 31 March 2015, Mr White wrote to the Claimants. The letter is five pages long, and detailed in its reasoning. Mr White recorded that he had taken advice from the Defendant's Director of Estates and Facilities, the Head of Security, the Head of Safety and Occupational Health, and various external third parties including the Southampton University Students' Union and the Hampshire Constabulary. He stated:

> "Having had full discussions with you yesterday and having reflected on all of the issues overnight, I have decided, under Section 2.3 of the University's Code of Practice to Secure Freedom of Speech within the law, to withdraw the University's permission to hold the conference….".

1. 34. He then gave his reasons for the decision under a number of headings. Under the heading "Speakers and Conference Programme" he noted that the speakers who had indicated attendance at the conference had a distinct leaning towards one point of view (which had not been the original intention of the conference), and a number of them were regarded as controversial. Under the heading "Risk Assessment", Mr White noted that the risk of disorder had progressively worsened over the past few weeks and now showed "*an unacceptable high level of risk*" which remained even after considering such reasonable measures as could be put in place in the period running up to the scheduled conference; the risks had to be considered in light of the increased threat of terrorist activity given recent terrorist attacks in Paris and Brussels. Under the heading "Public Order, Public Safety Assessment" Mr White referred to the Event Assessment which estimated that 400-1000 protesters would attend. He recorded that he had invited the Claimants to suggest any practical measures to ameliorate the risks, to which the Claimants had responded by email, and he quoted from that email which had said as follows:

> "…it is very clear from the Police's report that they are more than capable of policing the conference and ensuring the safety of university staff, speakers, delegates, students and property. This should be

accepted at face value".

In his letter, Mr White disagreed with that response from the Claimants, emphasising that the Defendant had a responsibility to maintain public order and safety. Mr White said that he considered the circumstances facing the Defendant as a result of the proposed conference to be "*exceptional*".

1. 35. In conclusion, Mr White confirmed that the Defendant took its duty to secure freedom of speech very seriously and that he had reached his decision with considerable regret:

> "With this in mind, I mentioned to you yesterday that the University is prepared to commission an independent report to establish how a conference of this nature could be held in future; exploring and identifying how the balance between upholding freedom of speech and securing the safety and security of staff and students can be achieved, and the measures needed to achieve this. In our meeting you rejected this offer, but I make it again as a confirmation of the University's continuing commitment to uphold freedom of speech within the law."

1. 36. Mr White confirmed that the Claimants could appeal.

2. 37. The Claimants did appeal by letter dated 31 March 2015, submitted to Professor Nutbeam, the Vice-Chancellor, by email on 1 April 2015. The letter of appeal stated that the "*general thrust of the appeal is that the University is using security arguments disproportionately and inappropriately*" and advanced grounds for appeal under nine numbered paragraphs. The Claimants argued, amongst other things that:

> "We believe that case law shows that but for extreme cases of imminent terrorist attacks the University is under a positive obligation to provide security in order to allow freedom of speech to take place. This means that an argument based on security cannot be used to cancel an event as the University intends to do in this case."

1. 38. The Claimants further argued that the Defendant's risk assessment was "*highly inconsistent*" and asserted that many of the risks addressed by the assessment were inflated. Specifically, the Claimants noted that the police had said that they were confident of being able to police the event and provide support to the Defendant. The Claimants suggested that the manner in which the Defendant had actively sought advice from the police in order to secure the event had been "*totally unacceptable*", but that police involvement should have been sought in a more "*active and demanding manner*". The Claimants suggested that there were alternative measures which could be put in place, for example holding the event in an offsite building, but said that it was not for them to suggest to the Defendant what those alternative measures should be. The Claimants argued that the reference to JTAC was irrelevant and none of the opposition to the conference came from groups with a track record of terrorist activities. Finally, the Claimants argued that the conference speakers would demonstrate a "*fantastic range of views*", fully in keeping with the intention of the conference organisers from the outset.

2. 39. The Claimants met with Professor Nutbeam on the morning of 1 April 2015. Professor Nutbeam dismissed the Claimants' appeal by letter dated 1 April 2015, written later that afternoon. In that letter, Professor Nutbeam stated:

> "I reassured you that throughout this process, the only issues under consideration were how to balance the University's duty to uphold freedom of speech within the law with its duty to ensure the safety of staff and students of the University on University premises and they are the only considerations that have weighed in the decision making

process."

1. 40. He acknowledged the specific grounds of appeal submitted by the Claimants, and said:

> "In short, however, my decision, based on the advice that I have received, is that it is not possible to put in place measures or take remedial action to ensure that good order can be maintained on campus that will safeguard staff and students while the conference is taking place. For that reason, and that reason alone, I uphold the decision of [Mr White] to withdraw permission to hold the conference at the University from 17th to 19th April, 2015.
>
> The University remains committed to taking such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for staff and students. I was impressed by the commitment you gave this morning to holding a conference reflecting a broad spectrum of views and I would like to confirm the offer that I made when we met that the University would be prepared to work with you to find a venue suitable for a conference of this nature at a later date. I remain committed to the possibility of the event taking place in the future if adequate safeguards can be put in place to minimise the risk of the safety of university staff and students. Given the short period of time between now and 17th April, the amount of publicity that the conference has attracted and the consequent risk of protest and counter-protest, I do not believe that such measures could be put in place for the present conference.
>
> …
>
> I realise that this will be a disappointment to you both and of no consolation to you that this is the most difficult decision that I have had to make in my whole time as Vice-Chancellor of the University of Southampton."

1. 41. The conference scheduled for 17 to 19 April 2015 was cancelled.

2. 42. The decision under challenge in JR 1 is Mr White's decision dated 31 March 2015. I understand the challenge to encompass also the appeal decision dated 1 April 2015 which confirms Mr White's decision.

The Decision – JR 2

1. 43. On 1 February 2016, Mr Ian Dunn, the Chief Operating Officer of the Defendant (who had by that date replaced Mr White) wrote to the Claimants with an update on the position of the Defendant in relation to the conference. Mr Dunn confirmed the Defendant's commitment to meeting its obligations to ensure academic freedom and freedom of speech, and that the Defendant was seeking to discharge those responsibilities by following its Code of Practice. He put forward a number of proposals to secure safety and good public order at the conference. Specifically, he proposed that the conference be held over two days (9 and 10 April 2016) in building 46; he withdrew permission to hold the mid-conference dinner in building 38; he enclosed a final risk assessment to which he sought the Claimants' agreement, noting that the risk assessment still required formal sign-off. He confirmed that the Defendant would cover the costs of security outside the venue, in line with the Code of Practice, and in line with the "*normal practice*", he proposed that the Claimants should cover the costs of security within the venue for the two days of the conference by reference to attachment 2 to his letter, which showed conference organiser costs of £20,045 plus VAT (a total of £23,873). Attachment 2 included costs for portaloos and cloakroom staffing, but also included

contract security costs and costs of erecting barriers. Mr Dunn said that these costs should be reflected in a revised conference budget. He went on to say that:

> "By requiring security costs to be covered at this level we assess that much of the health and safety risk can be mitigated to allow the conference to proceed in most circumstances".

1. 44. However, he went on to say that if additional costs were incurred in securing the event, those costs would initially be borne by the Defendant (up to providing the necessary resources to handle a maximum protest size of 600 people on campus and only to the extent that external policing was not required), but in that event the Defendant would look to be reimbursed out of conference income "*should a financial surplus be produced*". By reference to the Claimants' conference budget, Mr Dunn noted that there was no budget allocated for security at all and that the security costs were required to be met first, before discretionary costs were met. He suggested that it was not possible to undertake to fund the speakers' travel and accommodation costs until the security costs were covered; alternatively, the conference organisers could consider increasing the conference attendance fees to increase income from the conference. He noted that:

> "It is your present allocation of projected income that makes the conference appear to be financially untenable in terms of meeting the University requirement to be self-funding. …
>
> By offering to underwrite the possible security costs of threat escalation beyond the current security plan attached, I trust this reassured you of the [Defendant's] commitment to protect freedom of speech on our campus. …"

He invited the Claimants to submit a revised programme for a 2 day conference and a revised budget.

1. 45. The conference budget which Mr Dunn referred to (which had been produced by the Claimants) shows an estimate of 372 attendees (250 of whom would be paying the full rate), with fees charged of £95 per head (£30 for students). It was proposed that donations from two bodies (one anonymous) should be added to the income, giving a total forecast income of £55,250. This income was projected to be spent on accommodation, travel and other costs for the speakers, together with some modest publicity and other overheads, leaving a small deficit after costs. There was no allowance in this budget for security costs.

V. ANALYSIS - JR 1

Claimants' Arguments

1. 46. Paragraph 2 of the Claimants' skeleton summarises the arguments thus: the decisions under challenge in JR 1 breach the mandatory duty in Section 43 of the 1986 Act, they are contrary to the Defendant's own Code of Practice, they breach Articles 10 and 11 of the Convention, and were based on risk assessments that were based on speculation as opposed to any real risk, and were based on irrelevant considerations to the exclusion of relevant considerations.

2. 47. Ms Jegarajah dealt with the law. She reminded me that the decision as to whether there has been an unlawful interference with the Claimants' fundamental rights is a question for the Court, having due regard to the judgment of the primary decision maker, relying on *R* (*Lewis Malcolm Calver) v Adjudication Panel for Wales and Anor* [2012] EWHC 1172 (Admin) at [73]. However, she stressed, the approach requires close scrutiny by the Court (see *Calver* at [45]); the Court is not involved in a balancing

exercise (see *Calver* at [47]), but rather looking to see whether the interference can be justified by clear and satisfactory reasons (*Calver* [50]).

3. 48. She relies heavily on Application Nos 4916/08, 25924/08 and 14599/09 *Alekseyev v Russia* where the Court held that Russia had violated the Convention by its refusal to allow Gay Pride marches to take place in Moscow. From this case Ms Jegarajah draws the following propositions, which I do not understand to be disputed (and anyway, with which I wholeheartedly agree): freedom of expression is a fundamental value of a democratic society; this freedom extends to minority or controversial views; and the state has a positive obligation to secure the effective enjoyment of those freedoms.

4. 49. More specifically, Ms Jegarajah relies on the following passages from the judgment to argue that the mere threat of violence is insufficient (again, a proposition which was not disputed by the Defendant, and with which I agree):

> "[75] … As a general rule, where a serious threat of a violent counter-demonstration exists, the Court has allowed the domestic authorities a wide discretion in the choice of means to enable assemblies to take place without disturbance (see *Plattform "Ärzte für das Leben*", loc. cit.). However, the mere existence of a risk is insufficient for banning the event: in making their assessment the authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary for neutralising the threat of violent clashes (see *Barankevich*, cited above, § 33).
>
> [77] … if every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion (see *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 107)."

1. 50. The Court rejected Russia's case and found Russia to be in breach:

> "[77] … In the present case, the Court cannot accept the Government's assertion that the threat was so great as to require such a drastic measure as banning the event altogether, let alone doing so repeatedly over a period of three years. Furthermore, it appears from the public statements made by the mayor of Moscow, as well as from the Government's observations, that if security risks played any role in the authorities' decision to impose the ban, they were in any event secondary to considerations of public morals.
>
> …
>
> [85] The Court is therefore unable to accept the Government's claim to a wide margin of appreciation in the present case. It reiterates that any decision restricting the exercise of freedom of assembly must be based on an acceptable assessment of the relevant facts (see, among other authorities, *Christian Democratic People's Party*, cited above, § 70). The only factor taken into account by the Moscow authorities was the public opposition to the event, and the officials' own views on morals."

1. 51. So, argues Ms Jegarajah, in this case by analogy the Defendant has similarly capitulated to a risk of disorder which is insufficient to ban the event. The Defendant has failed to obtain a concrete estimate of the disorder, and because of that has failed to neutralise such risks as may have existed by taking appropriate measures. As with Russia, that puts the Defendant in breach of the Convention. The Defendant's conduct has, in effect, prohibited freedom of expression on an important and controversial subject

of public importance.

2. 52. She argues that s 43 is to be read with the benefit of Articles 10 and 11 so as to impose an *"enhanced duty"* on the Defendant to protect freedom of expression and freedom of assembly. In light of that enhanced duty (as she termed it), the Defendant has a positive obligation to facilitate the conference by taking all possible measures, accepting that there may come a point where the conference cannot go ahead, but that would only be in very exceptional circumstances, where safety could not be assured even with the benefit of full input from the police and public services. This ties in with the Defendant's own Code of Practice, paragraph 2.3 of which maintains that permission can only be withdrawn in exceptional circumstances. Those exceptional circumstances did not exist here, and for that reason the Defendant's decision was unlawful in domestic law (s 43), in breach of the Convention (Articles 10 and 11), in breach of the Defendant's own Code of Practice (paragraph 2.3) and based on an incorrect and inadequate risk assessment.

3. 53. Ms Jegarajah argued that the Defendant was in error in taking into account external factors in arriving at its risk assessment. In advancing this submission, she relied on *R v University of Liverpool ex parte Caesar-Gordon* [1991] 1 QB 124. In that case, the Court considered the withdrawal by the University of Liverpool of permission to hold a meeting at which a South African diplomat had been invited to speak. The Court held (per Watkins LJ at p132 D - H):

> "…Thus, we conclude, that on a true construction of section 43 the duty imposed on the university by subsection (1) is local to the members of the university and its premises. Its duty is to ensure, so far as is reasonably practicable, that those whom it may control, that is to say its members, students and employees, do not prevent the exercise of freedom of speech within the law by other members, students and employees and by visiting speakers, in places under its control. To require the university in the discharge of its duty under subsection (1) to take into consideration persons and places outside its control would be, in our view, to impose upon it an intolerable burden which Parliament cannot possibly have intended the university to bear.
>
> …
>
> Thus in discharging its duty under section 43(1) the university is not enjoined or entitled to take into account threats of "public disorder" outside the confines of the university by persons not within its control. Were it otherwise, the purpose of the section to ensure freedom of speech could be defeated since the university might feel obliged to cancel a meeting in Liverpool on the threat of public violence as far away as, for example, London which it could not possibly have any power to prevent.
>
> …
>
> Had they confined their reasons when refusing permission for the meetings to take place to the risk of disorder on university premises and among university members, it may be that no objection could have been taken to either of their decisions. Where, however, the threat was of public disorder without the university, then, unless the threat was posed by members of the university, the matter was, in our opinion, entirely for the police."

1. 54. In reliance on *Caesar-Gordon*, Ms Jegarajah argues that the Defendant was wrong to take any account of such external factors as the recent terrorist attacks in Paris and the general state of alert in relation to terrorist activity (noting that this event was due to take

place only weeks after 7 January 2015, when terrorists attacked the offices of Charlie Hebdo in Paris and a kosher supermarket at Porte de Vincennes). The only factors which the Defendant was entitled to consider, she argues, were "*internal factors*", namely risks arising on and present at the Defendant's own premises.

2. 55. Mr McDonald's main point on the facts was that the Defendant's risk assessment was not properly evidenced: there was no intelligence, in fact, to suggest that there would be significant disorder if the conference went ahead. On the specifics, Mr McDonald noted that the Defendant's Head of Security, Mr Jackson, stated in his witness statement that Special Branch had suggested to him at a meeting on 16 February 2015 that an armed response team might need to be available at the conference, but this was not evidenced by any minutes or written documentation, it formed no part of the Hampshire Constabulary's Event Assessment and there was apparently no intelligence to justify it. He argued that Mr Jackson had misinterpreted or exaggerated the risks in the risk assessments, and that it was clear by 30 March 2015, when the Event Assessment was received from the Hampshire Constabulary, that the Defendant had been working on an incorrect basis in assessing the risk, because that Event Assessment did not mention an armed response team; in fact, it indicated that there was only one group which was intending to demonstrate (namely SFOI), and that group was known to be peaceful and compliant; it was pure speculation whether there would be any other protesters or indeed any trouble at all at the conference. Risk assessments cannot be built on speculation but must be based on "concrete evidence" (citing *Alekseyev*). In fact, the Pro-Palestinian group had written saying they did not intend to demonstrate, and anyway the Event Assessment acknowledged that the Pro-Palestinians were a peaceful group. It was clear from the Event Assessment that the Hampshire Police would work with the Defendant and could handle security at the conference.

3. 56. In summary, the Defendant should have worked with the police to ensure that the conference went ahead, safely, rather than cancelling the conference. That cancellation was an unjustified interference with the right of free speech and freedom of assembly.

Defendant's arguments

1. 57. Mr Capewell acknowledged the importance of Articles 10 and 11 and the rights they safeguard. But, he says, this is not a case about high principle at all, but rather about a modest interference with the Claimants' Article 10 and 11 rights, justified and necessitated by the Defendant's concern for public safety, for those attending the conference (as delegates or protesters) and for others using the Defendant's premises at the time of the conference (students and staff).

2. 58. The Defendant's starting point on the law was *R (Lord Carlile of Berriew) v SSHD* [2014] UKSC 60, [2014] 3 WLR 1404. In that case, the Supreme Court upheld the Secretary of State's decision to exclude Mrs Rajavi, a prominent Iranian dissident, from the UK with the result that she was unable to accept an invitation to speak to a number of Parliamentarians about issues of human rights and democracy in Iran. Adopting Lord Sumption's analysis from that case, the Defendant argued that this case falls very much at the lower end of the spectrum in terms of interference, because this is not a case where the Defendant has banned the conference; the Defendant has withdrawn its consent for the conference to be held in April 2015 as originally anticipated; the reasons for that decision are driven by public safety and public order concerns, which are expressly contemplated by Articles 10 and 11 as legitimate bases for limiting those rights. The decisions under challenge involved judgment about future risks and conduct, which the Defendant is best placed to exercise in light of the advice it had received from the Hampshire Constabulary and others, and with which this Court should not interfere.

3. 59. He argued that the Court cannot go behind or question the evidence which has been

provided, in the form of witness statements and the Event Assessment by Hampshire Constabulary. The risks to public order and public safety are fairly and accurately reported in those documents. It is absurd for the Claimants to argue that the Defendant should not take account of external risks which could result in trouble on campus, or that the conference should simply have gone ahead in the face of such clear risks without the Defendant first putting in place sufficient measures to mitigate or control those risks. No responsible public authority could have closed its mind to the risks which were identified by the risk assessments and the Event Assessment.

4. 60. In summary, the Defendant submitted that there has been no error of law in the Defendant's approach to its decisions, and the decisions themselves are lawful, amounting to a wholly proportionate interference with the Claimants' Convention rights.

Discussion

Approach

1. 61. Like Mr Capewell, I start the analysis with *Carlile*. I accept Ms Jegarajah's submission that *Carlile* is not on all fours with this case on its facts, but she is wrong to argue that *Carlile* is irrelevant to the analysis here merely because of those differences of fact; the relevance of *Carlile* lies in the Supreme Court's guidance on the approach to be adopted in cases of this kind, where it is alleged that a public authority has impermissibly interfered with an individual's rights under Article 10 (and, in this case, Article 11) of the Convention.

2. 62. *Carlile* confirms, if any confirmation were needed, that the Convention rights at issue here are very important, freedom of expression being "*one of the essential foundations of a democratic society*" (para [13]). But it also confirms that rights under Articles 10 and 11 are qualified and not absolute (see [37]). The proportionality of interference with those rights is ultimately a matter for the Court (and in that respect *Carlile* is at one with *Calver*) but the Court cannot simply substitute its own decision for that of the primary decision-maker or frank the decision without itself considering it (see, for examples of that proposition, [20], [31], [34], [68]). As to the weight which is to be given to the particular decision in any case, Lord Neuberger said this:

> "[68] … The weight to be given to the decision must depend on the type of decision involved, and the reasons for it. There is a spectrum of types of decision, ranging from those based on factors on which judges have the evidence, the experience, the knowledge, and the institutional legitimacy to be able to form their own view with confidence, to those based on factors in respect of which judges cannot claim any such competence, and where only exceptional circumstances would justify judicial interference, in the absence of errors of fact, misunderstandings, failure to take into account relevant material, taking into account irrelevant material or irrationality."

1. 63. In applying that guidance to the facts of this case, it is clear that the Defendant has the "*relative institutional competence*" (to adopt Liberty's phrase, recorded by Lord Sumption at [33] of *Carlile*) to evaluate the risks posed by the conference going ahead as planned, and to determine whether it had sufficient time and resources to mitigate those risks. The nature of the Defendant's decision was essentially predictive: by it, the Defendant looked to a number of risks which had been identified but were incapable of precise quantification, and in light of those risks, the Defendant looked to the type of measures which it would have to put in place to mitigate against them and ensure public safely in light of them; it made a judgment about whether that could be done in the time available. This case falls at the latter end of Lord Neuberger's spectrum.

The Issues

1. 64. There are, I believe, two main issues for the Court to resolve: first, a factual question, namely why the Defendant withdrew permission to hold the conference; and secondly, if it was withdrawn because of risks which had been identified, whether the cancellation was a proportionate response.

1. ***(1) The factual question***

1. 65. I have outlined above the Defendant's risk assessments, the Event Assessment provided by the Hampshire Constabulary and the Defendant's decisions to withdraw consent for the conference. At the hearing, the Defendant further relied on evidence from its witnesses to explain the background to the risk assessments and decisions, and the Defendant's approach to evaluating the risks presented by the conference, as those risks escalated over time. The answer to the factual question must take account of that evidence, which I considered was relevant and helpful to this issue (and not some form of *ex post facto* supplement to the decision-maker's reasoning).

2. 66. Mr White stated in his witness statement that the conference first came to his attention in early February 2015. He decided to designate the conference under the Code of Practice. He had a meeting with the Claimants on 30 March 2015. By that date, his understanding was as follows:

> "My conversations with the police left me with a clear understanding that there was a high risk of public disorder and the advice that I had received from the Director of Estates, and the Heads of Security and Safety and Occupational Health were that at this time, the University was not in a position to put in place the arrangements that would ensure that a safe outcome could be delivered."

After further meetings, and having considered the matter overnight, Mr White decided to withdraw permission for the conference. In his witness statement, he said:

> "As Responsible Officer, I was aware of the positive duty of the University to take such steps as are necessary to ensure that freedom of speech within the law is secured for members, students and employees of the University as well as for visiting speakers but I was also very conscious of the duty to take such steps as are reasonably practical to safeguard students and staff on campus."

1. 67. Mr Jackson described the Defendant's security resources, which comprise a total of 54 people, of whom 10 are on duty during the day and 10 at night, to cover the whole of the Defendant's premises. He said that the Defendant uses a third party company to provide contracted in security staff for the halls and computer suites, providing between 5 and 17 staff on a daily basis except when the University is closed. However, none of the Defendant's own staff or contracted in staff had any public order training and the Defendant has no riot equipment available to it. The Defendant had only limited experience of dealing with protests, and he thought that the conference had to be considered (and this is a passage which was subject to much criticism by the Claimants):

> "against a background of UK terrorism threat level of severe and recent terrorist incidents elsewhere in Europe targeting Jewish people".

1. 68. Professor Nutbeam recorded in his witness statement that he had received a large amount of correspondence complaining about the conference, including threats to the Defendant if it went ahead. He stated:

> "I can categorically state that the nature and scale of the correspondence

> and lobbying about whether the conference should proceed or not did not impact in any way on the decisions that I made."

Professor Nutbeam had a series of meetings, including a meeting with the Claimants, before reaching his decision on appeal to confirm Mr White's decision of the previous day. He concluded:

> "Having reviewed the position, I did not consider, given the short period of time between the appeal and 17th April, the amount of publicity that the Conference had attracted and the consequent risk of protest and counter-protest, that suitable measures could be put in place for the Conference to take place now."

1. 69. Taken at face value, this is powerful evidence to explain and support the Defendant's decision to withdraw permission to hold the conference on the scheduled dates in April 2015. The Claimants argue that this evidence is inaccurate or incomplete, because in truth the Defendant was cowed into cancelling the conference by the various letters and threats of protest which were received and the fear of reputational damage if the conference went ahead. The Claimants have a problem in advancing this submission, which is in effect an invitation to the Court to disregard the Defendant's witness evidence, and indeed to make an adverse credibility finding against witnesses who deny these ulterior motives: there was no questioning of any of the Defendant's witnesses, no application to cross examine, and it was not put to any of them that they were not telling the truth. In the circumstances, I consider myself bound to accept the Defendant's evidence and to reject the Claimants' challenge to it. I should add that I see no reason at all to doubt the truth and integrity of these witnesses, or the facts to which they attest: their witness evidence is entirely consistent with the risk assessments, Event Assessment and the decision letters, and portrays an obviously credible sequence of events and process of thinking by the Defendant.

2. 70. The Defendant's witnesses all provide evidence of the Defendant's reasons for withdrawing permission. The Defendant, by its employees, was concerned about the risk of public disorder which had been identified, and concluded that there was insufficient time before the conference to ensure that the risks could be mitigated sufficiently to ensure safety for all those on the Defendant's premises at the time of the conference: it was for that reason, and that reason alone, that its permission to hold the conference was withdrawn.

1. ***(2) Proportionality of Interference***

1. 71. The Claimants contend that the Defendant's decision amounts to a disproportionate interference with the Claimants' Convention rights. In addressing those challenges, I have firmly in mind the four stage approach to issues of proportionality of interference with Convention rights, summarised by Lord Sumption in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 (and recited in *Carlile* at [19]) as follows:

> "[20] … the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them."

1. 72. There can be little dispute about (i) and (ii). The Defendant's withdrawal of permission to hold the conference was driven by its concern for the safety of persons present on its premises, including its own students and staff, but also conference delegates and those who might come onto university premises to protest. Articles 10 and 11 are subject to qualification where necessary for reasons of public safety and the prevention of disorder or crime. The Claimants did not suggest that the issues in this case arose in connection with stages (i) or (ii) of the analysis: I agree that those stages are met without difficulty on the facts of this case.

2. 73. It is convenient to consider whether a less intrusive measure could have been used ((iii) above) together with the final issue relating to the severity of the consequence and the overall balance of interests ((iv) above). There are a number of points to be made here. First, it is important to be clear about the extent of the proposed interference. The Defendant did not ban the conference from its premises. Indeed, both decision letters referred to measures which might be put in place to enable the conference to proceed safely at some time in the future, and Professor Nutbeam's letter dated 1 April 2015 specifically invited further discussion on that matter. The interference was modest: it precluded the conference taking place on the scheduled date; but it was not a decision to ban the conference from the Defendant's premises altogether for all time.

3. 74. Here lies the answer to the Claimants' submissions based on *Alekseyev*. In that case, the ECtHR recognised that the Russian state had, in effect, imposed an outright ban on the activists' right to march (and, what is more, a ban which was not driven by fears of public disorder but rather by "*considerations of public morals*" (see [77] – [78]). The Court could find no justification on the evidence (ie, no "*concrete estimate*") to justify this grave interference with the Claimants' Convention rights. By contrast, this case involves no ban on the Claimants' rights, only a much more modest interference. I have not found *Alekseyev* of assistance in resolving these claims.

4. 75. Secondly, the Claimants argue that the Defendant overstated the risks, alternatively that they took insufficient steps to mitigate those risks by working with the police in the time remaining prior to the conference. This is not a challenge to the credibility of the evidence so much as an argument that the Defendant wrongly evaluated the material it had before it. Mr McDonald took me to a number of passages in the risk assessments and the Event Assessment, seeking to persuade me that the risks outlined in those documents were modest and manageable, and that the decisions had been an overreaction to them. There are two answers to this point. The first is that this Court's role is to review the decisions, recognising (see above) that the Defendant has the relative institutional competence to evaluate the information before it and take those decisions. I give considerable weight to those decisions. It is not appropriate for this Court to engage in a line by line analysis of the material which was provided to the Defendant and on which it based its decisions; that would engage this Court in a process which goes far beyond its proper remit. But in any event, I am unable to accept that there is any substance in the Claimants' suggestions that the risks were exaggerated or misunderstood by the Defendant. The risk assessments were based on information obtained from the police; the assessments themselves appear to be thorough and professional. The Event Assessment contained details of a number of very worrying risks. I disagree with the Claimants' suggestion that it contained a reassuring overall message that the police could handle the event, come what may. It was entirely reasonable for the Defendant, faced with this material, and cognisant of its duties to staff and students, and to others who were present on the Defendant's premises for whatever reason, to conclude that there were significant risks in hosting the conference. Further planning was required to mitigate that risk, and time was insufficient to ensure that the required measures were in place.

5. 76. Thirdly, the Claimants argued that the Defendant should not have taken any account

of terrorist activity and the heightened general state of alert in arriving at its assessment of risk, relying on *Caesar-Gordon*. I reject that argument. *Caesar-Gordon* is authority for the proposition that a university should not take account of threats of public disorder *outside* the confines of the university and *outside* its control (see the citation above). By taking account of recent events in Paris and the general state of national alert, the Defendant was taking into account a relevant factor which might lead to disorder or violence *within* the confines of the university. As Mr Capewell said, the suggestion that the Defendant should simply ignore the terrorist threat in these circumstances is absurd.

6. 77. A fourth point raised was Ms Jegarajah's argument that the risk assessments were wrongly based on a "*worst case scenario*" when they should have been based on "*concrete evidence*" of a real risk. For reasons I have already explained above, I conclude that the risk assessments were based on concrete evidence, namely information provided by the Hampshire Constabulary, referred to in the Defendant's witness statements, and reflected in the Event Assessment. I accept that risk assessments should not be based on speculation, but they were not, in fact.

7. 78. Fifth, I ask myself what else the Defendant could have done, faced with the risks identified only a few weeks before the conference was due to take place, other than to withdraw permission? The Claimants argue that the Defendant should:

> "simply have worked with the police if they had concerns as to public disorder because that is the job of the police not University security."

(see the Claimants' skeleton argument at [62]). This misses the important point that the Defendant had duties, personal to it and not delegable to the police, to ensure the safety of its students and staff, and others who occupy its premises for whatever reason. It also had an obligation to protect its own premises from damage, and an interest in protecting its own reputation for safe conduct of public events. The Defendant could not "simply" expect the police to secure the event, without putting in place its own security arrangements. Significant work was required by the Defendant to work up its own security plan. This would take time. That was why the conference could not take place as planned.

1. 79. Finally, I turn to the Claimants' proposition that withdrawal of permission could only be a proportionate response in exceptional circumstances. I accept that the Code of Practice refers to permission being withdrawn in *"exceptional circumstances"* at paragraph 2.3, but am satisfied that these really were exceptional circumstances, so far as the Defendant was concerned, falling within the parameters of its own Code of Practice. Mr White was justified in describing the circumstances facing the Defendant as "*exceptional*".

2. 80. In summary, I fail to see any shortcoming in the Defendant's approach. Moreover, I do not believe that the Defendant had any real choice in practice but to withdraw its permission. The risks of holding the conference were very substantial. Any responsible organisation would have wished to develop a coherent plan to ensure a safe event, and would have refused permission to hold the event until that plan was to hand.

Conclusion

1. 81. For all these reasons, I conclude that the decisions under challenge in JR 1 were a proportionate interference with the Claimants' rights, they were not unreasonable, and there was no procedural irregularity. I dismiss JR 1.

VI JR 2

1. 82. I can deal with JR 2 more briefly. The essence of the Claimant's complaint here is

that the Defendant has unlawfully interfered with the Claimants' Convention rights, alternatively acted unreasonably, by asking the Claimants to meet the security costs for the conference. The Claimants suggest that this is a point of fundamental principle, namely that to request any contribution towards security costs for a conference of this nature is an unlawful breach of the right of free speech.

2. 83. The Defendant's decision dated 1 February 2016 was based on its revised Code of Practice, paragraph 12 of which requires the costs of any designated activity to be met by the "*appropriate budgetary group or other financial entity*" (which in this case is the conference itself, by the conference organisers). The Claimants attack that Code of Practice as itself constituting an unlawful interference with Articles 10 and 11 (and being in breach of s 43). The answer to this challenge is contained within the proviso to paragraph 12 of the Code of Practice: the costs are to be met by the conference "*except where it can be clearly shown that the right of freedom of speech is being inhibited by lack of funds*". Therefore, the Code of Practice itself safeguards the right of free speech, by removing the requirement to fund costs in circumstances where it can be clearly shown that there are insufficient funds available to do so.

3. 84. I can see no reason why, where funds are available, the conference should not fund its own security costs. I can see no reason why this would amount to any form of interference with the right of free speech. I conclude that the principle for which the Claimants contend does not exist.

4. 85. The question must be whether the conference does in fact have the funds available to meet the security costs. I have no evidence before me to suggest that the conference budget cannot be recast as Mr Dunn suggests. The budget on its face is plainly capable of covering these costs (assuming that £24,000 is a realistic figure and noting that there has been no discussion or agreement of that figure).

5. 86. Further, I reject the proposition that Mr Dunn's quantification of the security costs is flawed because it is based on the original 2015 risk assessment. The 2015 risk assessment was updated by the Defendant on 8 January 2016 and 25 January 2016. It provides a reasonable basis on which to quantify security costs. The Claimants' allegations that the risk assessments contain material errors (see [40] – [45] of the Claimants' grounds in JR 2) are unarguable. Further and in any event, the answer is for the Claimants' to work with the Defendant to finalise the risk assessment and the conference budget, including an amount for security costs if funds can be found.

6. 87. I refuse permission to bring JR 2. The challenge is premature, because no final decision has been made by the Defendant. And the substance of the challenge is unarguable. For both reasons, permission is refused.

7. 88. Since drafting this judgment (but before circulating it to the parties), I received a "Clarificatory Note" from the Claimants' representatives dated 11th April 2016. Nothing in that Note has caused me to take a different view or wish to rephrase my conclusions. I do not believe the Note raises any point which I have not already dealt with above.

VII CONCLUSION

1. 89. I agree with the Defendant that there is no large principle at stake here. From all that I have seen in this case, I believe that freedom of expression and freedom of assembly are alive and well at Southampton University. The decisions in each case were motivated by well-founded concerns for the safety of people and property, and exemplify good and responsible decision-making by the Defendant's officers.

2. 90. I dismiss JR 1 and refuse permission for JR 2.