

Neutral Citation Number: [2020] EWHC 2488 (Ch)

Case No: BL-2019-000354

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUST AND PROBATE LIST (CH D)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 September 2020

Before :

Tom Leech QC (sitting as a Judge of the Chancery Division)

Between :

- (1) MEHBOOB BHAMANI
(2) SHEIK BASHEER
(3) MOHAMMEDARIF HABIBURREHMAN
SHEIKH
(4) IQBAL MAHMOOD
(5) HUZAIFA SAYED

Claimants

- and -

- (1) ABDUL SATTAR
(2) HABIB QAMAR
(3) TALAT RIAZ
(4) ANJUM RIAZ
(5) MOHAMMED AKBAR SARWAR
(6) RAIS AHMED
(7) MOHAMMAD ABDUL RAOOF
(8) JAWED MUMTAZ
(9) KHALID KADIRI
(10) YUSUF AL DAHRI
(11) ADIL ALI MUMIN
(12) [REMOVED]
(13) UBaidULLAH MOHAMMED
(14) HUSSAIN MOHAMMED
(15) NADEEM CHOWDARY
(16) MOINUDDIN QADRI

Defendants

Mr Gideon Roseman (instructed by Russell Evans Rahman) for the Claimants

Mr Howard Smith (instructed by **Aman Solicitors Advocates**) for the **Defendants**

Hearing date: 2 September 2020

Approved Judgment

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

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Tom Leech QC :

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Introduction

1. By Application Notice dated 10 March 2020 the Claimants applied for summary judgment under CPR Part 24 for a final injunction to restrain the Defendants from entering or remaining on the Wembley Central Masjid, 37 to 37 Ealing Road Wembley HA0 4AE, which is a place of worship and prayers

and a community centre. The property itself is owned and operated by a charity which is registered at the Charity Commission under registration no. 285630. Although the same name is often used to describe both the land and buildings and the charity, in this judgment I will adopt the terms used in the Particulars of Claim and refer to the charity as the “**Masjid**” and the land and buildings as the “**Property**”.

2. There were two other applications before the Court. In the alternative to summary judgment, the Claimants applied for an interim injunction in the same terms as their claim for final relief. By Application Notice dated 19 December 2019 a number of the Defendants applied to be discharged from undertakings which they had given to the Court. However, at the hearing on 2 September 2020 they withdrew that application.
3. The Claimants are three members of the management committee (the “**Management Committee**”) and two of the trustees of the Masjid (the “**Trustees**”) and the Defendants are worshippers and members of the local community. The primary issue which arises on the application for summary judgment is whether the Claimants have a unilateral or unfettered right to prohibit the Defendants from entering the Property.
4. Mr Gideon Roseman appeared for the Claimants and Mr Howard Smith appeared for the Defendants. There was no issue between them about the test for summary judgment in a case of this kind which involves contested issues. Mr Roseman cited the summary of the principles by Lewison J (as he then was) in *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] approved in *AC Ward Ltd v Catlin (Five) Limited* [2009] EWCA Civ 1098 at [24]. I set out that summary without the relevant citations (which are not necessary for the purposes of this judgment):

“i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success.

ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.

iii) In reaching its conclusion the court must not conduct a “mini-trial”.

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.”

5. Although there were many contested factual issues between the parties, Mr Roseman submitted that it was unnecessary for the Court to resolve any of those issues because the Claimants had a superior possessory and proprietary interest in the Property which entitled them to possession and to exclude the Defendants (who have no rights of occupation). This submission had an

attractive simplicity about it but before addressing it, I set out the principal facts and the background to the present dispute.

The Masjid

6. The Masjid and its use of the Property are governed by a single constitutional document (the “**Constitution**”). The version which the First Claimant, Mr Mehboob Bhamani, exhibited was a draft dating from 2015 although it was common ground that the constitution was adopted in this form. Article 3 set out the aims and objects of the Masjid and was in the following form:

“The objects for which the Masjid is established are to promote for Muslims residing in the London Borough of Brent and surrounding area as defined herein (“**the Community**”):

- (a) The advancement of religion of Islam in accordance to the Qur’an and Sunnah and the belief in the finality of the prophethood of Muhammad (May the peace and blessings of Allah be upon him);
- (b) The advancement of education including instruction in the Islamic faith;
- (c) The relief of poverty;
- (d) To provide facilities for daily prayers, the Friday prayer, Eid prayers and other religious activities on special Islamic days, including teaching classes in Arabic and Urdu languages including Qur’anic studies;
- (e) To provide facilities for the advancement of and to promote the social welfare of the Community and to provide recreation and leisure with the object of upliftment and improving the conditions of the Community.

In furtherance of these objects but not further or otherwise the Masjid shall also have the following powers:

- (i) To provide legal advice and social welfare and services to poor Muslims unable to obtain such advice elsewhere;
- (ii) To provide and maintain a library and reading rooms for the study of Islamic literature;
- (iii) To raise funds and invite and receive contributions from any person or persons whatsoever by way of subscription and otherwise provided that the Masjid shall not undertake any permanent trading activities in raising funds for its primary charitable objects;
- (iv) To provide and organise funds for the relief of persons in need following disasters within the UK and abroad.”

7. Article 4 provided for membership of the Masjid. It provided for different types of membership including Life and Associate Membership. Article 4(a) provided as follows in relation to applications for membership:

“Any Muslim, whatever the Country of his/her origin with a belief in accordance to the Qur’an and the belief in the finality of the prophethood of Muhammad (May the peace and blessings of Allah be upon him) shall be entitled to be a member of the Masjid if he/she agrees to subscribe to the aims and objects of the Masjid and abide by the rules and regulations and contribute a subscription to the Masjid’s fund. The Management Committee shall have the right to accept or refuse a membership application without assigning reasons.”

8. Article 5 provided for the general management of the Masjid. Article 5.1 dealt with general meetings and Article 5.2 dealt with the appointment and powers of the Management Committee. It provided as follows:

“(a) The administration of the Masjid, decision regarding but not limited to the domain of Madressa, Speaker’s Engagement, Event Hosting, Employee Contracts, Ramadan Ifthar Planning, Notice Board Management, day to day administration issues, Announcements, New Projects were all to be taken by the Management Committee through setting out in the agenda of Management Committee Meeting and asking members opinion regarding that and following simple voting method if needed.

Then allot it to a subcommittee for execution which finally reports back to management committee.

The Management Committee which shall consist of a maximum of eleven (11) members including the Chairman, Vice Chairman, General Secretary, Treasurer and Education Secretary.

(b) These 11 members shall be elected at the Annual General Meeting but so that the members of the Management Committee shall not be less than five (5) nor more than eleven (11) which shall include the five (5) Office Bearers of the Masjid (Chairman, Vice Chairman, General Secretary, Treasurer and Education Secretary).

(c) The Management Committee shall elect amongst themselves the five (5) Office Bearers to their appropriate positions once in office. The Office Bearers shall hold their appropriate positions for one year. The Management Committee may in its absolute discretion choose either to elect new Office Bearers or permit the existing ones to continue...

(e) The Management Committee shall have the right to co-opt additional members to the Committee for urgent and special work or filling up vacancies as and when required. The maximum number allowed to be co-opted for special work, excluding filling up vacant spaces for core members, shall be four (4).

(f) The members of the Management Committee shall remain in office until the AGM or Elections ending their term of appointment.

(g) The outgoing Management Committee shall at least three months before the expiry of its term of office, formulate election procedures, frame rules and undertake measures for a free and fair elections. An independent election forum or an individual referred to in Clause 1(d) shall be assigned to preside over and conduct the elections.

(h) The elections of the Management Committee shall take place every three years.....

(j) The election of the Management Committee shall be by secret ballot.....

(t) The Management Committee shall have the right to call for explanation from either a general member or a committee member and temporarily suspend or cancel his/her membership provided that the member concerned is given the opportunity to be heard or to make written representations and written reasons are given for his/her suspension or cancellation of his/her membership.....

(v) The Management Committee shall be competent to frame bye-laws in accordance with the provisions of this Constitution. The bye-laws so framed shall come into operation immediately and shall be incorporated into the body of the Constitution after notification by the AGM by single majority vote.”

9. Article 6 provided for the qualifications, rights and duties of the Office Bearers and members of the Management Committee. Article 8 dealt with the funds and assets of the Masjid. Article 8(b) provided as follows:

“The real property and all assets of the Masjid shall be vested in the name of ‘Wembley Central Masjid and not in the name of any Trustee, Trustees, an individual or individuals.”

10. Article 13 provided for the appointment of between three and five Trustees. Article 13(f) provided that each Trustee should meet a number of criteria including the following: “He is not an Office Bearer or a member of the Management Committee.” Article 10 provided for arbitration:

“Arbitration: In case of a dispute arising between the Masjid and any member thereof or any person claiming to be a member thereof or on the Constitution or application of the rules and regulations of the Charity such dispute shall be referred to the adjudication by an independent solicitor or a barrister of not less than 10 years’ standing to be nominated by the Management Committee for arbitration and his decision shall be final provided that any decision so reached shall not be inconsistent with the provisions of this Constitution.”

11. The registered title to the Property was not in evidence. In the Particulars of Claim, paragraph 4 the Claimants pleaded the following case in relation to the registered title and possession of the Property:

“The Property is registered in the name of four members of the Masjid, who hold it on trust for the Masjid. The Masjid to [sic] is entitled to operate from the Property as a result of this beneficial interest (either by virtue of the charitable trust of land and/or under the Trusts of Land and Appointment of Trustees Act section 14) and/or a licence from the freeholders. Further, prior to and after 2 February 2019, the Masjid was in possession of the Property giving it possessory title.”

12. In the Defence, paragraph 7 the Defendants admitted this paragraph without any qualification. The parties appear to agree, therefore, that the property was held in the name of four individuals rather than in the name of “Wembley Central Masjid” as required by Article 8(b) of the Constitution. It seems likely that the Management Committee and Trustees arranged for the Property to be held this way because they were advised that the Masjid had no separate legal personality. I should also add that neither of the counsel who appeared before me had settled the statements of case.

The Code of Conduct

13. In his second witness statement Mr Bhamani stated that entry into the Masjid was (and is) governed by a code of conduct (the “**Code of Conduct**”) which was prominently displayed by the entrance. Under the heading “This is a Public Notice” it stated as follows:

“Following code of conduct is to be practised as approved by the Management Committee to facilitate worship in peace and

harmony as well as to ensure safety of the attendees, employees, volunteers and Masjid Property.

Without the permission of the Management Committee:

- No personal and/or private activities is [sic] permitted within WCM premises.
- No individual and/or group teaching within WCM Premises of any kind is permitted.
- No distribution of flyers, literature, leaflets, books including food or clothing, posting and/or placement of flyers, literature, leaflets, books, signs, notices, posters etc within WCM Premises is allowed.
- No sales or distribution of food products or any kind of merchandise anywhere on WCM Premises is allowed.
- Adhan and/or leading salah shall be by appointment only.
- No sleeping in the Masjid or anywhere on the property or overnight stay within WCM Premises.
- No overnight parking.
- No lectures, No public speaking, No announcement of any kind, No speeches, No use of PA systems etc.
- Zero Tolerance: Violent, aggressive or abusive behaviour towards any committee member or employee will not be tolerated.

Any exception to the above must be approved by the Committee. All rights are reserved by the Management Committee.

Violation of the above code of conduct will not be tolerated and will be dealt with by the appropriate Law Enforcement.

Legal action may be taken and the violator will be expelled from the Masjid without any notice.”

14. The term “WCM Premises” was intended to be a reference to “Wembley Central Masjid”. “Adhan” means a call to prayer and “salah” is a prayer although there was a dispute between the parties about its precise meaning in this context. The Claimants contended that it meant any prayer whereas the Defendants contended that it meant leading prayers from the location of the Imam.

The Parties

15. I deal now with the identity of the parties in more detail. The First Claimant, Mr Bhamani, is the current Chairman of the Management Committee; the Second Claimant, Mr Basheer, is the Vice-Chairman; the Third Claimant, Mr Sheikh, is the General Secretary and the Fourth and Fifth Claimants, Mr Mahmood and Mr Sayed, are two of the Trustees (who must not be members of the Management Committee under Article 13(f)).
16. The First Defendant, Mr Abdul Sattar, was employed by the Masjid as its Imam for over 20 years until his dismissal on 1 February 2019. The other Defendants are (or were) worshippers at the Masjid. Apart from the Fifth and Seventh Defendants, none of the Defendants are (or, when the claim was issued, were) members of the Masjid. The Fifth and Seventh Defendants were members but it is the Claimants' case that they had to renew their membership annually and that it has now lapsed. The Defendants did not accept that membership was annual but nothing turns on this and the parties made no distinction between the Fifth and Seventh Defendants and the other Defendants in relation to access to the Property.
17. Mr Smith also drew my attention to the fact that the present number of members of the Management Committee was fourteen and therefore exceeded the maximum number permitted in Article 2(a). However, he accepted that the committee could co-opt additional members above the maximum. He also drew my attention to the fact that the First Claimant had not been elected but had been co-opted under Article 2(e) although he also accepted that it was permissible for members of the Management Committee to elect co-opted members as Office Bearers (including the Chairman).
18. It is clear from the written evidence given by all of the witnesses that the election of the present Management Committee was heavily disputed when it took place. However, Mr Smith did not challenge its authority to act on behalf of the Masjid. Mr Smith also accepted that the members of the Management Committee were charity trustees within the meaning of section 177 of the Charities Act 2011 which means "the persons having the general control and management of the administration of a charity".

19. I approach all three applications, therefore, on the basis that all five Claimants are charity trustees even though three of them are members of the Management Committee appointed under Article 5 and two are Trustees appointed under Article 13. I draw no distinction between the powers and duties of the Management Committee under Article 5.2 and the powers and duties of the Trustees for the purposes of this application (and none was drawn by the parties themselves).

February 2019

20. In the Particulars of Claim the Claimants principally rely on events which took place in the short period between 1 February 2019 and 9 February 2019. Those events also led to the first interim application which I describe below. The pleaded allegations are supported by the First Claimant's witness statement which is in very similar terms.

1 February 2019

21. By letter dated 1 February 2019 the Management Committee dismissed the First Defendant from his employment as Imam. The grounds for his dismissal are not relevant to these proceedings although I was told that he had commenced unfair dismissal proceedings. In the letter dismissing him, the Management Committee also reminded him about compliance with the Code of Conduct. They continued:

“Despite the circumstances of the termination of your employment, you are of course welcome to attend the masjid as a worshipper. You will still be very much welcomed as a worshipper and you are free to attend prayers; however it will not be in the capacity of Imam.”

2 February 2019

22. It is common ground that shortly after 6 am on 2 February 2019 the First Defendant attended the Masjid and led prayers, that the Third Claimant attempted to hand him a copy of the letter dismissing him and that he refused to accept it. It is the Claimants' pleaded case and the First Claimant's evidence that:

“Mr Sattar reacted aggressively and threw the letter away. After a further attempt to give the letter to Mr Sattar, the latter shouted at Mr Shaikh and Mr Sattar’s supporters started shouting, surrounding and pushing Mr Shaikh. Mr Muhammed (the Education Secretary and one of the Management Board of the Masjid) attempted to de-escalate the situation but was similarly pushed. In addition to Mr Sattar, the Second Defendant was involved in the attack.”

23. The First Defendant admits gesturing with his finger and asking the Third Claimant to be quiet but denies shouting at him. The Defendants also admit that the Second Defendant then approached and told the First Claimant that the First Defendant did not wish to speak to him. The First and Second Defendants deny that either of them pushed or shouted at him and assert that the whole incident took three minutes.
24. It is also common ground that at 1 pm on the same day the First Defendant attended the Property again and again led prayers. It is the Claimants’ case that the First Defendant occupied the space for the new Imam and that he and his supporters pushed, punched and kicked the Third Claimant. It is also their case that his supporters included the Third to Tenth, Twelfth, Fifteenth and Sixteenth Defendants.
25. The Defendants admit that there was “some disquiet in the congregation at those prayers” but they deny that there was any shouting, punching or kicking by the First Defendant or any other person. In paragraphs 5.3 to 5.6 of his witness statement the First Defendant also stated as follows:

“5.3 After prayers, the Third Claimant repeatedly tried to hand me a copy of the dismissal letter which I had already received by email. I told him that I did not want to speak to him and asked him to be quiet whilst gesturing with my finger. I did not shout at him... 5.4 I assumed from morning prayer that a new Imam had not yet been appointed and, therefore, I could lead prayers in a voluntary capacity as many of the worshippers often do when the employed Imam is not present. Based on this understanding, I occupied the Imam’s spot shortly before the start of afternoon prayers at 13:00. 5.5 Around 12.50, the Third Claimant came to the front and informed me that a new Imam had been appointed. I immediately stood up and vacated the Imam’s spot. I did not speak to him, let alone shout at him...5.6 I led the overdue afternoon prayers at 13.10 around 10 minutes

later than the scheduled time. The new Imam was not present as he left the prayer hall around 12.55...”

26. Following these events the Management Committee decided to close the Property until prayers on 4 February 2019 and to open ten minutes before each Salah prayers. They also resolved that members of the congregation who were involved in the incident on 2 February 2019 would be denied entry to the Property until further notice (the “**Prohibition**”). In his third witness statement the Second Defendant denied that any of the Defendants had behaved violently, aggressively or abusively. He also stated:

“A general notice was posted on the gate to the Masjid stating that those ‘involved in the disorder will not be allowed to enter the Masjid at prayer times until further notice.’ The Defendants were not specifically notified of the prohibition so did not know if it applied to them. In any event, it would not be enforceable as per the advice the Claimants received from the Police.”

27. Since 2 February 2019 the First Defendant has not attended the Masjid or led prayers but has attended another Masjid. It is the First Claimant’s evidence that he remains the main instigator of the trouble at the Masjid and he asserts that the First Defendant chaired a meeting which most of the Defendants attended on either 15 or 22 December 2019. The First Defendant’s evidence is that this was a social event, a buffet dinner, at a community centre on 19 October 2019.

4 February 2019

28. The Claimants allege that at 8 am on the morning of 4 February 2019 the Third and Fifth Defendants refused to follow the instructions of security personnel and forcibly entered the Property. They also allege that at 12.50 pm before prayers at 1 pm the Sixth to Thirteenth and Fifteenth Defendants entered the Property in breach of the Prohibition. The Defendants deny these allegations and say that the Property remained closed until prayers at 8 pm.
29. The Claimants also allege that before prayers at 8 pm the Third, Fifth to Thirteenth and Fifteenth Defendants entered the Property and that the Third and Fifth Defendants swore at the First Claimant. They also allege that

throughout the day the Thirteenth and the Fourteenth Defendant led prayers occupying the Imam's space. The relevant Defendants admit that they were present but deny that they were aware of the Prohibition.

30. The Sixth Defendant admits that there were raised voices shortly before the prayers and that he may have raised his voice too. The Thirteenth Defendant also admits that he led prayers. His evidence is as follows:

“4. Having led many prayers in the Masjid since I was thirteen years old, I was requested by the worshippers to lead some of the prayers on these dates which I humbly accepted. 5. It is the right of worshippers to pray behind someone they accept which the Management Committee should respect. 6. I led one prayer from the Imam's space but it was unoccupied so I did not force anyone out. I led the rest of the prayers from a different spot in the Masjid and before the official time of prayers.”

6 February 2019

31. The Claimants also allege that at 6.08 am on 6 February 2019 the Third Defendant interrupted the new Imam's prayers and physically attempted to remove him from his place and that he then gave his own prayers. The Defendants admit that shortly before 6.15 am the Third Defendant started to say prayers. Although the Third Defendant has not addressed this allegation in his witness statement, the Defence continues as follows:

“This was not in interruption of the newly-appointed Imam whose prayers were not due to start until 6:15 am. The Third Defendant will say that many in the congregation joined in his prayers. It is strongly denied that any attempt, physical or otherwise, was made to remove the new Imam from his place: the Third Defendant had started before the new Imam. It is common in the practice of the Masjid for prayers to be led by members of the congregation, and multiple prayers happen during the course of an average day at the Masjid.”

8 February 2019

32. The Claimants also allege that at 9.30 am on 8 February 2019 a protest took place outside the Property which was coordinated by the Second and Third Defendants. They also allege that at 12.20 pm followers of the First Defendant interrupted the new Imam's sermon and that the Second, Third, Fourteenth

and Fifteenth Defendants made speeches and gave prayers using the public address system. The Claimants originally alleged that the followers of the First Defendant pushed through the security guards and chased the new Imam away from the podium before the First Defendant started a sermon. However, they now accept that the First Defendant did not enter the Property that day.

33. The Defendants admit that members of the Community staged a peaceful protest outside the gate. They originally denied that this protest was co-ordinated by the Second and Third Defendants. They admit, however, that the Third Defendant used a megaphone to make announcements and to encourage members of the crowd to remain calm. They also admit that the Thirteenth and Fourteenth Defendants led prayers. Further:

- i) The Third Defendant now admits that he and others organised and co-ordinated a protest on 8 February 2019. But he denies that it was a violent protest.
- ii) The Sixth Defendant admits that the Defendants are “the most active members of the congregation who have the courage to raise their voices”.
- iii) The Seventh Defendant admits that he spoke to the new Imam and encouraged him to leave because the congregation did not know him or accept him. But he denies that he shouted or behaved aggressively or abusively.
- iv) The Fourteenth Defendant admits that he brought a loudspeaker for the protest and that worshippers asked the Thirteenth Defendant, his son, to lead the prayers and that he supported their request.

34. The Claimants also allege that at prayers which took place later on 8 February 2019 the Thirteenth Defendant (assisted by the Fourteenth Defendant) led prayers from the podium before the Imam was permitted to give his prayers. The Defendants admit that they led the prayers but say that this was done before the official prayer time and that many of the congregation joined them. The Thirteenth Defendant states:

“The Claimants allege a breach of the Code of Conduct: ‘Adhan and/or leading Salah (prayers) shall be by appointment only’ but I have an official letter from the management committee which gives me explicit permission to lead prayers which does not specify an end date. Moreover, the prayers were conducted in the courtyard and no appointed Imam was present to lead prayers. In such situations, anyone chosen by the congregation can lead to prayers.”

9 February 2019

35. Finally, the Claimants allege that on 9 February 2019 the Second, Third, Tenth and Twelfth Defendants entered the Property in breach of the Prohibition and installed new microphone equipment and speakers. They also allege that the Thirteenth Defendant led prayers and gave speeches in the Property and that the Second Defendant encouraged the congregation to email the Management Committee.
36. The Defendants say that the Masjid’s public announcement system was turned off and that one of the community provided a portable device for use at prayers. They admit that the Second Defendant helped to plug in and configure the microphone. They also admit that the Thirteenth Defendant was chosen by the community to lead prayers but say that the new Imam was not present. Further:
- i) The Second Defendant states that temporary public address systems have been used for prayers on many occasions with the full knowledge of the Management Committee when the Masjid’s system fails to work.
 - ii) The Third Defendant admits attending the Property on 9 February 2019 but having no other involvement.
 - iii) The Tenth Defendant states that as one of the muadhins of the Masjid, he had used a temporary public address system on a number of occasions with the full knowledge of the Management Committee and in the two weeks leading up to 14 February 2019 it was used several times a day and the Management Committee did not object.

- iv) The Thirteenth Defendant admits that he led some of the prayers upon request but denies that he delivered any speeches.

The Undertakings

37. By Application Notice dated 13 February 2019 the Claimants applied for an urgent interim injunction to restrain the Defendants from entering or remaining upon the Property. On 14 February 2014 the first hearing of the application took place and all of the Defendants (apart from the Twelfth and Fifteenth Defendants) undertook to abide by the Code of Conduct until further order (the “**Undertakings**”). On that basis Mr Justice Zacaroli stood over the application to be heard not before 4 March 2019 and made an injunction in identical terms against the Twelfth and Fifteenth Defendants. His order described the Defendants giving the undertaking as the “**Undertaking Defendants**”.
38. By a consent order dated 25 April 2019 the parties agreed to vacate the return date of the application on the Undertaking Defendants agreeing that the Undertakings should continue until trial or further order. The Claimants also discontinued the claim against the Twelfth Defendant and agreed that the injunction against the Fifteenth Defendants should be discharged and the claim against him stayed. Where I refer to the “**Defendants**” below, I refer only to the Undertaking Defendants (unless I state otherwise) on the basis that the Twelfth and Fifteenth Defendants have played no further part in these proceedings.
39. As I explain below, it is important that the Claimants agreed to compromise their application by accepting the Undertakings which did not prevent the Defendants from entering the Property or worshipping there. Moreover, the Management Committee’s letter to the First Defendant initially welcomed his continued attendance as a worshipper. However, Mr Roseman submitted (and I accept) that the committee’s acceptance of the Undertakings did not amount to an invitation or licence to attend the Property (particularly in circumstances

where they objected to the conduct of the Management Committee and wished to protest).

Subsequent Events

40. The Claimants allege that since 14 February 2019 the Defendants have committed a number of breaches of the Undertakings. Mr Roseman set out those breaches in paragraph 38 of his Skeleton Argument:

- i) On 1 March 2019 the Second Defendant facilitated an unauthorised speaker to lead prayers;
- ii) On 8 August 2019 the Second Defendant, without the Management Committee's permission, invited an unauthorised speaker and set up a camera to record the proceedings;
- iii) On 6 December 2019 the Second, Third, Sixth and Ninth Defendants entered the Property to prevent construction workers working on it and forced them to leave;
- iv) On 13 December 2019 the Second Defendant, without the Committee's permission, invited a speaker to lead prayers, set up a camera and recorded the proceedings;
- v) On 14 December 2019 the Second, Third, Fifth, Sixth and Seventh Defendants took part in a private gathering and distributed food;
- vi) On 21 December 2019 office (which was the date on which certain CCTV equipment went missing) the Second, Third, Fifth, Ninth, Tenth and Fourteenth Defendants entered the Property and went into the administrative office;
- vii) On 4 January 2020 the Ninth Defendant distributed flyers asking people not to donate to the Masjid;
- viii) On 21 January 2020 the Eighth Defendant went into the administrative office and changed the locks;

- ix) On 17 February 2020 the Third and Sixth Defendants forcefully gained entry to the Property, together with a few other men, and occupied it for two hours before the police had to attend to ensure the safety of children who were attending classes;
 - x) On 18 February 2020 the Ninth, Thirteenth and Fourteenth Defendants blocked the entrance to prevent children and their parents attending the Property for classes and assaulted trustees and security guards; and
 - xi) On 26 February 2020 the Thirteenth Defendant blocked the entrance to deny access by children and their parents who were attending classes.
41. Many of the events which are the subject matter of these allegations were captured on CCTV. But it was common ground between the parties that it was not possible for me to determine finally whether those allegations were made out on this application and without hearing oral evidence. They also agreed that it would not assist the Court to view the CCTV footage at this stage and for the purposes of an application for summary judgment.
42. Mr Smith did not, however, attempt to persuade me that the allegations made by the Claimants had no real prospect of success for the purposes of the CPR Part 24.2. Nor did he attempt to persuade me that they did not give rise to a serious issue to be tried for the purposes of the *American Cyanamid* test. I therefore approach the application for an interim injunction on that basis.
43. Although the Claimants were prepared to concede that some allegations could not be determined on a summary basis, nevertheless they submitted that the Defendants had admitted a number of breaches of the Code of Conduct which constituted a contempt of court. For the following reasons I am only prepared to accept that submission in relation to a few, isolated breaches of the code:
- i) The Second Defendant admits setting up cameras on 8 August and 13 December 2019 for a speaker. But he denies that this amounted to a breach of the Code of Conduct. He also denies inviting the speaker to deliver the Friday sermon. I do not accept that this amounts to an admitted breach of the Code of Conduct.

- ii) The Second Defendant also admits that on 1 March 2019 he set up the cameras for the Friday sermon and handed over a microphone that plugs into his camera for the speaker. But he does not admit that the speaker was unauthorised or that he invited the speaker himself or that he co-ordinated his attendance. Again, I do not accept that this amounts to an admitted breach of the Code of Conduct.
- iii) The Second Defendant also admits that on at least one occasion in December 2019 he poured cups of tea for the worshippers. He also admits that one of the worshippers invited everyone to share food and drink (although he does not admit in terms that he himself did so). However, he also states that in common with other places of worship, mosques encourage the sharing of food and drink because it strengthens community bonds and that this is an established practice. The Code of Conduct prohibits the “sale or distribution of food products” but Mr Smith submitted that “distribution” must be understood in the context of the established practice of worshippers sharing food and drink (which the code was not intended to prohibit). I note that Article 3 only prohibits permanent trading activities and I cannot be satisfied that this amounts to a clear admission of a breach of the Code of Conduct.
- iv) The Second Defendant also admits that on 27 February 2020 the Police declared a protest illegal and arrested him and another individual when the First Claimant pointed him out. He also says that he was released without charge and that the Police told him that “there was no evidence of harassment by anyone and that neither I nor the other individual had anything to do with the argument which took place outside the Masjid”. It is clear that these events are hotly contested and I cannot determine on a summary basis whether the Second Defendant committed a breach of the Code of Conduct (and has admitted this) or whether the First Claimant unfairly accused him of illegal activity.
- v) The Third Defendant admits that on 5 August 2019 he prevented two proposed arbitrators from taking the microphone from a Mr Manzoor

Hussain who was giving an update on arbitration discussions to the congregation. He denies that he acted violently, aggressively or abusively and points out that the two proposed arbitrators were not members of the Management Committee or employees. These events are also hotly contested and, again, I cannot determine on a summary basis whether the Third Defendant committed a breach of the Code of Conduct or that he has admitted as much.

- vi) The Third Defendant also admits that one of the worshippers invited everyone to share food and drink (although he does not admit in terms that he did so). He also challenges the claim that sharing food and drink is a breach of the Code of Conduct for the same reasons as the Second Defendant. For the same reasons I cannot be satisfied that this amounts to a clear admission of a breach of the Code of Conduct.
- vii) The Third Defendant also admits that on 17 February 2020 he informed the First Claimant that “he is the most disliked, hated and despised person in the Masjid and should leave and let us pray in peace”. Even if the Third Defendant considered this comment to be justified, I accept that it was a form of abuse and amounted to a breach of the Code of Conduct.
- viii) The Fifth Defendant admits that on 21 December 2019 he told the First and Third Claimants that “they were incapable of serving the community and they should resign from their posts”. Again, even if the Fifth Defendant believed the criticism to be justified, I accept that this was a form of abuse and amounted to a breach of the Code of Conduct.
- ix) The Ninth Defendant admits that on 4 January 2020 he handed a tee shirt to an individual with slogans printed on the front and back as part of a peaceful protest. But he denies that he was selling the shirts or that handing them out to worshippers amounted to “distribution” for the purposes of the Code of Conduct. In my judgment, this defence has no real prospect of success and I accept that this amounts to an admitted breach of the Code of Conduct.

- x) The Eighth Defendant admits that on 21 January 2020 he tried to open the door of an office a couple of times. The Ninth and Tenth Defendants also admit being present at the Masjid that evening and the Second Defendant admits that: “We understand that, before leaving, the CCTV recording devices were removed to avoid potential criminal allegations.” However, these admissions must be understood in the context of the Claimants’ claim that these Defendants were involved in a burglary of the Property and I cannot decide this issue on a summary basis. In particular, I am not prepared to accept that the Third Defendant has made any admission that he took the CCTV recording devices.
- xi) The Sixth Defendant admits that on 17 February 2020 he said to the First Claimant: “I am 70 years old and you have closed the doors of the Masjid and prevented us from praying.” He also admits that he can be seen on the CCTV footage “wagging my finger a few of times to emphasise my point which should not be construed as aggression.” As I have stated above, I was not asked by either party to watch the CCTV footage and I cannot be satisfied on a summary basis that this amounted to a breach of the Code of the Conduct.

Closure of the Property

44. It is the Defendants’ evidence that following the incident on the 21 January 2020 the Management Committee closed the Property. In his fourth witness statement dated 25 August 2020 the Second Defendant stated that it remained closed for six months and only re-opened on 10 July 2020. He also stated that the gate was only opened for pre-approved worshippers and that the Claimants had introduced a registration form (ostensibly used for the purposes of track and trace). In his fourth witness statement dated 28 August 2020 the First Claimant did not contest any of this evidence.

The Charity Commission

45. The Charity Commission has had considerable involvement in the affairs of the Masjid. In a letter dated 28 March 2020 the Compliance Visits and

Inspections Team made a number of findings about the operation of the Masjid. For present purposes the most important (on page 2) was as follows:

“The Commission’s view is that decisions made by or actions taken by the trustees within the law and the provisions of the Charity’s Governing Document are for trustees to take (and justify) and they have very wide freedom to do so. The Commission does not have discretion to overrule a charity’s decision, validly taken within its powers, on the grounds that others take a different view, however strongly held.”

46. For this and other reasons the Charity Commission declined to intervene. Furthermore, by email dated 15 April 2020 the Charity Commission confirmed that the present proceedings were not “charity proceedings” within the meaning of section 115 of the Charities Act 2011 and that if the Defendants were to bring a counterclaim which constituted charity proceedings then they would need the Charity Commission’s consent. Finally, by email dated 20 August 2020 Mr Tony Robinson of the Regulatory Compliance Team confirmed that the Management Committee or Trustees had satisfied him that they were acting responsibly and that there was no foundation in relation to complaints which the Commission had received.

Summary Judgment

47. Mr Roseman relied on the admission in paragraph 7 of the Defence (above). He submitted that the Claimants were in lawful possession of the Property; that they were unilaterally entitled to determine who could enter; and that they had locus standi to bring proceedings in the tort of trespass and claim damages or an injunction. He also made the following submissions about the claim for an injunction to restrain the Defendants from trespassing:
- i) For the Defendants to place a foot over the boundary to the Property amounted to an actionable trespass: see *Patel v Patel* [1988] 2 FLR 179 (cited in *Clerk & Lindsell on Torts* 22nd ed (2018) at 19.01).
 - ii) To support an action for trespass it is unnecessary to show there has been any actual damage: see *Anchor Brewhouse Developments v Berkley House (Docklands Developments) Ltd* [1987] 2 EGLR 173.

- iii) It is no defence that the trespass was due to a mistake of fact or law provided the physical act of entry was voluntary: see *Clerk & Lindsell* (above) at 19.06.
 - iv) Where entry is threatened a *quia timet* injunction is the appropriate remedy: see *Hampshire Waste Services Ltd v Intending Trespassers upon Chineham Incinerator* [2003] EWHC 1738 (Ch).
 - v) Where protestors have trespassed in the past, injunctive relief for a prolonged period of time may be granted in such circumstances: see *Wensley v Persons Unknown* [2014] EWHC 3702 (Ch).
48. Mr Smith submitted that the correct parties were not before the Court. He argued that the four registered proprietors should be parties to the claim because the Masjid was an unincorporated association and not capable of holding property or being the subject of legal rights and duties: see *Re Horley Town Football Club* [2006] EWHC 2386 at [5] (Lawrence Collins J). He also submitted that if the Management Committee were the correct parties as charity trustees they should all have been made parties under CPR Part 19.3.
49. Mr Smith resisted the suggestion that by admitting paragraph 4 of the Particulars of Claim the Defendants had admitted that the individual Claimants were in possession of the Property or had a sufficient possessory title to bring a claim for an injunction to restrain a trespass. However, his alternative submission was that if such an admission had been made, he applied to withdraw it.
50. Mr Smith also submitted that the Claimants were not entitled to exclude anyone from the Property as of right and had no absolute right to bar the Defendants. He submitted that as charity trustees, they were bound to permit the Property to be used as a place of public worship and prayers, for the teaching and preaching of the Muslim faith and as a community centre in accordance with Article 3 of the Constitution.
- (1) *The Admission*

51. This claim is brought by three members of the Management Committee and two of the Trustees. Paragraph 4 of the Particulars of Claim (which I have set out above) does not address the rights and powers of either the Management Committee or the Trustees to possession of the Property. The pleaded case is that the Masjid is entitled to operate from the Property and is in possession. But since the Masjid is not a legal person, paragraph 4 begs the question who or what is meant by “the Masjid” for these purposes.
52. For this reason, I am satisfied that paragraph 7 of the Defendant does not amount to an admission that the five individual Claimants are in possession of the Property or that they have a possessory title. The Defendants have done no more than admit the legal title to the Property and that some or all of the members of the Masjid have possessory title. In my judgment, they have not admitted that the five individual Claimants have a sufficient title to sue.
53. But if I am wrong and paragraph 7 of the Defence amounts to an admission that the Claimants have title to sue, I permit the Defendants to withdraw it pursuant to CPR Part 14.1(5) and PD14, paragraph 7. I do so for three reasons:
- i) In my judgment, the question whether the Claimants have title to sue is a pure question of law. It would not be right to determine the application on the wrong basis and purely as a matter of pleading.
 - ii) On any view, the pleaded case is ambiguous. I accept Mr Smith’s submission that as an unincorporated association it is impossible for the Masjid to hold property (including a possessory title). However, paragraph 4 does not clearly identify the individuals who have title or can bring a claim on behalf of the Masjid.
 - iii) The Claimants have suffered no prejudice because, as I set out below, in my judgment the Management Committee does have title to sue. Moreover, as the price for permitting the Defendants to withdraw the admission, I am also prepared to make an order under CPR Part 19.3(1).

(2) *The Correct Parties*

54. Mr Smith accepted that the registered proprietors of the Property hold it on trust for the purposes of the charity. The Constitution sets out those purposes but it does not confer any powers of management on the registered proprietors. Indeed, Article 8(b) contemplated that the real property and assets of the Masjid would not be held by any individuals and Article 13(c) expressly provides that the Trustees shall not be proprietors of the real property or any other assets of the Masjid.
55. The powers of management of the Property are, therefore, vested in the Management Committee. In particular, Article 5.2(a) confers the day to day administration upon the Management Committee including the power to decide who uses the Property, its land and buildings and for what purpose. Article 5.2(v) also confers the power to frame bye-laws which have constitutional force. If the Management Committee passes a resolution to exclude an individual, e.g., because he or she has been violent or abusive, I can see no reason why it cannot apply for injunction to restrain that individual from committing a trespass. In my judgment, therefore, the Constitution confers a sufficient possessory title on the Management Committee to make such a claim.
56. In *Muman v Nagasena* [2000] 1 WLR 299 the governing council of a Buddhist temple and charity brought a claim against the patron and resident monk for possession of his living quarters. Legal title was vested in the official custodian for charities under section 22 of the Charities Act 1993 and the judge dismissed the action on the basis that the official custodian was not a party. The Court of Appeal allowed an appeal and Mummery LJ gave this as the reason at 304D-F:

“Section 97(1) of the Act of 1993 contains a definition of “charity trustees.” Section 97 is a general interpretation section and provides that in this Act, except in so far as the context otherwise requires, “charity trustees” means “the persons having the general control and management of the administration of a charity”. In my judgment, the charity trustees are entitled to the possession of the property of the charity subject only to any claims that the defendant may have. They may enter into transactions granting possession. They may bring proceedings in their own name to recover possession

for the purposes of the charity without the need to obtain the permission of or to join in the proceedings the official custodian for charities. The judge was wrong to hold that the proceedings were not properly constituted in the absence of the official custodian for charities as a claimant or co-claimant. On that ground alone I would allow the appeal.”

57. Mr Smith submitted that this reasoning only applied to property registered in the name of the official custodian for charities where the purpose was to avoid the necessity for periodical transfers of property. He relied on *Mohammed v Mohammed* [2018] EWHC 805 (Ch) in which Norris J refused to grant an injunction against thirteen individuals restraining them from entering a mosque. The judge dealt with title to the mosque at [12] and [13] of his judgment:

“A number of simple points might be made about this application. First, it is brought by only two of the three Registered Proprietors so any property-based rights must be viewed with some caution until such time as the third Registered Proprietor is added to the claim, either as a claimant or as a defendant to be bound by the outcome of the decision. That is something that must be done urgently.

Secondly, in so far as property-based rights are concerned, the Registered Proprietors do not hold the land for their own benefit. They hold it (as the title registered discloses) as charity trustees. They are bound to permit the Mosque to be occupied and enjoyed as a place for the public worship of Allah and for preaching and teaching the precepts and teachings of the Muslim faith. It is, accordingly, to be open to the public who wish to enter for the purpose of enjoying the benefits of the charity. Of course, if there were individuals whose presence disrupted the achievement of the objectives of the charity, there is little doubt that they could be excluded. If indeed there were a resumption of any violent conduct or any attempt to occupy the Mosque or to take over the management of the Mosque in anything that was not a constitutional way, no doubt the claimants could obtain relief.”

58. In *Mohammed v Mohammed*, however, the registered proprietors were the charity trustees themselves. There was also a dispute about the charitable trusts upon which the mosque was held and the two registered proprietors who had brought the claim had attempted to remove the third trustee: see [4]. Trustees must normally act with unanimity and there was, therefore, a serious

issue whether the Claimants could properly act on behalf of the charity at all without his agreement. But in any event Norris J did not dismiss the action (which would have been the necessary consequence if it had been necessary to join all of the registered proprietors).

59. In my judgment, the reasoning of the Court of Appeal in *Muman v Nagasena* applies equally in the present case. The Management Committee are charity trustees within the meaning of section 177 of the Charities Act 2011 (which replaced section 97 of the 1993 Act). They are entitled to the possession of the Property of the Masjid and may enter into transactions granting possession. They should therefore be entitled to bring proceedings to recover possession for the purposes of the Masjid without needing to obtain the permission of the registered proprietors.

(3) *CPR Part 19.3(1)*

60. Mr Smith also submitted that all of the members of the Management Committee should have been joined as parties. Mr Roseman drew my attention to the First Claimant's first witness statement in which he stated that he was authorised by the Management Board (by which I took him to mean the Management Committee) and the Trustees to make the statement in support of their application for an injunction. He also told me on instructions that the Claimants had the full support of both the Management Committee and the Trustees.

61. CPR Part 19.3(1) provides that: "Where a claimant claims a remedy to which some other person is jointly entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise." The notes to the White Book provide no guidance on when and how the Court should exercise its power to order otherwise. But in my judgment, it is appropriate to exercise that power in the present case where the failure to join all of the members of the Management Committee was a failure of form rather than substance.

(4) *The Management Committee's Powers*

62. I therefore reach what I consider to be the central issue on the application, namely, whether the Management Committee has a unilateral or absolute and unfettered right to exclude the Defendants from the Property. In support of his submission that the committee had such a right Mr Roseman relied on the decision of the Court of Appeal in *Rendall v Blair* (1890) 45 Ch D 139 in which the master of a school administered by a charity applied for an injunction to restrain the school's managers for dismissing him and taking possession of his accommodation.
63. The issue for the Court was whether the master could challenge the appointment of the managers without obtaining the permission of the Charity Commissioners under section 17 of the Charitable Trusts Act 1858. A majority of the Court of Appeal held that their permission was not required. Bowen LJ (with whom Fry LJ agreed) held that the section was not intended to apply to actions brought to enforce a common law right. He said this at p.153:

“Now, in order to construe the section, we must examine carefully the words of it; and it is apparent from the initial language that actions at common law are not within the scope of the section, which applies simply to suits, petitions, or other proceedings for obtaining relief, order, or direction concerning or relating to any charity. Those were not, at the date of this statute, 1853, apt words for dealing with or describing common law actions, and it follows, in my opinion, that no common law action, or, in other words, no action brought solely to enforce a common law right, whether such right arises out of contract or out of common law obligation, or common law duty, is within the section.”

64. Bowen LJ also went further and considered that the section did not apply to the actions for equitable relief to restrain the exercise of common law rights. In doing so, he also gave an example upon which Mr Roseman placed some emphasis at pp.153-4:

“But if that is so, must we not go a step further, and ask ourselves whether it is possible that the Legislature can have enacted such an anomaly as not to require the consent of the Commissioners for actions for enforcing common law rights, but to make the obtaining their consent a necessity in such equitable suits as are merely instituted for the purpose of obtaining relief with regard to common law rights? Is it

possible that such a construction of the statute can be reasonable? That would lead to the singular conclusion that, although a man was not obliged to obtain the consent of the Commissioners before prosecuting an action for breach of contract, he was obliged to obtain the consent of the Commissioners before he came to the Court of Chancery, or to the Chancery Division of the High Court, to appeal to the equitable jurisdiction of the High Court to prevent such a breach. It would lead to this curious conclusion—that although a man was not obliged to obtain the consent of the Commissioners before instituting an action for trespass, in which action the sole question would be his title to possession under the deeds of trust, he would nevertheless be obliged to obtain the consent of the Commissioners before he obtained an injunction to prevent the trespass being committed. That would be a curious anomaly, and one which, unless the language of the Legislature constrained one, one would scarcely adopt.”

65. When he came to apply this test, Bowen LJ held that the master was really seeking to enforce his contractual rights as an employee and that the consent of the Charity Commissioners was not required. However, he also concluded that it was open to the Court to decide trust or charity law questions if it was necessary to do so in order to resolve the contractual dispute. He said this at pp.156-7:

“But it strikes me that the Plaintiff’s case really is one of contract only or of common law right. He may be entitled so long as he is an authorized school teacher to hold the school-house; but it is in virtue of the appointment which he holds from the managers, which is really a contractual employment by him to teach. He is simply enforcing here, or seeking to enforce, what he considers to be his common law right, not to be dismissed by those who have not employed him, and to hold premises which he has received from persons who are authorized to deal with the possession against the unlawful and unauthorized usurpation of those who are strangers altogether in the matter.

That is his case. It may be that incidentally the question whether these are managers of the school may be decided. We cannot help that, nor can the Plaintiff help it. He is dealing with his masters, or with those who profess to be his masters. He declares that those who are seeking to exclude him from these premises are not the persons who are lawfully entitled to possession. The common law question may involve the construction of a deed, or may incidentally involve the question whether the managers who are seeking to oust him are really

properly appointed. But, as I said before, the mere fact that such questions incidentally arise does not seem to me to bring the case within the section.”

66. In *Stewart v Watts* [2018] Ch 423 a similar issue arose. The trustees of a charity claimed possession of an almshouse after terminating the Defendant’s rights of occupation under a letter of appointment. The principal issue for the Court was whether she had a tenancy or a licence and both the trial judge and the Court of Appeal held that she had a licence only. But the Court of Appeal also dismissed her appeal on the grounds that the proceedings fell within section 115 of the Charities Act 2011. Sir Terence Etherton MR dealt with this issue very briefly at [52] to [54] (following *Rendall v Blair*):

52. Section 115(2) of the Charities Act 2011 provides that, subject to the subsequent provisions of the section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Charity Commission.

53. Section 115(8) provides that the expression “charity proceedings” means (a) the court’s jurisdiction with respect to charities, or (b) the court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes. It is not suggested, on behalf of Mrs Watts, that these proceedings fall within (a). It is said that they fall within (b).

54. We consider that submission is, with respect, plainly wrong. These proceedings are not to do with the internal administration of the charity. They are for possession of the property pursuant to the terms of a written contractual licence: compare *Rendall v Blair* (1890) 45 Ch D 139. Furthermore, there has been no appeal against the judge’s finding that the trustees did not owe fiduciary duties to Mrs Watts.”

67. In my judgment, the effect of these two authorities is not to prevent the Court from inquiring into the legitimacy of the actions of the Management Committee unless the Charity Commission gives its permission. In *Rendall v Blair* Bowen LJ accepted that the common law question whether to grant an injunction might involve the construction of a deed or deciding the incidental question whether the school managers were properly appointed. In *Stewart v Watts* the Court of Appeal did not have to consider this point because there was no appeal against the finding that the trustees had not committed a breach of fiduciary duty.

68. In the present case the Management Committee's powers to control entry to the Property are given to them by the Constitution. But those powers are not absolute or unfettered and the committee must exercise them for the purpose of achieving the objects set out in Article 3. In *Harries v Church Commissioners for England* [1992] 1 WLR 1241 Sir Donald Nicholls states this at 1246A-B:

“Before going further into the criticism made of the commissioners I will consider the general principles applicable to the exercise of powers of investment by charity trustees. It is axiomatic that charity trustees, in common with all other trustees, are concerned to further the purposes of the trust of which they have accepted the office of trustee. That is their duty. To enable them the better to discharge that duty, trustees have powers vested in them. Those powers must be exercised for the purpose for which they have been given: to further the purposes of the trust. That is the guiding principle applicable to the issues in these proceedings. Everything which follows is no more than the reasoned application of that principle in particular contexts.”

69. Moreover, Article 3 expressly states that those objects are established to promote the interests of the Community. Whilst members of the local community are not beneficiaries in the strict sense, they are beneficiaries or objects of the charity in a loose sense. In *Bisrat v Kebede* [2015] EWHC 840 (Ch) His Honour Judge Purle QC stated at [22]:

“I think one has to be careful of the use of the word “beneficiary” in this context. A charitable trust, as such, does not have beneficiaries in the same sense as beneficiaries under a private trust. No individual has any proprietary interest in the charity's assets and funds as such, but a person may become a beneficiary in a loose sense as an object of the charitable trust. The advancing of the Ethiopian Orthodox faith would, in one sense, embrace all those of that faith. That would not, I think, be sufficient to make all members of the Ethiopian Orthodox Church, anywhere in the world, who are very considerable in number, persons interested in this charity, but I do think that regular worshippers, who have contributed as such to the acquisition of the assets of the charity, as well as worshipping at the church in its various forms over many years, are undoubtedly interested persons for this purpose.”

70. I accept that the Management Committee may exclude members of the public and, indeed, individual members of the Community where this action promotes the objects of the charity and the interests of the Community as a whole: see *Mohammed v Mohammed* (above) at [12]. But I do not accept that the committee has an absolute or unfettered right to exclude members of the Community without regard to their duties as charitable trustees. Nor do I accept that the Defendants cannot raise a defence to a claim for an injunction that the members of the committee have exceeded their powers or acted in breach of their duties as charity trustees.

(5) *The Defendants' Case*

71. Mr Smith explained the genesis of the present dispute from the Defendants' perspective in paragraphs 11 to 14 of his Skeleton Argument as follows (excluding footnotes):

“D1 (Mr Abdul Sattar) was the Iman during the period of about 22 years prior to 1.2.19. He promoted the inclusive approach, welcoming Muslims from different traditions within the community.

The previous MC (elected in 2014) sought to change the Masjid's inclusive policy. This caused unhappiness and resentment among large numbers of the worshippers, and there were many complaints to the charity commission.

The 2014 MC failed to call the election due in 2017. Following intervention from the Charity Commission, an election was held in March 2018. There were 2 groups standing for election: (1) the candidates supported by the 2014 MC, who were followers of a movement known as Tablighi Jamaat, which promotes a highly-orthodox approach to Islam, and (2) the candidates who favoured a more inclusive approach. However, prior to that election, a new membership list was prepared, and (say Ds) many members and prospective members were unreasonably and unaccountably excluded from membership. The candidates supporting a more inclusive policy withdrew from the election in protest. As a result, the remaining candidates were elected unopposed. They then co-opted members of the 2014 committee onto the new committee (including C1). This led to protests and demands for a fair election and arbitration.

The 2018 committee, which is comprised solely of followers of the strict Tablighi Jamaat movement, has continued and developed the highly orthodox and anti-inclusive policy of the

2014 committee. On 1.2.19, it attempted to increase divisions further by terminating the employment of D1 as Iman and appointing as a replacement an Iman who supports Tablighi Jamaat.

D1 was a popular Iman and, as the MC doubtless anticipated, the termination of D1's employment after 22 years caused great unhappiness among many of the worshippers."

72. The Defendants assert that the members of the Management Committee imposed the Prohibition in breach their duties as charity trustees. Again, in his Skeleton Argument Mr Smith put their case as follows:

"a. Ds say that the actions of the MC are part of a deliberate strategy to transform the Masjid from being inclusive, into a narrow, sectarian and fundamentalist place of worship.

b. To that end, say Ds, the 2014 committee wrongly excluded from membership those who were known to favour more open and inclusive worship, in order to engineer the election of those supporting the more fundamentalist faction. Having achieved that end, the 2018 committee then set about terminating the employment of the Iman of 22 years and provoking division in the congregation.

c. Cs now seek to exclude Ds from access to the Masjid for the same reasons: effectively, to exclude moderates and reinforce the Tablighi Jamaat faction. Ds say they have been singled out because they have been vocal in their complaints about poor governance. Cs' actions are not to further purposes of charity but rather to prevent open discussion about the future direction of the Charity and to silence legitimate questions and scrutiny.

d. The attempt to exclude Ds from access to the Masjid – including by the bringing of these proceedings and the application for summary judgment – is a breach of duty because Cs are not exercising their powers as charity trustees for the purposes for which they were given. Ds say that Cs are seeking to exercise powers for the reasons set out in sub-para c above, not for the purposes for which they are given and to further the purposes of the Charity."

73. These submissions are supported by the Defendants' witness statements. In particular, the Second Defendant has set out a number of ways in which he believes that members of the Management Committee had failed to comply with the Constitution and committed breaches of their duties as charity trustees. Mr Smith submits that these are not issues which the Court can decide on an application for summary judgment and I agree. I cannot decide

that this defence has no real prospect of success and in my judgment this is a case which falls within the sixth proposition in *EasyAir*. It requires a fuller investigation into the facts of the case which is bound to add to or alter the evidence available to the trial judge and so affect the outcome of the case.

74. Mr Roseman objects that there is no pleaded defence that the members of the Management Committee have exceeded their powers or committed breaches of their duties. I accept that the Defendants have not pleaded in terms the defence set out in Mr Smith's Skeleton Argument. But it seems to me that the basic facts upon which Mr Smith relies are set out in the Defence and also that I cannot deny the Defendants an opportunity to amend the Defence. I bear in mind that applications for summary judgment are often made before a defence has been served at all and it is usually enough for a defendant to establish on the evidence that their defence has a real prospect of success. I therefore dismiss the application for summary judgment.

Interim Injunction

(1) *Serious issues to be tried*

75. It follows from my determination of the application for summary judgment that there is a serious issue to be tried whether the Management Committee exceeded its powers by issuing the Prohibition. There may also be an issue whether the notice posted on the gate was adequate to communicate the Prohibition to the Defendants and, therefore, to withdraw any invitation to them to enter the Property. It is unclear from the Claimants' evidence how they say the Prohibition was communicated to the Defendants and the Defendants do not accept that they understood that it applied to them.
76. Further, even if the Management Committee exceeded its powers and the members committed a breach of duty by issuing the Prohibition, there are a number of serious issues to be tried whether the Defendants unlawfully trespassed on the Property by failing to abide by the Code of Conduct: see

paragraphs 40 to 43 (above). I have accepted that some of the Defendants have admitted isolated breaches of the Code of Conduct but that is all.

(2) *Damages an adequate remedy*

77. I am satisfied that damages would not be an adequate remedy for the reasons given by Mr Roseman: first, the Defendants' solvency is unknown and, secondly, it is not possible to assess or quantify the damage suffered by the Masjid as a result of the conduct by the Defendants. If the Claimants' are successful at trial, then the Defendants will be found to have seriously interfered with the charitable purposes of the Masjid. Its standing in the community may have been permanently damaged and fewer worshippers may have attended or made donations. In my judgment, damages would not adequately compensate the Claimants for this damage and, in any event, it will be difficult to quantify it accurately.

(3) *Balance of Convenience*

78. Mr Roseman submitted that balance of convenience strongly favoured the grant of interim injunction and that the Defendants have suffered no prejudice. He submitted that they had (and have) no legal or other right to demand entry into the Property and that there are eighteen other Mosques within five miles of the Property which the Defendants could attend (and the First Defendant's evidence is that he is attending an alternative mosque).

79. Mr Roseman also submitted that if no injunction was granted, the Trustees, members of the Management Committee and employees would be unable to carry out their duties in the Property without fear of serious violence and abuse, the police have had to attend the Property every time it is open and there is risk of further criminal damage and burglary.

80. By email dated 2 September 2020 Mr Roseman sent me a list of references in the evidence to the attendance of the police. It is clear from the Defendants'

evidence alone that the police have had to attend on a significant number of occasions. Mr Roseman also sent me a copy of a recent letter from the Brent Community Protection Branch of the Metropolitan Police. It stated that the local authority and the police had been providing a physical presence at Ealing Road to maintain order and ensure that there was no breach of the peace. It also stated that the local authority was unable to continue to provide ongoing support.

81. These are strong grounds for the grant of an interim injunction and I would have been persuaded to make such an order but for two factors: first, on the return date of the first application the Claimants were content to accept the Undertakings and did not ask the Court excluding the Defendants from the Property altogether. This has, therefore, represented the status quo for the last sixteen months. But secondly there is no dispute that the Defendants are worshippers at the Masjid and beneficiaries or objects of the charity in the looser sense described in *Bisrat v Kebede* (above). It would be harsh for the Court to prohibit the Defendants from worshipping at their chosen place of worship over the trial of an action for trespass. I should also add that I am not persuaded that the existence of many other mosques or masjids in the area removes this prejudice.
82. I would have been prepared to grant the injunction (even though it denied the Defendants the right to worship at the Property) because it is clear that the parties cannot agree about the meaning and effect of the Code of Conduct and the Undertakings have not prevented the continuation of the dispute. However, by email dated 7 September 2020 Mr Smith sent me a revised set of undertakings which the Defendants were prepared to give to the Court. I reproduce those undertakings in the Appendix to this judgment (together with the corresponding provisions of the Code of Conduct). By email also dated 7 September 2020 Mr Roseman strongly objected to the Court accepting these undertakings for a number of reasons including the fact that the Defendants had withdrawn their application to discharge the Undertakings and there was no application to revise them.

83. In my judgment, the revised undertakings offered by Mr Smith strike a fair and convenient balance between the Claimants' rights and powers as members of the Management Committee and Trustees and the Defendants' rights as worshippers and objects of the charity (in the loose sense). In particular, they clearly distinguish between private worship and activities which might be – or might be perceived to be – a protest against the management of the Masjid. Despite Mr Roseman's powerful submissions, I am prepared to accept them rather than granting the injunction.
84. I should say that I considered making the order but suspending it on compliance with the proposed undertakings. But in my judgment, that may well be counter-productive and lead to satellite issues about when the Claimants are entitled to enforce it and whether it has been broken. Rather than dismiss the application, however, I will adjourn it until trial and grant permission to the Claimants to restore it in the event that the Defendants fail to comply with their undertakings. I also make it clear that paragraph 1 of the revised undertakings limits the Defendants to entering the Property for private prayer and paragraph 11 prohibits them from protesting against the Management Committee on the Property. If the Defendants fail to observe those paragraphs, the Court may prohibit them from entering the Property at all.

Disposition

85. I therefore dismiss the Claimants' application for summary judgment. I decline to make an injunction prohibiting the Defendants from entering or remaining on the Property but adjourn the application on terms that the Defendants give undertakings in the form set out in the right column of the Appendix. I also give permission to the Claimants to restore the application in the event of non-compliance with the undertakings. I will also make an order under CPR Part 19.3 that all of the Members of the Management Committee need not be joined as parties provided that they agree to be bound by this order and any final order made by the Court at trial. (This agreement should also be recorded in a recital to my order.)

86. I leave it to the parties to agree a form of Order. I have heard no submissions on costs. But my preliminary view is that the appropriate costs order on both applications is so bound up with success at trial that I ought to reserve the costs to the trial judge. If the Claimants are successful at trial, they will be able to say that they were put to the expense of applying for an injunction and should recover the costs even though I was prepared to accept revised undertakings. If the Defendants are successful at trial, they will be able to say that the applications should never have been made. But if either party wishes to argue that I should make a different order, I will determine the issue on paper.

Addendum

87. When I had completed this judgment in draft and was about to hand it down Chancery Listing received an email from the Metropolitan Police which I reproduce:

“I am enquiring about a case that was heard, although not completed, on 2nd September. The complainant was The Wembley Central Mosque (may have been named as Wembley Central Masjid). Case reference is BL-2019-00354. The case revolved around the banning of a number of members of the community. The community have stated that it was found in their favour however were unable to produce anything to confirm this.

We are currently engaged in an operation to police protests and public order incidents outside the mosque. Can you confirm whether a final judgement has been made, what the judgement was and which court it was heard at as this will influence how we respond to the protest on Friday.”

88. Despite the contents of this email, I have decided to hand down judgment in its original form. I make it clear to the Defendants that by agreeing to accept their revised undertakings in the form offered by Mr Smith, I am not permitting them to protest at the Property and that if they commit breaches of those undertakings, I will permit the Claimants to restore the application for further hearing on an urgent basis. My order will also contain a penal notice and I will require an assurance from the Defendants’ solicitors that they have

explained the terms and effect of the revised undertakings to each of the Defendants personally (apart from the First Defendant).

Appendix

	Current	Proposed
01	No personal and/or private activities is [sic] permitted within WCM premises.	No personal/private activities other than worship, whether commercial or otherwise, are permitted within WCM premises. This includes any social events or the sharing of food and/or drink except where the same are authorised by the management committee. For the avoidance of doubt “worship” means individual private prayer, individual private reading, and participation in communal prayers and services approved by the management committee.
02	No Individual and/or group teaching within WCM premises of any kind is permitted.	[No change]
03	No distribution of flyers, literature, leaflets, books including food or clothing, posting and/or placement of flyers, literature, leaflets, books, signs, notices, posters etc within WCM premises is allowed.	No distribution, whether on a temporary or permanent basis, of flyers, literature, leaflets, books including food or clothing, posting and/or placement of flyers, literature, leaflets, books, signs, notices, posters etc within WCM premises is allowed.
04	No sales or distribution of food products or any kind of merchandise anywhere on the WCM premises is allowed.	No sales or distribution of food products or any kind of merchandise is allowed anywhere on the WCM premises.
05	No fundraising and/or soliciting of any kind within WCM premises.	[No change]
06	Adhan and/or leading salah shall be by appointment only.	No performing the call to prayer and/or leading prayers in congregation unless expressly authorised to do so by the management committee. This includes the 5 daily prayers and Friday, Eid and Ramadan prayers.
07	No sleeping in the Masjid or anywhere on the property or overnight stay within WCM premises.	[No change]
08	No overnight parking.	No overnight parking on the WCM premises.
09	No lectures, No public speaking, No announcement of any kind, No speeches, No use of PA systems, etc.	No delivery or facilitation of, or invitations to third parties to give, any lectures, public speaking, speeches, announcements of any kind including installation and/or use of PA

		systems (fixed or portable).
10	Zero Tolerance: Violent, aggressive or abusive behaviour towards any committee member or employee will not be tolerated.	Zero Tolerance: No violent, aggressive, insulting, unpleasant or abusive behaviour towards any committee member or employee of WCM.
11	-	No protesting against the management committee or its members on WCM premises.