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FW: In the event of a student protest DSRS x

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Jo Halliday to David

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David

In case you ever need.

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Jo

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-----Original Message-----

From: Jo Halliday [mailto:jh61@soas.ac.uk]

Sent: 05 October 2005 10:03

To: 'Geraldine Swanton'

Cc: 'Andrew Keeble'; 'Jennifer Hearn'

Subject: In the event of a student protest

All Mail

Spam (2)

Many thanks, Gerry, this is helpful info should the need arise which, at the moment, touch wood, it does not seem to be. Am copying this on to Andrew Keeble, the Director of Administration, as if ever something happens it is likely to be at Russell Square where he is based and I am not. Also to Jenni, in case one of us has to get in touch with you quickly. But so far, touch wood...

Bin

See you for the seminar tomorrow.

Contacts

Jo

-----Original Message-----

From: Geraldine Swanton [mailto:geraldine.swanton@martjohn.com]

Sent: 05 October 2005 09:37

To: jh61@soas.ac.uk

Subject: Student protest

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Jo

I have checked the legislation relating to the offence of disturbance/nuisance on educational premises. Unfortunately, it does not extend to HE. However, there are a variety of civil remedies available in the event of a potential or actual sit-in.

It may be possible to obtain an injunction prior to the event, preventing the protest from taking place, notwithstanding that the identities of the protestors are unknown. Enforcement would be by means of contempt of court proceedings. If you have reason to suspect a large-scale sit-in, you may wish to consider this remedy. It is also possible to obtain an order for possession once the sit-in has begun.

Criminal proceedings may be commenced where there is damage to property or persons.

Both the protest and the remedies are likely to attract adverse publicity and therefore, as you are very well aware, you will have to consider the lesser of 2 evils. Lancaster University has been in the news a lot recently regarding its response to students storming a meeting to protest against the commercialisation of research (of all the issues to occupy their consciences - that would seem the most unlikely!)

As we discussed, internal disciplinary proceedings may also be considered, though this is likely to be difficult if the protest involves large numbers of students.

I hope that the students remain oblivious to the issue of the librarians and that further advice will not be needed. If it is, please do give me a call.

Gerry

Geraldine Swanton
Senior Associate
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Fax: 0870 763 1855
E-mail: geraldine.swanton@martjohn.com

Jo Halliday

Search, add or invite

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Reply Forward David is not available to chat

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Student Occupations: a briefing note for members of AHUA, April 2009

Background

Following the Israeli attack on Gaza, which commenced in December 2008, there has been a spate of student occupations throughout the UK and indeed in other countries. About 30 UK HEIs experienced occupations during the first three months of 2009. This wave of student protest has a number of important characteristics and this briefing note has been prepared to inform members of AHUA.

Form of Protest

The occupations have been undertaken by a relatively small core of students expressing concern about the situation in Gaza, usually under the title 'Gaza (or Palestine) Solidarity Campaign' or similar. Although the form of the protests has varied, there are a number of general characteristics. Normally the occupation takes place in a lecture theatre or similar open area rather than in the administration building or library. The students have called on individual universities to take action in support of the people of Gaza (scholarships for Palestinian students, educational materials to be sent to Gaza). Sometimes there has been a call for 'action' against Israel (boycott Israeli products for example). There has also been a link to the issue of investments by UK universities in companies that manufacture military products and a call to adopt an ethical investment policy.

The students bring with them mobile phones and laptops. The link to the internet and the ability to publicise via blogs or Facebook is probably the single most important development compared to previous student direct action. The publicity generated and the mutual support offered via the web has been critical in spreading the protest around the country. For this reason, the actions taken by individual institutions in response to the occupations have consequences for others, with the protesters using alleged examples of where their demands have been met to encourage action elsewhere.

Most of the action does not appear to have been organised via any official students' union route. Indeed, the National Union of Students in mid February called for the wave of protests to end because the level of disruption had reached unacceptable levels.

Political activists, who may or may not be current students, have played a part in organising the occupations. The Socialist Worker Party newspaper and other 'hard left' publications or posters have been displayed prominently. Nevertheless, it would be wrong to dismiss the spate of occupations as being merely the work of activists. The students involved seem, in the main, to express genuine concern about the issues raised, even if the mode of expressing concern is disruptive.

There is a great deal of material now available on the web, see for example:

<http://occupations.org.uk/>

http://stopwar.org.uk/index.php?option=com_newsfeeds&catid=84&Itemid=230

<http://communiststudents.org.uk/tag/student-occupation/>

The lengths of the occupations have varied, depending on part whether the occupiers believe some or all their demands have been met. In most cases the occupations have been peaceful,

and relatively small scale. However, in a small number of cases they have caused severe problems.

Legal position on trespass

Our legal sponsors, Martineau, have prepared a note on the legal issues on student occupations which is attached.

The legal position on trespass is complex and the following brief summary should not be regarded as a substitute for professional legal opinion. Further, the law on trespass in Scotland differs significantly from elsewhere in the UK.

In English law, trespass is a civil law tort and is not normally an offence under criminal law. Students normally can enter lecture theatres or similar spaces and the university has to inform the protesters that it regards the occupation as a trespass. It is possible to seek a High Court injunction and claim for possession but the process is expensive and could reasonably be expected to take a couple of days. Under Common Law, a landowner (and for the avoidance of doubt, buildings are land) can physically evict a trespasser who refuses to leave provided that no more force than is reasonably required is used. In at least one case this was the action taken by an HEI to end the occupation. It would be sensible to adopt this action only with the support of the local police who could be invited to witness the eviction. There are occasions when the trespass might become aggravated trespass and the police could remove the protesters. This could occur in the event of criminal damage or if there is a threat of violence.

Difficult Issues

Regardless of the cause of the protest, HEIs will wish to minimise the disruption. Dealing with the occupation is likely to be time consuming and put a particular strain on the campus security team.

Any issue relating to the Middle East is likely to raise the concerns of Jewish students and there has been a reported rise in hate crimes against the Jewish Community over the past few months. The protesters have tried to make clear that they are not raising religious or race issues but the relationships are complex and not easily separated. Representatives of the Jewish community have urged individual universities not to concede to some of the demands made by the protesters. Other students too have expressed frustration at the disruption caused by a very small minority, especially when there are suspicions that non-students are involved. The Universities UK media release on the situation in Gaza is a useful starting point for any university that would wish to make a public statement. It is available at:

<http://www.universitiesuk.ac.uk/Newsroom/Media-Releases/Pages/GazaStatement.aspx>

However, even this has raised concerns from members of the Jewish community, specifically on the grounds of accuracy relating to the deaths in educational establishments.

Options for dealing with an occupation

1. Refuse to negotiate and require those occupying the building to leave. This could be enforced by legal action. This option has the advantage of ensuring the university does not appear to concede to direct action. It assumes that the protest will peter

out. However, it can result in the occupation becoming drawn out. A local judgement is required on the strength of the protest. It is possible to use the threat of internal disciplinary action against students. Most HEIs will have, as part of their disciplinary procedures, an offence relating to disrupting the normal work of the university or something similar. However, threat of legal or disciplinary action could exacerbate the situation and the actual instigation of disciplinary action would be time consuming and difficult. It might not be easy to identify the students involved, who probably would not be keen to co-operate in such a process.

2. Negotiate a settlement. Most universities appear to have been willing to talk to the protesters, issue a statement about the situation in Gaza and take some limited further steps. This has helped to bring individual occupations to an end relatively quickly but not before the protesters have had time to publicise their cause. Indeed, the publicity means that it is unlikely that any occupation will be ended within a brief period of time even if the university is willing to negotiate in good faith. In some cases, it appears that the original organisational energy is not sustained post occupation and the follow up actions are not pursued as rigorously by the students.
3. Refuse to negotiate whilst the occupation is going on but express willingness to enter into negotiations after the direct action has ended. This course of action runs the risk of falling between stools. It is difficult to maintain the line of no negotiation whilst the occupation is in progress and some form of talks about talks are probably inevitable. Nevertheless, it does hold out the prospect of ending the occupation relatively quickly whilst preserving the HEI's position of not conceding to the occupation itself. This, though, is a fine distinction.

Consideration should be given to the potential role of the students' union in resolving the dispute. In some cases the officers have been rather distant, aware of their obligation to represent the broad community of students, but in others the officers have been involved as helpful intermediaries.

One important issue to consider is the access to the area being occupied. In some cases, the students concerned made clear that they would be willing to allow lectures to continue in the same room. They probably regard this as a way of minimising the threat of legal or disciplinary action. Consideration needs to be given early on to the policy the HEI will adopt on access to the area. If it allows free access, there is a risk that the occupation will lengthen, more people could join and it allows the protesters to rotate. The alternative is an attempt to control access. This raises allegations of heavy handedness by the institution. A particular issue is whether or not to allow further supplies of food into the building. Again, refusal to do so runs the risk of publicity being generated about the institution attempting to 'starve' the students out. It is important for the HEI to emphasise the priority of health and safety issues. Obviously, access to toilet facilities and an attempt to maintain reasonable conditions should be a priority both for the protesters and for the HEI.

Student Occupations: The Legal Issues

April 2009

European Convention on Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights into national law. HEIs must carry out their management of student occupations in accordance with the rights guaranteed by the Convention.

The Convention rights most likely to be engaged in this context are freedom of expression, and freedom of assembly & association. These rights are not absolute, and they can, where necessary, be restricted on the grounds set out within the specific Convention Article. These grounds, though general, are exhaustive, and therefore no other ground may be used to justify interference with the right. The HEI's interference must also be proportionate, which means that it must go no further than is necessary to protect the particular interest set out in the relevant ground.

- **Article 11: Freedom of assembly and association**

Rights and freedoms: Students, staff and other individuals have the right to freedom of peaceful assembly and to freedom of association with others.

Restrictions: The right to freedom of assembly and association is subject to limitations set by law and necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- **Article 10: Freedom of expression**

Rights and freedoms: Students, staff and others have the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas.

Restrictions: The right to freedom of expression is subject to limitations including those set by law and 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, or for preventing the disclosure of information received in confidence.

It follows from the above that students do not have the right to protest whenever, wherever and on whatever terms they see fit. However, banning a protest should always be seen as the last resort, taken only after steps to try to manage the protest, by allowing it to take place in another less disruptive place or manner, have been tried and failed. The approach adopted by the court in the case of animal rights protestors disrupting the building of a laboratory at Oxford University is instructive in this regard: the court specified where and when protests could take place, prohibiting protests in other areas and at other times, but falling short of an outright ban.

The duty to promote good race relations

Promoting good race relations (a requirement of the general race equality duty) may also be a consideration in managing occupations on campus. However, the race equality duty does not override the Convention rights set out above. Legislation must, where possible, be interpreted in a manner compatible with the Convention, and therefore the equality duty cannot be invoked to justify a breach of a human right. That notwithstanding, HEIs must be prepared to justify any acts, and any failures to act, that do not comply with the race equality duty.

Trespass

Under the Criminal Justice and Public Order Act 1994, the police can order trespassers to leave an HEI's property (and arrest individuals who unreasonably refuse to comply) if:

- at least two people are trespassing on the campus with a common purpose of residing there for any purpose;
- the HEI has taken reasonable steps to ask them to leave; and
- any one of them has damaged property, or used threatening, abusive or insulting words or behaviour towards a member of staff.

An act of trespass may also involve the offence of criminal damage if, for example, harm is done to the HEI's property (eg animal rights activists protesting about the construction of a new laboratory damage fences). If the police reasonably believe that trespass is likely to lead to criminal damage, they may direct trespassers to leave. Failure to comply is itself a criminal offence. An HEI dealing with trespassers should always consider asking the police to attend, in case allegations of assault or false imprisonment are made against the HEI or its staff.

Protestors may gather on neighbouring land or the public highway, harassing people as they enter or leave the HEI's premises. This may amount to a criminal offence, or give rise to a civil remedy under the Protection from Harassment Act 1997.

Alternatively, HEIs can consider a civil action for trespass, which does not require the HEI to show that it has suffered damage as a result of trespassing protestors.

An HEI suffering from the persistent presence of trespassers could seek an order for possession of its land. The basic requirement for obtaining a possession order is to show that the HEI has a greater right to its land than those who have taken possession of it. If the identity of the trespassers is known, another option would be to bring proceedings to recover the cost of damage, after the event. A third remedy is to seek an injunction.

At common law a person who is entitled to the immediate possession of property may use as much force as is necessary to enable him to access the property and expel any intruder, provided that the force used is reasonable. However, in practical terms there are risks involved in HEIs using this self-help remedy as a court might consider the force used to be unreasonable (regardless of what any police in attendance might think), in which case the HEI may be liable to pay damages to the evicted students.

Public order offences

The Public Order Act 1986 contains a number of offences in the context of protests or assemblies, dealing with acts or threats of violence, use of threatening, abusive or insulting words or behaviour, and incitement to racial hatred.

- **Acts or threats of violence** (sections 1, 2 and 3) - a person using or threatening violence in a way that would cause a person of reasonable firmness to fear for his or her personal safety may be guilty of riot (if violence is used/threatened for a common purpose with at least 11 others), violent disorder (if a group of 3 or more individuals use/threaten violence) or affray. One person acting alone can be guilty of affray, provided the threat of violence involves physical conduct, rather than words alone. All three offences can be committed in private as well as public places (eg inside a students' union building, or hall of residence). Each offence carries a potential prison sentence and/or fine, riot being the most serious.
- **Fear or provocation of violence (s4)** - a person using threatening, abusive or insulting behaviour towards another, or displaying threatening, abusive or insulting material, may be guilty of fear or provocation of violence if he or she intends or causes a fear of violence, or intends to provoke or cause a fear that violence will be provoked. The offence can be committed in public or in private (other than in a person's home). The offence carries a potential prison sentence and/or a fine.
- **Harassment, alarm or distress (s5)** - using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displaying threatening, abusive or insulting material, within the hearing or sight of a person likely to be caused harassment, alarm or distress. Again, the offence can be committed in public or in private, other than in a person's home. The penalty for a s5 offence is a fine. Higher penalties apply to the more serious offence of intentionally causing harassment, alarm or distress under s4A.

Unless behaviour is very extreme, potentially criminal conduct involved in student protest is most likely to fall within s5.

For further information about any of the issues raised in this briefing note, please contact Smita Jamdar on 0870 763 1332, or by e-mail: smita.jamdar@martineau-uk.com

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