



IN THE COURT OF APPEAL

Claim No.: 2GTMR1

B E T W E E N:

MR JONATHAN McGINN

Claimant/Appellant

~v~

VILLA VIEW SCHOOL

Defendant/Respondent

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AGREED FACT PATTERN

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1. Mr Jonathan McGinn (born on 3 July 2007) (“**Mr McGinn**”) was a student at Villa View School, Birmingham (“**the School**”) from September 2018 until July 2025 (i.e. from the age of 11 until he completed A-Levels in the summer of 2025).
2. On Monday 3 July 2023 Mr McGinn (then aged 16) was in the School. At the time, schools in Birmingham (including the School) had only been open since 29 June 2023 following a lockdown (beginning on 20 March 2023) which was instituted to stop the spread of a contagious virus (“Frei-Pox”).
3. Given the ongoing Frei-Pox pandemic and the perceived need to reduce the spread of the virus, the School had made clear that students were to stay within their set groups and were not to mix with other groups during school hours.
4. To help avoid students mixing outside of their set groups, the school had put in place staggered break and lunch periods.
5. Mr McGinn’s group was due to have lunch from 1320-1400 on 2 July 2023. However, Mr McGinn’s best friends were in another group and due to have lunch from 1240-1320. Given it was his birthday, Mr McGinn wished to see his friends and, at 1300, asked his teacher if he could go to the bathroom. The teacher said yes. Mr McGinn did not go to the bathroom; instead, he went to the School yard to see his friends.

6. The School yard is a large yard surrounded by a fence. The fence is entirely on School-owned land. Given the risks of break-ins, the fence has metal protrusions along the top edge, to deter people from climbing it. The School's students had previously been told not to climb the fence. In any event, it was against the School's rules to leave the premises during the school day (i.e. between 0915-1530).
7. Whilst in the yard with his friends, Mr McGinn became worried he may be seen to be breaking Frei-Pox rules by mixing outside of his group. As such, he and his friends decided to climb over the fence and go to a local shop, away from their teachers.
8. They had climbed the fence in the past without incident and, on two occasions, had been seen climbing the fence by teachers (albeit those teachers had left the school in March 2023, having taken early retirement).
9. One part of the fence had tables stacked up, next to it. The tables had been removed from a nearby classroom to allow for social distancing. Using those tables, Mr McGinn and friends easily climbed the fence. They went to the shop and bought Mr McGinn a birthday cake, which they ate quickly.
10. To return to the School, Mr McGinn and his friends climbed back over the fence. Unfortunately, Mr McGinn's shirt was (against the School's uniform policy) untucked. It caught on the fence as he was climbing over it, causing him to fall. Mr McGinn broke his arm. As a result, he says he will never become a professional DJ.
11. Mr McGinn brought a claim against the School under the Occupiers' Liability Act 1957 only. He chose not to bring his claim in negligence as well.
12. Following a liability only trial, the first instance judge, Mrs Justice Guardiola found against Mr McGinn as:
  - I. He was not a visitor to the School fence, see *Phillips (a Minor) v South Eastern Education and Library Board* [2015] NIQB 91; *Kolasa v Ealing Hospital NHS Trust* [2015] EWHC 289 (QB). Not only were students expressly forbidden from climbing the fence, but Mr McGinn fell while climbing back into (not out of) the School yard.

- II. In any event, the School had not failed to take such care as was in all the circumstances reasonable to keep Mr McGinn reasonably safe.
13. Mr McGinn appeals to the Court of Appeal – he argues that he was a visitor and that the School had failed to take such care as was in all the circumstances reasonable to keep him reasonably safe pursuant to section 2 of the Occupiers’ Liability Act 1957.
14. The Court of Appeal has asked that the Parties provide written arguments, limited to two pages and two authorities (in addition to those mentioned in this Agreed Fact Pattern). Instructions as to formatting are in the Competition Rules.
15. In light of the fact this is hearing is limited to written arguments, the Court of Appeal expects Parties to address both their arguments and any key counter-arguments they think they might face.
16. You are instructed on behalf of Mr McGinn to draft his two-page written argument.