

# OPUS2

Birmingham City Council v Persons Unknown

Day 1A1

February 13, 2026

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1 Friday, 13 February 2026  
 2 (10.39 a.m.)  
 3  
 4 Housekeeping  
 5 MR JUSTICE PEPPERALL: Mr Carr, give me a moment. These  
 6 documents aren't where I need them. I work  
 7 electronically so I just -- Do take a seat a moment  
 8 and that will give me a minute to get the screens with  
 9 everything I need on them. (After a pause) Mr Carr?  
 10 MR CARR: Thank you, my Lord. I appear (inaudible) on  
 11 behalf of the claimant, along with Mrs Greenley.  
 12 MR JUSTICE PEPPERALL: Yes.  
 13 MR CARR: Can I start with a bit of housekeeping, as it  
 14 were? You should have the following: volume 1, which  
 15 comprises the documents filed with the Court in terms  
 16 of application notices, etc., plus witness statements;  
 17 volume 2 is exhibits to a number of the witness  
 18 statements.  
 19 MR JUSTICE PEPPERALL: Yes.  
 20 MR CARR: There are then videos, which I hope have been  
 21 provided to your Lordship separately --  
 22 MR JUSTICE PEPPERALL: They have.  
 23 MR CARR: -- electronically.  
 24 MR JUSTICE PEPPERALL: Yes.  
 25 MR CARR: There is an application notice, recently issued in

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1 order to seek a dispensation from service.  
 2 MR JUSTICE PEPPERALL: Yes.  
 3 MR CARR: There is a second witness statement, Deborah  
 4 Carter-Hughes --  
 5 MR JUSTICE PEPPERALL: Yes.  
 6 MR CARR: -- which has been very recently filed and brings  
 7 us as up-to-date as we can be.  
 8 MR JUSTICE PEPPERALL: Yes.  
 9 MR CARR: You should then have a skeleton argument filed on  
 10 behalf of myself and Mrs Greenley --  
 11 MR JUSTICE PEPPERALL: I have.  
 12 MR CARR: -- as well as a bundle of authorities.  
 13 MR JUSTICE PEPPERALL: Yes, I have all of those things and,  
 14 as I say, I have the electronic copies, so the hard  
 15 copies, I think, have been released back to you, if  
 16 somebody else needs them.  
 17 MR CARR: Thank you.  
 18 MR RICHARDSON: May I ask you to speak up a bit? I can't  
 19 hear you.  
 20 MR JUSTICE PEPPERALL: By all means, yes.  
 21 MR CARR: Is that me?  
 22 MR RICHARDSON: Yes, you.  
 23 MR CARR: Apologies, I'll try and keep my voice up, yes.  
 24 MR JUSTICE PEPPERALL: It's always the problem when  
 25 somebody's actually talking in the opposite direction.

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1 Whoever it is who's having difficulty hearing, if that  
 2 person wants to move forward, they can.  
 3 MR RICHARDSON: Yes, well, I think if he addresses the  
 4 audience as well, that --  
 5 MR JUSTICE PEPPERALL: Well, no, he can't do that, he  
 6 addresses me. We're not going to change the system so  
 7 he faces you. But if you have a problem hearing, if  
 8 you come as far forward -- take a seat on that -- yes,  
 9 that row there. By all means. See if that's any  
 10 better for you. Yes?  
 11 MR CARR: My Lord, I'm conscious of the fact that I don't  
 12 want to feel like I'm shouting at you.  
 13 MR JUSTICE PEPPERALL: No.  
 14 MR CARR: We may come to that, hopefully not, but I will try  
 15 and keep my voice up so that everyone in the room can  
 16 hear me. One other thing that I wanted to mention by  
 17 way of preliminary housekeeping is we do have  
 18 transcribers who are online.  
 19 MR JUSTICE PEPPERALL: Yes.  
 20 MR CARR: They, with your Lordship's leave, will need a  
 21 break at some point to flex their wrists, as it were --  
 22 MR JUSTICE PEPPERALL: Yes.  
 23 MR CARR: -- and if perhaps we could break at some  
 24 convenient moment at around 11.30/11.45, I know that  
 25 that would be appreciated by them.

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1 MR JUSTICE PEPPERALL: Yes. I assume that the intention is  
 2 that at the end of the court day, once it's been tidied  
 3 up, that will be sent to me through my clerk. That's  
 4 the purpose of the transcript, I assume, not just for  
 5 the audience.  
 6 MR CARR: It serves a dual purpose, my Lord. You've  
 7 identified the first purpose, but the second purpose is  
 8 bearing in mind that this is an application against  
 9 persons unknown, many of whom are not here, in the  
 10 interests of achieving the gold standard of  
 11 transparency --  
 12 MR JUSTICE PEPPERALL: Yes.  
 13 MR CARR: -- we would want to put it on the Birmingham City  
 14 Council webpage which hosts all of the other documents  
 15 relevant to this application so that those who are  
 16 either unwilling or unable to attend today will be able  
 17 to see exactly what's been said that may have  
 18 implications for them.  
 19 MR JUSTICE PEPPERALL: Yes, understood. Have any defendants  
 20 made themselves known to you or to your instructing  
 21 solicitors as one of the persons unknown and who wants  
 22 to address the Court?  
 23 MR CARR: Not directly, my Lord. We picked up a whisper, a  
 24 rumour, that there may be somebody who wishes to speak,  
 25 and of course we're not going to be difficult about

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1 that.  
 2 MR JUSTICE PEPPERALL: Yes.  
 3 MR CARR: That's a matter for your Lordship.  
 4 MR JUSTICE PEPPERALL: Sure.  
 5 MR CARR: But as it were, any formal indication that there  
 6 was someone here who wished to speak for the  
 7 defendants, we don't have anything. I think others in  
 8 the Court may know a little bit more than I do.  
 9 MR RICHARDSON: Excuse me -- Excuse me, your Honour --  
 10 MR JUSTICE PEPPERALL: Sure. Well, one thing at a time, and  
 11 I'll just speak with Mr Carr then I'll come to --  
 12 MR RICHARDSON: Yes.  
 13 MR JUSTICE PEPPERALL: -- any other representation, but  
 14 nobody's made themselves known to you?  
 15 MR CARR: Nobody's made themselves known to us, and perhaps  
 16 the other thing I ought to say for completion is that  
 17 your Lordship will be aware that this application was  
 18 flagged both electronically and physically in terms of  
 19 the court bundles --  
 20 MR JUSTICE PEPPERALL: Yes.  
 21 MR CARR: -- to Unite's solicitors, Thompsons --  
 22 MR JUSTICE PEPPERALL: Yes.  
 23 MR CARR: -- who of course have a direct or indirect  
 24 interest in the outcome of today, and we've heard  
 25 nothing from them to indicate that they have adopted

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1 any position or wish to.  
 2 MR JUSTICE PEPPERALL: Well, they're not a party, are they?  
 3 (Inaudible).  
 4 MR CARR: They're not a party, but just for the sake of  
 5 completeness I thought it right to let your Lordship  
 6 know about that.  
 7 MR JUSTICE PEPPERALL: Now, I have, through the court staff  
 8 -- if you've not had it -- been told that there may be  
 9 two people, and maybe they were the ones who put their  
 10 hands up just now, want to address me. Just so I'm  
 11 clear, if somebody self-identifies as a defendant and  
 12 says they are one of the persons unknown have done one  
 13 of these things, then you are a party and you must  
 14 address me. But otherwise, I hear only from lawyers  
 15 instructed on behalf of the parties. You are such a  
 16 person, are you?  
 17 MR RICHARDSON: Yeah. My name is Stuart Richardson.  
 18 MR JUSTICE PEPPERALL: Yes.  
 19 MR RICHARDSON: I'm a retired teacher of physics and  
 20 mathematics --  
 21 MR JUSTICE PEPPERALL: Yes.  
 22 MR RICHARDSON: -- from Erdington and I'm happy to speak  
 23 against this utterly draconian police state measure. I  
 24 believe there are one or two other people here who want  
 25 to oppose this move towards a police state.

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1 MR JUSTICE PEPPERALL: Just so I understand it, are you  
 2 therefore one of the protestors?  
 3 MR RICHARDSON: Yeah, that's right, yeah.  
 4 MR JUSTICE PEPPERALL: Yes. So you self-identify as one of  
 5 these defendants, and you would like to address me?  
 6 MR RICHARDSON: I've given my details to the court clerk.  
 7 MR JUSTICE PEPPERALL: Yes. Well, I've got your name --  
 8 MR RICHARDSON: Yeah.  
 9 MR JUSTICE PEPPERALL: -- which you've now confirmed in open  
 10 court. But just to directly address my question, if  
 11 you will, you've seen the paperwork, presumably, in  
 12 this case, have you?  
 13 MR RICHARDSON: I've seen the press reports and details, and  
 14 I can gather the proposal.  
 15 MR JUSTICE PEPPERALL: Yes.  
 16 MR RICHARDSON: I've been at the Atlas pickets where people  
 17 have peacefully -- and I emphasise peacefully --  
 18 protested in support of bin workers, so I'm happy to  
 19 oppose the application.  
 20 MR JUSTICE PEPPERALL: Yes.  
 21 MR RICHARDSON: And as I said, I believe that at least one  
 22 person behind me is also happy to speak.  
 23 MR JUSTICE PEPPERALL: Yes. Sorry, back to my question, if  
 24 I may, you identify therefore not just as somebody  
 25 sympathetic to, because that's different, but as one of

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1 the protestors who've done one of these things and you  
 2 say that that's lawful and I shouldn't grant an  
 3 injunction. Am I correct in all of that?  
 4 MR RICHARDSON: Yeah. I mean, I was part of the protestors  
 5 and I'm happy to stand here and oppose the application.  
 6 MR JUSTICE PEPPERALL: Mr Richardson, in those  
 7 circumstances, I'll give you a seat that will make your  
 8 hearing far easier for you. Please come right forward  
 9 to the front row so that you can address me in due  
 10 course.  
 11 MR RICHARDSON: We also have Alistair, (inaudible) --  
 12 MR JUSTICE PEPPERALL: Yes, I'll take him in a second.  
 13 MR RICHARDSON: Okay. All right, fine, fine.  
 14 MR JUSTICE PEPPERALL: I asked, and the solicitors have done  
 15 it, to make sure there were additional hard copies just  
 16 in case anybody in your situation didn't come complete  
 17 either with an electronic copy of all this material or  
 18 haven't yourself prepared from it, but you will find in  
 19 front you there a set of white lever arch files and, in  
 20 that document, the very first document is this, the  
 21 legal submission that's going to be made, the 25-page  
 22 legal argument. Feel free to make use of a set of  
 23 those documents for your use. Now, the other  
 24 gentleman, Alistair. Alistair Wingate. Is that  
 25 correct?

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1 MR WINGATE: That's correct, yeah.  
 2 MR JUSTICE PEPPERALL: Yes.  
 3 MR WINGATE: Sorry, your Honour, I'm not here as a  
 4 defendant, but I am here as a member of the public, and  
 5 I think I should have a right to speak because these  
 6 things -- as a homeowner in Birmingham, these things  
 7 directly affect me, and there's no -- I think you're  
 8 able to use discretion in this particular -- There's  
 9 nothing been set in the law that says the person who  
 10 speaks at a public injunction has to be specifically a  
 11 defendant. So I'd like to speak on the basis that I'm  
 12 a homeowner and a member of the public to you, please,  
 13 your Honour.  
 14 MR JUSTICE PEPPERALL: But you don't identify as one of the  
 15 defendants?  
 16 MR WINGATE: I don't identify as one of the defendants, no.  
 17 MR JUSTICE PEPPERALL: Thank you.  
 18 MR WINGATE: If you could take a seat for a moment.  
 19 MR JUSTICE PEPPERALL: Mr Carr, can you help me, taking into  
 20 account your duty as the only professionally  
 21 represented party here, as to whether or not you have  
 22 any submissions as to whether I should hear Mr Wingate,  
 23 in those circumstances?  
 24 MR CARR: It's entirely a matter for your Lordship. There  
 25 may be technical objections, but I don't think it would

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1 be right for me to try and stamp on an individual  
 2 wishing to speak on the basis of some technical  
 3 objection, so I leave it entirely in your Lordship's  
 4 hands.  
 5 MR JUSTICE PEPPERALL: Thank you. Are there any other  
 6 people who seek to speak? No? Nobody else seeks to  
 7 address me? I will hear you, Mr Wingate, you may also  
 8 come forward. Again, as with Mr Richardson, there is a  
 9 set of paperwork and plenty of seats on the front row.  
 10 If you want a set of the files to follow the  
 11 references, then have a set. Take a moment if you  
 12 will. There's I think three different (inaudible)  
 13 there, each (inaudible) four lever arch files tall.  
 14 Thank you very much for your help with that.  
 15 (After a pause) Yes, thank you. Mr Carr? Sorry,  
 16 just so that you both understand the process I'm going  
 17 to take. This is the City Council's application.  
 18 Sorry, I appreciate you looking at the papers but, Mr  
 19 Richardson, Mr Wingate, this is for your benefit. You  
 20 have your heads buried in the paper. I'm trying to  
 21 help you with the process I'm going to take, if you  
 22 want to know it.  
 23 Mr Carr is bringing the application; therefore, he  
 24 will address me first. He will make his submissions,  
 25 both as to matters of law and fact, and as to why he

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1 says I should go ahead with the case, given the way in  
 2 which they've served the papers, and I think he's going  
 3 to ask for some orders and expect a service. He's  
 4 going to address the law and the facts in respect of  
 5 the injunction application. Once he's done that, I  
 6 will call upon you, Mr Richardson first, Mr Wingate  
 7 second, to make any submissions and arguments you want  
 8 to make.

Understand this though, I act upon evidence and  
 legal argument. The argument can be based upon the  
 evidence already before me. If you wanted to rely on  
 evidence, then you ought to have really filed witness  
 statements and told me what that evidence is. But if  
 there are some matters of evidence that you want to  
 tell me about, we'll have to address that when we come  
 to it and decide how that will go forward.

After that, I will hear from Mr Carr in reply;  
 that is the standard process. He or she who makes the  
 application goes first and they have a last word but  
 only a brief one in respect of matters that you have  
 raised that are new. That's the process I will follow.  
 Mr Carr?

Submissions by Mr CARR

24 MR CARR: My Lord, can I just make three preliminary points  
 25 based on what we've heard so far?

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1 MR JUSTICE PEPPERALL: Yes.  
 2 MR CARR: The first is this, that whilst Mr Richardson may  
 3 have read in the press that this application is taking  
 4 place and whilst that may mean that he didn't have, as  
 5 it were, direct access to the documents, I think I'm  
 6 right in saying that press articles have contained the  
 7 link to the Birmingham City Council webpage. So he may  
 8 not have read the right article and may not have  
 9 realised the significance of the link, but as certainly  
 10 part of our duty to notify, we have taken steps to  
 11 ensure that the public had access to the relevant  
 12 documents.  
 13 The second point is this. Birmingham City Council  
 14 does not suggest for one moment that the activities of  
 15 the defendants have been anything other than peaceful.  
 16 The application would have been put in an entirely  
 17 different way had we been facing something other than  
 18 the peaceful protests. And of course, it's also  
 19 entirely accepted by Birmingham City Council that this  
 20 dispute raises strength of feeling across the community  
 21 --  
 22 MR JUSTICE PEPPERALL: Yes.  
 23 MR CARR: -- which the residents of Birmingham have been  
 24 subject to for in excess of 12 months.  
 25 MR JUSTICE PEPPERALL: If the videos that you have put in

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1 evidence are representative, then it seems to me that  
 2 first concession is well made. I've seen, so far, no  
 3 video evidence. I've watched nothing other than  
 4 peaceful protest but, nevertheless, protest that you  
 5 say has a disruptive effect upon the City Council  
 6 (inaudible) service.  
 7 MR CARR: Oh, and has stated in (inaudible) as having a  
 8 disruptive effect.  
 9 MR JUSTICE PEPPERALL: Yes.  
 10 MR CARR: And, my Lord, yes, we had provided videos which we  
 11 would suggest are representative of what's been going  
 12 on and that those videos do serve to underline the fact  
 13 that the protest activities are peaceful.  
 14 MR JUSTICE PEPPERALL: Yes.  
 15 MR CARR: The third point we wish to make, by way of  
 16 response to where we are so far, is that this is not a  
 17 police state application. The position of the  
 18 defendants appears to be that a dispute in respect of  
 19 which they are not directly a party is one which  
 20 nevertheless gives them greater rights than those that  
 21 apply to the Unite members who are employed by  
 22 Birmingham City Council.  
 23 You will have seen from the draft order, my Lord,  
 24 there is recognition in the draft order that the rights  
 25 that Mr Richardson and others have to protest is, from

1 Birmingham City Council's perspective, coterminous with  
 2 that which has been accepted by Unite but in fact goes  
 3 beyond that. Mr Richardson can stand and protest  
 4 anywhere he likes in Birmingham, but what he mustn't do  
 5 is block the free movement of vehicles which are out  
 6 there collecting waste from the residents of  
 7 Birmingham.  
 8 MR JUSTICE PEPPERALL: Yes.  
 9 MR CARR: So, one of the things Unite might have done is to  
 10 say, "Well, we don't want to be limited to the protest  
 11 areas described in the order as 'assembly areas.' We  
 12 want to line the streets all the way across  
 13 Birmingham," and if they had said that's what they want  
 14 to do, then as long as they didn't block, slow walk  
 15 etc., in front of vehicles it would be difficult to  
 16 conceive of any sensible objection to that, but that's  
 17 the same regime that applies to Mr Richardson and his  
 18 colleagues. Therefore, if this application is a police  
 19 state application, then Unite have consented to be  
 20 subject to that police state regime.  
 21 Where we go from here, my Lord, I'm to some extent  
 22 in your hands. I'm conscious of the fact that this is  
 23 an application that has a particular time estimate  
 24 attached to it.  
 25 MR JUSTICE PEPPERALL: Yes.

1 MR CARR: And what I wasn't proposing to do was go through  
 2 in huge detail the contents of my skeleton argument,  
 3 but I think out of deference and respect to Mr  
 4 Richardson and Mr Wingate, I ought to just go through  
 5 it so that they understand exactly the basis on which  
 6 the application is put.  
 7 MR JUSTICE PEPPERALL: Yes.  
 8 MR CARR: So that they can make whatever response to that  
 9 application that they wish to do so.  
 10 So, if I take you first to the introduction just  
 11 to give or to confirm the nature of the application  
 12 sought, what Birmingham City Council is trying to  
 13 achieve is a situation in which its vehicles are able  
 14 to move freely in and out of depots and freely across  
 15 the streets of Birmingham in order to carry out  
 16 collection of waste. The action that the defendants  
 17 have taken is self-described as action being taken in  
 18 substitution for Unite members, and you'll have seen,  
 19 my Lord, in some of the exhibits that we've put before  
 20 you that there are references to draconian Tory laws  
 21 that Labour is signing up to, but it is fundamental to  
 22 this application that, yes, Unite is subject to an  
 23 order of the Court, but it's an order that is built on  
 24 an offer that Unite put forward that they regarded as  
 25 securing their legitimate right to protest and their

1 legitimate right to picket.  
 2 MR JUSTICE PEPPERALL: Yes.  
 3 MR CARR: Perhaps one of the most important documents in the  
 4 raft of material that your Lordship has is the document  
 5 to Mr Smiles' evidence at Exhibit 7, CS 7, which is the  
 6 Thompsons offer letter on behalf of Unite which, having  
 7 gone through what we accept are rights in respect to  
 8 picketing and protesting, chose to delimit their  
 9 protest activities to defined assembly areas which were  
 10 then attached to the order of Mrs Justice Dias. So, if  
 11 it's a police state, it's a police state that has been  
 12 designed and consented to by Unite and its solicitors,  
 13 but of course it isn't a police state application and  
 14 Unite and its solicitors did not sign up to a police  
 15 state-based regime when they put forward what they  
 16 suggested was the means by which they could  
 17 legitimately pursue their objection to Birmingham City  
 18 Council's actions and staying within the confines of  
 19 the law. So that is the broad introduction to where we  
 20 are.  
 21 The second part of my outline submission begins at  
 22 page 3 under the heading "Notification." The purpose  
 23 of this part of the skeleton argument is that we  
 24 entirely accept that where, until this morning, we  
 25 didn't know the identities of any of the defendants,

1 they were all persons unknown, there is an obligation  
 2 that attaches to Birmingham City Council to take all  
 3 reasonable steps to bring to the attention of those who  
 4 may be affected by the order, or have some other  
 5 genuine and proper interest in the application, that  
 6 the application was taking place and to enable them to  
 7 have access to the material that was being relied on by  
 8 the Council in support of its application. The  
 9 presence of Mr Wingate and Mr Richardson is testament  
 10 to the fact that notification has worked, and we  
 11 welcome the fact that there are individuals here who  
 12 have learnt about the application and are concerned  
 13 about it such that they took the view that they ought  
 14 to come to Court to see what's going on and possibly to  
 15 make representations as to why the order should not be  
 16 made.

17 So one minor point of clarity, my Lord. You'll  
 18 see at Footnote 1 I've put a reference to the  
 19 Wolverhampton Supreme Court judgment as being at  
 20 paragraph 167(2). In fact it's paragraph 226 at the  
 21 same judgment which picks up on an earlier observation  
 22 to similar effect of 167(2). So that's a minor point  
 23 of clarity. I was slightly concerned that your  
 24 Lordship may be digging around in paragraph 167(2) —  
 25 MR JUSTICE PEPPERALL: For that quote.

17

1 MR CARR: — "Where's that quote come from? It's not  
 2 right." It is right, it's just found elsewhere in the  
 3 document. So what we then have — I'm now at page 4  
 4 of my outline submission. What we have at page 4 is a  
 5 list of the steps that we've taken pursuant to our duty  
 6 to get the word out, for want of a better expression.

7 The material that we've got has identified a  
 8 number of organisations: Strike Map, Socialist Workers  
 9 Party, Reel News, Birmingham Socialist Party. They've  
 10 all been notified. Individuals at Unite have been  
 11 notified, because one suspects that, as well as having  
 12 an interest in the outcome of this application, Unite  
 13 may well have some means of communication with at least  
 14 some of those involved in the activity and, for that  
 15 reason, we've also sent both electronic copies and hard  
 16 copies to Unite and also to their solicitors. We've  
 17 also posted notices at various depot locations, and  
 18 have also used the Council social media with the  
 19 platforms identified at the bottom of page 4.

20 Just moving on to page 5, I'm not going to go  
 21 through them all, but the list of steps goes right  
 22 through to letter (k), and we would say that we have  
 23 done more than enough to discharge the responsibility  
 24 or duty that we have to bring this application to the  
 25 attention of relevant individuals.

18

1 As I said at the outset, my Lord, it is important  
 2 to understand the background to this, because it's not  
 3 simply a matter of counsel's rhetoric to talk about  
 4 this not being a police state application. It is  
 5 fundamental to understanding why it is that the  
 6 defendants have stepped in to take the place of Unite  
 7 and why it is that that then leads Birmingham City  
 8 Council to make this application. It's fundamental to  
 9 that position to understand the background to this,  
 10 which consists of the legal action against Unite,  
 11 because what we have seen on the streets of Birmingham,  
 12 with increasing levels of intensity since the New Year,  
 13 is, broadly speaking, exactly the same activity which  
 14 led to Unite putting forward the route to settlement  
 15 with the exhibit at CS7 to Mr Smiles' affidavit and  
 16 then led to the order first made by Mrs Justice Dias on  
 17 23 May 2025.

18 So the position was, my Lord, we had Unite saying,  
 19 "We will only have six people on the gate. They will  
 20 only picket," and I'll come to in a moment what that  
 21 means, "and insofar as we want to protest, we will  
 22 confine ourselves to defined assembly areas in the  
 23 immediate vicinity of the relevant depots."

24 MR JUSTICE PEPPERALL: Yes.

25 MR CARR: It is important to understand, my Lord, that when

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1 Unite put forward that potential route to avoid any  
 2 litigation at all in respect of the activities that  
 3 they were carrying out, it's important to understand  
 4 the distinction between picketing and protesting.  
 5 Picketing is a right that's enshrined in the Trade  
 6 Union and Labour Relations (Consolidation) Act 1992 at  
 7 section 220, and picketing is an activity whereby you  
 8 seek to persuade others to breach their contracts and  
 9 say, "Well, I'm walking off the job in support of you."

10 That's a legitimate activity. It's within the  
 11 scope of the Union's Article 11 rights, it's enshrined  
 12 in statute, and you're free to do it, which is why, of  
 13 course, Birmingham City Council don't object to the  
 14 fact that six pickets are perfectly entitled to remain  
 15 at the gate. The number six is, as it were, a magic  
 16 number. It's a number that's taken from the Code of  
 17 Practice on picketing, which I think your Lordship has  
 18 got in the authorities bundle.

19 The people allowed to picket — This is another  
 20 important point that one needs to remember, the people  
 21 allowed to picket, as a matter of statute, fall into  
 22 two groups. Group 1 is an individual working at or  
 23 near his or her place of work. So that means that  
 24 people employed by Birmingham City Council are entitled  
 25 to picket. So you are entitled to seek to persuade

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1 people to breach their contracts by not continuing to  
2 work.  
3 The other category of people that are entitled to  
4 picket are union officials who are there supporting the  
5 individuals who are there on the gate. So that's  
6 picketing activity, and picketing activity does not  
7 allow you to stand in front of a lorry for three hours  
8 and not let it out. That is not picketing. That is  
9 protesting. That is direct action. Unite don't  
10 suggest that the pickets are entitled to block the  
11 passage of vehicles leaving the depots.  
12 MR JUSTICE PEPPERALL: Yes.  
13 MR CARR: Unite recognise, as do Birmingham City Council,  
14 that there is a right to protest, which is a separate  
15 right to make your feelings known, to blow whistles, to  
16 play loud music, to carry banners, to shout in support  
17 of the individuals who are on strike. But again, that  
18 doesn't, as a matter of law, entitle you to block  
19 vehicles, to block the collection of waste from the  
20 streets of Birmingham. So where we ended up after  
21 Unite put forward its offer was that we had,  
22 effectively, an order from Mrs Justice Dias, which was,  
23 apart from the date, pretty much identical in terms  
24 with that which Unite themselves had put forward:  
25 agreement to confine picketing to six people on a gate,

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1 agreement to confine protesting to the designated  
2 areas. Then we had a consent order, it was extended to  
3 another depot, it was extended to Smithfield depot,  
4 because that was being used as an alternative when  
5 Lifford Lane ceased operations.  
6 But we then had another problem, which was that  
7 Unite didn't comply with the order to which it had  
8 effectively agreed, and what Unite were doing was  
9 blocking vehicles, and that led to a contempt  
10 application, because Unite, we said, had breached the  
11 terms of the Court's order. Unite's argument in  
12 respect of that contempt application was to say, "Well,  
13 we know we can't block vehicles at the entrance to the  
14 depots, but we think we can do it further down the  
15 road." That was the basis on which they sought to  
16 defend the contempt application but, having reflected  
17 on it, they realised that that's completely unarguable  
18 and so the position was, at the contempt application,  
19 that Unite admitted that the blocking of vehicles on  
20 the streets of Birmingham in locations at or near, or  
21 even some distance away, from the depots was a breach  
22 of the order made by Mrs Justice Dias. That  
23 application was dealt with by Mrs Justice Jefford in  
24 October of last year. Effectively, it became a plea in  
25 mitigation.

22

1 MR JUSTICE PEPPERALL: Yes. Was it at the hearing — I  
2 think 14 October is the date in my mind?  
3 MR CARR: Correct. Yes, yes.  
4 MR JUSTICE PEPPERALL: Was it at the hearing on 14 October  
5 that there were ten counts or allegations of contempt  
6 that were admitted? Is that the position?  
7 MR CARR: Correct. There's some argument around the edges  
8 as to exactly how many acts were, as it were, formally  
9 conceded, because, if you block a vehicle in two  
10 different locations, is that two breaches or is it one  
11 breach? But, broadly speaking, the position adopted by  
12 Unite was, "Yes, we're very sorry we've broken the  
13 court's order, but we genuinely believe that the order  
14 allowed us to block vehicles away from depots. We now  
15 accept that that's wrong. We're terribly sorry, and  
16 we'll take our punishment, but please don't make it too  
17 severe." That was broadly the position we reached.  
18 MR JUSTICE PEPPERALL: Yes, and obviously I'm then on party  
19 to this application. I took that information from what  
20 Mr Smiles said about it.  
21 MR CARR: Yes.  
22 MR JUSTICE PEPPERALL: I can't recall seeing in the video,  
23 but maybe I missed it, that sort of confirmed that, but  
24 it was set out in Mr Smiles' evidence, and that's the  
25 position, isn't it?

23

1 MR CARR: You haven't seen —  
2 MR JUSTICE PEPPERALL: Is there an exhibit about the  
3 admissions or is it just that Mr Smiles tells me about  
4 it?  
5 MR CARR: No, we haven't exhibited it. With this sort of  
6 application there is a difficult line to draw as to  
7 what you disclose and we could have, for example,  
8 provided all the material that led to the injunction  
9 and led to the contempt application, but we have  
10 summarised it in Mr Smiles' affidavit.  
11 MR JUSTICE PEPPERALL: Yes, I saw his version.  
12 MR CARR: And as counsel who appeared for Birmingham City  
13 Council in the contempt application, I'm able to tell  
14 your Lordship that there's nothing in Mr Smiles'  
15 witness statement that is at odds with the arguments  
16 that I advanced and Unite advanced at the contempt  
17 hearing.  
18 MR JUSTICE PEPPERALL: Yes.  
19 MR CARR: So that's where we end up in terms of the Unite  
20 proceedings. We end up in a situation where Unite have  
21 accepted that they are not entitled to block vehicles  
22 at all, whether in the course of picketing or in the  
23 course of protesting, and the fact that they haven't  
24 done so on a number of occasions led to the order being  
25 made in the first place and led to the contempt

24

1 application. So that's where we are and if we just, as  
2 it were, draw breath for a moment to think what ought  
3 to be the position in the light of the litigation  
4 against Unite and litigation that impacts on those who  
5 are directly involved in this dispute, rather than  
6 having an indirect political and social interest as the  
7 defendants may have.

8 So we then get to section D of my skeleton  
9 argument, page 7, and we say that from the evidence  
10 that I've summarised in paragraph 10, whilst we would  
11 dispute some of the legal analysis that's contained in  
12 the various documents set out under the index to  
13 paragraph 10, it is 100 per cent clear that the  
14 position adopted by the organisations supporting the  
15 direct action by the defendants is based on them  
16 seeking to do that which they accept, albeit through  
17 gritted teeth, that the union and its members cannot  
18 do. So, what's being said is, "Well, we know that as a  
19 matter of law, Unite and its members can't block  
20 vehicles. We're going to do it instead."

21 Of course, it's perfectly open to anybody to have  
22 issues with the regime, if I use that word, probably  
23 shouldn't use that word, but the legal framework  
24 relating to picketing, they can say it's all very  
25 unfair, it shouldn't be, but that it is what it is.

25

1 So, just take you to one example, my Lord, towards the  
2 bottom of page 8, Exhibit 27 to Mr Smiles' affidavit.  
3 It's an organisation called Justice for Refuse Workers  
4 and Cleansers.

5 MR JUSTICE PEPPERALL: I have it.

6 MR CARR: "Good morning and a happy new year for all the  
7 gang in Birmingham" —

8 MR JUSTICE PEPPERALL: Sorry, if you're looking at this,  
9 it's page 83 (inaudible) in the bundle. Yes?

10 MR CARR: Yes:

11 "This week marked a year on strike for the Brum  
12 dust and today, a couple of depots were apparently  
13 prevented from operating by a plucky group of activists  
14 who are unhappy with the actions of the Labour council  
15 there. Get stuck right in, folks."

16 So, I know I'm here as an advocate, but I don't  
17 think I can add to those words. They tend to speak for  
18 themselves. One sees it in repeated messages put  
19 forward by Reel News, by Birmingham Socialist Party, by  
20 the Morning Star. Just looking at CS/26, my Lord, the  
21 Morning Star article, 30 January, "Birmingham has  
22 become the focal point for this support" of major  
23 disputes, refers to the Megapickets, quotes Arthur  
24 Scargill:

25 "What you need is not marches, demonstrations,

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1 rallies or wide associations — all of them are  
2 important. What you need is direct action."

3 Then invites those who are supporters of the  
4 message that's communicated in that article to "embrace  
5 the kind of direct action that we've seen ... in  
6 Birmingham." So what one learns from those articles is  
7 the significant uptick in disruptive activity that  
8 we've seen since the turn of the year is being actively  
9 encouraged and is highly likely to continue, and  
10 possibly intensify, unless there is some intervention  
11 by the Court to call out that which, we say, is plainly  
12 and unarguably unlawful.

13 The next section of the skeleton argument begins  
14 at page 11 and it deals with a similar application  
15 involving bin workers, this time in Sheffield. We put  
16 that before you, my Lord, because a lot of the issues  
17 raised in this application are similar to those that  
18 were dealt with by Mrs Justice Stacey when she handed  
19 down her judgment on 13 August.

20 MR JUSTICE PEPPERALL: Yes.

21 MR CARR: The principle difference between that dispute and  
22 this one is that the Veolia dispute in Sheffield is an  
23 inter-union dispute —

24 MR JUSTICE PEPPERALL: Yes, that's right.

25 MR CARR: — it's a dispute about which union should be

27

1 recognised and it's — Unite are not fighting the  
2 employer, they're fighting the GMB. But other than  
3 that, there are significant factual and legal overlaps  
4 between what went on at Veolia, or at the depots in  
5 Sheffield and what's been going on here: the walking in  
6 small circles at the entrance to depot gates, the  
7 disruption of service provided by Veolia, which led Mrs  
8 Justice Stacey to say, at paragraph 59 of her judgment,  
9 and I've quoted it in paragraph 15 of my outline  
10 submissions:

11 "... Veolia has demonstrated a compelling need for  
12 the protection of its civil rights which is not  
13 adequately met by any other available remedies;  
14 procedural protection for the rights (including  
15 Convention rights) of those persons unknown who might  
16 be affected by it have been built into the order ..."

17 Full and frank disclosure, etc. That paragraph 59  
18 was really a summary of where Mrs Justice Stacey got  
19 to. Of course, the judgment is rather more  
20 comprehensive than that, but paragraph 59 is a useful  
21 summary of why she came to the conclusion that she did.  
22 We say it does provide a useful template for, we say,  
23 the approach and outcome that should apply in this  
24 case.

25 Section F of the outline submission then sets out,

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1 in quite a lot of detail , the numerous occasions on  
 2 which disruption has taken place. You'll see, my Lord,  
 3 that this application is not one that Birmingham City  
 4 Council has rushed to court to make because the first  
 5 incidence of, if I call it non-union activity, so  
 6 defendant activity or non-union activity, goes right  
 7 back to 9 May 2025 at Lifford Lane. Then you'll see,  
 8 on page 13 of my outline submission, that there are  
 9 repeated occasions during the summer and into the  
 10 autumn where depots are blocked.  
 11 Just picking up on one of them, my Lord, you'll  
 12 see at top of page 13 at letter C, there's an incident  
 13 on 17 September.  
 14 MR JUSTICE PEPPERALL: Yes.  
 15 MR CARR: The significance of that, from our perspective, is  
 16 that that is evidence of blocking away from the depot.  
 17 It was blocking that mimicked activity that had  
 18 previously been carried out by Unite but on this  
 19 occasion, Unite, via their solicitors , disclaimed any  
 20 responsibility for it. The significance of activity  
 21 taking place away from the depot, my Lord, is this.  
 22 One of the concerns that you may have about granting an  
 23 order in the terms that are sought by Birmingham City  
 24 Council is that part of the order extends beyond the  
 25 depot entrances and applies to the collection area

1 defined in a map attached to the draft order. Your  
 2 Lordship may say, "Well, I think I ought to think about  
 3 whether restraint at the depot is as far as I need to  
 4 go."  
 5 MR JUSTICE PEPPERALL: Yes.  
 6 MR CARR: This is one reason why we urge you very strongly  
 7 not to stop there, for two reasons. One, we've already  
 8 seen evidence of blocking away from the depot and in Ms  
 9 Carter-Hughes' most recent statement, you'll see that  
 10 blocking away from the depot took place as recently as  
 11 yesterday. So that's point one. Point two, if you  
 12 were to make an order that was confined to blocking at  
 13 depot entrances, then you are sending the message to  
 14 the defendants that they can simply move down the road  
 15 and achieve what they want to at locations away from  
 16 the depot.  
 17 MR JUSTICE PEPPERALL: Yes.  
 18 MR CARR: The other problem with that as a legitimate  
 19 activity , of course, that's the very activity that led  
 20 to Unite effectively conceding that it was in contempt  
 21 of court. Now, I accept that that contempt turned on  
 22 the particular wording of the order, but given that  
 23 Unite blocking vehicles away from the depot entrances  
 24 amounted to a contempt of court, it would -- for want  
 25 of a more forensic expression -- be a funny old world

1 if those who are not direct parties to the dispute can  
 2 do that which would amount to a contempt if Unite and  
 3 its members did it. So, for those reasons, Lord, we do  
 4 invite you to make the order in the two limbs that  
 5 we've sought. One relates directly to depot entrances,  
 6 and the other relates to the collection area covered by  
 7 Birmingham City Council.  
 8 MR JUSTICE PEPPERALL: Can you help me with this? At  
 9 paragraph 17 of your skeleton argument, you say that  
 10 the action taken by the defendants goes back to 9 May,  
 11 and the first two incidents you gave on 9 May and 25  
 12 July. I had thought, from Mr Smiles' evidence, that it  
 13 was the City Council's case that things up until the  
 14 end of July were really Unite, and that the first  
 15 matter involving the defendants was 17 September.  
 16 What's the position on that?  
 17 MR CARR: Those two, the May and July incidents were the  
 18 first two Megapickets.  
 19 MR JUSTICE PEPPERALL: Yes.  
 20 MR CARR: Whilst we sought to suggest to Unite that they  
 21 were responsible for the Megapickets, they disclaimed  
 22 any responsibility for those. I entirely accept, my  
 23 Lord, that you don't have a great deal of evidence  
 24 relating to those two particular days, and they are  
 25 there, as it were, for historical reference only and I

1 don't put any significant reliance on those two events  
 2 for the purposes of --  
 3 MR JUSTICE PEPPERALL: No, indeed. I've followed the  
 4 footnote reference to Mr Smith's statement at paragraph  
 5 47, and it didn't really clarify the issue.  
 6 MR CARR: No, and if I had been here in late July or early  
 7 August making this application, then one would have  
 8 wanted to have made more of those two earlier incidents  
 9 --  
 10 MR JUSTICE PEPPERALL: Yes.  
 11 MR CARR: -- but it's just background. But it's also  
 12 indicative of this, my Lord, and it's a point I made a  
 13 few moments ago, that whilst we're accused of  
 14 "operating a police state," we have tolerated irregular  
 15 activity carried out by the defendants throughout -- or  
 16 "during the course of" is a better expression, during  
 17 the course of the autumn leading up to, funny enough,  
 18 the bottom of page 13. So no application was made --  
 19 and this is a matter of historical fact -- no  
 20 application was made in respect of those activities  
 21 that you see listed from (b) to (i) in our skeleton  
 22 argument on page 13.  
 23 MR JUSTICE PEPPERALL: Certainly, as you summarised here in  
 24 the skeleton argument, the evidence appears to be,  
 25 effectively , a monthly event during the autumn and

1 things stepping up in December and then more in  
 2 January.  
 3 MR CARR: Yes, there looks to be an uptick as we move into  
 4 December and there is even more activity in January.  
 5 MR JUSTICE PEPPERALL: Yes.  
 6 MR CARR: That's not to say, my Lord, that we invite your  
 7 Lordship to make an order that individuals protest once  
 8 a week. We take the view that the right order to make,  
 9 in order to allow Birmingham City Council to carry out  
 10 its waste collection responsibilities, is to make an  
 11 order in the terms that we've sought. But just looking  
 12 at page 14, Lord, and 15, tend to say, never mind the  
 13 quality, feel, or width, but the mere frequency that  
 14 one sees from (j) right through to (z) on page 15 is an  
 15 indication of the increased intensity of the activity  
 16 of the defendants and that, of course, falls to be  
 17 updated on the basis of the second witness statement of  
 18 Ms Carter—Hughes, which gives evidence of further  
 19 blocking taking place as recently as yesterday.  
 20 So, that's the pattern. We have Unite dropping  
 21 out of the picture, we have increased activity by the  
 22 defendants, particularly after the turn of the year,  
 23 and, of course, I don't shrink from the fact that there  
 24 are a lot of people very sympathetic to the position of  
 25 the Unite members who are on strike, and a lot of

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1 people who are thinking this strike has gone on for too  
 2 long and it's all the Council's fault. I'm not going  
 3 to accept that part of the analysis but it does,  
 4 perhaps, explain why the intensity has increased in the  
 5 latter part of 2025 and into 2026. And of course it  
 6 sits alongside, and I don't think it's covered in the  
 7 witness statements but I could be wrong, but Unite, as  
 8 it appears in the press, have just re—balloted which  
 9 will give them the right to continue with industrial  
 10 action through to September of this year.  
 11 MR JUSTICE PEPPERALL: Oh, right. I had May in the  
 12 evidence, but it's now September, is it?  
 13 MR CARR: Yes, it's moved on literally in the last day or  
 14 so, and I picked that up in the press to say I don't  
 15 think it's covered in witness evidence but it's a  
 16 matter of public record that that's when (inaudible).  
 17 MR JUSTICE PEPPERALL: Yes, but if I'm being strict about  
 18 it, the evidence before mid—May probably makes no  
 19 difference.  
 20 MR CARR: If it were a game changer in terms of the outcome  
 21 of the application, then I'd ask your Lordship for  
 22 permission to put in a further witness statement  
 23 evidencing that which is available on the internet —  
 24 MR JUSTICE PEPPERALL: Yes.  
 25 MR CARR: — but subject to that, my Lord, as I say, it is

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1 out there and it's not formally in front of you as a  
 2 matter of evidence, but I've felt it right to just  
 3 bring it to your attention that that does appear to be  
 4 the position, even though you've not had any formally  
 5 exhibited evidence to confirm that which appears from  
 6 press reports.  
 7 MR JUSTICE PEPPERALL: Yes.  
 8 MR CARR: The impact of the defendants' action. I suppose  
 9 it's worth starting from this position. The actions of  
 10 the defendants are intended to have significant  
 11 consequences for the Council and the residents of  
 12 Birmingham. It is intended as a means of forcing the  
 13 employer's hand in terms of settling the dispute. So  
 14 one should hardly be surprised that in terms of its  
 15 intention, it's doing what the defendants want it to do  
 16 in terms of causing disruption. And one can see, my  
 17 Lord, that we are fast reaching a point at which it  
 18 becomes financially and operationally unsustainable for  
 19 Birmingham City Council to deal with the levels of  
 20 activity by the defendants.  
 21 MR JUSTICE PEPPERALL: Yes.  
 22 MR CARR: You will have seen that set out in some detail in  
 23 Mr Smiles' evidence, which I've summarised at paragraph  
 24 18. Of course, it has knock—on consequences, not just  
 25 in terms of the fact that people's bins don't get

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1 collected, but it leads to greater levels of  
 2 fly—tipping, and it makes the environment for those who  
 3 live in Birmingham no doubt much less pleasant than it  
 4 perhaps ought to be.  
 5 The next section of the skeleton argument, my  
 6 Lord, is headed, "ENGAGEMENT WITH WEST MIDLANDS  
 7 POLICE," and of course the reason why that's in the  
 8 skeleton argument is that we recognise that rather than  
 9 coming to court to seek an injunction, we need to  
 10 explore other means by which could be argued to be less  
 11 intrusive means of controlling the activity of Mr  
 12 Richardson and the other defendants. And to summarise  
 13 the position that's set out in detail in Mr Smiles'  
 14 witness statement, the police — and this is not a  
 15 criticism, it's an observation of where they come from  
 16 — they take the view that based on the — or they took  
 17 the view that based on the Supreme Court decision in  
 18 DPP v Zeigler, there was, as it were, a three—hour  
 19 period that should be allowed.  
 20 And of course, bringing that to your attention is  
 21 evidence not only of us looking at alternatives, but  
 22 it's part of the full and frank disclosure obligation  
 23 that we have which we suggest we have complied with.  
 24 But that's broadly the position that, "We're not going  
 25 to do anything for three hours," and so, in terms of

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1 that providing a solution to the operational problems  
2 identified by Mr Smiles, it doesn't cut it. And of  
3 course, when the police make that assessment, they are  
4 not looking at the operational consequences for  
5 Birmingham City Council. They are simply taking the  
6 view as to what they think is a reasonable period with  
7 which this activity should be allowed.

8 The second crucial point about the perspective of  
9 the West Midlands police is that they are approaching  
10 this from the perspective of the criminal law, so, at  
11 what point does this become a criminal obstruction of  
12 the highway? Based on Zeigler, they take the view that  
13 you've got to put up with this. Of course, the police  
14 don't appear to have addressed what is an important  
15 distinction in terms of one's right to protest, an  
16 important distinction between protest in what we  
17 understand protest in lay terms to mean, which is  
18 shouting and demonstrating, etc., protest on the one  
19 hand and direct action on the other.

20 MR JUSTICE PEPPERALL: Yes.

21 MR CARR: And prefacing what I'm about to move onto in terms  
22 of the legal framework, we say that the authorities  
23 recognise that direct action whilst falling within the  
24 scope of Article 11 as being within your right to  
25 freedom of association and assembly, it is not at the

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1 core of the Article 11 right that you should be able to  
2 take direct action designed, intended to cause  
3 disruption.

4 MR JUSTICE PEPPERALL: Well, in fairness to the police view,  
5 peaceful, non-violent protest that is not a breach of  
6 section 137 of the Highways Act, if that's their  
7 assessment, and doesn't constitute the criminal offence  
8 of public nuisance, would plainly not be an arrestable  
9 matter.

10 MR CARR: That's the meaning of it, yes.

11 MR JUSTICE PEPPERALL: So, trespass and private nuisance  
12 would really have to be dealt with by the civil courts,  
13 would they not?

14 MR CARR: Yes. Yes, and as I say, this part of our  
15 submission was not intended to, as it were, have a pop  
16 at West Midlands Police.

17 MR JUSTICE PEPPERALL: No.

18 MR CARR: That's not what it's there for. It's there so  
19 that your Lordship has the full picture.

20 MR JUSTICE PEPPERALL: Yes.

21 MR CARR: But as your Lordship rightly identifies, that is  
22 from the perspective of, "Does this cross the threshold  
23 of criminal activity into which we have to intervene?"  
24 And of course, in assessing whether it crosses the  
25 criminal threshold, police are unlikely to take account

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1 of the fact that 50 per cent of bins in Birmingham  
2 haven't been collected. That's not the analysis that  
3 they can (inaudible).

4 MR JUSTICE PEPPERALL: No.

5 MR CARR: And what's troubling, my Lord, is if you look at  
6 paragraph 19f of my skeleton argument, you will see  
7 that it looks as though — and I won't put it any  
8 higher than this — we are moving to a position where  
9 even the enforcement of the three-hour period is not  
10 something on which we can bank in the future. See the  
11 reference at paragraph 19f.

12 So, we then move on to legal framework. I'll try  
13 and take this as quickly as I can and, in doing so, I'm  
14 keeping an eye on the clock rather than trying to be  
15 unfair to Mr Wingate and Mr Richardson.

16 MR JUSTICE PEPPERALL: Yes.

17 MR CARR: So, just in terms of understanding the union  
18 position, there is prima facie immunity that the union  
19 has that attaches also to picketing, see section 220.  
20 I'm on paragraph 22 of the submission.

21 MR JUSTICE PEPPERALL: Yes.

22 MR CARR: The only people who can picket are those who are  
23 doing so at their own workplace, which is reinforced by  
24 section 224 which is a restriction on secondary action,  
25 which is where you go and picket somebody else's place

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1 of work. So even if those not directly involved in the  
2 dispute took the view that they wanted to come along  
3 and picket, that would almost certainly be secondary  
4 action and unlawful under section 224.

5 MR JUSTICE PEPPERALL: You don't set out 224, do you? It's  
6 not in the authorities bundle.

7 MR CARR: My Lord, you may well be right, and if that is the  
8 case then please accept our apologies. But where it  
9 leads to is a point that I really started with, that  
10 it's beyond argument that Unite cannot do what the  
11 defendants are doing. If we then go over the page, we  
12 have reference to — This is paragraph 26 on page 20.  
13 I'm drawing the Court's attention to the decision of Mr  
14 Justice Ritchie in Valero Energy Ltd v Persons Unknown,  
15 and the reason why that's helpful, my Lord, is you will  
16 see that Mr Justice Richie just set out that list of  
17 factors that need to be considered in the context of a  
18 protest activity injunction application.

19 MR JUSTICE PEPPERALL: Sorry, just before we move away from  
20 that —

21 MR CARR: Before we move away from section 224, I'm told, my  
22 Lord, that it's in page 5 of the authority.

23 MR JUSTICE PEPPERALL: (Inaudible). So sorry. Yes, sorry,  
24 it is there. I've got it up online, I didn't realise  
25 it was there as well. Yes. You made the point in your

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1 skeleton argument that the law in this matter is about  
 2 to change as of 18 February. What impact, if any, does  
 3 that have on the submissions?  
 4 MR CARR: It doesn't have any impact in terms of the  
 5 particular provisions on which I rely. There are  
 6 various changes that have come in. Perhaps the most  
 7 significant one that's not directly relevant is that  
 8 the shelf life for industrial action ballots is going  
 9 to be extended from 6 to 12 months, but in terms of the  
 10 framework that applies to picketing and secondary  
 11 action, that is not changing as a result of the 2025  
 12 Act.  
 13 MR JUSTICE PEPPERALL: You make the point in Footnote 77  
 14 that the obligation is on the trade union to supervise  
 15 picketing.  
 16 MR CARR: Well, maybe that is -- Yes, that perhaps has some  
 17 indirect relevance. So, the position up to then was  
 18 that as a result of the 2016 Trade Union Act, the  
 19 government did introduce a regime pursuant to which --  
 20 and I do use the word "regime" advisably on this  
 21 occasion -- where the union had to have a picket  
 22 supervisor. Picket supervisor had to wear an armband  
 23 saying that they were a picket supervisor, and it was a  
 24 way of fixing the union with knowledge of what was  
 25 going on in the picket line, as well as setting up that

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1 obligation to supervise, so that if the picketing went  
 2 wrong, the employer would have an easy route to go and  
 3 bring an application against the trade union. So  
 4 that's going. In fact, I think pretty much everything  
 5 that was in the 2016 Act --  
 6 MR JUSTICE PEPPERALL: Yes.  
 7 MR CARR: -- this is perhaps one of the occasions in which  
 8 the Labour government kept its promise, in that it said  
 9 it was going to sweep away the restrictions that were  
 10 in the 2016 Act, and it indeed has done so, subject of  
 11 course to some of it being introduced to secondary  
 12 legislation. But that was the only one that I could  
 13 see that had even peripheral relevance to what we're  
 14 dealing with this morning.  
 15 MR JUSTICE PEPPERALL: So, obviously, the injunction remains  
 16 in place?  
 17 MR CARR: Correct.  
 18 MR JUSTICE PEPPERALL: Absent an application to discharge  
 19 will vary the injunction, that's the position as  
 20 between the City Council and Unite but, in any event,  
 21 section 219 and section 220, not 220(a), but 220 --  
 22 MR CARR: Yes.  
 23 MR JUSTICE PEPPERALL: -- will remain in place --  
 24 MR CARR: They will, yes.  
 25 MR JUSTICE PEPPERALL: -- of the deletion of 219(3)(b) --

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1 MR CARR: Yes.  
 2 MR JUSTICE PEPPERALL: -- which is the cross-reference to  
 3 the now-deleted 220(a).  
 4 MR CARR: Correct.  
 5 MR JUSTICE PEPPERALL: Is that the right analysis?  
 6 MR CARR: That is the right analysis, my Lord.  
 7 MR JUSTICE PEPPERALL: Okay.  
 8 MR CARR: And just in terms of understanding where we are in  
 9 terms of the Unite order, that sits until trial or  
 10 further order in the usual way.  
 11 MR JUSTICE PEPPERALL: Yes.  
 12 MR CARR: There is a case management conference which will  
 13 take place -- I think it's in April -- so that action  
 14 proceeds, though no final injunction has been granted,  
 15 obviously, because we haven't got to trial. But  
 16 equally, there's been no application by Unite or  
 17 Thompsons to vary or discharge the terms of the order.  
 18 MR JUSTICE PEPPERALL: Yes.  
 19 MR CARR: Yes, and the other point I wanted to pick up from  
 20 the skeleton argument, my Lord, is one that I've  
 21 already alluded to, and that's this question of what is  
 22 at the core of your Article 11 right, and you'll see in  
 23 paragraph 28, I've made reference, or we've made  
 24 reference to the Cuadrilla Bowland Ltd v Persons  
 25 Unknown decision in the Court of Appeal where,

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1 unsurprisingly, we would say, a distinction is drawn  
 2 between trying to persuade people not to work in  
 3 pursuance of your Article 11 rights versus compelling  
 4 them on the other hand. By blocking lorries which are  
 5 staffed by individuals who are ready, willing and able  
 6 to carry out collection duties, that is an attempt to  
 7 compel them not to collect and, therefore, we say  
 8 there's an impact on the proportionality question as  
 9 direct action is not a core right within Article 11.  
 10 We then, my Lord, get to our checklist of the --  
 11 MR JUSTICE PEPPERALL: Sorry, I'm just following the  
 12 reference there. Paragraph 70 of Zeigler is where you  
 13 get that from, that it's not the core right that's  
 14 protected.  
 15 MR CARR: Yes, but it's also in Cuadrilla, and it all stems  
 16 back --  
 17 MR JUSTICE PEPPERALL: Sorry, I was just following the  
 18 reference.  
 19 MR CARR: Yes. I've seen the references and I think it's  
 20 right. It also appears in Cuadrilla and it goes back  
 21 to a decision of the European Court in a case called --  
 22 and I'll get the reference in a moment. Perhaps I  
 23 won't.  
 24 MR RICHARDSON: Can I ask how long the advocate intends to  
 25 be, because he's been on his feet an incredibly long

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1 time?  
 2 MR CARR: Trust me, Mr Richardson, by my standards I've been  
 3 pretty quick. I'm trying to go --  
 4 MR JUSTICE PEPPERALL: We can find out how long he's likely  
 5 to take.  
 6 MR CARR: I'm trying to be fair to you so that you have a  
 7 proper understanding of the points that I make, whilst  
 8 keeping an eye on the clock, and I expect that I will  
 9 be finished within the next 10 or 15 minutes.  
 10 MR JUSTICE PEPPERALL: There we go. Yes, sorry, I diverted  
 11 you. You were going to --  
 12 MR CARR: Yes, I've found the name of the case. It's a case  
 13 called Kudrevicius and Ors v Lithuania.  
 14 MR JUSTICE PEPPERALL: Which was dealt with a paragraph or  
 15 so before para 70, I think, anyway in Zeigler.  
 16 MR CARR: Yes. That's where it all stems from. The  
 17 domestic authorities have picked up on that European  
 18 decision.  
 19 MR JUSTICE PEPPERALL: Yes.  
 20 MR CARR: Conscious of the fact that I think Mr Richardson  
 21 has probably heard enough of me, I'm going to take the  
 22 Ritchie checklist briefly.  
 23 MR JUSTICE PEPPERALL: Let's work out who the audience is  
 24 here. It's not just what Mr Richardson needs. It's  
 25 also what you need properly to say to me to persuade me

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1 of your client's application for an injunction and any  
 2 questions I need to be clarified --  
 3 MR CARR: Of course. Of course.  
 4 MR JUSTICE PEPPERALL: -- (inaudible) what it takes.  
 5 MR CARR: Yes. I'm, again, trying to steer a path between  
 6 the various competing elements to this hearing. So let  
 7 me just pick up on the checklist. So just in order  
 8 that everybody understands it, that checklist that runs  
 9 from A to O in paragraph 29 is based on a checklist --  
 10 I've called it a "checklist," a list of relevant  
 11 factors identified by Mr Justice Ritchie in a case  
 12 called Valero, and he came up with that list having  
 13 reviewed the relevant authorities on injunctions  
 14 against persons unknown in the context of a protest.  
 15 We say we have identified relevant causes of action.  
 16 The one that I ought to flag up is at A3: there is  
 17 limited evidence of trespass. I haven't got the  
 18 reference unfortunately, my Lord, but I will give it to  
 19 you in reply as needs be, but we accept that there is  
 20 limited evidence that the defendants have actually  
 21 crossed the physical line into land occupied by --  
 22 MR JUSTICE PEPPERALL: There's no painted white line as in  
 23 Veolia (Sheffield Environmental Services Ltd & Ors v  
 24 Persons Unknown)?  
 25 MR CARR: No, in Valero they've painted one.

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1 MR JUSTICE PEPPERALL: I saw that.  
 2 MR CARR: Yes, yes. Duty of full and frank disclosure. We  
 3 say we've done that, and I address that as a separate  
 4 matter in terms of the law of paragraph 31.  
 5 MR JUSTICE PEPPERALL: You do.  
 6 MR CARR: Evidence to prove the claim. There may be some  
 7 argument as to what the appropriate test is and I think  
 8 I would have to accept that on the authorities you've  
 9 got to do a little bit better than American Cyanamid v  
 10 Ethicon but we say the evidence is overwhelming in  
 11 terms of establishing a breach of the law.  
 12 MR JUSTICE PEPPERALL: Well, help me a bit further with  
 13 that. If Article 10 is engaged, then isn't section 12  
 14 the Human Rights Act in play?  
 15 MR CARR: Yes, but the question then is how far does that  
 16 take you in terms of understanding the level which the  
 17 claimants have to reach in terms of establishing their  
 18 evidence?  
 19 MR JUSTICE PEPPERALL: Yes. It's beyond Cyanamid though  
 20 once you've reached section 12.  
 21 MR CARR: It is, and I've conceded that, my Lord. It's  
 22 beyond Cyanamid --  
 23 MR JUSTICE PEPPERALL: Should I apply the section 12 test?  
 24 MR CARR: Yes, my Lord, and I'll give you the reference if  
 25 you need it. It's not in the submissions, for which my

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1 apologies. There is some authority for the proposition  
 2 that even at, as it were, the quasi-interim stage,  
 3 which we're at, you've got to show a real prospect, as  
 4 it were a better than 50 per cent chance, of succeeding  
 5 ultimately in your action.  
 6 Point D, no realistic defence: this is an activity  
 7 that is not defensible on any view. Point E, there is  
 8 compelling justification: as I've emphasised during the  
 9 course of my submissions, this is not an application  
 10 that Birmingham City Council brings with any relish.  
 11 It's not an application that they have rushed to make.  
 12 It is an application that has effectively been forced  
 13 upon them by the increasing levels of activity at depot  
 14 gates. We say convention-based arguments are bound to  
 15 fail, and I've given a list of reasons why that is so.  
 16 Then going over the page, damages are plainly not  
 17 an adequate remedy, before you even get to the point E:  
 18 if you were able to assess what the damages were, would  
 19 they be recoverable from the defendants? But of course  
 20 this application is brought by the Council, mindful of  
 21 the position of the residents in Birmingham whose bins  
 22 are not getting collected as a result of the activities  
 23 of the defendants. It has not been possible to  
 24 identify individuals. Mr Richardson is the first  
 25 individual who has made himself known. Whether he

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1 needs to be added as a named defendant, we will reflect  
 2 on whether that's appropriate.  
 3 Is the relevant prohibition clear? We say it is.  
 4 It mirrors the torts. It's got clear geographical  
 5 boundaries and I accept that the geographical  
 6 boundaries could be said to be substantial in this  
 7 case, but it is clearly defined and if you don't apply  
 8 it to the parts of Birmingham that waste collection  
 9 activities are intended to reach, then you just leave  
 10 open blocking of individual lorries on individual  
 11 routes anywhere across the city. We don't seek a  
 12 quasi-final injunction. We've asked for, effectively,  
 13 a review after six months.  
 14 MR JUSTICE PEPPERALL: You'll have to help me with that.  
 15 You say it's not a final injunction but if you look at  
 16 your claim form in the first bundle, the claim itself  
 17 is for an injunction for a period of six months.  
 18 MR CARR: Yes.  
 19 MR JUSTICE PEPPERALL: In other words, what you're seeking  
 20 today is the whole relief sought in the claim form,  
 21 isn't it?  
 22 MR CARR: Yes, my Lord.  
 23 MR JUSTICE PEPPERALL: To what extent, query, does that  
 24 affect the analysis?  
 25 MR CARR: Well, I think, on reflection, we may ultimately be

1 seeking an injunction for a period in excess of six  
 2 months. What one hopes is that six months does the job  
 3 and by that time there is at least some prospect of the  
 4 underlying industrial dispute being resolved. We  
 5 wouldn't want to issue a further claim form and so I  
 6 suspect what the position would be, my Lord, is that we  
 7 would be seeking almost certainly in our particulars of  
 8 claim to go beyond what is set out in the claim form in  
 9 terms of the period of six months but, fingers crossed,  
 10 hoping that six months would be enough. But your  
 11 Lordship's entirely right to make that point, it does  
 12 coincide with what's set out in the claim form, but I  
 13 think I'm right in saying that we would not ultimately  
 14 wish to confine ourselves to a period of six months if  
 15 we ended up with the risk of this activity continuing  
 16 or resuming six months after the date of any order that  
 17 you make.  
 18 Cross-undertaking in damages has been dealt with.  
 19 Full and frank disclosure: my Lord, what I've done or  
 20 what we've done at paragraph 31 is to set out those  
 21 points that we think might be taken against us from a  
 22 matter of, as it were, legal analysis or practical  
 23 analysis as to the scope of the order and given reasons  
 24 why we think those arguments would fail. I invite you  
 25 to view paragraph 31 both in procedural and substantive

1 terms: procedural terms in that it's part of the  
 2 discharge of the duty, substantive terms in that it  
 3 explains why, even if the defendants were legally  
 4 represented, arguments which they might wish to advance  
 5 would not be taken very far.  
 6 The last part of the submission -- and I see I'm  
 7 about to be on time as promised, 10 or 15 minutes from  
 8 when I said I would be 10 or 15 minutes -- we have  
 9 asked for dispensation of service in relation to the  
 10 claim form -- that's CPR 6.16 -- other documents being  
 11 the application notice and the order -- CPR 6.28 -- and  
 12 foreshadowing the possibility of a contempt application  
 13 if the order is breached -- that's CPR 81.4(2)(c) --  
 14 and that is dealt with in the application which was  
 15 issued after the application for an injunction, and I  
 16 think you've also confirmed that you have that.  
 17 MR JUSTICE PEPPERALL: I have. I appreciate you're trying  
 18 to conclude your submissions, but in respect to that,  
 19 Mr Justice Nicklin refused to make an order under Rule  
 20 6.16 in *Canada Goose v Persons Unknown*. It was upheld  
 21 in the Court of Appeal. Can you help me with whether  
 22 or not the law has moved on as a result of subsequent  
 23 decisions?  
 24 MR CARR: Well, I would suggest it's ultimately --  
 25 MR JUSTICE PEPPERALL: Or why I should make (inaudible).

1 MR CARR: It's ultimately a matter of discretion, my Lord,  
 2 if you're satisfied that it's appropriate to dispense  
 3 with service on the individual facts and, of course,  
 4 I'm not sure that your Lordship has the precise order  
 5 that was made in *Veolia*, but it was an order that was  
 6 made by Mrs Justice Stacey in *Veolia*.  
 7 Effectively, we've got two alternatives, my Lord.  
 8 We either go down the route of substituted service, or  
 9 we go down the route of dispensed with service. We've  
 10 pitched for this. If that is wrong, then we would ask  
 11 for appropriate orders for substituted service,  
 12 although I would have to just check what are the  
 13 relevant provisions of the CPR that deal with  
 14 substituted of service rather than dispensation of  
 15 service.  
 16 I think perhaps the point to make is this, my  
 17 Lord, that essentially it's the same evidence, it's the  
 18 same steps taken to draw the attention of the  
 19 application to the protesters and, without wishing to  
 20 sound glib, in a sense we would be content with either  
 21 one, but we would suggest that we need one of them.  
 22 And whilst we've gone for dispensation of service in  
 23 tracking what was done in *Veolia*, I don't think I could  
 24 stand in the way of your Lordship saying, "Well,  
 25 actually it's more appropriate that this is dealt with

1 by way of substitution rather than" --

2 MR JUSTICE PEPPERALL: Sorry, I think I need more help on

3 this. The Court of Appeal, as I say, upheld what Mr

4 Justice Nicklin did in Canada Goose. I haven't got to

5 the bottom, because I've been focusing on looking at

6 lots of other material, precisely the basis upon which

7 the 6.16 argument failed in Canada Goose, whether

8 that's plainly distinguishable from our situation, or

9 whether or not really you should have gone the 6.15

10 route.

11 MR CARR: Well, my Lord, can I come back in reply on that

12 point, because it's something that I want to just

13 consider whilst --

14 MR JUSTICE PEPPERALL: You can. I won't treat it as a

15 reply, because you won't have made your initial

16 statement on it.

17 MR CARR: Yes. Yes.

18 MR JUSTICE PEPPERALL: So I'll hear either Mr Richardson or

19 Mr Wingate if they want to address me further on that

20 point after you've done so.

21 MR CARR: Yes, of course.

22 MR JUSTICE PEPPERALL: But, yes, at the moment, I need a

23 little more help on that.

24 MR CARR: I think the primary submission would be this, my

25 Lord, that substituted service is appropriate in

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1 circumstances where you are satisfied that the

2 substituted mechanism has achieved its task. So you've

3 got a defendant who's keeping their head down, but you

4 manage to mail them and get the document to them.

5 MR JUSTICE PEPPERALL: Yes, which works better with a finite

6 pool of people, a finite and identified group of

7 people.

8 MR CARR: Exactly that, my Lord, but where you're dealing

9 with an inchoate group, dispensation of service on the

10 basis of the factual material relied on by the claimant

11 is the better route, but I will consider the point when

12 I am no longer on my feet.

13 MR JUSTICE PEPPERALL: Yes. Come back to me in due course

14 with respect to that. The leaflet that has been handed

15 out, can you show me where the exhibit for that leaflet

16 is?

17 MR CARR: I would expect it to be in the second affidavit.

18 MR JUSTICE PEPPERALL: There's a document saying, "Notice of

19 Injunction" or something of that sort.

20 MR CARR: Yes.

21 MR JUSTICE PEPPERALL: Is that what's meant by "the

22 leaflet"?

23 MR CARR: Yes. Again, I'm going to have to -- unless

24 somebody behind me is immediately able to lay their

25 hands on it, I'm going to have to come back to your

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1 Lordship on that, because I haven't got the page that

2 the leaflet is on. My expectation is that it's

3 attached either to the exhibit to Ms Carter--Hughes'

4 first statement or, if not, it's attached to the second

5 statement. But if it's not, too much of a --

6 MR JUSTICE PEPPERALL: Okay, I've got the second exhibit

7 here.

8 MR CARR: Ah, there we go. Yes, it's DCH2/37, page 61 of

9 the exhibit to the second statement.

10 MR JUSTICE PEPPERALL: Yes, that's the document I was

11 thinking of. That's what's meant by the leaflet, is

12 it?

13 MR CARR: It is because, as your Lordship knows, there were

14 sort of two stages to the notification process. One is

15 we're going to make an application, and the second

16 stage was "This is now one you're making."

17 MR JUSTICE PEPPERALL: Yes, so DCH2, page 61. Yes? Thank

18 you. Are there any other matters other than the things

19 you were coming back to me on?

20 MR CARR: No.

21 MR JUSTICE PEPPERALL: No, thank you.

22 MR CARR: I think it's just the thing, actually.

23 MR JUSTICE PEPPERALL: (Inaudible).

24 MR CARR: It's just the dispense versus substitution point.

25 MR JUSTICE PEPPERALL: I think it is. Thank you. Mr

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1 Richardson?

2 MR RICHARDSON: Alistair would like to go first --

3 MR JUSTICE PEPPERALL: By all means.

4 MR RICHARDSON: -- and I will go second.

5 MR JUSTICE PEPPERALL: By all means. Mr Wingate?

6 Submissions by Mr WINGATE

7 MR WINGATE: Okay, so, your Honour, it was said a long time

8 ago in a South African court, your Honour, that the law

9 and justice are at the best distant cousins, and

10 sometimes they don't actually talk at all. The reason

11 I want to talk to you, really, is to talk about the

12 justice aspect of what's actually happening here,

13 because I've been looking through everything that

14 Birmingham City Council has to say about protesters'

15 disruption of services, but there's nothing whatsoever

16 about what this dispute is actually about and why

17 people are doing what they're doing, your Honour.

18 I've lived in Birmingham, I've lived around

19 Sparkbrook, Sparkhill and Handsworth for the last 24

20 years, right, and we have lived with piles of rubbish,

21 piles -- neglect, accumulation of rubbish, and the

22 ongoing erosion of council services and I would argue

23 that it's in the public interest for you to consider

24 what the public interest actually is in these

25 circumstances because, I would argue, it's in the

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1 public interest that we have proper -- properly-paid  
 2 bin workers. They're facing a pay cut of up to £6,000;  
 3 some of them are going to lose their homes. So, you  
 4 may have heard of this so far but nevertheless, it's a  
 5 huge attack on workers and the reason that they were  
 6 striking in the first place is to try and stop that  
 7 attack. They weren't even asking for a pay rise, they  
 8 were simply trying to prevent a massive pay cut.  
 9 At this time, the council is talking about going  
 10 down to bi-weekly collections now. Once every two  
 11 weeks, we're faced with a rubbish collection in  
 12 Birmingham in a city where, before the bin strike, we  
 13 were also getting really grotesque accumulations of  
 14 rubbish already. So the council has not been investing  
 15 in bin services but it has been investing -- it's quite  
 16 happy to invest, your Honour -- and this is absolutely  
 17 relevant -- in paying unelected commissioners massive  
 18 sums of money to supervise Birmingham's budget. It's  
 19 quite happy to pay the chief executive of Birmingham  
 20 City Council a quarter of a million pounds or more in  
 21 wages, at the same time making huge cuts to the  
 22 conditions of workers, and I think what happens with  
 23 the bin workers has a wider knock-on effect in society  
 24 because the more that our services, our public  
 25 services, get eroded and the council puts in place

1 privatised services, it has a massive effect on the  
 2 quality -- on our quality of life.  
 3 So really, one of the arguments put by Mr Carr is  
 4 that the sauce for the Unite goose should be sauce for  
 5 the people's gander. In other words, there's been  
 6 particular laws and injunctions imposed on the union --  
 7 the Unite union workers and, therefore, the public  
 8 should have no right to protest either. Well, I would  
 9 argue that because of what I said previously, it is in  
 10 the public interest to actually ensure that this  
 11 dispute comes to a proper, properly-agreed end, because  
 12 we are the ones who are getting, you know, rubbish  
 13 piling up.  
 14 So, we cannot -- And we can talk about the letter  
 15 of the law and the spirit of the law, right? Now,  
 16 again, we can talk about the letter of the law in which  
 17 the way the law might be broken. We might also  
 18 question what "trespass" actually means on public land.  
 19 The council depots, to my knowledge, right, are  
 20 actually funded through council taxes. This is a  
 21 council tax which the council is now proposing to raise  
 22 by -- at least by something like 4 to -- 4 to 4.5 per  
 23 cent, right? So there's a huge disparity happening in  
 24 the council and with everybody -- with all -- the dogs  
 25 bark it in the street, that this council is already

1 highly dysfunctional with its management of money. So  
 2 the idea that there's no realistic defense being put  
 3 there, the defence that I'm putting is one of social  
 4 justice, your Honour, the one of public decency, the  
 5 one of actually paying workers what they deserve to get  
 6 paid, and also for the public to get a proper, decent  
 7 public service.  
 8 And also, what about the right to protest? What  
 9 about the right to protest, as I said, on what is  
 10 effectively council land, which is funded by the  
 11 public? There isn't -- There surely must be something  
 12 to be considered by that. And we cannot consider the  
 13 law to be something that is completely divorced from  
 14 prevailing social and political circumstances. We  
 15 can't pretend that they're just regulations that get  
 16 made up, and somehow, there's no connection between the  
 17 way laws get put in place and enforced in society, and  
 18 what governments want to happen. Unfortunately, the  
 19 culture at the moment is that governments are still  
 20 enforcing laws and putting laws in favour of private  
 21 corporations and in favour of privatisation, in effect,  
 22 a crony culture that runs this council and that runs a  
 23 much wider society as well.  
 24 So, I would argue that you actually have to  
 25 consider this, that you have to consider the

1 fundamental injustice of what's being done to these  
 2 workers and the fact that the truth is, I think one of  
 3 the reasons why the council has been so hesitant to  
 4 impose these laws so far, it's because a lot of -- they  
 5 know very well that a lot of people who live in this  
 6 city support the bin workers. They support the bin  
 7 workers because most people understand what it means  
 8 for ordinary people, people who have to pay bills and  
 9 mortgages, people who are trying to raise kids, to have  
 10 massive pay cuts. It's not just about the bin workers.  
 11 It's about all of us and how we get treated in a  
 12 society. So I would ask you to consider that. I would  
 13 ask you to, you know, ask what has the complaint  
 14 actually got to say about this, your Honour?  
 15 MR CARR: Apologies --  
 16 MR JUSTICE PEPPERALL: Sorry, one second.  
 17 MR CARR: I'm very apologetic for interrupting.  
 18 MR RICHARDSON: We didn't interrupt your contribution.  
 19 MR JUSTICE PEPPERALL: No, let's find out why --  
 20 MR CARR: Just wait until you hear what I'm going to say,  
 21 please, before you --  
 22 MR RICHARDSON: Can I object to this interruption?  
 23 MR JUSTICE PEPPERALL: No, no. One at a time, please.  
 24 MR CARR: I've been reminded --  
 25 MR JUSTICE PEPPERALL: Just a second, Mr Carr. I'm going to

1 hear what the objection is, then I will come back.  
 2 MR CARR: It's not an objection at all, it's just a reminder  
 3 that I completely forgot about the poor transcribers,  
 4 and we haven't had a break.  
 5 MR JUSTICE PEPPERALL: Oh gosh.  
 6 MR WINGATE: The what, sorry?  
 7 MR JUSTICE PEPPERALL: The transcribers.  
 8 MR CARR: There are transcribers on the link transcribing  
 9 the hearing.  
 10 MR JUSTICE PEPPERALL: Somebody's making a note of all of  
 11 this. It wasn't --  
 12 MR CARR: That was all -- That was it.  
 13 MR JUSTICE PEPPERALL: Thank you. That was the purpose of  
 14 the interruption.  
 15 MR CARR: Yes.  
 16 MR JUSTICE PEPPERALL: So he wasn't seeking to prevent you  
 17 from making your submission.  
 18 I am going to take a break, but that simply means  
 19 that you'll have agreed, then, you'll be able to  
 20 continue these submissions in a few moments. We'll  
 21 take a 10-minute break.  
 22 (Short break)  
 23 MR JUSTICE PEPPERALL: Thank you. Mr Wingate?  
 24 MR WINGATE: Yeah. Well, I'll -- I'll finish by saying --  
 25 Sorry. Article 10 of the Human Rights Act --

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1 MR JUSTICE PEPPERALL: Yes.  
 2 MR WINGATE: -- really doesn't, sort of, make a -- as far as  
 3 I can see, doesn't make a very specific distinction  
 4 between protest and direct action.  
 5 MR JUSTICE PEPPERALL: Yes.  
 6 MR WINGATE: So we have to ask ourselves, I mean -- And the  
 7 restrictions on what -- what people's rights are the  
 8 government can consider, in its own words, territorial  
 9 disorder or crime, protection of health or morals.  
 10 But this really goes back to my earlier argument,  
 11 is that we've lived with filth in Birmingham for a very  
 12 long time, and I'm -- this is getting much worse.  
 13 Obviously, it's becoming much worse because of the bin  
 14 strike, but the truth is it's -- The Council's own  
 15 approach is actually a threat to -- to public health in  
 16 itself. It's already given us years of neglect, and  
 17 accumulation of rubbish and under a -- under a  
 18 bi-weekly or a two-weekly collection service and a  
 19 diminished public service, it will also give us a --  
 20 additional health problems.  
 21 So, if people are -- are protesting, or -- or  
 22 blocking or taking direct action because of that, how  
 23 does -- why is that breaching Article 10 of the Human  
 24 Rights Act, we have to ask? But that's the end of my  
 25 contribution. Thank you for listening to me, your

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1 Honour.  
 2 MR JUSTICE PEPPERALL: Thank you. Mr Richardson?  
 3 Submissions by Mr RICHARDSON  
 4 MR RICHARDSON: Yeah. As I said earlier, I'm Stuart  
 5 Richardson, retired teacher of physics and mathematics,  
 6 and --  
 7 MR JUSTICE PEPPERALL: Yes.  
 8 MR RICHARDSON: -- speaking on my personal capacity, we're  
 9 not here representing Unite or anything like that.  
 10 MR JUSTICE PEPPERALL: No.  
 11 MR RICHARDSON: But I just want to return to this question  
 12 of the police state. See, I think that your ruling  
 13 could have serious implications for the democratic  
 14 rights of people to peacefully protest which is a very  
 15 long, century-old sort of tradition in British  
 16 politics. And what particularly worried me about the  
 17 advocate's statement was this talk about not just the  
 18 stopping people from being outside the immediate gate,  
 19 but the surrounding area.  
 20 Now, I have been to a number of these protests,  
 21 one at the Atlas, and there was a range of people,  
 22 possibly 70 or 80 people in the roads (inaudible)  
 23 peacefully making their views known, and a small group  
 24 of people circulated around the entrance. Now, at no  
 25 time did they physically interrupt any individual or

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1 threaten any individual or stop the lorry coming out.  
 2 There was an agreement, and it's up to the people  
 3 running the bins to make that agreement, saying that  
 4 they would stagger their exit. And the people who were  
 5 circling around withdrew every 15 minutes and a bin  
 6 lorry went out.  
 7 Now, at no time did the police intervene at all  
 8 and say an offence was being committed. There's, in  
 9 the documentation, a great deal of talk about blocking  
 10 it, but there's no reference to physically blocking it,  
 11 you know? There's no -- Or any sort of violence  
 12 against the lorries. So surely, under the law, there  
 13 would be possibilities for the police to intervene if  
 14 somebody did that, but nobody did that. They've  
 15 engaged in peaceful protests of walking in front of  
 16 lorries, etc., which I think is a very important  
 17 democratic right to defend, you know? There's a long  
 18 tradition, and you look at the American civil rights  
 19 movements, a very peaceful but deliberate direct action  
 20 which I think has to be retained in this situation.  
 21 I think Alistair's focus on the broader general  
 22 situation is the utter disgrace Birmingham Council have  
 23 not resolved this in 12 months. The Birmingham Mail,  
 24 who are represented here, have long coverage of the  
 25 disgusting levels of rubbish being left on our streets,

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1 etc., and what is the response of the Birmingham  
 2 Council? Is it to say, "Well, it's not a good idea to  
 3 cut people's wages by 8,000 but spend a fortune," I  
 4 mean, this must have cost tens of thousands of pounds,  
 5 this legal case, "employing expensive lawyers to engage  
 6 in a repressive move to limit people's democratic  
 7 rights."  
 8 So, I think it's very important that this order is  
 9 not implemented and that the democratic rights of  
 10 people like myself to peacefully protest to actually  
 11 support the bin workers is retained, and I think that  
 12 -- Yes, I think may -- Yeah, I -- I think I'll sort  
 13 of conclude by that, that I think there are very  
 14 serious implications for the democratic rights of  
 15 peaceful protest. There is no evidence being presented  
 16 that violent disorder, physical threats, or physically  
 17 stopping the lorries have actually carried out, and  
 18 that's not occurred. There have been peaceful  
 19 demonstrations, some completely away from the  
 20 entrances, some circulating in the entrances, and I  
 21 think that should -- that right to engage in that  
 22 peaceful protest should be maintained and supported by  
 23 this Court.  
 24 MR JUSTICE PEPPERALL: Thank you.  
 25 MR RICHARDSON: Unfortunately, I have to leave fairly soon,

1 you know.  
 2 MR JUSTICE PEPPERALL: No, but that's everything you wanted  
 3 to say? Yes.  
 4 MR RICHARDSON: Yes, that's right.  
 5 MR JUSTICE PEPPERALL: Thank you. Mr Carr, do you want to  
 6 first deal with the additional matters, if you're in a  
 7 position now to deal with them, (inaudible).  
 8 Submissions by Mr CARR  
 9 MR CARR: Yes. My Lord, Canada Goose, where the Court deals  
 10 with the issue of dispensation, is paragraph 49.  
 11 MR JUSTICE PEPPERALL: 49 in the Court of Appeal?  
 12 MR CARR: Yes, Court of Appeal. Canada Goose -- One part  
 13 of the argument was plainly unsustainable, which is  
 14 they had the identities of 121 defendants and still  
 15 wanted to dispense with service. So the Court,  
 16 unsurprisingly, took the view that that didn't satisfy  
 17 the test of exceptionality.  
 18 MR JUSTICE PEPPERALL: Yes.  
 19 MR CARR: Then at paragraph 50 --  
 20 MR JUSTICE PEPPERALL: Sorry, was that what 49 was dealing  
 21 with? Yes.  
 22 MR CARR: Yes.  
 23 MR JUSTICE PEPPERALL: 121 separate individuals were  
 24 identified.  
 25 MR CARR: So one can understand why that wasn't something

1 that the Court was prepared to go along with, but of  
 2 course there was this wider group in respect to whom  
 3 they hadn't identified, and you'll see from the last  
 4 couple of sentences on paragraph 49, the Court says:  
 5 "It is asking for dispensation from service on any  
 6 of the Persons Unknown respondents to the proceedings,  
 7 even if they have never been served with the order and  
 8 whether or not they know of the proceedings. There is  
 9 simply no warrant for subjecting all those persons to  
 10 the jurisdiction of the court."  
 11 Then at paragraph 50, they say:  
 12 "Furthermore, it would have been open to Canada  
 13 Goose at any time since the commencement of the  
 14 proceedings to obtain an order for alternative service  
 15 which would have a greater likelihood of bringing  
 16 notice of the proceedings to the attention of  
 17 protesters at the shop premises ..."  
 18 So, from that, one can see they're dealing with a  
 19 single location. Here we're dealing with multiple  
 20 locations, and indeed we also have instances of  
 21 blocking away from depots, and from what I would  
 22 describe as an amorphous or incoherent group. There  
 23 isn't a defined group of defendants; it's whoever feels  
 24 on the particular day of a similar mindset to Mr  
 25 Wingate and Mr Richardson, and I think --

1 MR JUSTICE PEPPERALL: Was it not an amorphous group in  
 2 Canada Goose?  
 3 MR CARR: Well, it's the single shop premises and of course  
 4 you can't say that it -- nobody takes the register like  
 5 it's school in the morning as to who's there, but I  
 6 think where one comes back to, my Lord, is this. That  
 7 in terms of the draft order we see, we would  
 8 respectfully suggest that these steps relied upon for  
 9 dispensation of service could equally be plugged into  
 10 CPR 6.15 as alternative service.  
 11 MR JUSTICE PEPPERALL: Yes.  
 12 MR CARR: I think I made the point before in my earlier  
 13 submissions that, in a sense, it doesn't matter to  
 14 Birmingham City Council what label you put on the  
 15 activity of notification. The activity itself would be  
 16 exactly the same, unless your Lordship took a different  
 17 view. I guess part of the difficulty that one may have  
 18 with going down the 6.15 route is that that will then  
 19 trigger the obligations that apply under 6.15(4), which  
 20 is, as well as there being a specified method in place  
 21 of service, which doesn't present any difficulty,  
 22 there's a date of deemed service, which again may or  
 23 may not present a difficulty, but then there are  
 24 defined periods for filing acknowledgement of service,  
 25 admission or defence, which seems rather inappropriate

1 in the circumstances of a protest of this sort. So we  
 2 say, one, there are good reasons why 6.16 is the better  
 3 route than 6.15 but, if your Lordship's against me on  
 4 that, then we rely on the same methods for the purposes  
 5 of 6.15 as we would rely on for the purposes of 6.16.  
 6 MR JUSTICE PEPPERALL: I mean, this isn't a novel issue, and  
 7 there are plenty of these persons unknown injunctions  
 8 —  
 9 MR CARR: There are, yes.  
 10 MR JUSTICE PEPPERALL: — of sort, and obviously the  
 11 matter's been on the way to the Supreme Court in fact,  
 12 and there have been a number of such injunctions  
 13 granted since the Wolverhampton City Council v London  
 14 Gypsies and Travellers case. I mean, are you able to  
 15 help me, either by reference to — I've got the White  
 16 Book commentary here, either by reference to the White  
 17 Book commentary or any of these cases as to,  
 18 notwithstanding what was said in Canada Goose, the  
 19 practical answer to this issue?  
 20 MR CARR: Well, I think what one takes from Canada Goose is  
 21 that at the end of the day it is, to some extent, a  
 22 fact-specific exercise and that you're looking at the  
 23 particular form of protest and how individuals might  
 24 have the proceedings drawn to their attention. So the  
 25 purpose of 6.15 is to deal with situations in which the

1 ordinary methods of service are not appropriate and,  
 2 therefore, you come up with an alternative. But if  
 3 that alternative on the facts of the particular case  
 4 are not going to produce the result, then one diverts  
 5 down the CPR 6.16 route. I think it's right that I  
 6 accept that, as it were, the hierarchy should be that  
 7 you look at — and this is where I'm going to get a  
 8 kicking at the end of the case because myself and my  
 9 solicitor had a slight difference of view as to which  
 10 way to go, but I think by now we have to accept that  
 11 the hierarchy would be that you only move on to 6.16 if  
 12 you're satisfied on a particular fact that 6.15 doesn't  
 13 provide an appropriate route.  
 14 So I think we start from the position that  
 15 ordinary forms of service are not going to work. So  
 16 see, for example, Mr Smiles' statement at paragraph 97  
 17 where he talks about people being masked and not  
 18 knowing the identities, so that precludes the normal  
 19 methods of service. So one has to look at some  
 20 alternative way on which the proceedings can proceed  
 21 and you have two gateways, 6.15 or 6.16, and, again, I  
 22 accept that if 6.15 does the job, then you are unlikely  
 23 to, at the same time, be able to establish the level of  
 24 exceptionality that's required for 6.16.  
 25 MR JUSTICE PEPPERALL: Yes.

1 MR CARR: But, as they say, ultimately, it is a matter for  
 2 the Court. The only other point that I wanted to make,  
 3 subject to any questions that your Lordship has, is  
 4 that I don't disagree with a number of things said by  
 5 Mr Richardson. So firstly, there have been no physical  
 6 attacks on lorries and no physical attacks on anybody  
 7 else. Secondly, that on occasion, when they are minded  
 8 to do so, there has been staggered release of vehicles  
 9 and that's —  
 10 MR JUSTICE PEPPERALL: Yes. There are a number of examples  
 11 of that in the video evidence.  
 12 MR CARR: There are a number of examples of that and I don't  
 13 pretend that it's always a constant block for three  
 14 hours, but even the staggering effect, of course, one  
 15 every 15 minutes, puts lorry number four the best part  
 16 of an hour behind deployment time, lorry number eight  
 17 the best part of two hours behind deployment time,  
 18 lorry number 12 the best part of three hours behind  
 19 deployment time, just looking at the chronology of how  
 20 it works. But even if that were, as it were, some  
 21 reason for not granting the order, of course that's not  
 22 the complete story. I take you back, my Lord, and it  
 23 is, we say, a significant indication of what's going on  
 24 here and what the potential is going forward, I take  
 25 you back to Exhibit 23 to Mr Smith's affidavit, which

1 is the Reel News video for 12 January.  
 2 MR JUSTICE PEPPERALL: Exhibit 23?  
 3 MR CARR: Yes, I believe — RS23 it should be.  
 4 MR JUSTICE PEPPERALL: Oh, RS23, sorry.  
 5 MR CARR: Yes.  
 6 MR JUSTICE PEPPERALL: Oh right, it's (inaudible).  
 7 MR CARR: They can't picket their own depots because of an  
 8 injunction from the Council. That comes in the  
 9 narrative on the video.  
 10 MR JUSTICE PEPPERALL: Is that the longer Facebook clip —  
 11 MR CARR: Yes. I mean it says —  
 12 MR JUSTICE PEPPERALL: — with a song in it?  
 13 MR CARR: Yes.  
 14 MR JUSTICE PEPPERALL: Yes, I know that one.  
 15 MR CARR: It says, "Supporters decide to shut the job down."  
 16 That is, as it were, a badge of honour for the  
 17 publishers of that video, along with the invitation for  
 18 others to do the same. But we come back again, my  
 19 Lord, even giving Mr Richardson the maximum latitude in  
 20 terms of the propositions that he put before you, that  
 21 even if we were only dealing with staggered departures,  
 22 which on the evidence we're not, one comes back to the  
 23 position that those directly involved in the dispute,  
 24 it is accepted by them, cannot do that.  
 25 MR JUSTICE PEPPERALL: Yes.

1 MR CARR: One comes back to how the direct action has  
 2 occurred in the first place. This is individuals, this  
 3 is the defendants, being encouraged and saying to  
 4 themselves, "Well, the Union can't do what the Union  
 5 wants to do because it's got an order against it and  
 6 it's been in contempt of court, so we're going to do it  
 7 instead." It is, to use the language of Mr Smiles'  
 8 witness statement, "outsourcing of prohibited  
 9 activity," prohibited (inaudible) apply to the Union,  
 10 apply to those directly involved in the dispute, and we  
 11 say it is beyond argument that that which employees,  
 12 Union members, those affected directly by the dispute  
 13 are not able to carry out, cannot, as a matter of law,  
 14 be regarded as being capable of being outsourced to the  
 15 defendants. My Lord, I'm not sure whether there are  
 16 any other points I was due to come back to you on.  
 17 MR JUSTICE PEPPERALL: I don't think there are. Given this  
 18 is your opportunity to do so, you haven't actually  
 19 taken me through the draft order as to what you are  
 20 seeking. Do you want to do that?  
 21 MR CARR: Yes, my Lord.  
 22 MR JUSTICE PEPPERALL: Page 29 of the main bundle.  
 23 MR CARR: Thank you. Yes.  
 24 MR JUSTICE PEPPERALL: Paragraph 1 is trespass. You told me  
 25 earlier that you accepted there was limited evidence of

1 trespass.  
 2 MR CARR: Yes.  
 3 MR JUSTICE PEPPERALL: Is there some evidence of trespass?  
 4 MR CARR: There is and --  
 5 MR JUSTICE PEPPERALL: That might have been one of the  
 6 issues you were going to come back on.  
 7 MR CARR: That was one of the issues, and I apologise for  
 8 not doing so.  
 9 MR JUSTICE PEPPERALL: Yes.  
 10 MR CARR: Yes, so that's paragraph 1. Paragraph 2 is to  
 11 prevent blocking, obstruction, entering, etc. There  
 12 was one point I perhaps should have made. Of course,  
 13 if you're driving a 10-tonne truck -- I don't know if  
 14 they're literally 10-tonne trucks, but let's use that  
 15 expression -- and there are people "walking," to use  
 16 the Reel News video language, "in tight circles" in  
 17 front of your vehicle, what are you supposed to do  
 18 other than stop? Because you're not going to put those  
 19 lives at risk. You're not going to push them out of  
 20 the way with your lorry. So it doesn't require, as it  
 21 were, physically pushing against the lorry in order for  
 22 them to be regarded as being incapable of moving.  
 23 Paragraph 3 deals with the prohibited territory.  
 24 So that's to prevent the blocking of vehicles simply  
 25 relocating in the way that Unite did, which led to the

1 injunction application.  
 2 MR JUSTICE PEPPERALL: Just on a point of detail, that  
 3 extends -- and you have the Brewery Depot evidence  
 4 about the road--sweeping vehicles being penned in there  
 5 -- then beyond just the waste collection vehicles.  
 6 MR CARR: Well, there are two points that emerge from  
 7 paragraph 3. First is geography and second is  
 8 vehicles. So the geographical limitation is there in  
 9 order to deal with the blocking down the road problem,  
 10 as to which we've seen, 19 September, and you will now  
 11 also have seen the evidence of the latest blocking down  
 12 the road, evidenced in Ms Carter--Hughes' second witness  
 13 statement, the latest one.  
 14 MR JUSTICE PEPPERALL: Yes.  
 15 MR CARR: So that's the first point that one has to consider  
 16 in terms of the draft order. The second point is  
 17 vehicles, and that is the street scene point.  
 18 MR JUSTICE PEPPERALL: Yes.  
 19 MR CARR: Given that that has happened already, that there  
 20 have been blocking of other vehicles, if you were just  
 21 to order that they are prevented from blocking the  
 22 principal bin collection lorries, then we would say,  
 23 "Well, that's inevitably going to lead to a different  
 24 tactic being deployed," and one only has to listen --  
 25 as we all have done -- to Mr Richardson and Mr Wingate

1 to see the strength of feeling. If you leave a gap,  
 2 they're going to fill it.  
 3 MR JUSTICE PEPPERALL: Yes. Sorry, the question I was  
 4 asking about, this goes beyond the waste collection  
 5 vehicles. The evidence of the blockades, does that all  
 6 relate purely to residential collections, or is it not  
 7 as straightforward as that? Do the same residential  
 8 lorries also collect the --  
 9 MR CARR: It's not as straightforward as that because waste  
 10 collection vehicles will collect from offices and --  
 11 MR JUSTICE PEPPERALL: So, this is trade and residential, is  
 12 it?  
 13 MR CARR: Yes.  
 14 MR JUSTICE PEPPERALL: And you put it colloquially about --  
 15 in terms of the residents, but actually, these are  
 16 business collections as well.  
 17 MR CARR: There are, but -- And I don't want to sound as  
 18 though I'm saying "Well, the businesses can put up with  
 19 it," but in terms of the strongest impact, we would  
 20 tentatively suggest that it's going to be felt most  
 21 acutely by people having rubbish outside the front door  
 22 of where they live.  
 23 MR JUSTICE PEPPERALL: Yes, so businesses, in other words,  
 24 if there isn't a collection, can ordinarily stump up  
 25 the costs, as it were, of getting that removed. Is

1 that the distinction , that the -- some residents can,  
 2 some can't?  
 3 MR CARR: Well, some may be able to take their rubbish to  
 4 the tip, some may find alternative ways of cleaning the  
 5 problem, some may not. Of course, I suppose it's right  
 6 to say that it's those with the least -- deep pockets who  
 7 will suffer most because they will be less able to  
 8 address the consequences of non-collection.  
 9 MR JUSTICE PEPPERALL: Absolutely. But your application is  
 10 very much put upon the basis of the impact on  
 11 residential collections .  
 12 MR CARR: Those are where the primary -- This will sound  
 13 like an emotive word and I want to be careful about how  
 14 it's construed. They are, as it were, the primary  
 15 victims of non-collection. Again, Mr Wingate's  
 16 concerns about non-collected refuse rather make my case  
 17 for me. He would say it's all the council's fault ;  
 18 well, that's what he says.  
 19 MR JUSTICE PEPPERALL: He says it's a longstanding issue  
 20 that's (inaudible) made worse --  
 21 MR CARR: He says it's not an issue --  
 22 MR JUSTICE PEPPERALL: -- being made worse by the impact of  
 23 the bin strike as well.  
 24 MR CARR: Yes, and ironically, it's being made even worse by  
 25 the activities of the defendants, but there we are.

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1 I'm not going to engage in the politics that --  
 2 MR JUSTICE PEPPERALL: No.  
 3 MR CARR: -- sit behind this because they are not  
 4 appropriate for this application. I'm also reminded,  
 5 my Lord, that of course, it's clinical waste is  
 6 collected as well.  
 7 MR JUSTICE PEPPERALL: Yes.  
 8 MR CARR: So that, I think, takes me to the end of paragraph  
 9 3. Paragraph 4 is a, sort of, outsourcing point.  
 10 MR JUSTICE PEPPERALL: (Inaudible) of service point.  
 11 MR CARR: Yes. Paragraph 5 is a --  
 12 MR JUSTICE PEPPERALL: It's a carveout.  
 13 MR CARR: It's a carveout, yes, and I think it's right to  
 14 say that the carveout that I acknowledge, for the  
 15 purposes of my submissions, does not prevent the  
 16 protesting, and it's actually -- it's not just a matter  
 17 of submission, it's a matter of drafting as well,  
 18 because it's the last few words of the carveout. It  
 19 acknowledges the right to protest across Birmingham  
 20 because you'll see the last sentence is:  
 21 "... or otherwise protesting within the area shown  
 22 on the map in Schedule 2..."  
 23 So protest all you like; just don't block the  
 24 lorries .  
 25 MR JUSTICE PEPPERALL: Yes.

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1 MR CARR: Then the variation provisions, as you've seen.  
 2 MR JUSTICE PEPPERALL: Yes.  
 3 MR CARR: Then paragraphs 9 and 10 may need to be refocused  
 4 towards CPR 6.15 rather than 6.28, 81.4, but the steps,  
 5 we would suggest, would remain the same. It may need  
 6 slight revision but in substance, the steps would be  
 7 the same.  
 8 MR JUSTICE PEPPERALL: Yes. Just on that, you --  
 9 MR CARR: Sorry, that's paragraphs 10 and 11.  
 10 MR JUSTICE PEPPERALL: Yes. Paragraph 9 goes beyond just  
 11 this question of whether or not the substituted service  
 12 or dispensation -- you seek, sort of, prospective  
 13 orders also in respect of, for example, what might  
 14 happen should you bring a contempt application.  
 15 MR CARR: Yes, and if I was on the other side, I'd be  
 16 saying, "Well, no, no, no, if you're going to fix  
 17 people with the consequences of penal notice, you've  
 18 got to do better than that," and I have to accept that,  
 19 but if you don't ask, you don't get.  
 20 MR JUSTICE PEPPERALL: Yes.  
 21 MR CARR: But 16 is aimed at claim form -- 16 aimed at the  
 22 claim form, 6.28 aimed at other documents, 81.4(2)(c)  
 23 aimed at dealing with the consequences of it, the  
 24 consequences of breach. I guess the downside, from our  
 25 perspective, of an order based on 81.4(2)(c), is that

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1 if one is going to dispense with service and then  
 2 commit, then it may be problematic in terms of  
 3 establishing actual knowledge of the order --  
 4 MR JUSTICE PEPPERALL: Yes.  
 5 MR CARR: -- for the purposes of any contempt application,  
 6 but one hopes one doesn't get to that because if the  
 7 order is made, one hopes that it's compliant with both.  
 8 But that is the purpose in that.  
 9 So, the steps at 10 and 11, mainly revision,  
 10 depending on your ultimate decision on what is the  
 11 appropriate way of dealing with the issue of  
 12 notification in the particular context that we're  
 13 dealing with here.  
 14 MR JUSTICE PEPPERALL: Yes.  
 15 MR CARR: Then 13 and 14, well, we have got a deemed date in  
 16 paragraph 12 but if you make an order under 6.15, the  
 17 order would also have to specify that this matters in  
 18 6.15(4)(c), which may not work in the context of this  
 19 particular dispute and the way in which the defendants  
 20 are conducting themselves.  
 21 Paragraph 10 -- So, paragraph 10 and 11 --  
 22 MR JUSTICE PEPPERALL: Are they precisely the same steps  
 23 you've already taken, or is there anything missing?  
 24 MR CARR: It is intended to be, and hopefully is, a  
 25 repetition of steps already taken. Now, of course, it

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1 would be open to your Lordship to say, "Well, actually,  
2 I think you should do more." I'm not sure what we  
3 could do more because we've done everything that seemed  
4 appropriate to us in terms of satisfying the  
5 requirement to give notice and if those steps are  
6 regarded by the Court as appropriate to discharge our  
7 obligation to give notice in this application, we would  
8 tentatively suggest that the same steps ought to be  
9 sufficient for the purposes of an order under 6.15 or  
10 6.16.

11 MR JUSTICE PEPPERALL: Yes.

12 MR CARR: Those steps will be familiar to you, my Lord, and  
13 the steps are pretty much the same at 10 and 11 but, of  
14 course, the difference on 11 is that we've got a  
15 monitoring requirement. Apologies, the monitoring  
16 requirement is also in 10(c); I'm mistaken.

17 MR JUSTICE PEPPERALL: Yes. So, although described as an  
18 interim injunction, there's no, sort of, formal return  
19 date?

20 MR CARR: There isn't a formal return date, Lord. Deciding  
21 what the category of injunction is in cases like this  
22 is not straightforward and you see them referred to in  
23 the authorities as being "quasi-interim" or  
24 "quasi-final."

25 MR JUSTICE PEPPERALL: Yes.

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1 MR CARR: I suppose that the correct description of this,  
2 bearing in mind my point about needing to revisit the  
3 length of the injunction for the purposes of the claim  
4 form, we would say that this is a quasi-interim  
5 injunction, albeit with a more lengthy and as yet  
6 unidentified return date.

7 You may not have picked this up from the judgment  
8 of Mrs Justice Stacey in Veolia, but what Veolia did is  
9 they turned up and they said, "Can we have three years,  
10 please?" And she said, "No, you're not having that.  
11 I'll give you six months." But the idea was that the  
12 injunction would be revisited after six months. Now,  
13 whether one calls that a review of the order, which is  
14 an expression often used in protester cases, or whether  
15 one calls it some sort of return date may not matter  
16 very much. But what we would say is the important  
17 thing is that, within a reasonable period of time,  
18 there is the opportunity for the Court to consider  
19 again whether an order (inaudible) appropriate.

20 So, to give one example, let's say that the  
21 dispute was settled within the next few months. If  
22 that happened, one would hope that we would apply to  
23 the Court for the order to be discharged because we  
24 wouldn't need it, but there may be events that happen  
25 between now and whatever day we come back that cast the

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1 order in a different light. It may be that, for  
2 example, that there are more defendants who want to  
3 present more arguments as to why the order should not  
4 continue on its terms, and they may take the view that  
5 rather than making an application for variation in  
6 accordance with the provisions of paragraphs 6-7, they  
7 may take the view that, well, they'd rather just turn  
8 up and argue that at a future date at which the Court  
9 has fixed for a formal review.

10 MR JUSTICE PEPPERALL: Mm—hmm.

11 MR CARR: So it may be, your Lordship, that the right way to  
12 proceed would be to fix a date of duration rather than  
13 just say six months, because that leaves things  
14 slightly up in the air.

15 MR JUSTICE PEPPERALL: Yes.

16 MR CARR: But again, I don't feel strongly about it. I  
17 mean, the important thing from our point of view is  
18 that we have an order in place that allows a  
19 functioning service in terms of waste collection for  
20 those living and working in Birmingham.

21 MR JUSTICE PEPPERALL: Yes, (inaudible). Is there anything  
22 further?

23 MR CARR: No.

24 MR JUSTICE PEPPERALL: Mr Wingate, that went a little bit  
25 beyond pure reply, partly at my invitation —

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1 MR RICHARDSON: May I — may I reply?

2 MR JUSTICE PEPPERALL: Well, I'm asking him first —

3 MR RICHARDSON: All right.

4 MR JUSTICE PEPPERALL: — because you asked that he speak  
5 first earlier. Mr Wingate, is there anything you want  
6 to add? I'll come to you in a second, Mr Richardson.

7 Submissions in reply by Mr WINGATE

8 MR WINGATE: Yes, well, thank you for coming back to me,  
9 your Honour. Well, I'd like to point out that Mr Carr  
10 really hasn't actually, sort of, dealt with any of the  
11 points I've made about the general conditions of life  
12 that we face in this city. And I think there's — the  
13 reason is because he can't, because he knows all this  
14 stuff is true. He knows that the council has been  
15 paying huge amounts of money extra to make sure that  
16 this is to try and break this strike — this is public  
17 money — to try and break this strike, than they would  
18 have actually paid out if they'd just been paying the  
19 bin workers their entitled wage.

20 He doesn't address the fact that — the huge  
21 mismatch of money that I've already been talking about.  
22 He doesn't deal with the issue of what does "trespass"  
23 actually mean if it's on public property, if it's on  
24 council property that's funded by people? The people  
25 themselves pay for the depots and the running of the

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1 depots. What does "trespass" actually mean in that  
2 situation?  
3 So, I'm asking you to not impose this injunction  
4 because actually, we want to see, in the interests --  
5 it's actually in the public interest, it's in the  
6 public interest that we have proper, decent public  
7 services and properly, decent--paid public servants and  
8 that bin workers are, you know, indispensable public  
9 servants, your Honour. That's the crux of my argument.

10 And he hasn't really come back to my argument  
11 about Article 10 of the Human Rights Act, which really  
12 talks about protest and says, "Well, you can't --  
13 you're not allowed to protest if you're infringing on  
14 -- you know, this possibility of criminal activity or a  
15 threat to health and morals." But I've already shown  
16 you, given you some examples of the way that actually,  
17 it's the council's actions that are threatening public  
18 health rather than the actions of the people who work  
19 in those services.

20 So, those are a couple of points. But thank you,  
21 your Honour, and I really hope that you don't impose  
22 this injunction on the people of this city.

23 MR JUSTICE PEPPERALL: I may come back to you in one moment  
24 once more, Mr Wingate, I'll explain why in a second --  
25 before you, Mr Richardson. The word "trespass"

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1 reminded me, and I don't think you've answered that  
2 question.  
3 MR CARR: Yes. Mr Smith's witness statement, paragraph 58.  
4 MR JUSTICE PEPPERALL: Just a minute. Smith at para 58.  
5 MR CARR: 29 January 2026.  
6 MR JUSTICE PEPPERALL: Which Smith? Dean Smith? Richard  
7 Smith?  
8 MR CARR: Richard Smith.  
9 MR JUSTICE PEPPERALL: Richard Smith. Paragraph 58. So  
10 this is the evidence of actual trespass?  
11 MR CARR: Yes.  
12 MR JUSTICE PEPPERALL: Yes. (After a pause) So this is 29  
13 January?  
14 MR CARR: Yes.  
15 MR JUSTICE PEPPERALL: (Pause for reading) And it's simply  
16 that they came, what, within the boundary line by 15 to  
17 20 metres, yes?  
18 MR CARR: Correct, yes. I'm not going to pretend that  
19 there's a huge amount of evidence of people entering  
20 their premises, I think --  
21 MR JUSTICE PEPPERALL: Just so that I have it, is that the  
22 only reference you rely upon or is there another one?  
23 MR CARR: That is the only one.  
24 MR JUSTICE PEPPERALL: Okay. Thank you. Because that was  
25 new, you can engage if you want to --

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1 MR CARR: Sorry, just so that there's a chance to respond to  
2 it.  
3 MR JUSTICE PEPPERALL: Yes?  
4 MR CARR: I would be fearful of a situation in which we came  
5 back to this Court in a month's time and say,  
6 "Everybody stepped over onto the land now and they say  
7 we're not in breach. Can we have an extension,  
8 please?"  
9 MR JUSTICE PEPPERALL: Yes. Mr Wingate, is there anything  
10 you wanted to add about that trespass point?  
11 MR WINGATE: Well, your Honour, if you walk in a public  
12 park, you're not trespassing, are you? So what makes  
13 you walking -- what makes somebody walking on a -- on  
14 the property of a bin depot, what actually makes it  
15 trespass under the law?  
16 MR JUSTICE PEPPERALL: Thank you.  
17 MR WINGATE: This is public property.  
18 MR JUSTICE PEPPERALL: Mr Richardson?  
19 Submissions in reply by Mr RICHARDSON  
20 MR RICHARDSON: Yeah, I equally urge your Lordship not to  
21 impose this order, and I think there are fundamental  
22 contradictions with the advocate's statement. He said  
23 at one time, "Protest wherever you like," but then in  
24 an earlier contribution, he objected to people even  
25 being on the road outside the depot.

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1 MR CARR: No, I didn't.  
2 MR JUSTICE PEPPERALL: Just one minute.  
3 MR RICHARDSON: I didn't interrupt you, you know?  
4 MR CARR: (Inaudible).  
5 MR JUSTICE PEPPERALL: Sorry, I'm trying to ask you a  
6 question. My understanding -- I might have got this  
7 wrong. My understanding is the distinction they make,  
8 and certainly in the draft order, the draft order  
9 doesn't say you can't be on the roads. The draft order  
10 says what you can't do is block or obstruct the highway  
11 for the purpose of blocking the bin lorries.  
12 MR RICHARDSON: Okay, well, thanks for that correction, but  
13 I did hear it as it being on the road.  
14 MR JUSTICE PEPPERALL: No, okay.  
15 MR RICHARDSON: But let's discuss this question of the  
16 circling outside the -- the (inaudible). When I was  
17 there, there was no attempt to move the lorries. If  
18 the lorries had been moved to the entrance and the  
19 people then tried to physically stop them, etc.,  
20 clearly the police could be -- intervene and remove the  
21 people. None of that was -- happened. The -- the  
22 wisdom of the people running the bin service decided  
23 not to challenge the protest, to wait for 15 minutes  
24 and send a lorry, and then at 15 minutes, it's  
25 completely up to them to make that decision.

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1 And I think the people circulating outside are not  
2 making a physical threat through barrier to the  
3 lorries. They're not pushing them or stopping them.  
4 They're just there. And whenever I saw that, the  
5 police did not intervene and if the police thought that  
6 they were sort of physically blocking them, surely they  
7 would have intervened. They were engaged in a peaceful  
8 protest, and they were -- it was up to the proprietors  
9 and the management of the bin lorries to actually  
10 decide what to do. As I said, to make this order has  
11 very dangerous implications for the right to legal  
12 peaceful protests, which I don't know whether some  
13 people might challenge in another court, but I do think  
14 it's a very significant thing, you know?

15 The other interesting thing about the advocate, he  
16 accepts no physical threats, or physical actions had  
17 been taken by the protesters to stop these lorries. So  
18 the people who are engaging in that protest were  
19 engaging in purely legal activity. I think that that  
20 is the crucial thing, and I think that the Court should  
21 reject this and the advocate could send back to his  
22 employers the sentiment that we've expressed, the  
23 urgent need to end this disastrous strike, completely  
24 discrediting the Council in a very short time. Thank  
25 you.

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1 MR JUSTICE PEPPERALL: Thank you. Now, finally, somebody in  
2 the back row has sat for quite a while with their hand  
3 in the air. I mean, this isn't a public meeting where  
4 I simply call -- I don't know if there's something you  
5 wanted to say. Let me be clear, if you're identifying  
6 yourself as a defendant, is that the position?

7 UNKNOWN SPEAKER: Sorry, can I just ask, what do you -- what  
8 --

9 MR JUSTICE PEPPERALL: Somebody who has been involved at one  
10 of these sites in the protests.

11 UNKNOWN SPEAKER: Speaking as a member of the public, if  
12 that's okay.

13 MR JUSTICE PEPPERALL: In that case, no. I've already taken  
14 one member of the public at the beginning of this  
15 hearing and identified who wanted to address me. I'm  
16 not simply going to sort of open the matter up to  
17 further debate. If you want to whisper something in  
18 one of these gentleman's ears, I'll allow you to do  
19 that though.

20 MR WINGATE: (After a pause) Sorry, (inaudible).

21 MR JUSTICE PEPPERALL: Okay.

22 Submissions by Mr WINGATE re trespass

23 MR WINGATE: Yes, thank you for allowing another  
24 intervention. The things raised were, first of all,  
25 evidence -- what evidence is there, actually, of

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1 trespass? Because as far as we can see, there was only  
2 one -- one case of a minor transgression. So on -- the  
3 theme of trespass is one of the things I've been  
4 talking about already. Is there any evidence of  
5 clinical waste actually being blocked by the  
6 protesters? Because as -- as far as we're aware, the  
7 clinical waste has been allowed through.

8 Lastly, really, the lorries -- it seems that the  
9 lorries are being obstructed but entirely peacefully,  
10 so what is the actual -- what is the crime being  
11 committed really? There's been no physical  
12 intimidation, it's been completely peaceful and we've  
13 all understood that. Where is the crime here? Where  
14 is the crime that necessitates an injunction, your  
15 Honour?

16 MR JUSTICE PEPPERALL: This is, of course, not a criminal  
17 court. Just to make a distinction, a criminal offence  
18 is something punishable in a criminal court, a  
19 magistrates' court or a Crown Court. It can lead,  
20 ultimately, to some sanction such as a fine,  
21 imprisonment or something of that sort for it. This  
22 injunction is put on the basis of the civil rights.  
23 Just so you understand that point, Mr Wingate, it's put  
24 on the basis that there's been some evidence of  
25 trespass, although it's accepted it's not a lot, and

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1 some evidence of what they call "private nuisance," and  
2 then thirdly, public nuisance. That's the way it's  
3 put. I don't know if there's anything you -- I simply  
4 say that to you because you've put it in terms of  
5 crime. If there's anything further you want to say on  
6 that, then I'll hear you.

7 MR WINGATE: Well, I suppose the thing is, you -- you try to  
8 balance what the Council wants to happen with what's  
9 public -- perhaps might be in the greatest public  
10 interest and the actual fundamental right of the right  
11 -- right to protest, your Honour. So this is what --  
12 is the argument we've been make -- making (inaudible),  
13 so --

14 MR JUSTICE PEPPERALL: I understand. I understand. Thank  
15 you. Well, we've sat a little bit beyond the normal  
16 lunchbreak, but I think everybody has completed their  
17 submissions. Yes. I appreciate the need for a quick  
18 decision and a quick decision you will have, but I will  
19 formally reserve the decisions that I take. I will  
20 send out and hand down at the same time actually, in  
21 this instance, the judgment that I give, and at the  
22 same time, in the event that an order is made -- well,  
23 there will be an order one way or the other, it's  
24 either granting an injunction or it's refusing an  
25 injunction, so an order will be made. I will send out

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1 the order at the same time.  
 2 Now, those that have addressed the Court, if they  
 3 wish to provide an email address to the court associate  
 4 sitting in front of me, then copies of those documents  
 5 will be sent out to you individually at the same time.  
 6 Otherwise, I'm sure they'll be published in any event  
 7 on the website where the City Council put up documents.  
 8 But it's a matter for you if you want to give an email  
 9 address. Mr Richardson, I think, has gone, but if he  
 10 wanted to as well then the same courtesy would be  
 11 extended to him. Are there any other matters before I  
 12 rise?

13 MR CARR: No, not from this side.  
 14 MR JUSTICE PEPPERALL: No. Thank you all and thank you also  
 15 for the courtesy with which this has been conducted. I  
 16 appreciate for some of the reasons that were outlined  
 17 particularly in your argument, Mr Wingate, that emotion  
 18 is run extremely clearly upon this issue. I think on  
 19 all sides, it's fair to say. Thank you for the  
 20 moderate way in which the argument was put. Thank you.

21  
 22 (Hearing ends)  
 23 (1.12 p.m.)

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